

NEW YORK STATE BAR ASSOCIATION

**Committee on Professional Ethics**

Opinion 693 - 8/22/97 (68-96)	Topic:	Nonlawyer Employees; Escrow Accounts; Attorney's Signature
	Digest:	Attorney may allow paralegal to use attorney's signature stamp to execute escrow checks under certain circumstances
	Code:	DR 1-104; DR 9-102(A), (B); DR 9-102(E); EC 3-6

**QUESTION**

May a lawyer allow a paralegal to use a stamp bearing the lawyer's signature to execute checks drawn on a client escrow account?

**OPINION**

This Committee and others have frequently addressed issues arising from a lawyer's delegation of tasks to a nonlawyer employee. *See, e.g.*, N.Y. State 677 (1995); N.Y. State 255 (1972); N.Y. State 44 (1967); N.Y. City 1995-11 (1995); N.Y. City 666 (1985); Nassau County 90-13; ABA 316 (1967). The question in this inquiry is whether, consistent with DR 9-102(E), a lawyer may allow a nonlawyer employee to use a signature stamp to execute checks drawn on the lawyer's client escrow account. *See* DR 9-102(B). The inquirer notes that the purpose of the signature stamp is to facilitate procedures at the closings of real estate transactions.

The New York Lawyer's Code of Professional Responsibility contemplates that lawyers will delegate tasks to nonlawyers. DR 1-104; EC 3-6; *See* N.Y. City 1995-11. We have recently opined that it is permissible for lawyers to delegate attendance at a real estate closing to a paralegal, where the delegating lawyer is available by telephone as necessary, the particular closing is "ministerial" and several other conditions are satisfied. N.Y. State 677 (1995). In our opinion we noted that all tasks assigned to a paralegal must be "within the limits prescribed by law" and "clearly limited to those functions not involving independent discretion or judgment." N.Y. State 677; *see* ABA 316 (1967); N.Y. State 255 (1972); N.Y. City 666 (1985). We acknowledged that many real estate and mortgage closings do not require the paralegal to exercise independent discretion or judgment. N.Y. State 677.

It is the attorney or a member of the attorney's firm who is the custodian of the funds of the client. DR 9-102; N.Y. State 570 (1985); Nassau County 88-31. DR 9-102(A) and (B) generally require that a lawyer deposit client funds in identifiable bank accounts within the state and segregate such funds from the lawyer's general funds. N.Y. State 570 (1985). An attorney is personally and professionally liable for funds and property entrusted to him or her by a client and must exercise the highest degree of care in preserving and protecting such funds and property. Nassau County 88-31. Consistent with these principles, DR 9-102(E) provides that "[o]nly an attorney admitted to practice law in New York State shall be an authorized signatory of a special account." A nonlawyer may not be a signatory on a special account and a lawyer may not give such a person signatory power on such account. *In re Gambino*, 205 A.D.2d 212, 619 N.Y.S. 2d 305, (2d Dep't 1994) (lawyer violated DR 9-102(E) by permitting nonlawyer daughter to be signatory on special account); *In re Stenstrom*, 194 A.D.2d 277, 605 N.Y.S. 2d 603 (4th Dep't 1993) (lawyer violated DR 9-102(E) by permitting nonlawyer ex-wife to be signatory on special account).

Although it is clear that only a lawyer may control the lawyer's client escrow account and be a signatory of it, the Rule does not address whether a lawyer may delegate the task of signing his or her name to escrow account checks to others, and if so whether a signature stamp can be used for that purpose. Based on the analysis of proper delegation in our previous opinions, we believe that it is ethically permissible for a lawyer to authorize a paralegal to make use of the lawyer's signature stamp on checks drawn from a special account at closings under certain conditions and with proper controls. As with the rest of a paralegal's duties at a real estate closing, N.Y. State 677, the lawyer must consider in advance how the paralegal will use the signature stamp – including approving the purpose of the anticipated payments to be made by such checks, the nature of the payee and the authorized dollar amount range for each check to be issued – and review afterwards what actually happened to assure that the delegation of authority has been utilized properly. As a practical matter, compliance with these restrictions will limit the use of the signature stamp by a paralegal to those circumstances in which the lawyer can reliably forecast events at the closing.

Attorneys must be aware that responsibility for client funds may not be delegated, and attorneys authorizing paralegals to use signature stamps on checks drawn from escrow accounts are "completely responsible" to the client for any errors or misuse of the stamp. N.Y. State 677; DR 1-104. Attorneys must take steps to safeguard the use of the signature stamp to avoid any misappropriation of client funds.

## CONCLUSION

A lawyer may allow a paralegal to use a signature stamp to execute escrow checks from a client trust account so long as the lawyer supervises the delegated work closely as provided in this Opinion and exercises complete professional responsibility for the acts of the paralegal.

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