

1978 WL 34772 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 17, 1978

*1 Henry C. Nelson, Jr., Esq.
President
Richland County Bar Association
P. O. Box 11808
Columbia, South Carolina 29211

Dear Henry:

You have requested an opinion from this Office concerning the propriety of an attorney's closing a mortgage loan and disbursing funds on the basis of an out-of-state bank draft prior to that draft's being honored by the out-of-state bank.

It is the opinion of this Office that this practice is in violation of Canon Nine of the Code of Professional Responsibility.

Although the American Bar Association has not issued an opinion on this specific Canon Nine question, the prohibition of disbursing funds prior to the out-of-state bank's honoring its draft is a matter of practical interpretation. Until the bank honors its draft, the attorney does not have these particular funds at his disposal. If the attorney disburses and the foreign bank fails to honor its draft, the attorney may find himself in the position of having spent money that is non-existent, or using another client's money improperly. Under the guidelines of Canon Nine, an attorney is obligated to preserve the identity of funds and he cannot do this until the actual money is deposited in his client's account.

It is, therefore, the opinion of this Office that an attorney should refrain from closing mortgages and disbursing funds until the bank honors its draft.

Sincerely,

A. Camden Lewis
Assistant Attorney General

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