

Subject:

FW: Written Comment Regarding the Proposed Amendment to Nevada RPC 1.8(e),
ADKT 0445

FILED

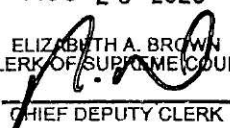
AUG 25 2023

From: Chad Pace

Sent: Thursday, August 24, 2023 2:00 PM

To: Supreme Court Clerk <nvscclerk@nvcourts.nv.gov>

Subject: Written Comment Regarding the Proposed Amendment to Nevada RPC 1.8(e), ADKT 0445

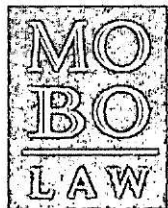
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

Ms. Elizabeth Brown,

I am writing to express support for the proposed rule change to Nevada Rule of Professional Conduct 1.8(e). In December, 2021, I authored an article in the Clark County Bar Association Magazine *Comminque* which advocated for an amended Rule 1.8(e). A copy of the article is attached, and I incorporated my writings there into this comment. Nevada's Rule 1.8(e) is substantially similar to the ABA's pre-2020 model rule. Other jurisdictions utilizing the same model rule sanctioned lawyers for benevolence including: providing clothing to children and gifting money to a client ravished by poverty. Such charity should not be punished, and Nevada RPC 1.8(e) should be amended.

The ABA amended model rule 1.8(e) in 2020, and the model rule now permits modest gifts of food, rent, transportation, medicine, and basic living expenses to indigent clients represented pro bono through nonprofit legal services. Nevada should go further and allow every lawyer to offer clients "humanitarian aid and de minimis gifts for necessary expenses." This language is broader than the proposal currently before the Court, but broader exceptions to Rule 1.8(e) have been successful in other jurisdictions. See Washington DC Rule 1.8(d)(2), Mississippi and South Dakota Rules 1.8(e)(2), and Louisiana Rule 1.8(e)(5). "Humanitarian aid and de minimis gifts for necessary expenses" are consistent with the Rule's purpose.

Thank you



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Landlord-Tenant CLE Webcast
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COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

The Pro Bono Issue

December 2021



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By Michael J. Nuñez, Esq.
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Leave the Client in the Cold. Nevada Rule of Professional Conduct 1.8 Sanctions Charity

By Chad Pace, Esq.

You represent an indigent client on a contingency matter and give her children used clothing. State bar counsel would like to see you now.

This charity violates Nevada Rule of Professional Conduct 1.8(e). Strict enforcement begs discretion, but Florida attorney Phillip Taylor found himself subject to discipline. He donated children's clothing and small amounts of cash to his indigent client. There was no expectation of repayment. The Florida Bar charged Taylor with violating ethical Rules 4-1.8(a) (business transaction with client); 4-1.8(e) (financial assistance to a client in connection with pending litigation); and 4-1.8(i) (lawyer's proprietary interest in the client's cause of action). *Florida Bar v. Taylor*, 648 So.2d 1190, 1191 (Fla. 1994).

Charity sanctioned

Taylor's case seems outlying, but Rule 1.8 enforcement is not isolated. *Cleveland Bar Association v. Mineff*, 652 N.E.2d 968 (Ohio 1995) is another example. George Mineff's client was evicted, appeared ragged, and was visibly losing weight. Mineff gifted him approximately \$5,400 without any agreement to repay. The Ohio disciplinary panel publicly reprimanded Mineff.

Oklahoma attorney Donald

Smolen's case is similar. Smolen loaned his indigent client \$1,200 after the client's home caught fire. The loan was interest and penalty free. The client terminated Smolen's representation without repaying, and his new attorney reported Smolen. Smolen admitted violating Rule 1.8(e). The Court suspended him from practice for 60 days and ordered him to pay costs. *State ex rel. Okla. Bar Ass'n v. Smolen*, 17 P.3d 456 (Okla. 2000).

Smolen argued a humanitarian exception should apply. A dissenting judge in the Ohio case concluded that Mineff's charity benefited the client and did not interfere with the representation. An initial referee in the Florida case would have exonerated Taylor, reasoning, "I simply do not believe it is appropriate to sanction lawyers who provide used clothing for a client's child." In each case, these dissenting voices were overruled in favor of a pedantic application of Rule 1.8.

Nevada Rule of Professional Conduct 1.8(e)

Nevada RPC 1.8(e) reads,

(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 litigation, the repayment of which may be contingent on the outcome of the matter; and



Chad Pace, Esq. is a partner at the Northern Nevada firm Carlson & Work. He devotes a portion of his practice to indigent criminal defense and is pro bono counsel at Healthy Communities Coalition in Lyon County. He is an experienced trial attorney and avid skier.

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

The Rule is substantially similar to the Florida, Ohio, Oklahoma, and ABA Model Rules. The ABA adopted Rule 1.8 based on the common-law prohibitions against champerty and maintenance because “such assistance gives lawyers too great a financial stake in the litigation.” MRPC 1.8(E) cmt. 10. A financial stake in the case may create an impermissible conflict of interest.

Amendments to Model Rule of Professional Conduct 1.8(e)

New York attorney Daniel Greenberg confessed that he has unknowingly violated Rule 1.8 throughout his career when taking clients to lunch, paying for carfare, or helping with food and necessities. Robert, Amanda, “Model Rule Revision Allows Attorneys to Help Pro Bono Clients in Need,” ABA Journal (Dec. 1, 2020). Greenberg, then a member of the ABA Standing Committee on Legal Aid and Indigent Defense, sought to amend the Rule.

In August, 2020, the ABA amended Model Rule

1.8(e) by adding a limited exception. The amendment permits modest gifts to an indigent clients represented pro bono through nonprofit legal services. The amended rule limits gifts to food, rent, transportation, medicine and other basic living expenses. New Rule 1.8(e) subsection 3 provides,

(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:

Nevada should also amend its RPC 1.8(e).

Nevada should expand upon Model Rule 1.8 Amendment

The model rule amendment is incomplete. It does not protect attorneys like Donald Smolen, Phillip Taylor, and George Mineff. No attorney should be sanc-

Charity *continued on page 26*

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tioned for giving a coat to an impoverished client.

Other jurisdictions protect charity. Washington DC's Rule 1.8(d)(2) permits aid when "reasonably necessary to permit the client to institute or maintain the litigation or administrative proceeding." Mississippi and South Dakota Rules 1.8(e)(2) allow gifts for medical and living expenses. Louisiana Rule 1.8(e)(5) allows lawyers to "provide financial assistance to a client who is in necessitous circumstances."

Nevada should follow suit. Rule 1.8 is intended to protect against champerty and maintenance. Humanitarian aid and *de minimis* gifts for necessary expenses are consistent with the Rule's purpose. Without aid, indigent clients may rely on high-interest, third-party loans or quick, discounted settlement. An amended Rule 1.8 can help clients avoid indignity and exploitation.

The Supreme Court of Nevada should amend RPC 1.8 to protect attorneys with benevolence and charity at heart. **G**



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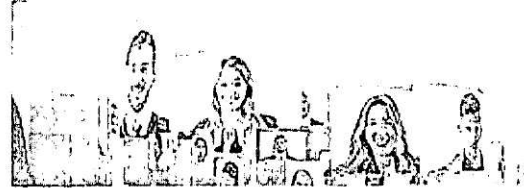
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