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**Helping Those in Need:  
New Rule on Financial Assistance for Indigent Pro Bono Clients**

**Mark J. Fucile**  
**Fucile & Reising LLP**

Last year, an amendment to RPC 1.8(e) became effective permitting financial assistance to indigent pro bono clients. The new rule is patterned generally on an amendment to the corresponding ABA Model Rule adopted in 2020. The new Oregon rule permits “modest gifts . . . for food, rent, transportation, medicine, and other basic living expenses” to indigent clients being represented pro bono. In this column, we’ll briefly survey the history of the amendment for context and then outline the basic contours of the rule.

***History***

The traditional rule in most American jurisdictions—including Oregon—was that financial assistance to clients was limited to advancing court costs and litigation expenses for items such as filing fees, deposition transcripts, and expert witnesses. The traditional rule reflected concern over lawyers “stirring up litigation” if they were able to offer prospective clients financial inducements. The ABA report that accompanied the 2020 Model Rule amendment, however, noted what many who work with pro bono clients long knew: indigent clients often need much more financial support than simply court costs and litigation expenses while their matters are winding their way through proceedings that sometimes last years.

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To address this dilemma, the ABA in 2020 amended its rule governing financial assistance—Model Rule 1.8(e)—to add a new subsection allowing financial assistance for basic necessities such as food, rent, and medicine. At the same time, the amendment included two broad limits. First, the financial assistance must be a “modest” gift. Although “modest” is not defined in the rule, the intent as reflected in the ABA report accompanying the amendment, the text of the rule, and new Comments 11 through 13 that were paired with the amended text was to limit the assistance to basic necessities. Second, although many paying clients have the same issues, the ABA made a policy decision to limit the availability of the expanded financial assistance to pro bono clients. To further emphasize this point, new Comment 13 to the ABA Model rule specifically excludes “contingent-fee personal injury cases” from the amended rule.

After adoption of the ABA Model Rule amendment, Oregon first looked at enacting a corresponding provision in our RPCs in 2022. The Oregon State Bar House of Delegates (which effectively acts as the Bar’s legislature for rule-making of this kind), however, had a number of questions about the proposal and returned it to the OSB Legal Ethics Committee for further review. Following some comparatively minor tweaks that addressed the questions the House of Delegates had raised, the Legal Ethics Committee again recommended adoption

the following year and the House of Delegates approved the amendment in October 2023. The Supreme Court, in turn, adopted the amendment in December 2023 as Oregon RPC 1.8(e)(3) with an effective date of January 1, 2024. Because Oregon does not have comments to our rules, only the text was adopted—while the ABA comments remain instructive in interpreting the rule.

***Contours of the Rule***

Like its ABA Model Rule counterpart, Oregon RPC 1.8(e)(3) only applies to indigent pro bono clients. Again like its ABA Model Rule counterpart, Oregon RPC 1.8(e)(3) includes indigent pro bono clients being represented by individual lawyers, through non-profit legal services agencies or public interest organizations, or by a law school clinics or pro bono programs. The separate references to legal services agencies, public interest law firms, and law school clinics are to make clear that financial assistance may be offered in qualifying circumstances even though the lawyers doing the work are receiving a salaries through an agency or a clinic. To also make clear that the rule extended to criminal cases and juvenile proceedings, Oregon added indigent clients being represented by court appointment.

As noted at the outset, Oregon RPC 1.8(e)(3) allows “modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses.”

Both the ABA and the OSB concluded that it made practical sense to avoid a set dollar cap so that the level of financial assistance might shift over time as inflation and other economic circumstances warranted. For similar reasons, neither the ABA nor the OSB included a specific dollar metric to qualify as “indigent.”

The ABA chose to frame the exception (and Oregon followed) as a gift rather than a loan to avoid the implication that the lawyer involved had a financial interest in the outcome of the matter concerned. That said, the rule also makes clear that financial assistance may be provided in qualifying circumstances “even if the representation is eligible for fees under a fee-shifting statute.”

The rule is subject to three principal restrictions. First, the prospect of a gift cannot be suggested prior to retention or as an inducement to continue a retention. Second, a lawyer cannot seek reimbursement for the funds given from the client, a relative or the client, or anyone affiliated with the client. Finally, a lawyer may not advertise or promote the willingness to give gifts to prospective clients.

Because gifts may have other financial implications for clients, such as possible eligibility for governmental benefits or social services, Comment 11 to ABA Model Rule 1.8 counsels that a lawyer should discuss these potential

consequences with the client. Again, although Oregon does not have comments to our RPCs, that remains prudent practice.

### **ABOUT THE AUTHOR**

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms, and corporate and governmental legal departments throughout the Northwest on professional ethics and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.860.2163 and Mark@frllp.com.