

FEES – REAL ESTATE TRANSACTION:
SETTLEMENT ATTORNEY ADVISING
ATTORNEYS IN SURROUNDING AREA
OF FEE ARRANGEMENT TO SELLERS
FOR PERFORMING CERTAIN
SERVICES.

You have recently received correspondence from Law Firm A advising that, in a number of routine real estate transactions, Law Firm A has represented the purchaser while the seller has been represented by another attorney. Law Firm A has been expected not to charge any fees to the seller; however, they were often faced with no alternative but to revise or correct the deed forwarded by seller's attorney, as well as prepare the seller's portion of the HUD-1 settlement statement, and explain that portion of the HUD-1 to the sellers at closing. In addition, Law Firm A would pay recording charges, prepare the seller's 1099, obtain payoff figures and release any deeds of trusts on the property. Law Firm A has proposed to advise the attorneys in its area, as well as in the surrounding jurisdictions, that in real estate transactions where Law Firm A represents the purchaser, and where Law Firm A will not charge any fees to the seller, seller's attorney must be prepared to perform all of the aforementioned functions on behalf of the seller unless other satisfactory arrangements are previously made. While Law Firm A recognizes that an individual is entitled to be represented by the attorney of his or her choice, this proposal would be a more equitable means by which to resolve the matter of nonpayment to settlement attorneys who would otherwise provide services to the seller in a real estate transaction when seller is represented by separate counsel.

You wish to know whether it would be ethically permissible for an attorney or his law firm to disseminate a letter, such as the one you have furnished with your inquiry, to all practicing attorneys in your area and surrounding counties.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:2-105, which provides that a lawyer's fees shall be reasonable and explained to the client. If additional counsel is employed, both attorneys shall assume responsibility, and shall obtain the client's consent after full and adequate disclosure of the terms of the fee.

The Committee previously opined in LE Op. 647, LE Op. 878 and LE Op. 911 that absent an agreement with the seller and seller's attorney, it is improper for the buyer's attorney to impose a fee on the seller in a real estate transaction for services performed by the buyer's attorney. The Committee is of the view that as each real estate transaction arises it would not be improper to advise seller's attorney or provide a letter such as the one attached with your inquiry to said attorney in advance of closing in order to arrive at a reasonable fee for those services the settlement attorney will execute on behalf of seller upon obtaining both seller's and his attorney's consent. The Committee would emphasize that such communication may not be used as a means of steering prospective clients to your firm under the assertion that it would be a needless expenditure to involve separate attorneys in a regular real estate transaction.

Committee Opinion
December 9, 1988