

You have advised the Committee that an attorney was asked to represent two individuals on real estate matters. The representation involved representing them as sellers of certain real property under contract for sale, i.e., preparing deeds of bargain and sale and necessary lien waiver letters for the title companies, and preparing loan pay-off statements for deeds of trust held by the two individuals separately. Both clients are also officers in two Virginia corporations and certain of the parcels of real estate for sale were in one of the corporate names showing the corporation as owners. Other of the parcels were owned individually by one or the other client.

You indicate that, at the time of your request for an opinion, one real estate sales contract was closed, with the property transferring to a bona fide purchaser and the attorney's client holds a deed of trust note. In addition, two pay-off statements had been provided to other attorneys for their clients who wanted to refinance notes held by the corporation; the individual client holding the deed of trust note had not received any payment on the note; and the corporations had not received money from loan pay-off information. Other transactions had not yet been completed and the real estate representation was ongoing.

You further advise the Committee that, subsequent to the lawyer's representation of the two individuals in the real estate transactions, both clients were indicted by a federal grand jury for conspiracy to distribute drugs, money laundering, and structuring. One of the individuals has requested that the attorney represent her on the federal criminal charges.

You have asked the Committee to opine whether, under the facts of the inquiry, the attorney may accept employment by a criminal defendant/client when the attorney simultaneously represents both the potential client and his alleged co-conspirator on real estate matters apparently unrelated to the proposed criminal representation.

The appropriate and controlling disciplinary rules related to your inquiry are DR:5-105(A) and (C). Disciplinary Rule 5-105(A) requires that a lawyer shall decline employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the preferred employment, except to the extent permitted under DR:5-105(C).

Disciplinary Rule 5-105(C) requires that a threshold determination be made, i.e., it must be "obvious that [the lawyer] can adequately represent the interests of each [client]". The Committee is of the opinion that the determination of whether adequate representation is "obvious" turns on whether or not the real estate representation is related to the potential criminal representation. The facts you have provided indicate that the real estate representation involves the preparation of contracts, lien waivers, and pay-off statements related to the sale of certain real property, and that such representation is

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ongoing. Furthermore, you also indicate that the potential criminal client has been indicted on charges involving conspiracy to distribute drugs, money laundering, and structuring. The facts you have provided do not indicate that the two representations are related, and the Committee believes that it has insufficient facts to determine whether the two matters actually are related.

The Committee cautions, however, that should it be subsequently determined, by either the attorney or a finder of fact, that the two matters are related, e.g., that the real estate clients were using the properties sold to launder illegal profits from drug distribution, it would be improper and violative of DR:5-105(A) and (C) for the attorney to accept representation of the criminal defendant client.