

**Louisiana State Bar Association  
Rules of Professional Conduct Committee**

**PUBLIC Opinion 07-RPCC-015<sup>1</sup>**

December 20, 2007

**Gifts to Clients**

*The Louisiana Rules of Professional Conduct do not specifically prohibit gifts by lawyers to clients. However, the Committee believes that any gift made by a lawyer to a client should be made only as a modest expression of thanks and appreciation but should not be portrayed or perceived as some form of compensation in exchange for, or as a result of, the referral of prospective new clients.*

The Louisiana Rules of Professional Conduct do not specifically prohibit gifts by lawyers to clients. Nevertheless, there are still a few rules that must be considered in connection with any proposed gift to a client.

Rule 7.1(c)<sup>2</sup> states “...A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the

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<sup>1</sup> The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

<sup>2</sup> Rule 7.1(c) of the Louisiana Rules of Professional Conduct.

lawyer...” Rule 7.2<sup>3</sup> provides, in pertinent part, that “...A lawyer shall not give anything of value to a person for recommending the lawyer’s services...” Rule 7.3(a)<sup>4</sup> states “...A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain...”

In light of these Rules, a lawyer should be careful, when selecting and giving gifts to clients, to ensure that no one misunderstands or mistakenly concludes that the gift represents some sort of payment or compensation in exchange for—or as some form of a *quid pro quo* incentive for—referral of prospective new clients.<sup>5</sup> While many lawyers depend heavily upon word-of-mouth referrals of prospective new clients from existing and former clients and often wish to show their gratitude and appreciation for that new business, a lawyer should be cognizant of and careful with the limitations on solicitation of prospective new clients: 1) a lawyer cannot solicit new legal business in-person or over the telephone from someone with whom the lawyer has no family or prior professional relationship when a significant motive for doing so is the lawyer’s pecuniary gain<sup>6</sup>; and more importantly for this discussion, 2) the lawyer cannot solicit new legal

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<sup>3</sup> Rule 7.2 of the Louisiana Rules of Professional Conduct.

<sup>4</sup> Rule 7.3(a) of the Louisiana Rules of Professional Conduct.

<sup>5</sup> See *In Re: Lawrence D. Sledge*, 2003-1148, 859 So. 2d 671 (La. 10/21/2003), wherein the lawyer was disciplined for, among other things, improper solicitation of clients and paying money to current and former clients for referring prospective clients to him. Of particular interest, the Court, in footnote 23 of the opinion, mentions that: “...Although our finding of solicitation is limited to three specific instances, there are hints of a much wider practice of solicitation in the record. In particular, we note the record contains references to a ‘ham list’, a list for clients to whom respondent sent a ham at Christmas time. There is a suggestion that clients who referred new clients would be placed on this list...”

<sup>6</sup> Rule 7.3(a) of the Louisiana Rules of Professional Conduct.

business from such persons through the actions of others acting at the lawyer's request or on the lawyer's behalf.<sup>7</sup>

As a result, prospective recipients of proposed gifts from lawyers should not be encouraged or allowed to conclude easily but mistakenly that, in exchange for or as a result of the gift(s), the recipients are expected to try and solicit prospective new clients for the lawyer. Glowing recommendations from satisfied clients made to others that they know or with whom they do business are one thing (and generally quite acceptable); active pursuit and solicitation of new legal business for a lawyer from virtual strangers, even when done by clients acting at the lawyer's request or on the lawyer's behalf, is entirely different and would be a violation of the Rules.<sup>8</sup> If those clients are improperly soliciting prospective new clients for a lawyer and also being somehow compensated for those referrals, there would be additional violations of the Rules.<sup>9</sup> Therefore, whenever a lawyer might consider making a gift to a client, it would be best to keep the size/value of the gift at a very reasonable—perhaps even nominal (*de minimis*)<sup>10</sup>—level so that it appears clearly to everyone to be nothing more than a simple token/expression of the lawyer's appreciation, gratitude, friendship, etc., as opposed to some form of payment,

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<sup>7</sup> Rule 7.3(a) of the Louisiana Rules of Professional Conduct.

<sup>8</sup> It should also be noted that, aside from improper solicitation by clients, solicitation of legal business in exchange for any manner of payment is a criminal offense if done by: sheriffs, clerks of court, constables or their deputies or any police officer or detective, whether commissioned without pay or not (see La. R.S. 14:356); wrecker drivers, owners or any other person engaged in providing wrecker services (see La. R.S. 14:356.1); or ambulance drivers, owners or any other person involved in providing ambulance services (see La. R.S. 14:356.3).

<sup>9</sup> See Rule 7.2 and Rule 7.1(c) of the Louisiana Rules of Professional Conduct.

<sup>10</sup> See ABA/BNA Lawyers' Manual on Professional Conduct, 18 LMPC 133, citing Arizona Ethics Opinion 2002-01 (February 27, 2002): "...Where the independent judgment of the attorney giving the gift is not affected or influenced, the intent of the rule is not to prohibit a *de minimis* gift as an expression of thanks and professional courtesy after the referral has been made...The panel emphasized that the gifts were to be given after the referral, that they were intended as an expression of thanks rather than compensation, and that they would not have significant value..."

bonus, incentive or other compensation in exchange for or in consideration of the solicitation and/or referral of prospective new clients.

### **Conclusion**

The Louisiana Rules of Professional Conduct do not specifically prohibit gifts by lawyers to clients. However, the Committee believes that any gift made by a lawyer to a client should be made only as a modest expression of thanks and appreciation but should not be portrayed or perceived as some form of compensation in exchange for, or as a result of, the referral of prospective new clients.