



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 799
December 4, 1982**

Topic: Attorney's Fees;
Rebates on Title Insurance

Digest: A commission received from a title insurance company for "back title evidence" must be disclosed to the client and may not be retained by the attorney.

Ref: Rule 2-106
ISBA Opinion No.563;
ABA Opinion No. 304

QUESTION

A title insurance company offers a \$25 fee to a lawyer for furnishing "back title evidence" at the time the lawyer applies for title insurance. The evidence consists of the most recent title policy or commitment issued by another title company and enables the company to reduce its costs by limiting its search to the period subsequent to the date of the prior evidence of title. An inquiring lawyer asks whether he may properly (1) accept the fee, and keep it, or (2) accept the fee and remit it to the client or credit it to the client's account.

OPINION

The answer to the first question is no; the answer to the second is yes. This committee held in ISBA Opinion 563 that a commission received from a title insurance company must be fully disclosed to the

client and that the lawyer's retention of the commission violates Rule 2-106, since the commission constitutes a fee to the lawyer which is not "reasonable" because it is arbitrary and not based on any of the factors (such as the time and labor required) to be considered in getting a fee. We adhere to the view taken in that opinion.

No ethical rule, however, prevents the lawyer from accepting the commission if he remits it to the client or credits it to the client's account.

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