



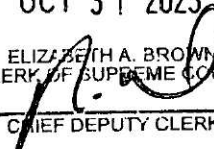
UNLV | WILLIAM S. BOYD SCHOOL OF LAW

October 31, 2023

FILED

Hon. Justice Kristina Pickering
c/o Elizabeth A. Brown, Clerk
Supreme Court of Nevada
201 South Carson Street, Suite 201
Carson City, NV 89701-4702

OCT 31 2023

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

Re: Comment Regarding ADKT 0445 ✓
Amendment to Nevada Rules of Professional Responsibility, Rule 1.8(e)

Dear Justice Pickering,

We write to offer comments regarding proposed revisions to Rule 1.8(e) of the Nevada Rules of Professional Responsibility. We are faculty directors and supervising attorneys of various clinics in the Thomas & Mack Legal Clinic at the William S. Boyd School of Law. One of us also teaches the Professional Responsibility course. Although we draw on our experience leading law school clinics that offer pro bono legal services to indigent clients, we offer these comments in our individual capacities, not on behalf of the law school.

We are pleased that the Court is considering the request from legal aid organizations to amend Rule 1.8(e). The current version of this rule serves an important protective purpose, but as it stands is overly rigid and counterproductive with regard to serving indigent clients. We thus strongly support the proposal to amend the rule.

Rule 1.8(e) prohibits a lawyer from providing "financial assistance to a client." As a general matter, it is reasonable to avoid incentivizing clients to engage in litigation in order to receive financial assistance rather than because of a genuine interest in the litigation. If a client is motivated primarily by financial assistance, the client will be incentivized to make key decisions in an effort to please the lawyer. This will undermine the cardinal principle embodied in Rule 1.2 that clients, not attorneys, must set the objectives of a representation. In addition, as we often teach our students, it is important for lawyers to be clear about the limits of their roles vis-à-vis the many challenges that clients face in their lives. These are valid and worthy concerns, but the present rule is overly broad.

When non-profit entities offer free legal services to indigent clients, there should be less concern that modest assistance to clients will distort the lawyer-client relationship the way it might in other contexts. Yet, there are currently no exceptions to this prohibition in Nevada, other than for court costs and litigation expenses. Even though our clinics do not regularly

maintain funds to financially assist clients, the current Rule 1.8(e) has caused problems and has operated against the interests of our clients because it is so broad. For example, when our clients have had health emergencies and set up online community donation campaigns for their medical expenses, our staff and student attorneys have been prohibited from voluntarily giving modest gifts. When an anonymous donor offered to give money to assist in buying holiday gifts for some of our child clients, Rule 1.8(e) left us unable to assist in administering the potential funds. As a result, the donor backed out and our clients lost out. Many similar examples of the problems caused by the current version of the rule have already been offered in the memorandum from the Legal Aid Center of Southern Nevada. These examples echo in our own experience. For these reasons, the ABA and many other states have added exceptions for legal aid providers serving low income clients.

We urge the Supreme Court to amend Rule 1.8(e) to add an exception for non-profit, pro bono legal services to indigent clients. The proposed amendment to Rule 1.8(e) would add a new exception allowing “modest gifts and humanitarian aid” to indigent clients or to those assisting them. This would be a positive change. We would also like to recommend two ways to improve the current proposed amendment.

First, we recommend adding a specification that for this exception to apply, the legal services should be offered pro bono. Although the currently proposed limitation to nonprofit organizations most likely eliminates most risks, there are some non-profit legal aid providers in Nevada that charge substantial fees for legal services. In these situations, we would recommend that the legal aid provider first eliminate its fees before considering giving financial assistance to a client. When a legal aid provider depends on client fees, but the client is receiving financial assistance of some kind from the lawyer, there is reason to worry that the lawyer-client relationship may be distorted in the ways that Rule 1.8(e) is designed to prevent.

Second, we recommend adopting one of the safeguards that is included in the ABA Model Rule, namely the rule that if a legal aid provider offers financial assistance to an indigent client, the legal aid provider may not seek or accept reimbursement. This safeguard ensures that no implied debt is created when a lawyer provides any form of assistance. It must be a no-strings-attached gift to qualify for the exception.

Our suggestions would mirror the ABA’s Model Rule, in part. However, there are two aspects of the ABA Model Rule version of Rule 1.8(e) that we do *not* recommend adopting for Nevada. The Model Rule would prohibit either advertising the potential for modest assistance (MR 1.8(e)(iii)) or informing a client of the possibility of assistance at the outset of representation (MR 1.8(e)(i)). We believe these restrictions would be counterproductive. Consider, for example, a legal aid program or clinic that wants to make legal consultations or representation more accessible to indigent clients who struggle with transportation, food insecurity or other necessities. The legal aid organization could solicit donations of free rides or food vouchers in order to make it easier for clients to meet with attorneys. In a similar vein, a legal aid provider might partner with an organization that provides children’s

clothing, medical check-ups, or other assistance to indigent families. Yet, the Model Rule would prohibit informing potential clients about such assistance, which would hinder them from taking advantage of programs that would help them receive needed legal help. That would hardly be in their interest.

We are grateful to the legal aid organizations that have petitioned for an amendment to the current Rule 1.8(e), and we are glad that the Supreme Court is considering this matter. We hope that these comments are helpful in arriving at an amended rule that will better serve the people of Nevada.

Sincerely,



MICHAEL KAGAN
Joyce Mack Professor of Law
Director, Immigration Clinic

ALISSA COOLEY
Managing Attorney
Community Advocacy Office

COURTNEY CROSS
Professor of Law
Director, Survivor Representation
and Advocacy Clinic

EVE HANAN
Professor of Law
Director, Misdemeanor Clinic

LYDIA NUSSBAUM
Professor of Law
Director, Mediation Clinic