

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of January, 1997, the following order was made and entered:

Lawyer Disciplinary Board,
Complainant

vs.) No. 23012

Otis R. Mann, Jr., a member of The
West Virginia State Bar, Respondent

On the 21st day of August, 1996, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Elisabeth H. Rose, its chairperson, and presented to the Court its written recommended disposition in the above-captioned proceeding, recommending that this matter be dismissed but that the respondent be admonished for technically violating Rule 1.8(e), Rules of Professional Conduct. Thereafter, on the 15th day of November, 1996, came the Office of Lawyer Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, pursuant to Rule 3.11, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written objection thereto. Thereafter, pursuant to Rule 3.13, Rules of Lawyer Disciplinary Procedure, this matter was set on the Court's Argument Docket scheduled for Tuesday, the 14th day of January, 1997.

Thereafter, on the 13th day of January, 1997, came the Office of Lawyer Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, and also came the respondent, Otis R. Mann, Jr., a member of The West Virginia State Bar, by Clifford, Mann & Swisher, and Stephen P. Swisher, his attorneys, and presented to the Court a proposed stipulation between the parties for discipline of the respondent for his technical

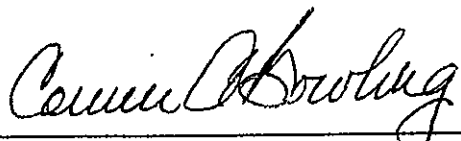
violation of Rule 1.8(e), Rules of Professional Conduct, wherein respondent be admonished and be required to reimburse the Lawyer Disciplinary Board for costs incurred in this matter in the amount of Five Hundred Dollars (\$500.00).

Upon consideration whereof, the Court is of opinion to and doth hereby approve the stipulation between the parties. It is therefore ordered that the respondent, Otis R. Mann, Jr., a member of The West Virginia State Bar, be, and he hereby is, admonished for the technical violation of Rule 1.8(e), Rules of Professional Conduct. It is further ordered that the respondent reimburse the Lawyer Disciplinary Board for the costs incurred in this matter in the amount of Five Hundred Dollars (\$500.00).

Service of a copy of this order upon all parties herein shall constitute sufficient notice of the contents.

A True Copy

Attest:


Interim Clerk, Supreme Court of Appeals

THE LAWYER DISCIPLINARY COUNSEL

JAN 27 1997

RECEIVED

FILE COPY

FILED

DO NOT REMOVE FROM FILE BEFORE THE LAWYER DISCIPLINARY BOARD OF THE
STATE OF WEST VIRGINIA

AUG 2 | 1996

IN RE: OTIS R. MANN, JR., a
member of the West Virginia State Bar

I.D. No. 94-01-265 OF WEST VIRGINIA
SUP. CT. NO. 23012

ANCIL G. RAMEY, CLERK
SUPREME COURT OF APPEALS

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED DISCIPLINE**

Otis R. Mann, Jr., is a licensed member of the West Virginia State Bar who maintains his practice of law in Charleston, West Virginia, and is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Mr. Mann was admitted to the West Virginia State Bar on May 28, 1974.

Mr. Mann is charged with a violation of Rule 1.8(e) of the Rules of Professional Conduct. That rule states:

- (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; and
 - (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

On June 28, 1994, Emily Mangus filed a complaint with the (then) West Virginia State Bar Committee on Legal Ethics. She stated on her complaint form that

Mr. Mann had been overpaid in conjunction with his representation of her in a Workers' Compensation Claim. She also complained that Mr. Mann told her that her Social Security Disability claim would be settled within thirty (30) to ninety (90) days after a May 23, 1993, hearing on that claim; as of the date of her complaint, the claim apparently had not been resolved.

The Statement of Charges issued by the Investigative Panel of the Lawyer Disciplinary Board states that Mr. Mann, at the request of Ms. Mangus, advanced to Ms. Mangus amounts of money ranging from \$50.00 to \$315.00 on nine (9) occasions from July 9, 1990 to February 18, 1992. These amounts of money were advanced for living expenses while Ms. Mangus was awaiting receipt of a Workers' Compensation check. The Statement of Charges also alleges that Mr. Mann advanced the amount of \$2,500.00 to Ms. Mangus to buy a trailer while she was awaiting the delivery of the settlement check in a civil action for damages arising out of a February 28, 1991, accident. These transactions, according to the Statement of Charges, were in violation of Rule 1.8(e) which prohibits a lawyer's providing financial assistance to a client except in the circumstances described in the subparagraphs in that rule.

In addition to arguing that the violations charged warrant the imposition of discipline, Lawyer Disciplinary Counsel asserts that Mr. Mann received a previous warning from Disciplinary Counsel concerning improperly advancing money to clients.

