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TITLE OPINION FOR LENDING INSTITUTION, DISCLOSURE TO CUSTOMER

Adopted March 26, 1960.

Syllabus

A lawyer who is retained by a lending institution to render a title opinion on property on which the institution is making a loan may not sell, or acquiesce in the sale of, a copy of such opinion to the customer of the institution.

Facts

A lawyer represents a lending institution. For that client he renders a title opinion with respect to property on which the institution is making a loan. The client (the lending institution) makes a charge to its customer on the settlement sheet for the title opinion addressed to the lending institution. At the closing, and with the knowledge of the lawyer, the customer is offered a copy of that title opinion, for an additional charge. Is the lawyer in violation of the Canons of Professional Ethics?

Opinion

In the opinion of the Committee, the lawyer violated Canons 6, 27 and 35 of the Canons of Professional Ethics.

The lawyer, through his acquiescence in the sale of the title opinion to the customer of the lending institution, has caused the customer to believe he has purchased a title opinion upon which he can rely for his own purposes. Further, this arrangement may well discourage the customer from retaining his own counsel. It is the opinion of the Committee that an attorney-client relationship was established, in fact, between the lawyer and the customer of the lending institution by the furnishing of the opinion to the customer.

The attorney-client relationship was created through the solicitation of the lending institution, which was a violation of Canon 27. Canon 27 prohibits the solicitation of professional employment by a lawyer. It is equally unprofessional for a lawyer to permit such solicitation to be made on his behalf by a third party.

Canon 6 forbids a lawyer from representing conflicting interests, except in those situations where a full disclosure of the facts is made to the parties concerned. It can only be assumed that a complete disclosure of the conditions upon which the lawyer was retained by the lending institution and the limited scope and purpose of the title opinion was not personally made by the lawyer to the customer of the lending institution. The failure to disclose constituted a violation of Canon 6.

It is also assumed that all discussions with the customer relating to the copy of the title opinion to be sold were conducted solely by the lending institution. The action of the lawyer in permitting the lending institution to act in that matter on his behalf was a breach of Canon 35. That Canon, entitled "intermediaries," provides in part as follows:

A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediaries. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client.

The Committee is also of the opinion that the same Canons would be violated should the lawyer permit the lending institution to advise its customer that the fee to be charged the customer on the settlement sheet would automatically entitle the customer to a copy of the lawyer's title opinion. The lawyer may not circumvent the prohibitions of the Canons of Professional Ethics by making an arrangement with the lending institution to charge one fee that would be passed on in its entirety to the customer of the lending institution and entitle the customer to a copy of the title opinion.

The disposition of the fee charged by the lending institution of its customer is not stated in the fact situation presented. If all or any part of the fee was retained by the lending institution with the knowledge and consent of the lawyer, it is the opinion of the Committee that the lawyer would also be in violation of Canon 34. Canon 34, entitled "Division of Fees," states an absolute prohibition against a division of fees with a lay agency.