

Committee Opinion
April 17, 1986

LEGAL ETHICS OPINION 744

ATTORNEY/CLIENT RELATIONSHIP –
SUBSTITUTION OF TRUSTEE.

Attorney “A” represented buyer and seller in a real estate transaction in which seller took back a second deed of trust under which Attorney “A” was designated trustee. The deed of trust did not provide for substitution of trustee. Seller sold/assigned the note secured by the second deed of trust to bondholder, who, upon default, instructed Attorney “A” to foreclose under the deed of trust and Attorney “A” refused. Bondholder then brought a court proceeding for the substitution of trustee and Attorney “B” represented Attorney “A” and buyer in the proceeding. The substitute trustee initiated foreclosure proceedings under the deed of trust and Attorney “A” advised buyer to take legal action to stop foreclosure and referred buyer to Attorney “B.” Attorney “B” stopped the foreclosure proceeding by representing buyer in filing of a bankruptcy petition. Subsequently, Attorney “A” and “B” became members of the same law firm.

Based on the above fact situation, the committee concluded that (1) Attorney “A” properly refused to initiate foreclosure because to do so would have violated the attorney/client relationship which existed between Attorney “A” and buyer by reason of the simultaneous representation by Attorney “A” of buyer and seller in the underlying transaction; (2) Attorney “A” did not act in compliance with DR:5-105(D) and (E) in advising buyer to take legal action to stop the foreclosure because of the attorney/client relationship between Attorney “A” and seller; (3) while Attorney “A” had a fiduciary responsibility to the bondholder as the purchaser of the note secured by the deed of trust from Attorney “A’s” client/seller, there was no attorney/client relationship between Attorney “A” and bondholder and, subsequently, there was no violation of the Code of Professional Responsibility; and (4) Attorney “B” did not conduct himself in compliance with the Code of Professional Responsibility by continuing the representation of buyer in bankruptcy after Attorney “B” joined Attorney “A” in the same law firm. [DR:5-105(D) and (E)]

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