

**Rule 1.8.5 [4-210] Payment of Personal or Business Expenses
Incurred by or for a Client
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (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.

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Synopsis of Public Comments**

TOTAL = 2	A = 0
	D = 0
	M = 2
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-21h	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M	1.8.5	OCTC generally supports this rule. However, OCTC is concerned that subsection (b)(4) does not define indigent person. The rule exempts an attorney from the requirements of this rule when the attorney pays expenses for an indigent client, but does not define when a person is considered indigent. This lack of precision will make this rule difficult to understand or enforce. This subsection could be used by attorneys to incite or promote unnecessary litigation.	The Commission did not make the suggested change. The Commission believes that the term “indigent” is sufficiently defined in other areas of the law (see, for example, Bus. & Prof. Code sec. 6213(d)) and does not require a specific definition for this rule. In addition, the rule adopted in most states use the term “indigent” without a specific definition.
Y-2016-7e	State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) (Spencer) (01-06-17)	Y	M	1.8.5	COPRAC does not support the current revision of proposed Rule 1.8.5 because of the deletion of the phrase “or pro bono client” from subparagraph (b)(4). Prohibiting a lawyer from paying the costs of prosecuting or defending a claim or action, or otherwise protecting or promoting the interests of a pro bono client, could deprive non-indigent clients (including non-profit organizations) of access to justice. In addition, it imposes an unacceptable burden on the First Amendment rights of lawyers to support those causes or persons	The Commission did not make the suggested change. The Commission believes that the term “pro bono” would be overbroad in the context of this rule’s intended exception to the general prohibition against a lawyer’s payment of a client’s costs. In ordinary usage “pro bono” includes, for example, a lawyer’s provision of free legal services to a symphony organization regardless of the financial circumstances of that organization. To retain the public protection of the rule,

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					in which a lawyer may believe.	the term “indigent person” is a more appropriate concept. In addition, rule 1.0.1(g-1) defines “person” to include both natural persons and organizations. Accordingly, if an organization is indigent, then the exception would apply. Finally, the corresponding provision in the ABA Model Rules, Rule 1.8(e), which has been adopted in a substantial majority of jurisdictions, is limited to “an indigent client” and the Commission is not aware that this provision has created the access to justice problem asserted by the commenter.