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**E-88-9 Compensation of nonexpert witnesses  
for testifying**

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**Question**

What limitations are placed on lawyers' compensation of nonexpert witnesses?

**Opinion**

SCR 20:3.4(b) prohibits lawyers from offering an "inducement to a witness that is prohibited by law."

"[Generally] [i]t is permissible, however, to pay reasonable amounts to witnesses to compensate for lost wages incurred in testifying, and for travel and similar expenses, and to pay [any lawful] witness fee." C. Wolfram, *Modern Legal Ethics* (1986) and 651. See also *Annotated Model Rules of Professional Conduct* (ABA 1984) at 226-227.

SCR 20:3.4(b) provides little guidance regarding what constitutes an "inducement." Further confusing matters, this rule seems to imply that all inducements to witnesses are professionally proper, except those clearly prohibited by law. However, we believe that inducements to witnesses that exceed their actual out-of-pocket losses would support findings of SCR 20:3.4(b) violations. And, of equal importance, an opposing counsel's eliciting testimony about excessive witness compensation could adversely impact a witnesses's credibility, a client's case and a lawyer's "reasonableness" as a practical qualification on SCR 20:3.4(b)'s amorphous prohibition.