

**ETHICS OPINION NUMBER 33  
OF THE MISSISSIPPI BAR  
RENDERED APRIL 2, 1976  
AMENDED APRIL 6, 2013**

**AIDING THE UNAUTHORIZED PRACTICE OF LAW** - It is improper for a lawyer to participate in a loan closing transaction in which the mortgage lender renders legal or quasi-legal services and receives a division of "attorney's fees", ostensibly the lawyer's.

The Ethics Committee of the Mississippi Bar has been requested to render an opinion on the following facts:

Lawyer A does a title work for, and renders title opinions to, Company B, a mortgage lender, in connection with its mortgage loans. Lawyer A is paid a fixed fee for the title work and an additional fee for his preparation of deeds. Company B on its loan closing statements sets forth an attorney's fee in the amount of I percent of its loans. This amount is collected by Company B, but from it Lawyer A is paid only a fixed fee. The balance is retained by Company B. Lawyer A does not prepare any of the loan closing papers or any of the other instruments utilized in the closing of loans, and all administrative and clerical work is performed by Company B. Lawyer A is, however, required to endorse the loan closing check along with the mortgagors.

The question posed is whether the participation by Lawyer A in such practices constitutes "aiding the unauthorized practice of law."

It is clear that Company B, if it likes, can represent its own interests in all features of its mortgage loan closings, legally and ethically, Ethical Consideration 3-7 provides:

The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public but anyone who does not wish to avail himself of such representation is not required to do so.

Accordingly, Company B can prepare all papers and other instruments utilized in the closing of its loan (save, of course, conveyances and other legal instruments to which it is not a direct party), and can perform all related administrative and clerical work, all without ethical complications for Lawyer A. It is of no concern that Company B may

pass the cost of such services along to others, or even profit from them, through fees or service charges, properly labeled.

It is the opinion of the Committee, however, that Lawyer A cannot ethically participate in any practice through which Company B performs legal or quasilegal services and for those services is permitted to collect and retain any part of an "attorney's fee" ostensibly his. Mississippi Rule of Professional Conduct 5.5(a) (MRPC) prohibits an attorney from assisting a person who is not a member of the bar in the performance of activities that constitute the unauthorized practice of law. Furthermore, Rule 5.4(a), MRPC, prohibits a lawyer or law firm from sharing legal fees with a non-lawyer.

Whatever its purpose, the requirement that Lawyer A endorse the loan closing check, coupled with the imposition of a one percent "attorney's fee", may have the effect in many cases of leaving all parties to the transaction (other than Lawyer A and Company B) with the impression that the transaction is one which is being closed by an attorney, which it is not, that Lawyer A is the closing attorney, which he is not, that he has assumed the attendant responsibilities, which he had not, or at least has not expected to, and that he is being paid a customary fee for the service, which he is not.

Correspondingly, it is improper in the opinion of the Committee for a lawyer to participate in practices, such as those described, which may reasonably lead members of the public to believe the transactions in which they are involved are receiving the attention, supervision, and handling of a lawyer, when in fact they are not.