

ADVISORY COMMITTEE
MISSOURI BAR ADMINISTRATION
FORMAL OPINION #119

Reference Note: Rule 4-1.8, Conflict of Interest: Prohibited Transactions, was amended effective November 23, 2021. This formal opinion predates that amendment and should be read with Rule 4-1.8(e)(3) and Comments [11], [12], and [13].

Question: Does Rule 4 Professional Conduct prohibit a lawyer from advancing any funds other than court costs and expenses of litigation in connection with pending or contemplated litigation?

Answer: A lawyer can advance only court costs and expenses of litigation. Rule 1.8 Conflict of Interest: Prohibited Transactions states at Rule 1.8(e)(1):

1.8(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; ...

The Advisory Committee believes that ‘court costs and expenses of litigation’ do not include daily living costs, housing, payments on personal property debts or any expense other than specific court costs and expenses directly related to litigation such as discovery expense and expert witness fees. Further, Rule 8.4 Misconduct, declares that it is professional misconduct for a lawyer to violate, or attempt to violate, the Rules of Professional Conduct through the acts of another. This would prohibit an attorney from providing improper financial assistance to a client through a third party.

Referenced Rules: Rule 1.8(e)(1) of Rule 4.

Rule 8.4 of Rule 4.

Adopted: August 30, 1990

(Updated January 18, 2022, to include Reference Note)