

## **HYPOTHETICAL No. 1**

Client is a single mother of three (3) children and has come to attorney's office as a result of financial difficulties. Client had a repossession of a motor vehicle 3 years ago which has been placed with a debt collector, medical bill debt related to medical treatment for her children, past due pay-day loans and utility bills. Client, due to having minor children, can only work part-time and receives minimal assistance. The children's father is a dead-beat and provides no child support. Client receives \$750 per month from public assistance and \$250.00 per month for food assistance. Employment income is approximately \$600.00 per month. Client is clearly below the poverty level. The client has a reliable car with a secured loan that may be subject to a cram down in a Chapter 13 to make it affordable for her to keep her current car.

Client tells the attorney she is having difficulty paying rent, clothing her children, putting food on the table, and keeping the heat and lights on. Client indicates she does not know how she will afford to pay legal fees or pay the costs to file a bankruptcy.

- (1) If lawyer decides to handle the case Pro Bono, can the attorney seek a waiver of the court costs associated with filing a bankruptcy?
- (2) Can the attorney pay court costs or other costs (like obtaining a credit report) on behalf of the client?
- (3) Can the lawyer ethically provide financial assistance to client for rent, food, transportation, medicine or utilities for this debtor?
- (4) Can the lawyer promise these things prior to retention of the client?
  - (a) Prior to retention?
  - (b) As an inducement to continue the client-lawyer relationship?

### **Variation #1**

Upon coming to you, Client was 2 months (\$2,000) in arrears in her rent payments. Prior to filing a Chapter 13 bankruptcy, you have decided to "advance" these monies for client so that she is not evicted. After you file the Chapter 13, the \$2,000.00 "advanced" to client is to be repaid in debtor's plan.

- (5) Can lawyer require client to reimburse lawyer in a Chapter 13 Plan for the rent lawyer paid?
- (6) Can attorney accept reimbursement from a relative of the client?
- (7) Can the lawyer publicize or advertise that “financial assistance is offered to clients who seek to use the lawyer for their legal needs?”

**Variation # 2**

Client also has a personal injury claim and wants attorney to handle it.

- (8) If attorney provides assistance to client for Court costs of the bankruptcy, rent, food, transportation, medicine or utilities for this debtor, can attorney seek reimbursement from the injury proceeds once the case settles?

Ethics Reference:

**Amended Delaware Rules of Professional Conduct Model Rule 1.8(e)**

Amended by Delaware Supreme Court on *December 18, 2023*

-SEE Attached Order

**Plug:** Legal Services Corporation generously provides assistance to clients of modest financial circumstances, so if you are unable to offer assistance on a Pro Bono basis, please consider them.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULE 1.8 OF §  
THE DELAWARE LAWYERS' §  
RULES OF PROFESSIONAL §  
CONDUCT §

Before **SEITZ**, Chief Justice; **VALIHURA**, **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, Justices, constituting the Court *en Banc*.

**ORDER**

This 18<sup>th</sup> day of December 2023, it appears to the Court that:

WHEREAS, in 2020 the American Bar Association (“ABA”) Standing Committee on Ethics and Professional Responsibility and the ABA Standing Committee on Legal Aid and Indigent Defense proposed amending Rule 1.8 of the ABA Model Rules of Professional Conduct (the “Model Rules”) to permit a lawyer representing an indigent client pro bono to provide modest financial assistance to the client for basic living expenses;

WHEREAS, at the 2020 ABA Annual Meeting, the ABA House of Delegates adopted the proposed amendment to Model Rule 1.8, adding subsection (e)(3) and three clarifying comments;

WHEREAS, before the ABA amended Model Rule 1.8 in 2020, the professional conduct rules of various states provided for humanitarian exceptions to professional conduct rules limiting lawyers’ provision of financial assistance to clients;

WHEREAS, following the amendment of Model Rule 1.8, various other states have amended their respective professional conduct rules consistently with the amendment of Model Rule 1.8;

WHEREAS, the Permanent Advisory Committee on the Delaware Lawyers' Rules of Professional Conduct has considered whether Rule 1.8 of the Delaware Lawyers' Rules of Professional Conduct should be amended consistently with the amendment of the Model Rules and has recommended that the Court amend the Delaware rule;

WHEREAS, the Court has determined that the proposed amendment will promote access to justice for Delaware's most vulnerable populations; will not promote deleterious litigation; will not increase lawyers' financial stake in litigation or otherwise compromise lawyers' exercise of independent judgment; and will not contribute to competition among lawyers for clients;

NOW, THEREFORE, IT IS ORDERED that:

(1) Rule 1.8(e) of the Delaware Lawyers' Rules of Professional Conduct shall be amended to add the underlined text and to delete the strikethrough text as follows:

(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 litigations, 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 representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization, and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the 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.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

(2) The commentary to Rule 1.8 shall be amended to add new Comments 11, 12, and 13 as provided below, and the subsequent existing comments shall be renumbered accordingly:

[11] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization, and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) include modest contributions for food, rent, transportation, medicine, and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring, or implying the availability of financial assistance prior to 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 clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

[13] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

(3) The amendments are effective immediately.

