

You state that you have received a proposal from a title insurance company wherein the title insurance company would agree that your office could, under certain circumstances, issue title insurance binders. You would not be a licensed agent of the title insurance company, but your title opinions would be accepted by the company in connection with the issuance of the company's policies of title insurance. Both you and the title insurance company believe that it would be mutually advantageous for the parties for you to prepare and issue the title binders on those titles you examine.

The title company would appoint you as its validating officer and would authorize you to countersign its binders. You would agree that every binder issued in this manner would set forth all exceptions to the title disclosed by the examination. You would also agree, as validating officer, to countersign binders upon application by any other approved attorney in the area, in which instance you would be able to rely upon the examination of the approved attorney. You would further agree to promptly forward to the title insurance company a copy of all binders. You state that you would receive no compensation under this agreement.

You wish to know whether or not this arrangement is proper.

Disciplinary Rule 5-101(A) states, “A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.”

In LE Op. 187, the Council of the Virginia State Bar stated as follows: “DR:5-101(A) does not absolutely bar any 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. In the Committee's opinion, if the attorney's disclosure is such that his client is able to make an informed decision, then the disclosure is adequate. The Committee is of the opinion 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 reasoning set forth in LE Op. 187 was reaffirmed in LE Op. 1072.

Based upon the above-cited opinions, the Committee believes that the arrangement as set forth in your letter is not improper, as long as your client consents to your

representation after full and adequate disclosure is made to your client of this arrangement.

Committee Opinion
July 11, 1988