



Department of
PUBLIC DEFENSE

Anita Khandelwal
Director

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April 10, 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

Re: Comment Requesting Amendment to Comment 11 to Proposed Rule Changes to RPC 1.8

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

The King County Department of Public Defense supports the proposed changes to RPC 1.8 and requests an additional change to allow a public defense attorney 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.

The Washington State Bar Association, Board of Governors, Committee on Professional Ethics (WSBA) is the proponent of the rule changes to RPC 1.8. The GR 9 Cover Sheet discusses how the proposed rule changes align with the American Bar Association's House of Delegates' recently adopted resolution allowing lawyers representing an indigent client pro bono, through a nonprofit legal services public interest organization, or through a law school clinic to provide modest gifts to a client for food, rent, transportation, medicine, and other basic living expenses. Including public defenders into RPC 1.8(3) will increase access to justice and serve the public interest. 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. 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.
- providing a client with a cell phone is an important way to keep in contact with them throughout their case.
- 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,

A handwritten signature in black ink, appearing to read 'Anita', followed by a long, horizontal, wavy line that extends to the right.

Anita Khandelwal

From: Khandelwal, Anita <Anita.Khandelwal@kingcounty.gov>
Sent: Tuesday, April 11, 2023 11:01 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed RPC 1.8 Amendment

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Attached is a Letter of Comment to Proposed RPC 1.8 Amendment. Thank you.

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