

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-2
Issued: March 1962

Question: May an attorney submit a written proposal for the fee to be paid him if the proposal is not competitive in any way?

Answer: Yes.

References: Canon 6

OPINION

A title insurance company requested an attorney to advise the fee he would require for examining the title to certain tracts of land in an adjoining state. He discussed the matter with members of the bar in the other state, who agreed to assist him in performing the work. The Kentucky attorney informed the title insurance company that he would perform the work for a stated fee, as determined by him. The title insurance company then contracted with an agency of the United States to issue policies of title insurance based upon the certification by the attorney involved. The title insurance company did not request proposals from other attorneys, and the proposal submitted by the attorney was not competitive in any way.

The question is: Was it unethical for the Kentucky attorney to submit the proposal under those circumstances?

It is not unethical for an attorney to submit a written proposal for the fee to be paid him in the event he is employed to perform certain services for a prospective client, so long as the proposal is not made on a competitive basis. It is also not improper or unethical for an attorney to accept occasional employment from a title insurance company in such instances and under similar circumstances. However, it would be unethical for an attorney to accept employment through a title insurance company to examine and certify a title to anyone other than the title insurance company that had employed him.

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). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."