

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-121
Issued: July 1975

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: A lending institution prepares all loan closing documents itself but requires its closing attorney to comply with the Scrivener's Statute, KRS 382.335. The institution makes a charge for preparation of the closing documents. May a lawyer properly close these loans (1) where the charge for preparation of the documents is stated to, and collected from, the borrower separately and (2) where the preparation charge is not stated to the borrower but is collected from the closing attorney, either directly or by docking part of the title examination fee that was stated to the borrower?

Answer: No.

References: Opinion KBA E-39 (1970); KRS 382.335

OPINION

It appears to us that this question was answered squarely in the Opinion KBA E-39.

A lending institution may perform the mechanical labor of preparing documents affecting title to real estate if it is done under the supervision of a lawyer, Opinion KBA E-39 (1970). In such cases, the lawyer may properly comply with KRS 382.335. If he does not at least supervise the preparation of such documents, he may not comply with KRS 382.335.

We understand the difficulty of defining "supervision" in this context. However, such a definition is unnecessary to resolve the question presented. If the lawyer supervises preparation in some meaningful way, he is entitled to payment for his services. If he does not so supervise, he is not entitled to payment for services in preparation of the documents.

The arrangements presented in the question make it clear the lawyer is not in fact expected to supervise preparation of the documents in any meaningful way and is not to be paid for doing so. Consequently, he may not comply with KRS 382.335.

Inquiries concerning the relationship of lending institutions with their lawyers appear to be endless. It may be suggested that the differences between arrangements heretofore approved and the arrangement here condemned are merely formal. That may be true, but it only suggests

that the lending institutions could make arrangements with their lawyers without forcing these repeated ethics inquiries on us.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.