A hearing was held on this matter before a subpanel of the Lawyer Disciplinary Board on March 22, 1996.

Mr. Mann was retained by Ms. Mangus to represent her in a claim for damages arising out of a motor vehicle accident on February 28, 1991. He also represented her in Workers' Compensation and a Social Security claims.

Ms. Mangus testified that, prior to entering into a lawyer-client relationship with Mr. Mann, she was told by an acquaintance that she could get money from Mr. Mann if she was "hard up." On the occasions listed in the Statement of

Charges, she asked Mr. Mann for advances. When checks for Workers' Compensation benefits arrived, Ms. Mangus reimbursed Mr. Mann for the amounts advanced.

The \$2,500.00 was advanced to Ms. Mangus after she had agreed to purchase a mobile home. She apparently was relying on the settlement of her personal injury case to cover this cost. The check representing the settlement, which was reached with her authority, did not arrive as quickly as Ms. Mangus had hoped that it would. Upon request, Mr. Mann advanced that amount of money to Ms. Mangus because he knew the check would be arriving soon. In fact, it arrived the day after the advanced.

Ms. Mangus' testimony produced no evidence that she was adversely affected by the advances. She voiced several complaints concerning Mr. Mann, including the gripes that she had not received everything to which she was entitled from Workers' Compensation and that Mr. Mann took no action to assist her when she was fired from a job. The subpanel did not consider these complaints to be relevant to the matters contained in the Statement of Charges, and they were not supported by other evidence.

Mr. Mann acknowledged advancing the money in question to Ms. Mangus. He testified that his violation of Rule 1.8(e) was a technical violation and that his actions did not contravene the intent of that rule. He argued that the purpose of Rule 1.8 is to avoid a lawyer's "buying" cases by advancing money. He stated that this prohibition is not applicable to his professional relationship with Ms. Mangus. He charged no interest on the money advanced. He gained no advantage in advancing the money. He advanced the money because Ms. Mangus needed it and asked for it. The advances had no effect on his potential fees. He eventually recovered the monies advanced when Ms. Mangus received the money due her from Workers' Compensation and the settlement of her personal injury action.

The subpanel recognizes that the Statement of Charges brought against Mr. Mann does not track the language or implication of Ms. Mangus' complaint. As noted above, Ms. Mangus complained that Mr. Mann was overpaid in conjunction with his representation of her on her Workers' Compensation claim and (by interpretation) that he had not acted expeditiously in compelling a resolution of her Social Security claim. The Statement of Charges does not address these complaints, being limited to the charge that Mr. Mann violated the Rules of Professional Conduct by advancing money to Ms. Mangus. The Investigative Panel is entitled to press charges which it deems appropriate, and those charges are not rendered impotent simply because they are not consist with complaints voiced by a client. In this case, however, equity compels the subpanel to consider as the essence of this matter what harm, if any, resulted to the client. Mr. Mann has acknowledged a technical violation of Rule 1.8, and the subpanel agrees that he is guilty of this violation. Therefore, there is no question that the Lawyer Disciplinary Counsel has met its burden of proof by clear and convincing evidence that this violation occurred. The only question is what discipline, if any, is to be imposed for this violation.

The subpanel agrees with Mr. Mann that the intent of Rule 1.8 is to prevent lawyers from enticing potential clients into their webs of representation by the promise of front money for expenses. The subpanel finds that Mr. Mann was motivated not by avarice but by misplaced generosity. The evidence gave rise to a fairly clear inference that Ms. Mangus' complaint against Mr. Mann was provoked not by the reasons stated therein or by any actionable dissatisfaction with him but, rather, by the termination at a coincidental juncture in their relationship of his willingness to meet her request for advances. She bit the hand that was no longer feeding her.

The subpanel agrees with the arguments set forth by Mr. Mann: He earned no interest on the money advanced; he reaped no benefit from his poor

judgment; and his actions had no effect on his potential fees. There was no evidence whatsoever that Ms. Mangus was harmed in any real or potential way by the advances.

Recognizing that a technical violation of the Rules of Professional Conduct has been established in this case by clear and convincing proof, the subpanel nonetheless recommends that this matter be dismissed. Mr. Mann is admonished to avoid making monetary advances to clients in the future, except under the circumstances enumerated in the applicable rule.

Elisabeth H. Rose

Elisabeth H. Rose, Chairperson
Lawyer Disciplinary Board
Hearing Subpanel

Claudia W. Bentley

Claudia West Bentley, Member
Lawyer Disciplinary Board
Hearing Subpanel

Debra K. Sullivan

Debra K. Sullivan, Lay Member
Lawyer Disciplinary Board
Hearing Subpanel

OFFICE OF LAWYER DISCIPLINARY COUNSEL

AUG 22 1996

RECEIVED