

Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client
(Commission's Proposed Rule – Clean Version)

- (a) A lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer's law firm will pay the personal or business expenses of a prospective or existing client, except that a lawyer may:
- (1) pay or agree to pay such expenses to third persons, from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
 - (2) after the lawyer is retained by the client, agree to lend money to the client based on the client's written promise to repay the loan, provided the lawyer complies with Rule 1.8.1 before making the loan or agreeing to do so;
 - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter. "Costs" within the meaning of this paragraph (a)(3) are limited to all reasonable expenses of litigation, including court costs, and reasonable expenses in preparing for litigation or in providing other legal services to the client; and
 - (4) pay court costs and reasonable expenses of litigation on behalf of an indigent or pro bono client in a matter in which the lawyer represents the client.
- (b) A lawyer does not violate this rule by offering or giving a gift to a current client, provided that anything given was not offered in consideration of any promise, agreement, or understanding that the lawyer would make a gift to the client.

Comment

- [1] This Rule is intended to balance two competing concerns. One is that a lawyer's subsidization of a client's legal proceedings would give the lawyer a financial stake in the proceedings that might injuriously affect the performance of the duties owed to the client, including the obligation to exercise independent professional judgment on the client's behalf without being influenced by the lawyer's personal interests. The second concern is that a prohibition on the lawyer providing financial assistance to the client might adversely affect the client's access to justice. The Rule is also intended to protect against the hidden transfer of funds to a client under the guise of a loan and to protect the lawyer against client demands for loans or gifts.
- [2] Paragraph (a)(2) does not permit a lawyer to lend money, or to offer, promise or agree to lend money, to a prospective client. It does permit a lawyer to lend money to a client after the lawyer is retained, but the lawyer then must comply with Rule 1.8.1 and make a disclosure under Rule 1.7(d)(4) concerning the effect the proposed agreement might have on the lawyer's representation of the client. Nothing in this Rule shall be deemed to limit the application of Rule 1.8.12.
- [3] "Costs," as defined in paragraph (a)(3), are not limited to those that are taxable or recoverable under any applicable statute or rule of court.