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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?

ANSWER NO. 156

In the opinion of the Committee, the act is improper, because it is inconsistent with the lawyer's relations to the decedent, and with the lawyer's position as a material witness in the case.²

QUESTION NO. 152

ACCEPTANCE OF EMPLOYMENT FROM WIFE TO DEFEND HER HUSBAND FROM A CRIMINAL CHARGE, ARISING FROM FACTS, BY REASON OF WHICH THE WIFE FIRST EMPLOYED THE LAWYER TO PROSECUTE HER HUSBAND—NOT DISAPPROVED.—An attorney is retained by A, the wife of B, to prosecute her husband for threatening her with a revolver. Upon the wife's complaint, the attorney thereupon procures the issuance of a summons out of a City Magistrate's Court, upon the service whereof by an officer of the police department, a revolver is found on B's person. An additional charge is thereupon preferred against B by such officer in said Magistrate's Court, for unlawfully possessing said weapon. The wife then becoming reconciled to her husband, requests the City Magistrate for permission to withdraw her charge, and the same is granted and the charge is withdrawn, with such Magistrate's consent. The wife thereupon requests said attorney to defend her husband on the second charge namely that of unlawfully possessing a revolver, and the husband joins in such request, and desires to retain said attorney to defend him on said charge.

Is it unprofessional for said attorney to accept such retainer?

ANSWER NO. 152

In the opinion of the Committee, it is not unprofessional. The controversy between the husband and wife, out of which the first complaint arose, having been settled, the Committee sees no reason why the attorney should not, with the wife's consent, represent the husband in the second proceeding.

²compare §23, West Virginia Bar Association Code of Ethics which reads as follows:

"An attorney can never attack an instrument or paper drawn by him for an infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it."

Compare also §18, West Virginia Bar Association Code of Ethics which is as follows:

"Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client as to any matter."