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

QUESTION NO. 154

DUTY OF MEMBER OF LEGAL ADVISORY BOARD TO PREVENT FRAUD BY A REGISTRANT, BUT TO ADVISE REGISTRANT OF HIS PURPOSE.—In the opinion of the Committee, is it proper professional conduct for a lawyer, who has been designated as a member of a Legal Advisory Board, under the Selective Service Law and Regulations, and who has taken his oath of office thereunder, to disclose to the Local Board, information received from a registrant which is in addition to, or in conflict with, the latter’s answers to the questionnaire, but which would tend to establish his correct classification, even though it is information which the registrant has deliberately concealed, or withheld from his written answers?

ANSWER NO. 154

In the opinion of the Committee, the relation of attorney and client does not exist between the registrant and a member of the Legal Advisory Board; and it is not improper, but is indeed the duty of the latter, under his oath of office, to disclose to the Local Board all such information to enable the Board to judge the case in accordance with truth.

He may properly, and should, inform the registrant that he (the lawyer) is designated by the Government to aid in securing accurate and complete information along the lines indicated by the questionnaire. But his duty to “advise the registrant” does not contemplate his assisting the registrant to deceive the Local Board as to the registrant’s availability or exemption.

**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 it opinion on such facts only as are set forth in the question.
In our opinion it is, however, unwise and impolitic to make secret reports to the Local Boards, lest the registrants get false impressions of the attitude and functions of the Legal Advisory Board and its members.

While we regard it as the duty of the members to prevent fraud upon the Government, we advise that the course which the member of the Legal Advisory Board may properly consider it his duty to pursue, in order to apprise the Local Board either of facts or his impressions, be disclosed to the registrant in fairness to him, and that the registrant be counseled, and thus afforded an opportunity, either to explain the situation or to modify his answers to conform with the truth.

QUESTION NO. 156

Lawyer Accepting Employment to Contest Will Prepared and Witnessed by Him—Disapproved.—A, a lawyer, having been the attorney for B for a number of years, is called upon by B, who brings C, a friend, to A’s office, and C requests that A prepare his will. A, after some questioning to determine the mental capacity of C, prepares his will and thereafter witnesses it and signs the usual attestation clause. Later C dies, and his widow calls upon A and states to him that at the time he drew C’s will the latter was laboring under insane delusions, and believed wrongly at that time that his wife was attempting to take his life. Alleging this to be the fact, she asks A to undertake for her a contest of C’s will, and presents to him evidence which seems to A to be conclusive of the fact that C was suffering under the insane delusions, as described, at the time the will was drawn and attested. A then as attorney for the widow files a contest in the probate court, which is verified by his client and signed by him as attorney, alleging therein, among other things, that at the time C executed his will and at the time A signed it as a subscribing witness, C was laboring under insane delusions, and that he was not of sound mind.

Is the act of A in instituting a contest of the will which he himself had prepared and witnessed, improper?