

Committee Opinion
May 11, 1993

LEGAL ETHICS OPINION 1521

CONFLICT OF INTEREST —
PERSONAL INTEREST AFFECTING
REPRESENTATION: ATTORNEY
REPRESENTING BUILDER WHEN
TITLE COMPANY IN WHICH
ATTORNEY HAS OWNERSHIP
INTEREST SERVES AS MECHANICS'
LIEN AGENT FOR BUILDER.

You have presented a hypothetical situation in which Lawyer A has an ownership interest in Title Company B and also represents Developer C. Title Company B has been asked, and has agreed to act, as a mechanic's lien agent and as a disbursing agent, for C pursuant to Virginia Code § 43-4.01(D). Lawyer A represents Developer C in connection with the same project for which Title Company B has been designated as a mechanic's lien agent and disbursing agent. You further indicate that no bill of complaint has been filed and that the situation described arises at the beginning of the attorney-client relationship.

You have asked the committee to opine whether, under the facts of the inquiry, and assuming full disclosure by Lawyer A to Developer C of A's interest in Title Company B, and assuming consent by C, it is ethical for Lawyer A to represent C when it is possible that B might be called to testify as a mechanic's lien agent or disbursing agent.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-101(A), which states that a lawyer shall not accept 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.

The committee is of the view that the attorney-as-witness provisions [DR:5-101(B), DR:5-102(A) and (B)] are inapplicable to the specific question you have raised, since your facts indicate that Title Company B, rather than Lawyer A, may be called to testify. The committee has earlier addressed the question of whether an attorney/mechanic's lien agent may serve as a witness. *See* LE Op. 1474.

Under the applicable DR:5-101(A) and the facts you present which assume that full disclosure of Lawyer A's interest in Title Company B has been made to Developer C, who has consented, the committee opines that it would not be improper for A to represent C on the same project for which B has been designated as mechanic's lien agent and disbursing agent, even if there is a possibility that B may be called to testify on the project.

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