

Your inquiry concerns the practice of a law firm purchasing title insurance policies for clients, through a title insurance agency in which members of the law firm have an interest. In particular, you ask whether the following two requirements of LE Op. 174-A are still applicable: (1) The attorney examining the title and submitting the application for title insurance may participate only in the general management of the title insurance agency, and (2) The authority to determine whether to issue or decline a policy and to determine what exceptions and exclusions to include in the policy must rest with an individual who is not under the substantial control of the attorney examining the title. You have asked three other questions contingent upon the Committee finding that the above-referenced portions of LE Op. 174-A are still valid. Because the Committee opines that the above-referenced conditions set forth in LE Op. 174-A are no longer valid, it is unnecessary to set forth your other questions.

It is the Committee's opinion that LE Op. 187 implicitly overruled the above-referenced portions of LE Op. 174-A. Although the specific inquiry involved in LE Op. 187 concerned other portions of LE Op. 174-A, the rationale applied in LE Op. 187 effectively overruled the portions of LE Op. 174-A of which you inquire. In referring to LE Op. 174-A, LE Op. 187 stated:

This earlier conclusion was reached in the absence of an absolute prohibition in the Code of Professional Responsibility. Since DR:5-101(A) sets forth a qualified prohibition rather than an absolute one, the Committee now thinks that the attorney's conduct must be measured in light of the disclosure the attorney gives his client. DR:5-101(A) does not actually bar an attorney from undertaking employment when the attorney has a personal or financial interest in the subject matter of the representation. The attorney cannot undertake the representation unless the client consents to the employment of the attorney, after the attorney explains fully the attorney's interests in the representation. Absent an absolute prohibition against such conduct by the Code of Professional Responsibility, the Committee does not believe it can bar through an ethics opinion that which appears to be permitted by DR:5-101(A) upon proper disclosure.

Thus, there are no *per se* prohibitions in obtaining title insurance policies for clients pursuant to DR:5-101(A). As stated in LE Op. 187, "the crucial factor is the adequacy of the attorney's disclosure. . . ." In determining the adequacy of the disclosure this Committee heartily endorses the caution in LE Op. 187 that "all doubts regarding the sufficiency of the disclosure must be resolved in favor of the client, and against the attorney, since it is the attorney who seeks to profit from the advice given his client." The adequacy of the disclosure can only be determined on a case-by-case basis, in light of the particular circumstances involved.

Because questions of law, as opposed to ethics, are not within the province of this Committee, this Committee does not opine whether or not there are laws governing

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matters related to your question. Of course, an attorney's violation of a law may place the attorney in violation of DR:1-102(3).

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Legal Ethics Committee Notes. – Editor’s Note: See also L E Op. No. 1564.

This opinion is overruled, in part, by L E Op. No. 1702 which would require the lawyer to return the materials without reading them. While an ex parte interview of an adversary’s expert is not *per se* improper, standing procedural rules or pretrial orders of the tribunal might restrict or prohibit an ex parte contact with the opponent’s expert. See Rule 3.4(d). See, e.g., Rule 4:1(b)(4)(B) of the Rules of the Supreme Court (discovery of facts or opinions held by an expert may only be had by written interrogatories, unless the parties agree otherwise.)