

Practice Rules Compliance Committee

Practice Advisory - Disclosure of “Rewards”

Code of Professional Conduct (2013) - Chapter 3, Section 3.6 Fees and Disbursements

*Reasonable Fees and Disbursements
rule 3.6-1, commentary [2]*

[2] *The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer’s fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.*

(Emphasis added)

The Practice Rules Compliance Committee received an enquiry from a member who wished to use a personal credit card to pay a substantial disbursement on behalf of a client so that the lawyer may receive the air miles bonus for the large dollar value. The Practice Rules Compliance Committee was concerned such transactions are not being fully disclosed to clients in accordance with the Code section referenced above. Due to the fiduciary nature of the lawyer/client relationship, all related financial dealings must be fully disclosed to the client.

The Committee, with agreement from Benchers, decided that if the rewards provided with respect to a client matter were more than “*de minimis*”, the firm has an obligation to disclose and obtain consent from each affected client. For example, members may receive advertising information from a title search company that is offering air miles reward miles for title insurance policies purchased from that company. The Committee is of the view that a single transaction with a client might fall within the scope of “*de minimis*” if the reward or benefit accruing to the lawyer as a result of the transaction is a small financial benefit. The use of rewards based credit cards for purchases under \$5000 in a single matter, or \$5000 for a series of transactions on behalf of a client over the period of one month, will be considered “*de minimis*”. In cases where a lawyer may receive a substantial benefit because of the size of a single transaction for a client or because the lawyer acts on multiple transactions for the same client, it is necessary for the lawyer to make full disclosure of and obtain the client’s consent prior to receiving the benefit pursuant to commentary [2] above.

The Practice Rules Compliance Committee advises members that, excepting a “*de minimus*” transaction and travel expenses incurred on the client’s behalf, the client must be informed in writing that the lawyer may use a credit card with benefits while acting on the file. Use of the credit card with benefits is permissible unless the client objects. Members are directed to adhere to the standards prescribed by the Code of Professional Conduct (2013). Non-compliance with these standards may have disciplinary consequences.

Issued: November 2007

Revised: April 2013