

Summary of OSB Public Comments on Proposed Changes to RPC 1.8(e)

September 26 – October 27, 2022

On September 26th, the Oregon State Bar published proposed changes to Rule of Professional Conduct 1.8(e). Notice was posted on the front page of the OSB website for 30 days. Additionally, notice was included in a handful of all bar messages and OSB President's messages sent to members directing interested persons to submit comments to feedback@osbar.org.

Rule of Professional Conduct 1.8e

The OSB received eight comments regarding the proposed change to RPC 1.8e. Seven of the eight comments were in support of the proposed change, and one was clearly opposed.

The comment in opposition raised two objections to the proposal. First, the proposed change limits financial assistance to situations where the lawyer is representing the client pro bono, when other clients might likewise benefit if such assistance was allowed. Second, the commenter expressed concern that the rule change would be abused, not by lawyers but by clients who may try to coerce attorneys into providing assistance when it is not appropriate.

Those in support of the rule change generally emphasized that very small amounts of financial assistance can often have a very large impact on the lives of clients. The financial assistance offered would be minimal and would normally address a client's basic needs. Additionally, clients represented in immigration matters are often in a position where they are not legally permitted to work, yet face substantial delays in receiving assistance from the government for which they are otherwise eligible.

OSB Public Comments on proposed changes to RCP 1.8(e) - Financial Assistance

Date	Support/ Oppose	Comment
9/28/2022	Support	I support the proposed change to ORPC 1.8 that would allow public defenders/pro bono attorneys to make small gifts to their clients. There are days where it would make a big difference to a client to have a couple of dollars in bus fare to get back to town from court (about a 30 minute drive), but ORPC 1.8. This rule, as it stands, is too broad.
9/28/2022	Support	I also support these amendments. Pro bono Lawyers who work with indigent clients do so out of compassion rather than remuneration. I did not realize that currently, those lawyers cannot transport an indigent client to court or for a meeting, or buy them a meal, for example. The amendments provide a practical and compassionate response to struggling clients. If pro bono lawyers are willing and able to provide that small financial assistance, they should be allowed to do so.
9/29/2022	Support	I am a member of the Oregon State Bar. After reviewing the information provided in the links below, I am writing to express my support for both sets of revisions. I see no downside to any of the proposed changes and believe they would both serve the public better than the rules as they currently stand.
9/29/2022	Support	I'd like to comment on the proposed amendment to RPC 1.8(e), which would allow attorneys to provide modest gifts to a pro bono client for food, rent, transportation, medicine, and other basic living expenses. I strongly encourage that this amendment be adopted. I represent several pro bono clients seeking asylum in the United States, who come to Oregon without any support – financial or personal. Two of my pro bono clients are minors who cannot work. It takes months – sometimes years – for these asylees to obtain work authorization from the government. Even when they can work, their wages are generally not enough to sustain their family. Representing a client pro bono means little if the client cannot survive; if we can help them in ways beyond providing legal services, we should. At the very least, we should be allowed to do so. I'm happy to provide further comment if necessary, but I truly hope that the amendment is adopted so that we can continue protecting our most vulnerable clients.
9/29/2022	Oppose	I oppose the new rule on financial assistance. First to allow it only in pro bono circumstances unfairly limits the people who would benefit from the help if in fact the bar decides this is a good idea. However, it's an idea that will be abused. Not by lawyers but people who hear of it will try to coerce lawyers into giving the money Lots of clients try to do that already.Lots of clients try to do that already. Someone learn how to manipulate the system others will threaten bar complaints against the lawyers if they don't help etc.

OSB Public Comments on proposed changes to RCP 1.8(e) - Financial Assistance

9/29/2022	Support	I support the proposed amendment to RPC 1.8(e), which would allow attorneys representing pro bono clients to provide modest gifts to the client for basic living necessities. Many pro bono clients need more than just legal services. If an attorney is willing and able to provide their client with these basic living necessities, they should not have to fear repercussion from the state bar for doing so.
10/5/2022	Support	I note from your web site that you are considering an amendment to ORPC 1.8(e) for the limited purpose of permitting lawyers who represent pro bono indigent clients to provide them with “modest gifts” for basic living expenses. I once chaired the Oregon State Bar Legal Ethics Committee, was among those on the committee that drafted the Oregon Rules of Professional Conduct when they were presented to the Supreme Court some years ago, have served on the ABA Standing Committee on Ethics and Professional Responsibility, and have been practicing ethics and professional responsibility for the past few decades. I write to express my complete support for the proposal. The purpose of the limitation in Rule 1.8 against providing financial assistance to clients in connection with pending or contemplated litigation is avoiding barratry, the encouragement of groundless litigation for the lawyer’s benefit rather than a client’s benefit. Whether or not that is a sound basis for the rule overall, the proposed amendment is a salutary modification in the context of the desperate persons who might benefit from the charitable impulses of lawyers with whom they come in contact. I have particularly in mind the many persons today who may need legal assistance in immigration matters, and whose children are too often in need of basic assistance while an immigration case or appeal is pending. Nothing in my view justifies making lawyers’ aiding such persons into an ethical violation. On the contrary, “legal ethics” should encourage, rather than discourage, genuine charity. Thank you for considering the amendment, and I hope you adopt it.
10/10/2022	Support	I write in support of the proposed amendments to Rule 1.8. In partnership with St. Timothy Episcopal Church's outreach ministry, advocacy team, and community kitchen, I provide free legal services for people experiencing homelessness. Rule 1.8 as it currently is written creates a murky ethical conundrum for our legal advocacy program, as the church provides meals, showers, a clothes closet, and basic hygiene supplies to all who need them. Our current work-around is for me to find a church volunteer to provide these humanitarian services, or to terminate representation before I directly provide humanitarian services. It is my belief and understanding that Rule 1.8 was drafted to prevent solicitation or inducement to litigation through "perks" from a fee-based attorney; not that it was meant to limit the ability of a church or other nonprofit-based program to provide life-sustaining necessities to a person experiencing homelessness. The proposed amendments would clearly exempt legal services provided on a pro bono basis to a person experiencing poverty from the prohibition on providing gifts. After all, the situation at hand is about an attorney giving a client a cup of coffee, not champagne; bus tickets, not a private jet ride; clean socks, not a designer handbag; a shower, not a tee time. Thank you for considering my experience and for approving these amendments.