

LEGAL ETHICS OPINION 1645

OBLIGATION OF ATTORNEY TO  
PROVIDE ITEMIZED STATEMENT OF  
FEES DUE WHEN PERSON  
RESPONSIBLE FOR PAYMENT IS NOT  
THE ATTORNEY'S ACTUAL CLIENT.

You have presented a hypothetical situation in which Borrower entered into a construction loan agreement with Bank for the construction of Borrower's home. Delays in completing the construction and the filing of a mechanic's lien constituted breaches of the construction loan agreement. The Bank referred certain aspects of this matter to its attorney. The loan documentation states that the Bank "shall be entitled to collect all expenses incurred in pursuing the remedies provided in the security instrument including, but not limited to, reasonable attorney's fees . . . ."

The Bank notified Borrower that \$3,640 in attorney's fees had been charged against the loan. After several requests, the Bank provided to Borrower a bill from the law firm which provided little additional information. Borrower has attempted to obtain an itemized accounting of the attorney's fees, but the law firm has not provided this information to the Borrower. The Borrower feels that without an itemized accounting it cannot be determined whether the charges are proper and constitute "reasonable attorney's fees" as that term is used in the loan documents.

Under the facts you have presented, you have asked the committee to opine as to whether the person ultimately responsible for the payment of reasonable attorney's fees is entitled to an itemized accounting of how those fees were determined as if that person were a client.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-105(A) which states that a lawyer's fees shall be reasonable and adequately explained to the client; and DR:2-105(B) which states that the basis or rate of a lawyer's fee shall be furnished on request of the lawyer's client.

The committee believes that the cited rules require the existence of an attorney-client relationship. Prior opinions of the committee have interpreted certain disciplinary rules as applicable to the conduct of an attorney regardless of whether a professional relationship of attorney and client existed. LE Op. 1185 (lawyer must comply with the applicable rules at all times, whether or not acting in professional capacity).

However, the committee is of the view that the language of DR:2-105(A) and (B), cannot be construed as creating an ethical duty for an attorney to provide an itemized accounting of his or her fees to persons other than the client, even though such third party may be responsible for the payment of such legal fees, incident to a contract between the client and such third party.

The Rules of the Supreme Court of Virginia provide that the relation of attorney and client exists whenever one furnishes to another advice or service under circumstances

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which imply his possession and use of legal knowledge and skill, or the preparation of legal instruments for a person other than his regular employer. Rules of Court, Pt. 6, § I(B) (definition of the practice of law).

If the relation of attorney and client exists between Bank's attorney and Borrower, then the refusal of Bank's attorney to provide an itemized breakdown of legal fees charged in the construction loan dispute would violate DR:2-105(A) and (B). See, LE Op. 1571. In the absence of an attorney-client relationship, however, the committee is of the opinion that these rules do not apply and Bank's attorney is under no ethical duty to provide Borrower with an itemized breakdown of his legal fees. Whether or not an attorney-client relationship exists between Bank's attorney and Borrower is a legal question beyond the purview of the committee.