

MINUTES

COMMITTEE: Ethics Committee

DATE: March 2, 2000

6. APPENDIX 1 OF THE *PROFESSIONAL CONDUCT HANDBOOK*: WHETHER A LAWYER MAY WITNESS DOCUMENT THROUGH VIDEO DISPLAY TERMINAL

The Committee was asked whether it is proper for a lawyer to witness a signature as an officer under section 43 of the *Land Title Act* using live interactive videoconferencing.

The Committee noted that in an opinion of April 11, 1996 the Ethics Committee identified the minimum obligations of a lawyer acting as a witness under section 43 of the *Land Title Act*, Appendix 1, Rule 2 of the *Professional Conduct Handbook* and Chapter 4, Rule 1 of the *Professional Conduct Handbook*. The Committee expressed the view that those minimum obligations are:

- (a) to identify himself or herself as a lawyer,
- (b) to verify the identity of the borrower in accordance with section 43 of the *Land Title Act*, and
- (c) to advise the borrower that the lawyer is not protecting the borrower's interests.

It was the Committee's view that there are a number of aspects of these requirements that cannot be met using videoconferencing:

- A lawyer cannot know what document the signer is signing and cannot know for certain that the paper the lawyer must sign was the paper signed by the person who executed the document.
- Off-screen influences and the lack of proximity may detract from the lawyer's ability to verify the identity of the person who signed the document.

Furthermore, the Committee concluded that the words "appeared before" in section 43 require an actual physical appearance before the officer and not an appearance through the use of videoconferencing technology.

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