

Committee Opinion
February 15, 1991

LEGAL ETHICS OPINION 1398

REAL ESTATE TRANSACTIONS/
PRACTICE - PERSONAL INTEREST
AFFECTING REPRESENTATION:
SETTLEMENT ATTORNEY SPOUSE
OF REAL ESTATE AGENT FOR SELLER
AND/OR PURCHASER.

You have requested that the Committee opine as to the propriety of an attorney's conduct in several situations relevant to real estate closings where the real estate agent is related to the attorney conducting the settlement represents either or both the seller and purchaser.

The appropriate and controlling rule relevant to the questions you raise is DR:5-101(A), which precludes a lawyer from accepting employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances. Further guidance is available through Ethical Consideration 5-1 [EC:5-1] which suggests that neither the personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute the lawyer's loyalty to his client.

The Committee has earlier opined that it is not improper for an attorney to engage his spouse's court-reporting firm to provide services for the attorney's clients provided that the appropriate full disclosure, including information regarding commission fees received by the spouse, is made to the client who then gave consent. LE Op. 1345; see also LE Op. 1198. Similarly, it was also found proper for an attorney to refer her legal clients to her husband who was a financial planner, provided there was full and adequate disclosure of the personal, interest, relationship and office-sharing arrangement. LE Op. 834. The Committee has also opined that it is not improper for a law firm to invest in the stock of a realty corporation and then conduct closings of conveyances originated by the realty corporation as long as the law firm's personal, financial, business or property interests will not disadvantage the clients. LE Op. 1131. Finally, it was not found improper for an attorney who was also a partner in a real estate firm to represent the seller and/or purchaser in a legal capacity, where the property had been sold by either the attorney or his real estate firm, so long as full disclosure and consent occurred. LE Op. 302.

In the first scenario you describe, a real estate closing where the real estate professional involved is the spouse of the attorney who is acting as settlement attorney for both buyer and seller, and the real estate professional who has written the contract is acting as legal agent for the seller, the Committee is of the view that consent must be obtained from both the buyer and seller after full disclosure is made to them of the attorney's personal interest. In the second situation, where the relationship of the attorney and real estate professional is the same and the attorney represents the buyer and seller, but the real estate agent is acting only as a broker for the buyer, the Committee believes similarly that consent must be obtained from both the buyer and seller after full disclosure. Thirdly, where the agent has written the contract but the attorney/spouse is acting as attorney only

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for the buyer while the seller is independently represented, the Committee believes that the attorney must obtain consent from the buyer after full disclosure. Finally, where the attorney conducts the settlement on his own behalf as either purchaser or seller, the Committee opines that the attorney must obtain the consent of the opposite party to the transaction, again after full and adequate disclosure. Obviously, full disclosure must consist of all relevant factors, including the relationship between the attorney and the real estate professional, the personal and financial interest shared by them, and disclosure as to any commissions received. In addition, other disclosures related to the roles of the attorney and spouse may be necessary as part of the transaction. The Committee is not opining as to those issues which have not been raised in your inquiry.

The Committee also wishes to bring to your attention that, contrary to the statement contained in your response to item six (6) on the Request for Legal Ethics Opinion, not all real estate closing services may be "accomplished by non attorneys in accordance with what has been agreed upon." See Part Six: Section 1: Rules of the Supreme Court of Virginia: Unauthorized Practice Rules 6-101 through 6-106 and Unauthorized Practice Considerations 6-1 through 6-9.

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