

# Chicago Daily Law Bulletin®

Volume 162, No. 245

Serving Chicago's legal community for 161 years

## Good tidings to you, but don't overstuff the holiday stockings

**T**he Court of Common Sense is back in session, and just in time for the ho, ho, ho holidays!

In this session, we will be discussing questions of holiday giving and etiquette. On deck first is how to ride the line of ethical giving.

**Q:** *Dear Court, I would like to give my clients a holiday gift. Are there any guidelines that I should follow? I would also like to give my referral sources a referral fee. Are there any special ethical considerations there?*

**A:** Great questions! If you are considering giving your corporate clients a gift, be sure to first check with the company's gift policy. Many companies prohibit gifts more expensive or valuable than a token. This limit could be as low as \$25 to \$50. The reason for this is obvious: Companies want to make sure that their employees are not being swayed by extravagant gifts from vendors.

Whatever you decide to do, make it personal. Send a special gift tailored to your client's particular interests or a note that is more than just your signature.

These steps will distinguish your present among all the other holiday cards and gifts they are receiving. Also, remember that while holiday giving is nice, clients appreciate remembrances throughout the year, too.

Don't merely concentrate your gift-giving at the end of the year, ignoring the months of January to November. You will set yourself apart by being conscientious of your client throughout the entire year.

As for referral fees, this is a form of fee-splitting or sharing, and thus, these cannot be handed out as holiday gifts. Illinois Rule of Professional Conduct 1.5(e) strictly controls how and

when a referral fee can be paid to another lawyer. It is only permissible for one attorney to pay another attorney a referral fee if all of the following requirements are met:

- The client must be advised in writing that the primary service performed by one lawyer is the referral of another lawyer and each lawyer must assume joint financial responsibility for the representation (i.e., the referring lawyer agrees to be financially responsible for the performance of services to the client).

- The client is advised in writing the share each lawyer will receive.

- The client consents in writing after receipt of the written disclosure.

- The total fee is reasonable.

In sum, referral fees must be agreed to by the client up front, and the engagement letter must expressly outline these terms.

The rules do allow you to accept a token gift from your client. The comments to Rule 1.8 state: "A lawyer may accept a gift from a client, if the transaction meets general standards of fairness.

For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, [P]aragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent." Bottom line, stick to token gifts and stay away from testamentary gifts.

As for accepting referral fees from non-lawyers, don't do it!

And don't share with non-lawyers either. The rules surrounding

### COURT OF COMMON SENSE



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referrals are complicated and fraught with peril. Not only are your ethical obligations on the line, but your friend could be found to be engaging in the unauthorized practice of law, which is a crime. And that's more than either of you bargained for as a holiday gift!

*Bottom line, stick to token gifts and stay away from testamentary gifts. As for accepting referral fees from non-lawyers, don't do it!*

**Q:** *My firm holiday party is coming up. It is my first time attending. Any suggestions on decorum?*

**A:** Do I have suggestions? Is the pope Catholic? You bet I do. Here, the line is a bright one: The firm holiday party is not the time to take full advantage of an open bar. These are professional colleagues that you are mingling

with, not your college fraternity brothers or sorority sisters. You want your colleagues to view you as the professional that you are.

Therefore, it is best not to imbibe to the point that you cannot maintain your professional demeanor or distance. And by the way, (ahem) this advice is not just for the younger lawyers; partners, I am talking to you, too!

The reason for this is obvious. Drinking to excess at a firm function impairs your judgment. It may cause you to dirty dance with someone entirely inappropriate, for example, your boss, or someone else's spouse, or on a table or chair. These acts are inconsistent with the image of you as a trusted adviser.

Overindulging on the egg nog may also loosen your tongue and cause you to engage in gossip or say something you will regret and can't take back. On this score, memories are selective and long and your behavior will follow you throughout your career. Trust me on this, don't be that memory.

It is not only your supervisors that you should care about. The staff — those people upon whom you depend to achieve success in your professional life — should not see you behaving like a drunken lunatic. If you would not behave like that in front of your grandmother,

then you should not do it at the holiday party.

With those caveats, however, the holiday party can be a great time to get to know your colleagues better, outside of the work setting. Do kick back, relax and enjoy yourself. Even hit the dance floor. Who does not enjoy a friendly dance off (I know I do). Just do not take things too far.

**Q:** *Dear Court, I wished a client, “Merry Christmas,” but realized after the fact that they did not celebrate the holiday. I feel like things are awkward between us now. What should I do?*

**A:** Well for starters, let me commend you on your thoughtfulness for expressing holiday greetings to your client. I am always delighted when someone thinks enough of me to wish me well or bless me during any holiday.

If your client is upset that you did not recognize the holiday that they celebrate, well then bah humbug to them.

In my opinion, this is a breach

of etiquette by your client because, in essence, they are making you feel bad for a religious celebration. The proper response to your wish was “Thank you.”

As for what to do, I would ignore the breach of etiquette and continue being courteous and professional. If you feel you must address it, I would simply explain that your intentions were good, that you simply wished to share the joy of the season and that you would like to apologize if that joy came across as insensitive to his or her religious beliefs.

If, however, you are aware of your client’s religious views and

deliberately ignored them in pushing your own religious agenda, then shame on you. After this most recent election cycle, the Constitution and the concept of religious freedom has taken on renewed importance.

Now, more than ever, lawyers must lead by example, uphold the Constitution in all that they do and show respect to the concepts our founding mothers and fathers fought to protect. And if you were engaging in the latter, rather than the former, then you should apologize to your client profusely and keep your religious views to yourself. A professional relationship is not appropriate

for proselytizing.

The holidays are the time for mending old wounds and bringing cheer, regardless of holiday affiliation. So keep up the merry spirit and keep those Christmas wishes coming for those that are Christians. And don’t forget to share Hanukkah wishes to your Jewish friends — Happy Holidays if you are not sure. Keep it simple, follow these rules, and you will never be wrong.

With that advice, you are armed with all you need for a safe and happy holiday season and great New Year. See you in 2017! And, hey, Happy Holidays!