



ETHICS ADVISORY OPINION

13-07

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION

Question Presented:

May a firm request attorney fees at default foreclosure hearings based upon a percentage of the total debt, despite the fact that the firm's contract rate with its clients is a flat fee for a lesser amount?

Summary:

Rule 3.3 provides that a lawyer must disclose facts that are material and that would enable the tribunal to make an informed decision. The question of which facts are material is a legal question, and therefore a question upon which the Committee will not opine.

Opinion:

In a foreclosure action, as in any matter before the tribunal, the determination of an award of attorney's fees and costs is within the purview of the Court. South Carolina law sets forth the factors to be considered in determining a fee award and a court may also inquire as to additional factors it considers material to the matter. Lawyers must comply fully with Rule 3.3 when responding to inquiries of the Court. If an attorney petitions the court for fees which are more than the client is obligated to pay under the contract of representation, the terms of the engagement between the lawyer and client must be disclosed to the court in order to comply with Rule 3.3.

NOTE: This does not prevent the attorney from making such an application, nor is it intended to be preclusive of the court's ability to award fees based upon the terms and conditions of the contract which is the subject matter of the controversy.