

FORMAL OPINION NO 2005-73

[REVISED 2021]

Information about Legal Services: Acceptance of Referrals

Facts:

Lawyer is social friends with *X*, is known to *Y* as a competent professional, and has a lawyer–client relationship with *Z*. Lawyer is aware that, from time to time, *X*, *Y*, and *Z* may refer potential clients to Lawyer. Although Lawyer has thanked *X*, *Y*, and *Z* for doing so, Lawyer has not compensated *X*, *Y*, or *Z* for their referrals and has not affirmatively requested that future referrals be made. Lawyer would like to send a small gift to *X*, *Y*, and *Z* after learning about the referrals as a token of appreciation.

Questions:

1. May Lawyer accept future referrals from *X*, *Y*, and *Z*?
2. May Lawyer send a small gift to *X*, *Y*, and *Z* as a token of appreciation?

Conclusions:

1. Yes.
2. Yes, qualified.

Discussion:

Oregon RPC 7.2 provides, in pertinent part:

- (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;

(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.

On the facts as presented, there does not appear to be a violation of any Oregon RPC by accepting referrals, so Lawyer may continue to accept the referrals. *See also* OSB Formal Ethics Op No 2005-35 (rev 2018).

Oregon RPC 7.2(b)(4) expressly permits the Lawyer to give nominal gifts in the ordinary course of social or business hospitality as an expression of appreciation as long as the proposed gifts are not payments in exchange for X, Y, or Z recommending the Lawyer's services.¹ *See* ABA Model Rule 7.2 comment [4]:

[This paragraph] permits 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.

¹ *See, e.g.*, Arizona Ethics Op No 02-01; Philadelphia Ethics Op No 93-26. Lawyer should be advised that many other states prohibit an attorney from giving any gift to a person in exchange for a client referral, no matter how de minimis. *See, e.g.*, Connecticut Informal Op No 92-24 (noting lawyer could not discount services as compensation for clients for referring another client); Rhode Island Op No 89-05 (May 29, 1989) (noting gift of less than \$100 ran afoul of the rule against giving anything of value for recommending a lawyer's services); Alabama Formal Op No 1999-01 (prohibiting attorney from paying another attorney's advertising expenses in exchange for receiving referrals).

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.

Approved by Board of Governors, February 2021.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.6-4 (limitations on obtaining employment through the recommendation of a third party), § 2.6-5 (lawyer-referral services, prepaid legal-services plans, and legal-services organizations), § 13.2-1(d) (group legal plans) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 47 (2000); and ABA Model RPC 7.2.