

An attorney represents the wife in a divorce matter. The attorney was party to a telephone conversation with the husband, his attorney, and the wife the evening before the matter was to come before a commissioner in chancery for the taking of evidence. The telephone conversation resulted in the drafting of a property settlement agreement and cancellation of the commissioner's hearing. This settlement agreement contained a condition precedent which was not performed by the husband, nor was the agreement, which was signed by the wife and forwarded to the husband's attorney, ever executed by the husband. Dispute exists over the language of the agreement, and the husband claims the agreement is valid in spite of the nonperformance of the condition precedent and the fact that the agreement was never executed. The wife's attorney now believes that her testimony will be required since she is a knowledgeable party to the negotiations.

Given the above, it is improper for the wife's attorney to continue representing her client when the attorney's testimony is required and none of the exceptions under DR:5-101(B) apply. [DR:5-102(A) and (B); LE Op. 462]

Committee Opinion  
March 11, 1987