

Committee Opinion  
April 3, 1989

LEGAL ETHICS OPINION 1220

REAL ESTATE PRACTICE: INCLUDING  
TITLE EXAMINATION FEES IN TITLE  
INSURANCE PREMIUM FEES.

You advised that some attorneys on their real estate closing statements are showing an attorney's fee of a certain amount and a title insurance premium fee of a certain amount. However, the title insurance premium fee is greater than the fee quoted by the title insurance company for the policy and you believe that legal fees for the title examination costs are being included in the sum listed as title insurance premium. You wish to know whether or not this practice is unethical.

The committee opines that DR:2-105(A), DR:1-102(A)(4), and DR:9-101(B)(3) are appropriate and controlling disciplinary rules in this situation. Disciplinary Rule 2-105(A) provides that, "A lawyer's fees shall be reasonable and adequately explained to the client." Disciplinary Rule 9-102(B)(3) [ DR:9-102] provides that a lawyer shall maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render appropriate accounts to his client regarding them. The Committee opines that if the closing statement is not accurately reflecting the charges made to a client then these disciplinary rules would be violated by the practice you have outlined.

The Committee is further persuaded that Ethical Consideration 2-21 [ EC:2-21] should be the guiding principle in such a situation:

As soon as feasible after a lawyer has been employed it is desirable that he reach a clear agreement with his client as to the basis of fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

To the extent an attorney is masking an attorney's fee under the guise title insurance premium the Committee opines that this is a deceptive and misleading practice which should be discouraged since under some circumstances it may arise to the level of a violation of DR:1-102(A)(4).

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