



*Professional Ethics Committee*

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## INFORMAL OPINION 2011-10

### HUMANITARIAN FINANCIAL ASSISTANCE TO CLIENT

You have asked whether you may pay a water bill for an indigent client who you represent in a contingency matter without violating Rule 1.8(e). Specifically you have asked whether payment made under any of the following circumstances would be permitted: (1) payment made on the condition that if the litigation is successful you would be repaid; (2) payment made without an agreement for repayment; (3) a donation made to church with foreknowledge that funds will be used to pay the water bill; or (4) payment made anonymously. In light of our prior decisions recognizing the absence of a “humanitarian exception” to Rule 1.8(e), the lack of any substantive amendments to Rule 1.8(e) creating such an exception, and the majority rule of our sister states, we conclude that your payment of the water bill would be improper.

The facts as we understand them are that you represent a woman in a contingency employment matter against a municipal housing authority that also provides her Section 8 housing assistance. The client is indigent, disabled and was recently released from the hospital after having major surgery. An eighteen month old child is living with her.

The client has been unable to pay her water bill for over a year and the provider has turned the service off. You have interceded, at the client’s request, with the water company and have been unsuccessful. They demand \$1,500 to restore the service. You would like to pay the water bill and have inquired whether there is a manner in which you may do so that would not violate the Rules of Professional Conduct.

Rule 1.8(e) prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation. The rule provides:

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

- (1) A lawyer may pay court costs and expenses of litigation on behalf of a client, the repayment of which may be contingent on the outcome of the matter;
- (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

The rule permits the payment of costs related to the litigation, including, for example, medical tests related to injuries that are the subject of the lawsuit. *See Informal Opinion*, 93-12. The rule is silent as to any “humanitarian exception” to the prohibition against providing financial assistance to clients.

In *Informal Opinion 90-03*, we considered whether a plaintiffs' personal injury attorney handling a matter for a client on a contingency fee basis sought a determination of whether a "humanitarian exception" applied to Rule 1.8(e). There, the client, the client's spouse, and their two children, were about to be evicted from their home. The client located a rental to which the client's family could remove, but needed \$500 advance rent and only had \$200. The attorney was confident that recovery in excess of \$300 was very probable in the personal injury matter, and did not believe there was any personal financial risk in providing the \$300 to the plaintiff for the rent money. The committee concluded that there was no humanitarian exception to the rule and the \$300 payment would be prohibited:

Strictly construed, subsection 1.8(e) prohibits you from making the advance of \$300 to the client for rent. You have asked whether this particular Rule of Professional Conduct has any unexpressed exception based upon humanitarian issues such as those involved in the facts you have described.

The answer is no, there is no exception to the rule other than those specifically stated therein.

*Informal Opinion 90-03.*

Our decision in *Informal Opinion 90-03* that Rule 1.8(e) was to be "strictly construed" was cited with approval by the court in *Rubenstein v. Statewide Grievance Committee*, 35 Conn. L. Rptr. 34 (2003) (*Shapiro, J.*). In *Rubenstein*, the court considered whether an attorney violated the Rule 1.8(e) by providing bus tokens to clients for transportation to medical appointments. In concluding that such payments were prohibited, the court noted that the drafters of the Model Rules of Professional Conduct had rejected an exception for living expenses:

....In drafting the Model Rules of Professional Conduct, authorization of broader advancement of monies by lawyers to clients was considered, and rejected. "[T]he Proposed Final Draft of the Model Rules would have loosened the rule still more. A lawyer would have been allowed to advance *living expenses* as well as litigation costs, *and* was explicitly permitted to make repayment of either contingent on the outcome. This proved to be too much of a liberalization, however. The ABA House of Delegates amended Rule 1.8(e) to permit advancement of litigation costs with no guarantee of repayment, but advances for living expenses were once again prohibited altogether." (Emphasis in original; footnotes omitted.) Hazard (2d.Ed.1990, 1996-97 Sup.), § 1.8:602, pp. 274-75.

(Emphasis in original.) *Rubenstein v. Statewide Grievance Committee*, 35 Conn. L. Rptr. 34. See also *Informal Opinion 04-02* (payment of DMV license restoration fee in DUI case was not expense related to the litigation and was prohibited by Rule 1.8(e)).

Payment of a water bill is a living expense for which there is no exception found in Rule 1.8(e)'s prohibition against a lawyer providing a client with financial support. Therefore, payment of the water bill upon condition that if the litigation is successful you would be repaid would violate Rule 1.8(e).

