



ETHICS ADVISORY OPINION

09-03

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 ON LAWYER CONDUCT.

Factual Background:

Attorney is a licensed agent for two different title insurance underwriters. One underwriter ("Underwriter A") has increased premiums by twenty percent (20%) over premiums charged by the other underwriter ("Underwriter B"). Both underwriters issue standard ALTA approved policies. Identical policy coverage may be obtained, in most cases, from either underwriter.

Question Presented:

Does attorney have an ethical obligation to write the title insurance policy with Underwriter B or to disclose the difference in premiums?

Summary:

Attorney does not necessarily have an obligation to write the title insurance policy with Underwriter B; however, attorney has an ethical obligation to disclose the premium differences, as well as any other relevant differences between a policy issued by Underwriter A and a policy issued by Underwriter B.

Opinion:

Real estate closing attorneys in South Carolina frequently serve as title insurance agents for multiple title insurance underwriters. The attorney-agent receives a share of the title insurance premiums collected. Rule 1.4 clearly requires attorney to communicate with his clients on this issue, and explain to them the premium difference as well as any other relevant information "to the extent reasonably necessary to permit the client to make informed decisions" as to title insurance. Rule 1.4(b). If attorney believes that it is in the client's best interests to issue the policy through Underwriter A notwithstanding the higher premium, then attorney should so inform the client and explain the basis of his opinion. For instance, if special coverage differences exist between Underwriter A and Underwriter B, or if attorney reasonably believes that Underwriter A is more financially stable or provides better claims service, attorney should so inform the client. In short, attorney is not obligated to issue the title insurance policy through Underwriter B based solely on cost; however, attorney is obligated to convey to the client all relevant information, including of course, the premium differences, necessary to allow the client to make an informed decision.