

A lawyer represents both buyer and seller in a real estate closing. After problems arising related to the deal, seller sues buyer for breach of contract. Seller intends to call the attorney who represented both the buyer and the seller in the closing as a witness on his behalf, and the former attorney intends to testify on behalf of the seller.

Ordinarily, it is not improper for an attorney to testify on behalf of a former client represented by the attorney in the same matter when requested to do so by the former client. It is well-established that if an attorney undertakes to represent both buyer and seller in a real estate transaction, it is unethical for him to subsequently represent either party against the other, unless the adverse party consents after full disclosure. When a lawyer represents both parties to a real estate transaction, he has a duty to inform his clients at the outset of the transaction that he will not be able to represent either party against the other if a dispute should arise.

It would not be improper for the closing attorney to testify on behalf of the seller in the breach of contract action. If he is called upon to reveal confidences and secrets gained in the former attorney-client relationship with the buyer, he should not answer unless the former clients consent or unless he is ordered to do so by the court.

The question of whether an attorney can be stopped from testifying even though he faces ethical violations raises legal issues which fall outside the committee's purview and thus cannot be addressed in the scope of a Legal Ethics Opinion. [DR:4-101(B); LE Op. 322, LE Op. 414, LE Op. 656, LE Op. 1000.]

Committee Opinion
November 18, 1991