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Opinion No. 34 of the Ethics Committee of the Colorado Bar Association Adopted March 27, 1965

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BAR BRIEFS
OPINION NO. 34 OF THE ETHICS COMMITTEE OF THE COLORADO BAR ASSOCIATION ADOPTED MARCH 27, 1965

SYLLABUS

It is improper for a lawyer in a personal injury case to advance living expenses to or for the benefit of his injured client.

FACTS

A lawyer handles personal injury cases. He desires to advance funds for living expenses to his injured clients, with the understanding that he will be reimbursed at the time the case is concluded and that such reimbursement will be in addition to any fee for professional services. The Committee has been asked whether such a practice violates the Canons of Ethics.

OPINION

The Committee is of the opinion that such a practice clearly violates Canons 6 and 10. Canon 42 outlines the limits which must be observed and clearly does not authorize this practice.

The principal objection to this practice is that it amounts to the purchase by the lawyer of an interest in the litigation. This is clearly prohibited by Canon 10. This is true whether or not the client's agreement to reimburse the lawyer is contingent on recovery. A client whose assets are so meager that he requires advances from his counsel to live is unlikely to have any realistic chance of repaying such advances if there is no recovery on his claim.

This practice, by giving the lawyer an additional stake in the case beyond his fees, places the attorney in a situation where his own personal pecuniary interests may well conflict with the best interests of his client and make it impossible for him to represent the client with the undivided fidelity required by Canon 6. While this conflict exists already with respect to counsel fees (particularly in contingent fee cases), we feel that it should *not* be extended to a situation where the lawyer seeks not only compensation but reimbursement.

The justification usually given in support of the practice of advancing living expenses is that it eliminates the urgency of an injured person's need for funds as a factor to be considered in disposing of the case, either by settlement or by trial, and tends to prevent the disparity in economic status usually present in personal injury cases from being a factor in the case. The Committee recognizes that such economic disparity exists in many cases, that it ought not to affect the outcome of the cases, and that, unfortunate-

ly, it sometimes does. The Committee is of the opinion, however, that the practice of having a lawyer advance living costs is not an appropriate nor professionally proper method of resolving the problem. The law is a profession and those engaging therein must use all of the skills of that profession on behalf of those who seek their counsel. Money lending is not one of those professional skills. A remedy for the problem created by economic disparity of litigants must be sought in the proper use of professional skills.

This question has been considered elsewhere. In Opinion 288 by the ABA Ethics Committee, 41 ABA Journal 33, the Committee concluded that such a practice was improper. A like conclusion was reached recently by the Ohio Supreme Court in *Mahoning County Bar Ass'n v. Ruffalo,* 176 Ohio 263, 199 N.E.2d 396 (1964). This Committee agrees with these authorities and, like them, is not persuaded by *People v. McCallum,* 341 Ill. 578, 173 N.E. 827 (1930), in which the Illinois Supreme Court reaches a different conclusion.

Finally, it should be pointed out that the practice, if publicized, constitutes a holding out by the lawyer of an improper inducement to clients to employ him, in addition to the assurance of performing legal services for the client (see Canon 27).