



Committee on Professional Ethics

Opinion #304 - 10/17/73 (31-73) Topic: Law clerks, paralegals and other non-lawyer employees; taking of deposition by clerk or non-lawyer employee

Digest: Improper to delegate taking of deposition to clerk or other non-lawyer employee.

Code: Canon 3
EC 3-5, 3-6
DR 3-101(A)

QUESTION

May a lawyer delegate to a student law clerk studying in his law office under a certificate of clerkship, or to an employee who is a law school graduate awaiting bar admission, the taking of a deposition, where the lawyer is present and supervising throughout the deposition?

OPINION

It would be violative of accepted professional standards to delegate to a law clerk studying in a law office under a certificate of clerkship, or to a law school graduate awaiting bar admission, or to a paralegal employee, or to any unlicensed individual any function which calls for the professional judgment of a lawyer. EC 3-5. The taking of a deposition necessarily involves an exercise of professional legal judgment, and therefore may not be delegated to anyone not yet authorized to perform an attorney's function, whether or not a supervising licensed attorney remains present throughout the taking of the deposition. Cf. N.Y. State 44 (1967). EC 3-6 and N.Y. State 255 (1972) which permit the delegation of certain tasks to appropriate lay employees, do not extend to any matter where the exercise of professional legal judgment is required.

While this Committee does not pass on issues of law, we call attention to Section 478 and Section 484 of the Judiciary Law which prohibit, with certain limited exceptions, individuals not yet admitted to practice, from engaging in the practice of law. Thus a lawyer may also find himself in violation of Canon 3 and DR 3-101(A) by aiding a non-lawyer in the unauthorized practice of law, to the extent that the Judiciary Law may make it unlawful for an unlicensed individual to take a deposition.
