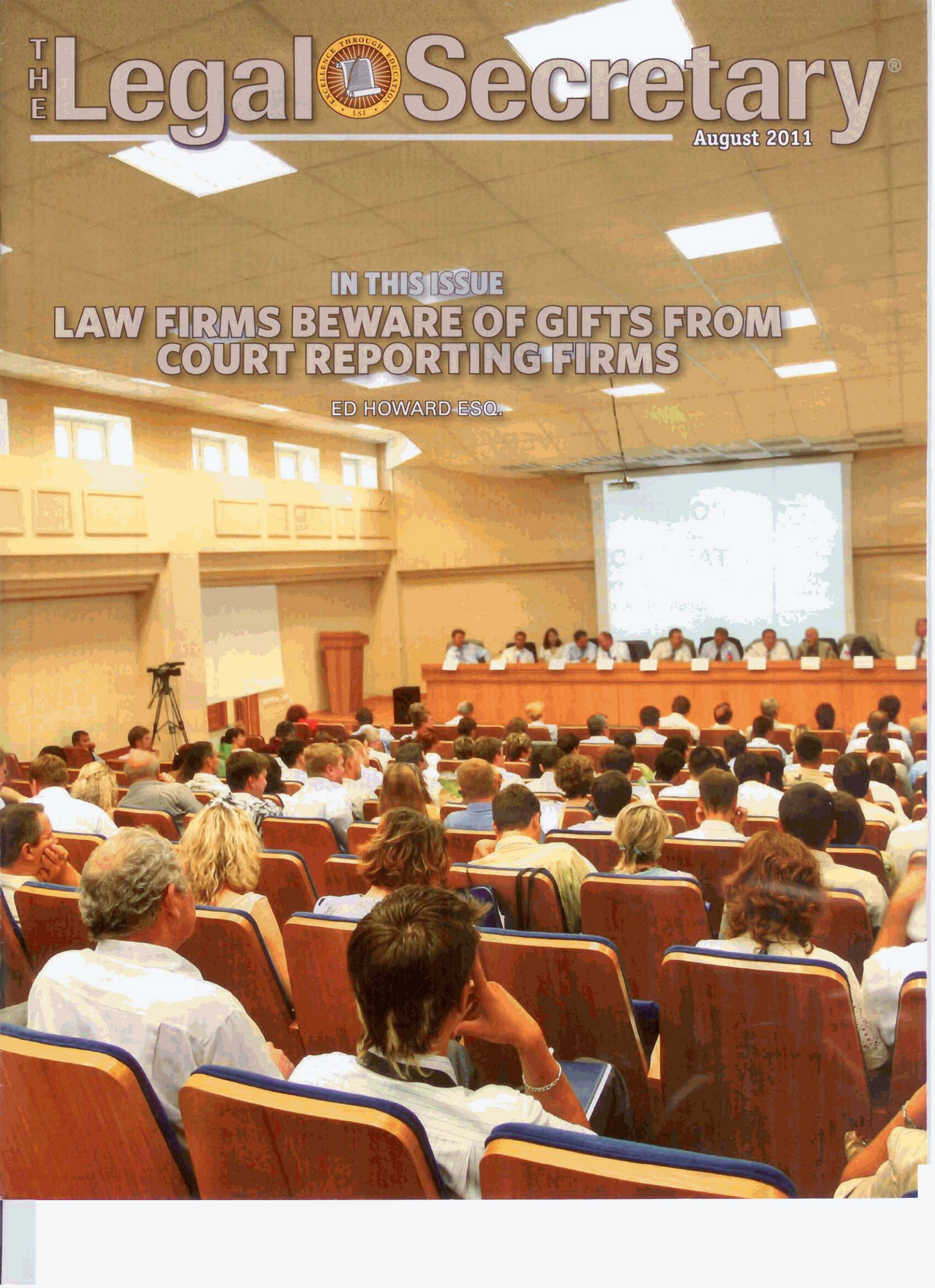
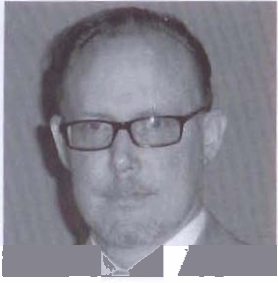




