



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have a litigation practice centered on representing clients in a very low income area. Some of the clients have at least modest means, but are unable to fund the costs and expenses of litigation, and for those who have good cases I usually take matters on a contingent fee basis, advancing the costs and expenses of litigation, contingent (along with my fee) on the outcome. There are other clients whose needs are a bit more challenging, because an injury or housing displacement has disrupted their ability to handle normal living expenses. For these clients, in addition to advancing the costs and expense of litigation, I'd like to provide them with some financial assistance that would enable them to feed and house their family during the course of the litigation. Ethically, can I do this?

Also, I have a related set of questions. I volunteer at and serve on the Board of a neighborhood legal clinic run by a public interest organization, where we represent indigent clients in litigation matters on a pro bono basis. Are we able to advance or pay the costs and expenses of litigation in this context? Could we also advance or provide living expenses to these clients?

A: Thank you for your work for low income and indigent clients. Your questions are addressed by Rule 1.8(e). I will review the current ABA Model Rule version here, but please examine the rule as it has been adopted in your jurisdiction—there are notable state-to-state variances, particularly as it concerns whether a lawyer or legal services organization may provide payment of living expenses.

Under Model Rule 1.8(e)(1), your advance of the costs and expenses of litigation in connection with contingent fee litigation, with repayment contingent upon the outcome is appropriate. And, under Rule 1.8(e)(2), you may also pay costs and expenses of litigation for those clients who are indigent, even for matters other than contingent fee.

For indigent clients you are representing pro bono, either in your practice or through a public interest or nonprofit legal services organization or law school clinic, you may also provide "modest gifts to the client for food, rent, transportation, medicine and other basic living expenses. Rule 1.8(e)(3). However, this rule states that the lawyer cannot publicize a willingness to provide such gifts, use them to induce continuation of the attorney-client relationship, or seek or accept reimbursement of the expenses from the client or anyone related to or affiliated with the client.

With these exceptions, Rule 1.8(e) prohibits a lawyer from providing any "financial assistance" to a client in connection with pending or contemplated litigation. For example, you (in your practice or through a clinic or legal services organization) could not advance living expenses to any client (indigent or otherwise) with an expectation of being repaid from the litigation proceeds. You could also not give a non-indigent client financial aid for food, rent, transportation, medicine or other basic living expenses.

Once again, please determine whether Rule 1.8(e) has been adopted in your jurisdiction and in what specific form. This should help you determine what is appropriate for your practice.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.