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QUESTIONS AND ANSWERS OF COMMITTEE ON PROFESSIONAL ETHICS OF NEW YORK COUNTY LAWYERS ASSOCIATION¹

QUESTION NO. 149

ACCEPTANCE OF PROFESSIONAL EMPLOYMENT IN RESPECT TO CLAIM OF EXEMPTION FROM ARMY DRAFT, AND OF COMPENSATION THEREFORE — NOT DISAPPROVED. — I have lately been consulted by a man who has for thirty years and upwards been a client of this office. He was seeking to secure for his son exemption from military service under the so-called Selective Draft Law. The claims for exemption were of two kinds, one being a matter for the Local Board in the first instance with right of appeal to the District Board; the other being a matter within the original jurisdiction of the District Board. It seemed necessary to supplement by affidavits the official forms issued by the respective boards. No official forms were prescribed for such affidavits. The employment came to me unsolicited; I had no reason to doubt the good faith of my client; and it seemed to me that the construction of the rather long and involved regulations, the drawing of the necessary distinctions between matters of original jurisdiction and matters of appellate jurisdiction, and the drafting of affidavits which should set forth facts and not conclusions, were tasks for a lawyer rather than for a layman. I therefore accepted the employment and performed the service. Furthermore, since my client is able and (presumably) willing to pay, I expect in due course to send him a bill for a reasonable fee. In view of the recent utterance of another Bar Association on this subject, I wish to know whether in the opinion of your committee,

- (a) I have acted unprofessionally in rendering the service;
- (b) It will be unprofessional to make a reasonable charge for the service.

¹ In answering questions this Committee acts by virtue of the following provisions of the by-laws of the Association, Article XVI, Section III:

"This Committee shall be empowered when consulted to advise inquirers respecting questions of proper professional conduct, reporting its action to the Board of Directors from time to time."

It is understood that this Committee acts on specific questions submitted *ex parte*, and in its answers bases its opinion on such facts only as are set forth in the question.

ANSWER NO. 149

In the opinion of the committee the questions should be answered in the negative. In reaching this conclusion the committee has been governed by the following considerations:

It is the duty of every citizen to obey the law, and in this hour of the nation's crisis the duty is made more immediate and more imperative only because of the crisis. The President has called upon every citizen to do his full share in uniting the nation in one supreme and effective sacrifice. In answering this call the lawyer has his duty to perform. Primarily he should assist in the enforcement of the law, and give without stint his services to that task. The exemption rules in the selective draft are part of the law. They are in the law not for any individual's private good, but for the good of the nation. Like the provisions for conscription, they are to be observed. In aiding in their observance, in the interpretation of the law, in applying the rules to the circumstances of particular cases so that the law and the facts may be presented to exemption tribunals, the lawyer is merely performing that service for which he is specially qualified and commissioned. In aiding those who seek clear exposition of the law or in aiding those whose cases come before such exemption tribunals we see no ethical impropriety. We take it for granted, of course, that the lawyer will be mindful of the obligations imposed upon him upon these occasions, as upon all others; he will not fail to speak the truth, to defend the weak, to uphold the law, and to see that no injustice is done or error made in the administration of the law. We take it for granted, also, that he will not consciously lend himself to the aid of the slacker or the shirker, either with or without pay, nor solicit employment from those seeking exemption. His services should be available only to those who really need his assistance and advice either in determining their rights or their duties under the statute and rules, or in presenting their situation to the proper tribunal. So far as the matter of compensation for services of this character is concerned, we think that this must be determined by the lawyer individually in each particular case, and that if the lawyer is disposed to give his services gratuitously, he is free to do so as he would in any case justifying gratuitous service.²

²At a regular meeting of the board of directors of the New York County Lawyers' Association, held October 4, 1917, the following resolution was adopted:

"Resolved, That the Board approves the proposed answer submitted to it by the Committee on Professional Ethics to Question 149, and adopts the same as a correct expression of its views on the subject concerned, and that it be published in the usual manner, including in said publication the action of this Board."