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Entry of Judgment by Default upon Notes Given to Settles Suit for Breach of Promise to Marry, Notwithstanding Lawyer for Promise Knows of Her Prior Marriage and is Unable to Confirm Information of Death of Husband–Course Indicated

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QUESTION NO. 181

ENTRY OF JUDGMENT BY DEFAULT UPON NOTES GIVEN TO SETTLE SUIT FOR BREACH OF PROMISE TO MARRY, NOTWITHSTANDING LAWYER FOR PROMISEE KNOWS OF HER PRIOR MARRIAGE AND IS UNABLE TO CONFIRM INFORMATION OF DEATH OF HUSBAND—COURSE INDICATED.—A lawyer has in behalf of a woman client, and with her consent, settled a suit instituted by him in good faith for breach of promise of marriage, by taking notes of the defendant, with a stipulation for entry of judgment in the action in case of default in payment. After paying some of the notes the defendant deliberately defaults, assigning as a reason that at the time of the alleged promise and the suit the plaintiff was a married woman. The lawyer investigates and learns that she was married about four years ago, and that her husband deserted her and disappeared a few months thereafter (all of which was known to the defendant at the time he made the settlement), and that his client is advised by relatives of her husband that he is dead; but the lawyer can get no confirmation of this information, nor any information of the husband’s whereabouts.

In the opinion of the Committee is there any impropriety in the lawyer entering judgment pursuant to the stipulation for the unpaid balance of the amount of the settlement?

ANSWER NO. 181

In the opinion of the Committee, if the plaintiff’s attorney believes that his client has acted in bad faith, he should withdraw from the cause, because he may otherwise be assisting in the perpetration of a fraud. If he does not so believe, there is still a possibility that the husband was alive at the time of the contract to marry, and that the stipulation was, therefore, the result of a mutual mistake as to a material fact. For this reason, it is the opinion of the Committee that the attorney should not enter judgment on the stipulation without opportunity to the defendant to assert such ground as he may be advised why he should be relieved from the stipulation.