Committee Opinion
June 2, 1993

LEGAL ETHICS OPINION 1535        CONFLICT OF INTEREST: ATTORNEY REPRESENTING SELLER VS. BUYER AFTER TITLE COMPANY, IN WHICH ATTORNEY HAS OWNERSHIP INTEREST, CONDUCTS SETTLEMENT.

   You have presented a hypothetical situation in which Lawyer represented Client in the purchase of a home from Builder. At closing, Client paid to Title Corporation a "settlement or closing fee". Lawyer, at the time of closing, was President of Title Corporation involved, and Lawyer and Title Corporation used the same office address. You indicate that Lawyer did not make written disclosure to Client of his financial interest in Title Corporation.

   You advise that, subsequently, Client sued Builder for construction defects and Lawyer is now representing Builder in the suit, over Client's objection.

   You have asked the committee to opine whether, under the facts of the inquiry, it is proper for Lawyer to represent Builder in the suit.

   The appropriate and controlling Disciplinary Rules related to your inquiry is DR:5-105(D) which provides 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 interest of the former client unless the former client consents after disclosure. [emphasis added]

   Under the facts you have presented, the committee understands that no attorney-client relationship was established between Lawyer and Client/purchaser since the closing fee was paid to the title company which conducted the settlement. The committee is of the view that the Lawyer's apparent ownership interest in the Title Corporation, along with the apparent sharing of office space, does not constitute the Lawyer's representation of parties to a real estate transaction simply because that transaction is closed by the Title Corporation.

   Thus, the committee opines that it would not be improper for Lawyer to represent Builder in defending against the suit brought by Client/purchaser since Client/purchaser is not a former client of Lawyer.