As a variation, you have also inquired whether payment of the bill without an agreement for repayment would be permitted under Rule 1.8(e). We do not believe that transforming the \$1,500 contingent loan into a gift would substantively alter the analysis.

Initially, we note that Connecticut shares the majority view that there is no humanitarian exception to the prohibition against a lawyer providing financial assistance to a client. See Rule 1.8(e) Comments, "Assisting Need Client," ABA's Annotated Model Rules of Professional Conduct 7<sup>th</sup> Ed. (2011) ("Most jurisdictions do not find any implicit 'humanitarian' exception for helping needy clients"). Our research has uncovered only two jurisdictions in which the respective state supreme courts have found a "humanitarian exception" to be implicit

within the state rule. See *Louisiana State Bar Association v. Edwins*, 329 So. 2d 437 (La. 1976); *The Florida Bar v. Taylor*, 648 So.2d 1190 (Fla. 1994). The Louisiana approach requires that “the client remain[ ] liable for repayment of all funds, whatever the outcome of the litigation.” *Louisiana State Bar Association*, 329 So. 2.d at 446. Therefore, even under the judicially created humanitarian exception to the Louisiana rule, a “gift” of living expenses made to a client would be improper. In contrast, the Florida approach provides that a payment of living expenses is permitted as an “act of humanitarianism” as long as there is no agreement or expectation for repayment. *The Florida Bar*, 648 So.2d at 1193.

Unlike in Florida, as we concluded in *Informal Opinion 90-03*, there is no “humanitarian” exception to Connecticut’s Rule 1.8(e). Moreover, unlike some states which have amended their rules and adopted an explicit humanitarian exception to their versions of Rule 1.8(e), since the issuance of *Informal Opinion 90-03*, Connecticut’s Rule 1.8(e) has not been amended to provide for such an exception. Compare D. Cohen, “Advancing Funds, Advancing Justice: Adopting the Louisiana Approach,” 19 *Geo. J. Legal Ethics* 613 (2006) (discussing amendments to rules in Minnesota, North Dakota, Montana, California, Mississippi, Alabama, and the District of Columbia to explicitly permit emergency financial assistance). However, in each of these states, the respective amended rule permits the providing of “loans” for living expenses under certain conditions. Pursuant to the canon *expressio unius est exclusio alterius* – the expression of one thing is the exclusion of another - the specific reference to “loans” in the respective exceptions to the sister state rules suggests that virtually all states, with the exception of Florida, prohibit financial assistance in the form of gifts to clients for living expenses.

To this end, we agree with the reasoning of the South Carolina Supreme Court that there is no distinction drawn in Rule 1.8(e) between loans and gifts:

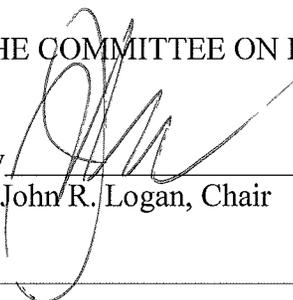
These payments, whether deemed to be loans or gifts, are prohibited by Rule 1.8(e). Rule 1.8(e) forbids an attorney from providing financial assistance in connection with pending litigation. The rule does not distinguish between loans and gifts, and the term “financial assistance” is unambiguous and encompasses both loans and gifts of money. See *In re Strait*, 343 S.C. 312, 540 S.E.2d 460 (2000) (advancing money to client for his electric bill); *In re Larkin*, 336 S.C. 366, 520 S.E.2d 804 (1999) (providing money for mobile home payments for client and providing loans to numerous clients); and *In re Mozingo*, 330 S.C. 67, 497 S.E.2d 729 (1998) (furnishing money for a rental car to a client). Accordingly, respondent violated Rule 1.8(e) when he provided financial assistance to Client while he represented her.

*In re Hoffmeyer* , 656 S.E.2d 376, 378 (S.C. 2008).

Each of the scenarios that you have presented would ultimately result in you, as an attorney, providing financial support to your client. Moreover, whether the payment is made through the medium of a church or done anonymously would not change the essential character of the payment. While the potential conflict of interest may be reduced through these other methods of paying the water bill, we cannot say that they would be permitted by Rule 1.8(e).

Strictly construed, while you maintain an attorney-client relationship, any payment made by you of your client’s water bill would violate Rule 1.8(e).

THE COMMITTEE ON PROFESSIONAL ETHICS

By  \_\_\_\_\_  
John R. Logan, Chair