NCRA INTRODUCES ETHICS FIRST

NCRA believes that the practice of providing gifts, rewards, or incentives to attorneys, clients or their representatives or agents undermines and dilutes the integrity of the legal profession and the status of the reporter as a neutral and impartial officer of the court. In the public eye, giving excessive gifts and incentives can create the appearance of partiality or favoritism on the part of the reporter toward the recipient.

The Ethics First program was created as a positive and proactive effort to encourage reporters, firms, and the clients they serve to promote the impartiality and the neutrality of the reporting profession and avoid inappropriate gift giving and gift acceptance. The Ethics First trademark is designed to instill public confidence in and support for the court reporting profession.

PROTECT YOURSELF

- Implement and enforce a firmwide policy on gifting that protects against the many pitfalls associated with gifting.
- Ensure that the taxable costs your client may be required to pay do not include the cost of incentive gifts received by your opposition.
- Learn more about the Ethics First program by visiting **http://www.ncra.org/ethicsfirst** Attorneys, law firms, judges, and legal professionals are invited to participate in the Ethics First program to show their support and help promote ethical standards within the legal profession.

Gifts and Ethics

What attorneys and legal staff need to know

Incentive gifts are common in today's marketplace. For law firms, a closer look is warranted on the impact of incentives and how to ensure against ethical and tax ramifications to best protect you and your clients.

ATTORNEYS AND LEGAL STAFF

ABA Formal Opinion 93-379 states: **"In the absence of disclosure to the contrary...if a lawyer receives a discounted rate from a third-party provider, it would be improper if she did not pass along the benefit of the discount to her client rather than charge the client the full rate and reserve the profit to herself."** While non-lawyers are not subject to professional discipline, the lawyer for whom they work is responsible for ensuring that their conduct is compatible with their own professional obligations.

COURT REPORTERS

The Code of Professional Ethics of the National Court Reporters Association states that reporters should refrain from giving, directly or indirectly, any gift or anything of value to any person or entity associated with litigation that exceeds $100 in the aggregate per recipient each year. Nothing offered in exchange for future work is permissible, regardless of its value.

TAX IMPLICATIONS

How the Internal Revenue Service views these gifts is also of great concern. Hanson Bridgett, a nationally recognized law firm, offers the following expert opinion: **"Given that the incentives provided by Reporting Firms in exchange for business are payments for services rather than gifts, the [Internal Revenue Code] requires the recipients of those payments to treat the value of the incentives as gross income."** This means that recipients must report the value of the incentives they receive as income on their tax returns. Failure to do so could result in the assessment of additional taxes, interest and penalties by the Internal Revenue Service.

This level of tax-responsibility awareness hasn't yet reached the court reporting firms and law firms involved in today's extensive rebate and incentive programs. A law firm having a general policy in place that prohibits acceptance of gifts may not be sufficient to avoid tax consequences. The policy must be enforced or serious tax issues may still arise.

TAXABLE COSTS

It is easy to become desensitized to incentive offers/reward programs because they are prevalent across so many industries today. Law firms, however, must be sensitive to the perils of accepting these incentives in exchange for court reporting services. Firms may be unknowingly compromising their ethical obligations when it comes to reporting taxable costs on a sworn affidavit to the tribunal.

If a law firm receives a gift card for booking a deposition, the true cost--deposition fee minus gift amount--is what should be sworn to as taxable costs. More and more attorneys are using this often overlooked fact when trying to reduce the fees their clients must pay to a prevailing party.

Protect yourself and your client by prohibiting gift incentives in your firm and by ensuring that the taxable costs your client may be required to pay do not include the cost of incentive gifts received by your opposition.