

Committee Opinion
March 11, 1989

LEGAL ETHICS OPINION 1204

FEES – REAL ESTATE
TRANSACTIONS: SELLER'S ATTORNEY
CHARGING FEE TO PURCHASER
ABSENT PRIOR CONSENT WHEN
PURCHASER IS REPRESENTED BY
SEPARATE COUNSEL.

You advise that you were retained by the purchasers to represent their interest in the purchase of a house. Prior to settlement, you informed seller and seller's attorney, whom the seller designated as settlement attorney, of your representation of purchasers. On the date of settlement, you were informed by the settlement attorney that a fee in the amount of \$ 295.00 would be imposed on the purchasers as a settlement fee. You have further indicated that the settlement attorney had prepared a deed, and the deed of trust and note on behalf of his client, the seller, which secured and designated the seller as noteholder and payee on the note. However, there were no settlement fees imposed on the seller by the settlement attorney.

You believe that LE Op. 425 and LE Op. 647 would prohibit a settlement attorney from imposing a fee upon the purchaser, absent any prior agreement, under the circumstances. You wish to know whether it is proper for the settlement attorney, absent any prior agreement, to impose a settlement fee upon the purchaser when the purchaser is represented by separate counsel.

The Committee is in agreement with your conclusion and would opine that LE Op. 425 and LE Op. 467 are dispositive of your inquiry. (See also LE Op. 878 and LE Op. 911) Absent any notification to purchaser well in advance of closing and the purchaser's consent for additional fees, it is improper for the settlement attorney to charge any settlement fees to the purchaser when he or she is represented by separate counsel. (See DR:2-105)

The settlement attorney, who was designated by the seller, performed functions on behalf of and in the best interest of his client, the seller. Therefore, since he did not assume any responsibility to the purchaser, he may not impose a fee on the purchaser. (See DR:2-105(D))

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