

Committee Opinion
December 12, 1987

LEGAL ETHICS OPINION 1011

ATTORNEY – ATTORNEY AS
WITNESS.

You advise that Attorney A and his wife B own a parcel of land which C contracted to purchase. The contract contained a contingency requiring the board of supervisors to pass an ordinance which would create a category of use for which the land is intended for use by C.

After the board of supervisors acted upon C's request, C took the position that the contingency was not met and, therefore, C no longer had an obligation under the contract. A and B wish to recover damages against C for breach of contract.

You ask three questions relative to this situation. The Committee will address these questions in the order presented in your letter.

1. You wish to know whether A may represent both himself and B when A will be a witness in the action. The Committee believes DR:5-105(B) is dispositive of your inquiry. DR:5-105(B) states that a lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness. There are exceptions to this rule (see DR:5-101(B)(1); (B)(2) and (B)(3)).

2. You ask whether A may represent himself when A will be a witness in the action. In this situation, it would not be improper for A to be a witness in the action.

3. You also ask whether it is permissible for A, after B has sought and received independent legal advice from an attorney, to obtain an assignment of B's rights, title and interest, in suing C for damages which B may have sustained. This question does not raise any ethical issues.

Committee Opinion
December 12, 1987