



ETHICS ADVISORY OPINION

15-02

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

Law Firm would like to pursue a practice referred to as "Donut Friday," where an employee of Law Firm visits the Firm's existing vendors (e.g., banks, real estate agencies, etc.) and delivers a box of donuts to these vendors. Included with the box of donuts are a dozen koozies bearing the name of Law Firm, as well as a fee sheet, a pamphlet containing information about Law Firm and its staff, and a coupon for \$50.00 off Law Firm's fee for a consultation or real estate closing. None of the marketing material is addressed or directed to any one person, nor does the material request that existing vendors refer business to Law Firm, although the intent is to receive referrals.

Question:

Can Law Firm participate in Donut Fridays?

Summary:

Law Firm may engage in Donut Fridays without violating the Rules of Professional Conduct.

Discussion:

As a preliminary matter, the mere delivery of gifts or other marketing materials to a business generally without delivery to specific individuals does not constitute a solicitation; therefore, Rule 7.3 does not apply. However, enclosing Law Firm marketing materials in a donut box does constitute lawyer advertising; therefore, the remainder of the advertising and communication rules (7.1, 7.2, 7.4, and 7.5) do apply.

The specific rule provision implicated by the facts presented is the Rule 7.2(c) prohibition on giving "anything of value to a person for recommending the lawyer's services." This provision is at issue here because the recipients of the donut boxes are existing vendors of the firm: banks

and real estate agents that refer their buyer/borrower clients to Law Firm for closing-related legal services. However, as long as the weekly donuts and other donut-box contents are delivered regardless of whether the vendor had referred clients to Law Firm that week, and regardless of how many, then the requisite quid pro quo for a Rule 7.2(c) violation does not exist. If the delivery of donuts were contingent on the referral of clients to Law Firm, the practice would violate the rule.

Finally, the Committee notes that 1) only the donuts, koozies, and coupons (not the fee sheets or pamphlets) would be considered things “of value” under 7.2 because the rule contemplates value to the recipient and not cost to the sender; and 2) although the Rules of Professional Conduct are “rules of reason,” see Scope at [1], SCACR 407, the prohibition on giving “anything” of value contains no explicit de minimis exception.