

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-337
Issued: September 1990

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has made substantial revisions to rules governing the advertisement of legal services. For example, this opinion refers to Rule 7.2, which was revised and renumbered as Rule 7.20. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>) and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: Attorney ("A") forms a title insurance company ("Title Company") and then sells an ownership interest in Title Company to B. B is either a mortgage company, an employee of a mortgage company, or a shareholder of a mortgage company. In return, B channels business in the form of real estate closings from the mortgage company B is associated with to attorney A. One of the requirements of the mortgage company is that the buyer-mortgagor pay for mortgage title insurance for the protection of the mortgagee (the mortgage company with which B is associated). Attorney A collects the title insurance premium and pays it to Title Company. Title Company issues the title policy and distributes the "profits" to attorney A and to B. The requestors ask (1) if this is ethical (2) if disclosures are made.

Answer: No, except that there is not any ethical problem with the requirement that the buyer-mortgagor pay the cost of mortgage title insurance for the protection of the mortgagee.

References: DR 2-103(B), Rule 7.2 (c), and RESPA.

OPINION

We have the following concerns about the above arrangement, as it relates to the Professional Code.

Both the Code and the new Rules provide that a lawyer "shall not give anything of value to a person for recommending the lawyer's service (except that a lawyer may pay the reasonable cost of advertising or written communications permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.)") Rule 7.2 and DR 2-103(B). The arrangement described in the question appears to be little more than a plan pursuant to which the lawyer buys legal work. There is no way to reconcile this method of operation with the Professional Code, whether it be direct, by "of counsel," or any other contrivance or device.

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.