

BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS

Opinion 11-03

Topic: Personal Guarantee Of
Client's Water Charges at
Real Estate Closing

Digest: Seller's Attorney Guarantee of
Water Charges, with Escrow of
Twice the Amount of the Current
Water Bill, Would be De Minimis
And Raise No Ethical Conflict
Under Rule 1.7(a)(2)

Rule: 1.7(a)(2)

QUESTION

Does an ethical conflict arise when the attorney for the seller of certain real property (the "Property") guarantee "payment of all water charges for the Property through the date of Closing and agree to hold a sum equal to the greater of: (i) two times the paid amount shown on the most recently receipted bill for the water account or (ii) \$250.00 in escrow for payment of all unpaid water charges attributable to the Property through Closing?"

OPINION

This inquiry seeks an opinion as to the propriety of the above-stated guarantee, which the Erie County Bar Association's Real Property Committee seeks to include among form agreements for the sale of real estate.

Pursuant to Rule 1.7(a)(2) of the New York Rules of Professional Conduct, a seller's attorney's guarantee of payment for water charges accrued for the seller's property through the date of closing would present an ethical conflict only if such a guarantee entails the representation of differing interests, or if "there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests."

Neither circumstance arises from the putative guarantee. It does not cause the seller's attorney to represent the interests of the purchaser. It also does not present, in general, a "significant risk" of an adverse affect on the seller's attorney's professional judgment, because the risk of payment of water charges would be "de minimis" in light of the escrow issue. Because of the escrow agreement involved in the proposed guarantee, there is not "a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests" under Rule 1.7(a)(2).