

## **Rule 1.8.6 Payments Not From Client** (Commission's Proposed Rule – Clean Version)

A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) the client gives informed written consent at or before the time the lawyer has entered into the agreement for, charged, or accepted compensation from one other than the client, or as soon thereafter as is reasonably practicable, provided that no disclosure or consent is required if the lawyer: (i) is rendering legal services on behalf of a public agency that provides legal services to other public agencies or the public; or (ii) is rendering services through a non-profit organization;
- (b) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
- (c) information relating to representation of a client is protected as required by Rule 1.6 and by Business and Professions Code section 6068(e).

### **Comment**

[1] A lawyer might be asked to represent a client when another client or other person will pay the lawyer's fees, in whole or in part. This Rule recognizes that any such agreement, charge, or payment creates risks to the lawyer's performance of his or her duties to the client, including the duties of undivided loyalty, independent

professional judgment, competence, and confidentiality. A lawyer's responsibilities in a matter are owed only to the client except where the lawyer also represents the payor in the same matter. With respect to the lawyer's additional duties when representing both the client and the payor in the same matter, see Rule 1.7(b) and Rule 1.7, Comments [12] and [13], regarding joint representations. The lawyer also must comply with Rule 1.7(d) when the lawyer has a potential conflict of interest because the lawyer has another relationship with the payor, such as when the lawyer represents the payor in a different matter. In accepting payment from someone other than the client, the lawyer also must comply with Rule 1.6 and Business and Professions Code section 6068(e) (concerning confidentiality) and Rule 5.4(c) (concerning interference with a lawyer's professional judgment by one who recommends, employs, or pays the lawyer to render legal services for another).

[2] Despite the risks described in Comment [1], paragraph (a) contains two exemptions from compliance with its requirements. These exemptions reflect policy decisions to not interfere with the functioning of (1) public agencies that provide legal services to other public agencies or the public, or (2) non-profit organizations that provide legal services to the indigent and to others. A lawyer who is exempt from compliance with paragraph (a) nevertheless must comply with paragraphs (b) and (c).

- [3] This Rule does not apply to payment of a lawyer's fees by a third party pursuant to a settlement agreement or as ordered by a court or otherwise provided by law.
- [4] This Rule is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].) Thus, a lawyer is not obligated to obtain the client's consent under paragraph (a) when appointed and paid by an insurer to represent an insured pursuant to the insurer's contractual right to do so. However, the lawyer nevertheless must comply with Rule 1.7 whenever the lawyer has a potential or actual conflict of interest. See Rule 1.7, Comment [35].
- [5] In some limited circumstances, a lawyer might not be able to obtain client consent before the lawyer has entered into an agreement for, charged, or accepted compensation, as required by this Rule. This might happen, for example, when a lawyer is retained or paid by a family member on behalf of an incarcerated client. This also might happen in certain commercial settings, such as when a lawyer is retained by creditors' committee involved in a corporate debt restructuring and agrees to be compensated for any services to be provided to other similarly situated creditors who have not yet been identified. When this

occurs, paragraph (a) permits the lawyer to comply with this Rule as soon thereafter as is reasonably practicable.