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Ed Howard is President of Howard Advocacy, Inc., a Sacramento-based lobbying, public affairs, and litigation firm. Ed has been one of California's most prominent public interest lawyers and advocates for twenty years. On behalf of numerous high-profile grassroots organizations and policy-minded non-profits, Ed has been counsel in more than eleven cases that have permanently changed the California legal landscape; cases that resulted either in new precedent or statutory or regulatory reform. As a public interest lobbyist and former Chief Consultant in the California State Senate, Ed has spearheaded the enactment of numerous and nationally trend-setting laws in the areas of privacy, technology, IT procurement, the regulation of licensed professions, health care, consumer rights, and the rights of abused and neglected children. Since 2005, Ed has represented the Deposition Reporters Association of California.

Law Firms Beware Of "Gifts" From Court Reporting Firms

BY ED HOWARD, ESQ.— SUBMITTED BY SAN DIEGO LSA

What are the most feared three letters in the English language? Probably these: "I-R-S."

If you are a legal secretary tempted by promises of goodies in exchange for booking depositions, you could learn the hard way the truth of the warning "there's no free lunch," the really hard way. The getting-you-or-your-law-firm-employer-in-trouble-with-IRS-hard way. That's because a new legal memo drafted by the prestigious law firm of Hanson Bridgett makes it clear that if you accept such goodies -- gift cards, contest entries, vacation stays -- in exchange for booking depositions, either you or the law firm that pays your salary had better be declaring the value of these goodies as income, or else the IRS might come knocking on your door or, worse, your employers.

The key is this: such goodies aren't gifts. If you are promised the goody on the condition of booking a deposition with the goody-offering firm, then they are paying you for referring them business. That isn't a gift, either in the legal sense, the tax sense, or the lay "Happy Birthday" sense. True gifts where you receive the gift without first having to do anything the gift-giver values aren't compensation. But promising something of value to you conditioned on you steering business to the court reporting firm, this is compensation for a service provided to the court reporting firm. It is a commission or a kick-back, and that makes such things of value income to somebody, either you or your employer, on whose behalf you are acting when you book a deposition.

As you know, the IRS gets very grumpy when people don't declare their income. As the Hanson Bridgett memo warns: "Given that the incentives provided by Reporting Firms in exchange for business are payments for services rather than gifts, the [Internal Revenue Code] requires the recipients of those payments to treat the value of the incentives as gross income. This means that recipients must report the value of the incentives they receive as income on their tax returns. Failure to do so could result in the assessment of additional taxes, interest and penalties by the Internal Revenue Service."

Even if the law firm has a policy against such commissions being paid to their employees to steer business to particular firms, the policy won't necessarily shield your law firm from IRS trouble unless the policy is being actively enforced. As the memo says: "Where law firms have policies in place prohibiting employees from accepting incentives, serious tax issues may still arise to the extent these policies are not enforced."

The problem here is that ordering court reporting services isn't like ordering printers or sodas. Can you imagine being tempted by an ad saying, "Book a brain surgery with Doctor Jones now and get a free ticket to Wicked!" Of course not.

Doctors, CPAs and court reporters in California are all licensed by boards within the Department of Consumer Affairs. The reason all these professionals are rigorously licensed is because if they harm a consumer, the harm is so bad that all the after-the-fact damages in the world can't make the consumer whole.

Hire a bad doctor, your loved one can't be brought back from the dead. A bad lawyer, only in the rarest circumstances can your verdict be overturned. A bad CPA? You go to jail and your life-savings goes poof. The same is true with a court reporter. A bad transcript can destroy a life and pervert justice. Simply put: these transcripts are really, really important to the lives and fortunes of your law firm's clients. You may not be the client who depends on the quality of the transcript but you should choose the court reporter as if you were.

You owe it to your law firm, your law firm's clients, and your conscience to select court reporters based solely on criteria important to the client; namely, quality and price. But if appealing to your conscience as a professional isn't sufficient to dissuade you from selecting a licensed professional court reporter with tremendous power over your employer's clients, only on the basis of what goodies they offer, then consider this:

Is that goody really worth the risk of getting you, your family, and your employer in trouble with the IRS? In this instance like so many, doing the right thing is also doing the smart thing. **LS**