

April 12, 2023

Honorable Charles W. Johnson  
Honorable Mary I. Yu  
Supreme Court Rules Committee  
c/o Clerk of the Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia WA 98504-0929  
supreme@courts.wa.gov

Dear Justice Johnson, Justice Yu, and Rules Committee Members:

We write in support of the proposed changes to RPC 1.8, proposed by the Washington State Bar Association Board of Governors, Committee on Professional Ethics (WSBA). We encourage the Committee and the Court to adopt the rule with one additional change to allow public defense attorneys to provide modest gifts for living expenses to indigent clients in limited circumstances.

Specifically, we request an addition to comment 11 to proposed RPC 1.8:

[11] [Washington revision] For purposes of 1.8(e), the term “indigent” has its ordinary meaning and in addition includes definitions of eligibility used by nonprofit legal services providers, court-annexed pro bono programs, law school clinics and similar programs that operate to protect and expand public access to our courts and to legal representation. A lawyer representing an indigent client without fee, a lawyer representing an indigent client through a nonprofit legal services or public interest organization, ~~and~~ a lawyer representing an indigent client through a law school clinical or pro bono program, **and a public defense attorney (working with a defender organization, county office, contract attorney or assigned counsel) representing an indigent client** may give the client modest gifts. Gifts permitted under paragraph (e)(3) 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.

In its GR 9 cover sheet proposal, the WSBA outlined the merits of the proposed rule for lawyers of indigent clients. The small gifts considered include food, transportation, medicine, or other living expenses. Including public defenders amongst the list of legal professionals who can offer nominal gifts to indigent clients makes sense. For example,

- buying lunch and other small items for indigent clients can be an essential part of building trust and rapport. It can help public defenders establish a relationship with clients and show that they care about their well-being and that they’re willing to meet the client on their own terms and in places where the client is most comfortable. This can lead to clients opening up about themselves, which can be crucial for building a strong defense.

- buying lunch for a client during a client meeting can also help ensure that the client's basic needs are met so that they can focus on their case. This is especially true when the client attends a meeting with small children.
- providing a client with a cell phone is an important way to keep in contact with them throughout their case. Recovery Act money offered by the State Office of Public Defense during the COVID crisis allowed for the use of funds to provide clients with devices to remain in touch with their lawyers. These devices have proven effective in maintaining contact as well as trusting attorney client relationships.
- providing a client with bus tickets is also an important support to ensure their return to court.

Allowing public defense attorneys to provide modest gifts advances the public interest and helps build trust. We ask the court to adopt the proposed changes to RPC 1.8 with our suggested additional change to comment 11.

Sincerely,

*/s/ Jason Schwarz*

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*/s/ Kathleen Kyle*

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**Sent:** Thursday, April 13, 2023 9:07 AM  
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**Cc:** Kathleen Kyle <[kkyle@snocopda.org](mailto:kkyle@snocopda.org)>  
**Subject:** Comment to Proposed RPC 1.8 pursuant to GR 9

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Please find attached a comment to the proposal to RPC 1.8 pursuant to GR 9.

Thank you,

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