Law Society of British Columbia

Ethics Advisory

Lawyer as a witness

EA-2025-06[1] August 18, 2025[2]

Introduction

A lawyer should take precautions to avoid the position of having to give evidence in a matter when also appearing as counsel, as doing so may prevent the lawyer from continuing to represent the client if the lawyer is required to give evidence. This ethics advisory provides some additional context in regard to the ethical requirements and practices arising in situations where a lawyer is, or may be, called as witness in a matter when also appearing as counsel.

Professional responsibility considerations

Code of Professional Conduct for British Columbia ("Code") rule 5.2-1 provides that a lawyer who appears as an advocate must not testify or submit their own affidavit evidence before a court or tribunal. Exceptions to the rule are set out in the rule itself and include: (i) when appearing as both counsel and witness is permitted by law, the court, or the rules of court, (ii) when the matter is purely formal or uncontroverted, and (iii) when it is necessary in the interests of justice for the lawyer to give evidence. Ultimately, whether it is permissible to appear as witness and counsel in a matter is for determination by the decision-maker in the matter. When the chances are sufficiently great that a lawyer will be obliged to give evidence if the matter proceeds to trial, it would be improper for the lawyer to continue as counsel unless there is other counsel ready to assume conduct of the matter without interruption if the lawyer's evidence is required.[3]

Conclusion

From time to time, lawyers may be in the position of potentially having to give evidence in a matter when they are also counsel. When there is a possibility that a lawyer acting as counsel

[1] This Ethics Advisory is based on the Ethics Committee Opinion on lawyer as witness. Ethics Advisories are reviewed and approved by the Ethics & Lawyer Independence Advisory Committee.
[2] Inaugural publication of this Ethics Advisory.
[3] Original consideration: EC September 30, 2004, item 6. Original summary: "Where there is a strong chance that a lawyer will be obliged to give evidence if the matter proceeds to trial, it would be improper to continue as counsel unless other counsel is ready to assume conduct of the matter without interruption if the lawyer's evidence is required."

will be called as a witness, it is prudent to consider alternate arrangements at an early stage and to discuss the options with the client.

Questions

If you would like to discuss a specific professional responsibility issue regarding lawyers as witnesses, feel welcome to contact a practice advisor.

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