



Committee on Professional Ethics

Opinion #351 - 6/21/74 (26-74)

Topic: Title Company search and certification fee

Digest: An attorney may act as title examiner and agent for a title company in a real estate transaction where he also represents a party if there is full disclosure and consent.

Code: DR 5-107(A), 5-105(C)

QUESTION

May an attorney act as title examiner and agent for a title insurance company issuing a policy in a real estate transaction in which he also represents a party?

OPINION

An attorney may act as a title examiner, "Approved Attorney", or agent for a title company in a real estate transaction where he represents a party, provided it is clear that there is no conflict of interest between the client and the title company, that both parties consent after the attorney makes full disclosure to both, and his client is either given credit for the amount of any fees paid to the attorney by the title company or the client expressly consents to the retention of such fee. N.Y. State 320 (1973); ABA 304 (1962); DR 5-105(C).

DR 5-107 provides in pertinent part:

"(A) Except with the consent of his client after full disclosure, a lawyer shall not:

- (1) Accept compensation for his legal services from one other than his client.
- (2) Accept from one other than his client any thing of value related to his representation of or his employment by his client."

No distinction can be made between a fee paid to an attorney as a title company commission and that paid for the searching or certifying of title. ABA 331 (1972).
