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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

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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husband, requests the City Magistrate for permission to withdraw her charge, and the same is granted and the charge is withdrawn, with such Magistrate's consent.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."