So What's Wrong With Paying Your "Clients"?

By Lawrence H. Duffy, Orange Office

Over the past several months, there has been a spate of newspaper articles reporting on the downfall of some very prominent lawyers. This sudden interest was triggered by their criminal convictions in connection with secret and *illegal* payments of earned legal fees to "clients." The most notorious incidents involved former partners of a nationally prominent class-action law firm. In separate cases, these two lawyers pleaded guilty to criminal charges in connection with schemes that allegedly netted millions of dollars in kickbacks to clients in lawsuits targeting large corporations. In both cases, the government contended that the attorneys "maintained and paid a stable of ready-made plaintiffs" who were immediately available to file class actions lawsuits against corporations that allegedly defrauded investors. Both attorneys face prison terms of at least two years for their conduct.

So what exactly is wrong with paying your "clients"? Actually, plenty. And for good reason.

Virtually every state places significant restrictions on an attorney's ability to share fees with non-lawyers. Rule 1-320 of California's Rules of Professional Conduct specifically provides that neither a lawyer nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer. That rule also states that a lawyer cannot compensate, give or promise anything of value to any client—person or entity—for the purpose of recommending or securing employment of the lawyer or the lawyer's law firm. In addition, a gift to a client cannot serve as a reward for having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm.

The main purpose of Rule 1-320 and similar laws in other states is to protect the lawyer's professional independence of judgment. Stated another way by the American Bar Association Committee on Ethics and Professional Responsibility, the rationale for the long-standing general prohibition against the sharing of fees between lawyers and non-lawyers is that the public interest is best served through this rule. This assures that clients are represented by lawyers who, as members of a regulated profession, are an arm of and subject to the courts, are committed to court-approved standards of ethics and professional conduct, are not subject to conflicting interests or divided loyalties and are protected against possible control by others in the exercise of their professional judgment.

The problem typically arises in situations involving fee sharing with non-lawyers who are not clients. Thus, the rule is designed to protect against the possibility of control over the matter by the lay person, interested in his or her own profit, rather than the client's fate. Not surprisingly, a secondary purpose for the rule is to discourage lay persons from engaging in the unauthorized practice of law.

The rule against fee sharing is not absolute. For example, a lawyer can offer a gift or gratuity to anyone for the referral of a client that resulted in the employment of the lawyer or his or her firm. However, the gift or gratuity cannot be offered or given in consideration of any promise, agreement or understanding that such gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future. Additionally, a lawyer may employ a non-lawyer to provide services so long as payment for those services is not based on a percentage of the lawyer’s fees in the matter with respect to which the non-lawyer’s services are rendered.

Please feel free to contact Lawrence Duffy of the WFB&M Orange County Office at lduffy@wfbm.com, (714) 634-2522, or any WFB&M attorney with whom you have a working relationship should you have any questions with regard to the matters discussed in this article.