
7. Amendment to Oregon RPC 7.2 Regarding Nominal Gifts (Board of Governors Resolution No. 1)

Whereas, the Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); and

Whereas, the Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 7.2(b) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a lawyer referral service;

[and]

(3) pay for a law practice in accordance with Rule 1.17[.]; **and**

(4) **give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.**

(c) Any communication made pursuant to this rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

Background

The proposed amendment to Oregon Rule of Professional Conduct 7.2(b) would clarify that lawyers are allowed to give nominal gifts as an expression of appreciation to referral sources, as long as those gifts are neither intended nor reasonably expected to be a form of compensation for recommending the lawyer's services.

Further, the proposed amendment would keep Oregon in line with the majority rule on this issue and reduce potential confusion among lawyers. See ABA Model Rule 7.2(b)(5) (providing identical exception). The intent of the exception is to

permit[] lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

Comment [4] to ABA Model Rule 7.2.

Adoption of the proposed amendment would place current advice on the de minimus gift issue in the text of the rule itself. As current OSB Formal Ethics Op No 2005-73 (Revised 2018) explains:

Lawyer also may provide de minimis gifts in the ordinary course of social or business hospitality as long as the proposed gifts are not payments in exchange for X, Y, or Z recommending the Lawyer's services. Lawyer should therefore be careful to not run afoul of the rule by providing something of value *in exchange for* the referral. When the intent is not compensation for the referral, it does not violate the rule.

(Footnote omitted).

The Legal Ethics Committee recommended adoption of the proposed amendment to provide Oregon practitioners with advertising guidelines that are clear, simple, and consistent with other jurisdictions. The Board of Governors agrees with that recommendation.

Financial Impact

None.

Presenter:
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