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Standing Committee on Professional Ethics

November 18, 2020

Informal Opinion 2020-03
Payment of Indigent Client's Litigation-Related Expenses

The question presented is whether an attorney who works for the State of Connecticut's Division of Public Defender Services may, consistent with our Rule of Professional Conduct 1.8(e), pay for certain litigation-related expenses of an indigent client "including, but not limited to, providing the . . . client a bus pass, train ticket, hotel room, meal, or clothing to wear for a court trial."

The answer, in short, is yes, because the financial assistance listed by the inquirer—new clothes for a court appearance, a train or bus ticket to get to court, and a hotel room when the client must stay overnight near the court¹—relate to the litigation and pertain to an indigent client, and hence are expressly permitted by Rule 1.8(e)(2).

Rule 1.8 is entitled "**Conflict of Interest: Prohibited Transactions.**" Subsection (e) provides:

(e) 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.

In the situation presented in the inquiry before us, there is no expectation of repayment; hence, the first exception to the general prohibition on financial assistance to a client is not applicable. The second exception expressly permits attorneys to pay both "court costs" and "expenses of litigation" on behalf of an indigent client. Both exceptions apply to all attorneys and are not limited to those undertaking a pro bono representation or working for a non-profit organization. Thus, they apply to attorneys working for a government agency such as the State of Connecticut Division of Public Defender Service. We understand that all clients of a public defender in Connecticut are indigent, and it appears that virtually all of the payments the inquiry asks about are payments for expenses related to litigation.² Hence, we conclude that such payments would be permissible under the second exception in Rule 1.8(e).

¹ We address "meal" payment *infra* note 2.

² The one payment inquired about that may not be a litigation expense is for the client's "meal." We understand the question to be whether it is permissible to buy the client lunch now and then when the attorney and client are meeting. In these circumstances, we do not think the provision of or payment for the client's meal amounts to "financial assistance" because it is *de minimis* and an ordinary part of civil discourse. See Informal Opinion 18-05 (Nominal Value Gift for Client Referrals) (stating that "a gift of such nominal value does not violate"



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This Committee has previously determined that the term “expenses of litigation” should be narrowly construed to encompass only those expenses that are integral to the lawsuit itself, such as sheriff’s fees, an appeal bond, or an MRI in a personal injury action performed for the purposes of establishing causation. *See* Informal Opinion 93-12 (1993) (Attorney Advancing Cost of Client’s Medical Test). Likewise, travel and hotel expenses to enable the indigent client to attend a court hearing may be paid by the attorney. *See* Informal Opinion 00-21 (2000) (Right of Lawyer to Pay Client’s Transportation and Lodging to Attend Deposition). On the other hand, transportation expenses not directly related to the litigation, such as to allow the client in a personal injury case to obtain medical treatment, are not within the exceptions of Rule 1.8(e). *See* Informal Opinion 00-21 (citing *Attorney Grievance Commission of Maryland v. Kandel*, 563 A.2d 387, 389 (1989)), which held that living expenses, including transportation for medical treatment, were not “litigation expenses”). We have also opined that payment of a DMV license restoration fee is not an expense of litigation and therefore is not permissible under Rule 1.8(e). *See* Informal Opinion 04-02 (2004) (Payment of License Restoration Fee by Lawyer). Although there is no prior ethics opinion on point in Connecticut about clothes, it is reasonable to conclude that the clothes worn by an indigent client may have an impact on the judge, witnesses, other attorneys, and a jury. Hence, we conclude that an attorney may pay for the clothing a client wears to a court or other litigation appearance.

As this Committee has previously noted, Connecticut’s Rule 1.8(e) does not currently have a general “humanitarian exception” to the prohibition on providing financial assistance to a client. *See* Informal Opinion 90-03 (1990) (Financial Assistance to a Client) (concluding that a \$300 loan to a client to avoid a home foreclosure is not a litigation expense); Informal Opinion 00-21, *supra* (citing Informal Opinion 90-03 approvingly); Informal Opinion 11-10 (2011) (Humanitarian Financial Assistance to Client) (again noting the absence of a “humanitarian exception” in Rule 1.8(e) and concluding that such a payment “made through the medium of a church or done anonymously would not change the essential character of the payment”).

We understand that some states do permit payments to indigent clients beyond those currently permitted by Connecticut. *See, e.g., Louisiana State Bar Association v. Edwins*, 329 So. 2d 437, 446 (La. 1976); *The Florida Bar v. Taylor*, 648 So. 2d 1190 (Fla. 1994). On June 18, 2020, New York amended its counterpart to Rule 1.8(e) to allow lawyers undertaking a pro bono representation or working for a non-profit legal services organization to provide financial assistance to indigent clients. *See* 2020 Amendments to Rule 1.8(e) of the New York Rules of Professional Conduct. ABA Model Rule 1.8(e) also was recently amended to permit limited humanitarian assistance to indigent clients. The task of this Committee, however, is to interpret the Rules of Professional Conduct as adopted in Connecticut.

THE COMMITTEE ON PROFESSIONAL ETHICS

Kim E. Rinehart

BY Kim Rinehart, Chair

Rule 7.2(c)); *see also* Commentary to Rule 1.8 (explaining that the Rule likewise does not prohibit clients from giving lawyers “a simple gift such as a present given at a holiday or as a token of appreciation”).