

## The Resolution

Delegates from the state of (multiple states) recommend the following resolution:

That the language in Provision No. 8 of the Code of Professional Ethics be amended to read as follows and an updated Public Advisory Opinion be issued to reflect these changes:

“A Member shall: Refrain from giving, directly or indirectly, any ~~incentive, reward~~ gift or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with the litigation, or to the representatives or agents of any of the foregoing, except for (1) items that do not exceed \$100 in the aggregate per recipient each year , or, (2) pro bono services as defined by the NCRA Guidelines for Professional Practice or by applicable state and local laws, rules and regulations.

(Add the words: Incentives or rewards in direct exchange for scheduling, use or payment of court reporting services are expressly prohibited in any amount).”

Provide Full Rationale Why that National Committee of State Associations Should Recommend Adoption of this Resolution to the Board of Directors:

As currently written, Provision No. 8 is contradictory to Provision Nos. 1, 2, 3, 9, which read as follows:

A Member Shall:

1. Be fair and impartial toward each participant in all aspects of reported proceedings, and always offer to provide comparable services to all parties in a proceeding.
2. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the Member shall disclose that conflict or potential conflict.
3. Guard against not only the fact but the appearance of impropriety.
9. Maintain the integrity of the reporting profession.

The practice of rewards and incentives in direct connection with hiring a court reporter creates, in the eyes of the public, the appearance that the reporter or firm offering the rewards holds some partiality or favoritism toward the recipient of the rewards. As such, it undermines and dilutes the integrity of the reporting profession and the status of the reporter as a neutral and impartial officer of the court.

Advertising or offering a reward or incentive as part of a contractual relationship is quite different from offering a discretionary thank-you gift, regardless of the dollar amount. Once specific obligations are attached as part of a business agreement -- book by X date, minimum

two hours, payment required (parameters to be met in exchange for a reward) -- it now meets the dictionary definition of a kickback: "a percentage of income given to a person in a position of power or influence as payment for having made the income possible; usually considered improper or unethical." That definition addresses a principle, not a dollar amount. Anything of value offered with any contingency or that requires action or fulfillment of certain obligations on behalf of the recipient would necessarily change the nature of the transaction from a "gift" to an "incentive/reward" and should be prohibited.

Incentives and rewards are designed and offered for the sole purpose of influencing attorneys' decisions in the selection of a court reporting service and interfering with their independence of professional judgment. Such practices create the appearance of impropriety and erode the integrity of the reporting profession and therefore have no place in it. A direct connection between booking a reporter and receiving a reward is inimical to the impartiality and integrity of the reporting profession.

The Code of Professional Ethics is essential to protecting the integrity of the reporting profession specifically and the judicial process generally. It exists to ensure that NCRA professionals have no stain or suspicion upon their complete and total impartiality. Provision No. 8 needs to be amended as suggested, in order to accomplish this.