

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1991

Amending Professional Conduct Rule 1.8(e) and Comment concerning a gift exception to the prohibition on providing financial assistance to a client in connection with pending or contemplated litigation.

IT IS ORDERED:

1. Professional Conduct Rule 1.8(e) is amended to read as follows:

Rule 1.8. Conflict of Interest: Current Specific Rules

* * * *

(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; and

(3) a lawyer may provide modest gifts to a client for food, rent, transportation, medicine, and other basic living expenses. The lawyer:

(i) may not promise, assure, or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client, or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Gifts that would compromise the lawyer's independent professional judgment are prohibited.

(f) * * * *

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2. The Comment to Professional Conduct Rule 1.8 is amended to read as follows:

Rule 1.8. Conflict of Interest: Current Specific Rules

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COMMENT

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Financial Assistance

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to

the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Under Paragraph (e)(3), a lawyer may give a client modest gifts for food, rent, transportation, medicine, and similar basic necessities of life. Because such gifts may have collateral consequences for the client – for example, they may affect the client’s tax liability or the client’s eligibility for government benefits or social services – the lawyer should consult with the client about these issues before giving the gifts. See Rule 1.4.

Even though Paragraph (e)(3) allows lawyers to give modest gifts to clients for the listed basic living expenses, these gifts must not be so substantial that they would create a conflict between the lawyer’s interests and the client’s interests in regard to the handling or settling of the case. In addition, Paragraph (e)(3) prohibits a lawyer from (i) promising, assuring, or implying the availability of such financial assistance prior to the lawyer’s retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client, or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective to clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

Person Paying for a Lawyer’s Services

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DATED: November 29, 2022

EFFECTIVE DATE: November 29, 2022

/s/
Chief Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson