

ETHICS OPINION

RO-95-02

[REDACTED]

QUESTION:

"Pursuant to our telephone conversation of this date, I am submitting the following situation for a legal opinion from the Alabama State Bar regarding professional responsibility issues. [REDACTED] is a Settlement/Closing Agent of, inter alia, residential real estate loans. It is the wholly owned subsidiary of [REDACTED]. [REDACTED] is the wholly owned subsidiary of [REDACTED], as is [REDACTED]. [REDACTED] would like to close loans for [REDACTED]. Among the forms that [REDACTED] requires to be executed at a closing is the enclosed 'Acknowledgement of Attorney's Representation'. Very simply put my query is:

Considering this form, would the staff attorney for [REDACTED] be construed as allowing [REDACTED] to profit from the practice of law by representing [REDACTED] in a loan closing?

I submit this query to you in light of the Alabama State Bar opinion to [REDACTED] of January 1994, part of which regards a corporation being prohibited from profiting from the practice of law. It is my understanding that since both [REDACTED] come under the umbrella of [REDACTED] attorney would be construed as 'in-house' counsel and therefore be conducting ministerial functions. Performing such ministerial functions would preclude [REDACTED] from charging 'Attorney's fees' but would not prevent it from charging a settlement fee. With this query, I am hereby requesting a formal opinion from the Alabama State Bar."

* * *

ACKNOWLEDGEMENT OF ATTORNEY'S REPRESENTATION

This is to acknowledge that _____ represents
[REDACTED] in connection with the loan transaction made with
[REDACTED] this day. I/we acknowledge that the attorney
represents [REDACTED] even though the cost, including
attorney fees, of this transaction are paid by me/us. I/we further
acknowledge that I/we could have retained an attorney to represent
me/us, but I/we have chosen not to retain counsel.

Date

Borrower

Borrower

ANSWER:

The earlier Disciplinary Commission opinion to which you make reference is RO-94-01. In that opinion, the following statement was made:

"If [redacted] charges for the preparation of legal documents to be used at a real estate closing, two problems arise. First of all, [redacted] is engaging in the unauthorized practice of law because in-house counsel are employees of the corporation ([redacted]) and it is the entity which is charging and collecting for legal work traditionally handled by private lawyers and law firms. Similarly, the lawyers doing the work are splitting legal fees with an entity not organized for the practice of law. This violates Rule 5.4(a)."

You make the point that "in-house counsel" for [redacted] because of their job description or classification are only performing "ministerial" functions. That is not a correct analysis. An attorney who is providing legal services to others as enumerated in Title 34-3-6 is engaging in the practice of law. It does not matter whether or not he is acting at the direction of another, such as an employer. The Disciplinary Commission does not believe that you can escape Rule 5.4(a) by calling fees charged for legal work associated with a financial real estate transactions "settlement fees" rather than "attorney's fees".

The "Acknowledgement" you have submitted adds nothing to this particular analysis one way or the other.

MLM/vf

1/11/95