You wish to know whether or not it is proper for an attorney for a borrower to sign a stipulation that loan agreements and loan documentation prepared by a bank are legal, valid, binding and enforceable.

Disciplinary Rule 5-105(A) states that "A lawyer shall decline proffered employment if the exercise of his independent, professional judgment on behalf of a client will be, or is likely to be, adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR:5-105(C)." Disciplinary Rule 7-101(B) states: "In his representation of a client, a lawyer may: (1) With the express or implied authority of his client exercise his professional judgment to limit or vary his client's objectives and waive or fail to assert a right or position of his client." [ DR:7-101]

The Committee opines that this transaction does not compel an attorney to have undivided loyalties. This is the traditional method of representing a client in a real estate closing and it is required that the attorney provide his or her opinion to the client concerning the enforceability and validity of the loan documents.

Committee Opinion
October 26, 1988