

The Committee reconsidered LE Op. 1138, issued on August 4, 1988, which found that it is ethically permissible for an attorney who is a stockholder of a title insurance company to receive consulting fees, the amount of which is tied to the number of policies obtained for his clients through the title insurance company. The Committee considered a January 15, 1982 Opinion of the Attorney General; prior LE Op. 187, regarding the permissibility of an attorney representing a [real estate] client while maintaining an interest in a title insurance company; recent LE Op. 1405, which found that it would be improper and violative of DR:5-101(A) and DR:5-106(A) for a title insurance company to make payments for a related law firm's employees' salaries, costs of goods, services, and advertisements, and that, if a finder of fact were to determine that such payments [under § 38.2-4614], the receipt of such payments by the lawyer or law firm might constitute misconduct in violation of DR:1-102(A)(3); and Va. Code § 38.2-4614 [preceded by § 38.1-733.1] which sets forth a statutory prohibition against payment or receipt of title insurance kickbacks, rebates, commission, and other payments.

The Committee determined that, since LE Op. 1138 had been rendered without regard to Va. Code § 38.2-4614, LE Op. 1138 should be vacated. Thus, no advisory opinion is now in force which specifically permits an attorney/title insurance company stockholder to receive consulting fees the amount of which is tied to the number of policies obtained for his clients through the title insurance company. [DR:1-102(A)(3), DR:5-101(A), DR:5-106(A); LE Op. 187, LE Op. 1138, LE Op. 1405, Opinion of the Attorney General, January 15, 1982; Va. Code § 38.2-4614.]

Committee Opinion  
October 21, 1991