



# The State Bar of California

## **Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client (Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (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.
- (b) Notwithstanding paragraph (a), 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 rules 1.7(b), 1.7(c), and 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; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the lawyer represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

**NEW RULE OF PROFESSIONAL CONDUCT 1.8.5  
(Former Rule 4-210)  
Payment of Personal or Business Expenses Incurred by or for a Client**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 4-210 (Payment of Personal or Business Expenses Incurred by or for a Client) in accordance with the Commission Charter. In addition, the Commission considered the national standard of the ABA counterpart, Model Rule 1.8(e) (Conflict Of Interest: Current Clients: Specific Rules), pertaining to financial assistance to a client. The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the evaluation is proposed rule 1.8.5 (Payment of Personal or Business Expenses Incurred by or for a Client).

**Rule As Issued For 90-day Public Comment**

The main issues considered were whether to permit lawyers to pay the costs and expenses for a pro bono or indigent client, and whether to allow gifts to existing clients. While the Commission adopted payments to pro bono or indigent clients in order to promote access to justice, permitting gifts to existing clients was excluded from the proposed rule due to the potential of unintended expectations and confusion between the personal and professional relationship between the lawyer and client.

Proposed rule 1.8.5(a) prohibits the direct or indirect payment of personal or business expenses of a prospective or existing client.

Paragraph (b) allows for a lawyer to make payments to a client under the following defined circumstances:

- (1) with the client consent, making payments to third parties from funds collected on behalf of the client during the representation;
- (2) after being retained by the client, loaning money to the client with client’s written promise to repay the loan and the lawyer’s compliance with rules 1.7(b)<sup>1</sup> and 1.8.1;
- (3) advancing the costs of prosecuting or defending a client’s claim or action, repayment of which may be contingent on the outcome of the matter;
- (4) paying the costs of prosecuting or defending a claim or action of an indigent or pro bono client.

Paragraph (c) clarifies costs under (b)(3) and (b)(4) to include reasonable expenses for litigation or providing other legal services to the client.

Paragraph (d) reinforces the applicability of proposed rule 1.8.9 (Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review).

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<sup>1</sup> One member of the Commission submitted a written dissent stating general support for the Commission’s draft rule but objecting to the inclusion of a reference to proposed Rule 1.7(b). The full text of the dissent is attached to this summary. (See also, the Executive Summary for proposed Rule 1.7.)

### **Post-Public Comment Revisions**

After consideration of comments received in response to the initial 90-day public comment period, the Commission made only two revisions. In paragraph (b)(2), the Commission updated a cross reference to rule 1.7 (re current client conflicts of interest) to account for changes made to that rule. In paragraph (b)(4), the Commission substituted the phrase “an indigent person” for “an indigent or pro bono client” because a pro bono client might not be indigent, for example, a lawyer who provides pro bono services to a theater company or symphony.

With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.

### **Final Commission Action on the Proposed Rule Following 45-Day Public Comment Period**

After consideration of comments received in response to the additional 45-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule. A member of the Commission submitted a dissent to this rule that can be found following the Report and Recommendation.

The Board adopted proposed rule 1.8.5 at its March 9, 2017 meeting.

### **Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as submitted by the State Bar to be effective November 1, 2018.

**Rule ~~1.8.5~~ 4-210 Payment of Personal or Business Expenses  
Incurred by or for a Client  
(Redline Comparison to the California Rule Operative Until October 31, 2018)**

- (Aa) A ~~member~~lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent, ~~or sanction a representation~~ that the ~~member or member's~~lawyer or lawyer's law firm\* will pay the personal or business expenses of a prospective or existing client, ~~except that this rule shall not prohibit a member.~~
- (b) Notwithstanding paragraph (a), a lawyer may:
- (1) ~~With the consent of the client, from paying or agreeing~~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; ~~or~~
  - (2) ~~After employment, from lending~~after the lawyer is retained by the client, agree to lend money to the client ~~upon the client's~~based on the client's written\* promise ~~in writing~~ to repay ~~such~~the loan; ~~or, provided the lawyer complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;~~
  - (3) ~~From advancing~~advance the costs of prosecuting or defending a claim or action, or ~~of~~ otherwise protecting or promoting the ~~client's~~client's interests, the repayment of which may be contingent on the outcome of the matter: ~~Such costs; and~~
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the lawyer represents the client.
- (c) "Costs" within the meaning of ~~this subparagraph (3) shall be limited to~~ all paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation ~~or, including court costs, and~~ reasonable\* expenses in ~~preparation~~preparing for litigation or in providing ~~any other~~ legal services to the client.
- (Bd) Nothing in this rule ~~4-210~~ shall be deemed to limit ~~rules 3-300, 3-310, and 4-300~~the application of rule 1.8.9.