

Committee Opinion
June 8, 1988

LEGAL ETHICS OPINION 1089

FEES – INABILITY TO COLLECT FEES.

You advise that your office handled a closing approximately one year ago and represented both buyer and seller. The closing ran smoothly until the buyer, when filing this year's tax return, noticed that a credit had not been given to him in closing. After investigation, you determined that the credit should have been given. The seller freely admits that the credit should have been given but refuses to pay. Your firm immediately paid buyer the amount of the credit and now wishes to proceed against seller to collect the money. You wish to know whether your firm's prior representation of the seller precludes your firm from proceeding against seller to collect the monies owed by sellers.

There is nothing within the Code of Professional Responsibility which prohibits an attorney from suing a former client for monies owed. However, the Committee does refer you to DR:5-105(D), which states that a lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interests of the former client, unless the client consents after disclosure. In this situation, the Committee believes that because your firm previously represented the seller in the same matter, it would be improper for your firm to represent itself in the suit against your former client for the monies owed unless the client consents after disclosure. Should the client not consent, your firm will be required to retain the services of another firm in this matter.

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