



Committee on Professional Ethics

Opinion #320 - 12/18/73 (52-73)

Topic: Title company discount;
attorney retention

Digest: Attorney may not retain
title company discount
without crediting client
unless the client expressly
consents to such retention
after full disclosure

Code: DR 5-107(A)(1); DR 5-107(A)(2)

QUESTION

May an attorney retain the discount received from title companies without giving his client credit for the amount of the discount?

OPINION

It is improper for an attorney to retain the discount received from title companies without giving his client credit for the amount of the discount unless the client expressly consents. 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."

Unless the conditions stated in this Disciplinary Rule are fully complied with by the attorney; i.e., full disclosure to the client and the client's express consent obtained, retention of the title company discount by the attorney without crediting the client is improper. See, N.Y. State 107 (1969); N.Y. State 107(a) (1969); ABA 304 (1962); ABA 331 (1972); N.Y. City 862 (1964). Additionally, 5 Scott on Trusts, Sec. 502 (3d ed. 1967) provides that an agent who makes a profit in connection with transactions conducted by him on behalf of his principal is under a duty to give such profit to the principal, unless it is otherwise agreed between them. See also, Drinker, Legal Ethics 97 (1953).
