

REVISED RECOMMENDATIONS OF THE SUPREME COURT COMMITTEE TO STUDY FINANCIAL ASSISTANCE TO CLIENTS

Following the Court's decision in *Chittenden v. State Farm Mutual Automobile Insurance Co., et al.*, 2000-0414 (La. 5/15/01), 788 S.2d 1140, the Court appointed a committee "to study and make recommendations concerning possible amendments to the Rules of Professional Conduct concerning financial assistance to clients."

The Committee's initial recommendations were placed on the Court's website for comment. Many commenters voiced objection to the language of proposed ROPC 1.8(e)(3)(vi), which would have prohibited lawyers from passing on to clients interest charges (together with fees) in excess of "Prime + 3%."

In light of the comments, the Committee revisited its work, and has finalized a number of revisions to its original recommendations. The Court has decided to place the Committee's Revised Recommendations on its website in order to allow interested persons to comment. Different typeface and other indicators, such as ~~strikethrough~~, are used to indicate revisions.¹ Persons interested in commenting on the Revised Recommendations of the Supreme Court Committee to Study Financial Assistance to Clients may forward written comments to:

Tim Averill
Deputy Judicial Administrator/General Counsel
Office of the Judicial Administrator
Supreme Court of Louisiana
400 Royal Street, Suite 1190
New Orleans, LA 70130-8101

or via e-mail to: rulecomments@lajao.org

¹ Those who wish to procure the original Committee recommendations may do so by:

- (1) clicking on "Invitations to Comment" on the left side toolbar of the Court's web page;
- (2) clicking on "Archived Invitations to Comment;" and then
- (3) scrolling down the Archived Invitations and clicking on "Final Recommendations of the Supreme Court Committee to Study Financial Assistance to Clients."

Comments should be forwarded no later than Monday, April 25, 2005.

Please be advised that any comments which are forwarded constitute matters of public record and are subject to public inspection.

REVISED RECOMMENDATIONS OF THE COMMITTEE TO STUDY FINANCIAL ASSISTANCE TO CLIENTS

(February, 2005)

The following typeface and indicators are used in the revisions which follow.

Regular type - The use of regular type indicates no revision to the present language of the Rules of Professional Conduct.

Boldface type - Indicates the original Committee recommended language.

Italicized

bold type - Indicates subsequent revisions to the original Committee recommendations.

~~Strikethrough~~ - Indicates the deletion of language from the original Committee proposal.

PROPOSED RULE CHANGE

Rule 1.4(c)

A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

PROPOSED RULE CHANGE

Rule 1.5(c)

. . . A contingent fee agreement shall be in a writing signed by the client. **A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement** shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated . . .

PROPOSED RULE CHANGE

Rule 1.8(e)

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: *as follows*.

PROPOSED RULE CHANGE

Rule 1.8(e)(1)

A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, **provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken.**

PRESENT RULE

Rule 1.8(e)(2)

A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

PROPOSED RULE CHANGE

Rule 1.8(e)(3)

Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, ~~ordinary postage charges~~, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services. With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, *postage charges*, *copying charges*, and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

~~Paralegal services shall be considered as professional services and not an overhead cost.~~

PROPOSED RULE CHANGE

Rule 1.8(e)(4)

In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

- (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.**
- (ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.**
- (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.**
- (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation *expenses*, education, or other documented expenses necessary for subsistence.**

PROPOSED RULE CHANGE

Rule 1.8(e)(5)

Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.

- (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.**
- (ii) Financial assistance provided by a lawyer to a client may be made using *a lawyer's line of credit or loans* obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not**

apply to publicly traded financial institutions where the lawyer's ownership, control and/or security interest is less than 15%. *Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.*

- (iii) ***Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.***
- (iv) ***A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.***
- (v) ***The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters after in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.***
- (vi) ***In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents,***

approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.