

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2020-31

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendment of
Rule 1.8 of the Michigan
Rules of Professional Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.8 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 1.8 Conflict of Interest: Prohibited Transactions.

(a)-(d) [Unchanged.]

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

(1)-(2) [Unchanged.]

(3) provided that the lawyer represents the indigent client pro bono, pro bono through a nonprofit legal services or public interest organization, or pro bono through a law school clinical or pro bono program, a lawyer representing an indigent client may pay for or provide the following types of assistance to the client to facilitate the client's access to the justice system in the matter: transportation to and from court proceedings; lodging if it is less costly than providing transportation for multiple days; meals during long court proceedings; or clothing for court appearances. The legal services must be delivered at no fee to the indigent client, and the lawyer:

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

Funds raised for any legal services or public interest organization for purposes of providing legal services will not be considered useable for providing assistance to indigent clients, and assistance referenced in this subsection may not include loans or any other form of support that causes the client to be financially beholden to the provider of the assistance.

Assistance provided under (3) may be provided even if the indigent client's representation is eligible for a fee under a fee-shifting statute.

(f)-(j) [Unchanged.]

Comment:

[Unchanged except for the following proposed additional language]

Humanitarian Exception.

Paragraph (e)(3) serves as a humanitarian exception. The lawyer can assist the client with needs that frustrate the client's access to the justice system in the specific matter for which the representation was undertaken, while still preserving the nature of the attorney-client relationship. For purposes of this rule, indigent is defined as people who are unable, without substantial financial hardship to themselves and their dependents, to obtain competent, qualified legal representation on their own.

Staff Comment (ADM File No. 2020-31): The proposed amendment of MRPC 1.8 would allow attorneys to provide certain assistance to indigent clients they are serving on a pro bono basis.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by July 1, 2023 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2020-31. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 22, 2023

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk