

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8005

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**ORDER PROMULGATING AMENDMENTS TO THE
MINNESOTA RULES OF PROFESSIONAL CONDUCT**

On January 22, 2025, the Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility filed a joint petition proposing amendments to Rules 1.8 and 3.8 of the Minnesota Rules of Professional Conduct. By order filed on April 23, 2025, we established a period for the public to file written comments in response to the petition. *See* Order Establishing Public Comment Period on Proposed Amendments to the Minnesota Rules of Professional Conduct, ADM10-8005, Order at 2 (Minn. filed Apr. 23, 2025) (attaching petition). We received four comments, all in support of the petition.

Rule 1.8 of the Minnesota Rules of Professional Conduct addresses conflicts of interest for current clients, and it prohibits a lawyer from providing financial assistance to a client, subject to certain exceptions. Minn. R. Prof. Conduct 1.8(e). The proposed amendment to Rule 1.8 adds an exception to the financial-assistance prohibition that allows a lawyer representing an indigent pro bono client to give the client a modest gift for basic living expenses such as food, rent, transportation, medicine, and other basic living expenses. It also, however, prohibits such a lawyer from promising, assuring, or implying the availability of such gifts prior to retention or as an inducement to continue

the client-lawyer relationship. And it also prohibits the attorney from seeking or accepting reimbursement from the client, a relative of the client, or anyone affiliated with the client.

Rule 3.8 of the Minnesota Rules of Professional Conduct addresses special responsibilities for a prosecutor. The proposed amendment to Rule 3.8 adds language to clarify a prosecutor's obligations regarding disclosure of exculpatory evidence. It does this, in part, by adding two paragraphs regarding a prosecutor's obligations upon learning of "new, credible, and material evidence" that a person convicted of a crime did not commit the crime. Under proposed Rule 3.8(g), if such evidence creates a reasonable belief that the defendant did not commit the offense, the prosecutor must disclose the evidence and, in certain circumstances, must make reasonable efforts to cause an investigation of the matter. Under proposed Rule 3.8(h), if the prosecutor learns of "clear and convincing evidence" establishing that a defendant in the prosecutor's jurisdiction was convicted of a crime the defendant did not commit, the prosecutor must "seek to remedy the conviction."

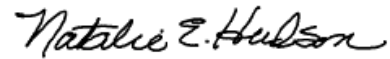
Having carefully considered the petition and the public comments, we agree with the proposed amendments to Rules 1.8 and 3.8 of the Minnesota Rules of Professional Conduct.

The petition also included proposed amendments to the comments to Rule 1.8 of the Minnesota Rules of Professional Conduct. As with other rule amendments, comments are included with the rules for convenience and do not reflect court approval or adoption.

IT IS HEREBY ORDERED that the Minnesota Rules of Professional Conduct are amended as shown below. The amendments to Rule 1.8 of the Minnesota Rules of Professional Conduct are effective as of the date of this order. The amendments to Rule 3.8 of the Minnesota Rules of Professional Conduct are effective July 1, 2026.

Dated: May 14, 2026

BY THE COURT:

A handwritten signature in black ink that reads "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Chief Justice

**AMENDMENTS TO THE MINNESOTA RULES OF
PROFESSIONAL CONDUCT**

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

**RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC
RULES**

* * *

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

* * *

(4) 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:

- (i) may not promise, assure, or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention; and
- (ii) may not seek or accept reimbursement from the client, a relative of the client, or anyone affiliated with the client.

* * *

Comment

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Financial Assistance

[10] Lawyers may not subsidize lawsuits brought on behalf of their clients, such as by making loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly,

an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted. A lawyer may guarantee a loan to enable the client to withstand delay in litigation under the circumstances stated in Rule 1.8(e)(3).

[11] Paragraph (e)(4) provides another exception. A lawyer representing an indigent client without fee, 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 give the client modest gifts. Gifts permitted under paragraph (e)(4) include modest contributions for food, rent, transportation, medicine, and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(4) exception is narrow. Modest gifts are allowed in specific circumstances where the giving of a modest gift is unlikely to create a conflict of interest or invite abuse. Paragraph (e)(4) prohibits the lawyer from (i) promising, assuring, or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; and (ii) seeking or accepting reimbursement from the client, a relative of the client, or anyone affiliated with the client.

[13] Financial assistance, including modest gifts pursuant to paragraph (e)(4), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(4) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

Person Paying for a Lawyer's Services

~~[14]~~ Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client, or acceptance of compensation from another is impliedly authorized by the nature of the representation. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

~~[15]~~ Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the

lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[1316] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement. The rule stated in this paragraph is a corollary of both these rules and provides that, before any settlement offer is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement is accepted. See also Rule 1.0(f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[1417] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because such agreements are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[1518] Agreements settling a claim or a potential claim for malpractice are not prohibited by this rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[1619] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The rule is subject to specific exceptions developed in decisional law and continued in these rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[1720] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[1821] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[1922] When the client is an organization, paragraph (j) of this rule prohibits a lawyer for the organization from having a sexual relationship with a person who oversees the representation and gives instructions to the lawyer on behalf of the organization.

Imputation of Prohibitions

[2023] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

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RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

* * *

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that a prosecutor is required to disclose under applicable law and procedural rules that a prosecutor knows or reasonably should know tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

* * *

(g) when a prosecutor knows of new, credible, and material evidence creating a reasonable belief that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority;
and,

(2) if the conviction was obtained in the prosecutor's current jurisdiction,

i. promptly disclose that evidence to the defense unless the court authorizes delay; and

ii. make reasonable efforts to cause an investigation to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's current jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.