(4) The Clerk of this Court is directed to transmit a certified copy of this order to the clerk for each trial court in each county.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

## **Delaware Supreme Court Amends Lawyers' Rules of Professional Conduct to Authorize Modest Gifts to Indigent Clients.**

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By an order dated December 18, 2023, the Delaware Supreme Court has amended Rule 1.8 of the Lawyers' Rules of Professional Conduct to permit a lawyer representing an indigent client pro bono to provide modest financial assistance to the client for basic living expenses. The amendment follows changes to the Model Rules of Professional Conduct adopted by the American Bar Association in 2020. Multiple other states have similar provisions in their professional conduct rules. The amendment will promote access to justice for Delaware's most vulnerable populations, without compromising lawyer independence.

The rule amendments are effective immediately and are available on the Court's website. If you have any questions, please contact Karlis Johnson, Supreme Court Administrator, at [Karlis.Johnson@Delaware.gov](mailto:Karlis.Johnson@Delaware.gov) or (302) 651-3906.



## **HYPOTHETICAL No. 2**

Client comes into attorney and has a small appliance business that was incorporated. Client was the sole owner and operator of the business. Due to supply issues and rising costs related to rent, employee costs, and supply chain issues, debtor is seeking to file a chapter 7 bankruptcy case for the corporation. Client retains attorney and begins providing financial information, including assets, P & L statements and tax returns to lawyer.

After retention, but prior to filing the case, client comes to the office and tells attorney that he plans to have an auction to sell off about \$50,000.00 in appliances. He further tells attorney instead of paying creditors of the business, debtor plans to deposit these proceeds in his personal account as he figured once the business closed, he would not have any additional source of income and he needs to keep his household bills afloat.

### **QUESTIONS TO CONSIDER**

- (1) How do you advise the client in these circumstances?

#### **Variation #1**

If client holds an auction **prior** to coming to attorney to retain attorney for the corporate bankruptcy and does not tell attorney about the auction until after attorney has already filed the corporate chapter 7 case, how should attorney advise client and what are attorney's ethical responsibilities?

- (2) Can attorney ethically represent the corporation in filing a corporate Chapter 7 and continue to represent the client as an individual if the Chapter 7 Trustee seeks to avoid the payment to client and sue the client for return of the funds for the benefit of the corporate creditors?

#### **Variation #2**

Client decides he needs to file a Chapter 13 bankruptcy case because he has fallen behind on his mortgage, has tax debt, two secured vehicles and co-signed debt related to the corporation.

- (3) Can attorney represent the client in the Chapter 13 while the corporate Chapter 7 case is pending?

- (4) How should attorney advise this client about chapter 13? Is the best practice to refer the debtor out to other counsel to represent him individually in the Chapter 13, while attorney continues represent to Corporation in the Chapter 7?
- (5) Can attorney represent client in a Chapter 13 after the corporate Chapter 7 case has concluded?

**Rules to Consider**

Rule 1.13 Organization as a Client and adverse interest of organization

Rule 1.7 (Conflict of Interest)

**Rule 1.7. Conflict of Interest: Current Clients.**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

### **Rule 1.13. Organization as client.**

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

- (1) asking for reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

### **HYPOTHETICAL No. 3**

A prospective debtor comes to attorney for a consultation. During the course of the consultation, the debtor advises attorney that he wants to “keep out” a significant asset from his bankruptcy case. Debtor has a classic 1967 Ford Mustang that was gifted to him 30 years ago and is stored in a friend’s garage for “safe keeping.” The car is in mint condition and has very low mileage. The car has not been registered, titled or licensed since debtor received the car. Client insists he will not file this bankruptcy if the vehicle is listed on the schedules.

Of course, the attorney declines representation and advises the prospective debtor about the consequences of failure to disclose. Subsequently, while attending a 341 meeting for another client, attorney learns that prospective debtor has filed a chapter 7 bankruptcy case and it is apparent to attorney that the debtor did not disclose this asset in his case as the Trustee listed and asked the debtor to confirm the vehicles on debtor’s schedules and the Ford Mustang was not mentioned and obviously not listed.

As debtor was leaving the 341 meeting room, debtor looked at attorney, put his finger to his mouth, as to say “shush,” and left the meeting room.

- (1) What are the attorney’s options?
- (2) Can attorney ethically disclose this information to third parties, including the Trustee or Bankruptcy Court?
- (3) Are there exceptions to the duty of confidentiality?
- (4) Should attorney write a letter to debtor or debtor’s new lawyer to request that they take action to rectify non-disclosure?
- (5) If no action is taken by debtor or debtor’s lawyer, can you ethically notify the Trustee or Bankruptcy Court?

#### **Rules to Consider**

1.6 (b)(6) (b) (2) & (3)

18 U.S.C. §152

See also 1.2(d), 1.9© 1.18(b)

### **Rule 1.6. Confidentiality of Information.**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these Rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (6) to comply with other law or a court order.

## **Rule 1.2 Scope of Representation.**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**Rule 1.9. Duties to former clients.**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.



**Rule 1.18. Duties to prospective client.**

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).

(d) If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

LII > U.S. Code > Title 18 > PART I > CHAPTER 9 > § 152

Quick search by citation:

Title  Section

## 18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

U.S. Code    Notes

A person who—

- (1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;
- (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
- (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;
- (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;
- (5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;
- (6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

**(7)** in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

**(8)** after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

**(9)** after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 86-519, § 2, June 12, 1960, 74 Stat. 217; Pub. L. 86-701, Sept. 2, 1960, 74 Stat. 753; Pub. L. 94-550, § 4, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 95-598, title III, § 314(a), (c), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 100-690, title VII, § 7017, Nov. 18, 1988, 102 Stat. 4395; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103-394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4138; Pub. L. 104-294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

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