

I'll Be There FOR YOU

IN ORDER TO STAND OUT IN A CROWDED LEGAL MARKET, ABC Law Firm offers its clients innovative and flexible payment options. One option is a monthly subscription plan by which clients pay a monthly fee and receive a fixed number of hours of legal services for that month. The fee is a significant discount from ABC's usual hourly rates. Each agreement is tailored to provide both the client and ABC with value based on the expected amount of work and prior experience working with the client.

The monthly fee is paid by the client and deposited by the firm in advance on the first of the month, and the firm keeps the entire fee even if the client does not use all its allotted hours during that month. Any unused hours do not carry forward and cannot be used on future matters. The client can cancel the contract at any time, but ABC is not required to refund any portion of the monthly fee if the client cancels before the end of the month.

According to a recent Ethics Opinion, which of the following is most accurate?

- A. Monthly subscription legal fees are not permissible.
- B. Collecting fees at the beginning of the month for services during that month is not permissible.
- C. Allowing forfeiture of the monthly fee if the client cancels before the end of the month is not permissible.
- D. Both B and C.
- E. None of the above.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: Rule 1.04(a) of the Texas Disciplinary Rules of Professional Conduct prohibits legal fees that are “unconscionable.” The rule says that a fee is unconscionable if “a competent lawyer could not form a reasonable belief that the fee is reasonable.”

Ethics Opinion 701 (2024) found that subscription agreements for legal services are not “inherently unconscionable,” though they may be unconscionable in some circumstances. For example, the opinion notes that a subscription fee for family law services for an unmarried client with no children might be considered unconscionable because the client is unlikely to need the lawyer's services. The opinion advises that the terms of the subscription agreement be carefully weighed at the outset and periodically reevaluated because a reasonable fee agreement could become unconscionable over time.

The opinion offers a couple of caveats to law firms offering a subscription fee arrangement. First, any prepaid fee for services must be kept in a trust account until the end of the fee period in which it is earned. Therefore, a monthly subscription fee must be held in trust until the end of the month. Second, because clients have the right to terminate a representation at any time, with or without cause, an agreement in which no portion of the monthly fee is refundable upon cancellation is unethical. The opinion finds that “when the client cancels the subscription service before the end of the month, the lawyer must refund an appropriate portion of the subscription fee.”

ABC's subscription fee does not appear to be unconscionable in its entirety under Rule 1.04. However, two of its provisions are prohibited by Ethics Opinion 701: (1) permitting the firm to collect and deposit the fee at the beginning of each month, and (2) requiring the client to forfeit the entire monthly fee if they cancel before the end of the month. The correct answer is D. For more analysis, go to legalethictexas.com/ethics-question-of-the-month. **TBJ**