

**THE PROFESSIONAL ETHICS COMMITTEE  
FOR THE STATE BAR OF TEXAS  
Opinion No. \_\_\_\_\_ [PO 2024-2]**

**Posted for Comment on June 12, 2024**

**QUESTIONS PRESENTED**

1. May a lawyer accept payment from a private company for providing pre-recorded educational presentations or livestreamed Q&A sessions on general legal topics, which the private company markets to the public?
2. During a livestreamed Q&A session, may the lawyer answer an audience member's questions about specific fact situations?
3. May the lawyer agree to represent an audience member who contacts the lawyer after viewing a pre-recorded or livestreamed Q&A presentation?

**STATEMENT OF FACTS**

A private company (the "presentation company") intends to market educational presentations on legal topics to non-lawyers through subscription access to a website providing pre-recorded and livestreamed videos. The presentation company is not a law firm, and its employees are not licensed to practice law in Texas.

The presentation company plans to market some of its educational videos to school district leaders and officials, specifically focusing on the legal issues involved in the construction of school facilities. The presentation company has approached a construction lawyer to provide content for prerecorded videos related to construction law. The presentation company has also asked the lawyer to participate in periodic livestreamed sessions during which the lawyer may answer questions posed by viewers in real time.

The presentation company proposes to pay the lawyer for participating in the educational presentations. The presentation company offers to pay the lawyer a fixed amount for each new subscriber who enrolls after the platform reaches a threshold number of subscribers.

All presentations will include a warning that the content is for educational purposes only, is not legal advice, and does not create a lawyer-client relationship with the speaker. The presentations will also advise viewers to retain a lawyer for their own legal needs.

The lawyer anticipates that during the Q&A sessions some viewers may ask questions involving specific fact situations. The lawyer also anticipates that some viewers may seek to contact and possibly retain the lawyer after watching the presentations. Both the videos and the livestreamed presentations will include the lawyer's contact information and an accurate description of the lawyer's background and experience.

## **DISCUSSION**

The assumed facts raise several potential issues under the Texas Disciplinary Rules of Professional Conduct, including fee sharing with a non-lawyer (Rule 5.04(a)), assisting in the unauthorized practice of law ([currently] Rule 5.05(b)), and impermissible client solicitation (Rule 7.03).

### **Payments for providing educational presentations on general legal topics are not legal fees.**

Rule 5.04(a) provides that “(a) lawyer or law firm shall not share or promise to share legal fees with a non-lawyer ...” with certain exceptions not applicable here. The principal reasons for this restriction are “to prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting nonlawyers in the practice of law.” Rule 5.04, comment 1.

Although the Rules do not define the term “legal fees,” in the Committee's opinion the term “legal fees” in Rule 5.04(a) means payments for services provided in the course of a lawyer-client relationship. Although the existence of a lawyer-client relationship is ordinarily a question of fact, an educational presentation to an audience regarding general legal topics does not create a lawyer-client relationship with the attendees, especially when accompanied by an express disclaimer of legal representation. Because no lawyer-client relationship exists under the assumed facts, neither the amounts paid by the subscribers to the presentation company nor the amounts paid by the presentation company to the lawyer are legal fees. Accordingly, a lawyer does not violate Rule 5.04(a) by sharing payments received for providing such a presentation with a non-lawyer presentation company.

### **Providing educational presentations on general legal topics is not the practice of law.**

Rule 5.05(b) provides that a lawyer shall not “assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.” Similarly, Rule 5.04(b) provides that a lawyer “shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.” These rules might apply if either the presentation company or the lawyer were deemed to be engaging in the practice of law by providing the lawyer's educational presentations to an audience and charging a subscription fee.

Texas Government Code § 81.101(a) contains the following definition of the “practice of law”:

In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

This statutory definition is not exclusive, however, and the Texas Supreme Court has inherent power to regulate the practice of law and to determine whether services and acts not enumerated

in the statute may constitute the practice of law. *Id.*, § 81.101(b); *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 700 (Tex. 1999).

The Committee concludes that a lawyer who does no more than provide an educational presentation on general legal topics is not thereby engaged in the practice of law and is not assisting the sponsoring organization in the unauthorized practice of law.

**A presenting lawyer may answer audience questions about specific individual problems, but should decline to answer if the audience member appears to be confused about the lawyer's role.**

In Opinion 489 (December 1992), the Committee addressed a situation in which a law firm gave informational seminars to non-lawyers. As part of the opinion, the Committee concluded that in a public seminar “(i)t is improper for an attorney to answer questions of laymen concerning their specific individual problems.” The Committee has reconsidered the quoted sentence from Opinion 489 and concludes the sentence is overbroad and should be clarified.

No provision in the Rules prohibits a lawyer from giving educational presentations to the public. To the contrary, the Preamble to the Rules mentions a lawyer's responsibility to “cultivate knowledge of the law beyond its use for clients” and “work to strengthen legal education.” Preamble, A Lawyer's Responsibilities, ¶ 5.

Likewise, no provision in the Rules prohibits a lawyer from answering questions posed by audience members during an educational presentation, including questions regarding the application of law to specific fact situations. But a lawyer who does so faces a risk that the audience member may misunderstand the lawyer's role and mistakenly believe that the lawyer is providing legal advice and inviting reliance on the answer as a legal opinion.

To reduce the risk of confusion, and as a best practice, a lawyer should (1) caution the audience that the lawyer's presentation is not legal advice or a substitute for legal advice, (2) discourage reliance on hypothetical discussions based on limited facts, and (3) recommend that audience members should retain a lawyer to address their own legal problems. A lawyer should also decline to answer an audience member's question when, despite such warnings, it reasonably appears that the audience member is confused about the lawyer's role or believes the lawyer is providing legal advice.

**A presenting lawyer may communicate with audience members who seek representation.**

Under the assumed facts, the lawyer making the educational presentations anticipates that some viewers may seek to contact and possibly retain the lawyer after watching the presentations or participating in the livestreamed Q&A sessions. This raises the question whether such presentations, or statements made during the presentations, are impermissible solicitation communications subject to the limitations of Rule 7.03.

Rule 7.03(b) provides that:

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

To “solicit” a client under Rule 7.03, a lawyer must make a “solicitation communication.” See Rule 7.03(a)(2). Rule 7.01(b)(2) defines a “solicitation communication” as:

a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer’s advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

As stated in Rule 7.03(b), and subject to the exceptions in that Rule, a presenting lawyer must not make a solicitation communication to a non-client by in-person or electronic contact. Nevertheless, the Committee is of the opinion that a general educational presentation is not a solicitation communication. Under Rule 7.01(b)(2) a solicitation communication must “reasonably be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in *a particular matter*.” (Emphasis added.) This element is not present under the assumed facts. The lawyer knows that the viewers are school district leaders and officials who, by virtue of their jobs, are likely to need legal advice regarding the construction of school facilities at some point in the future. But there is nothing to suggest that the lawyer is “offering to provide legal services,” much less legal services that the lawyer “knows or reasonably should know the person needs in *a particular matter*.” Further, it is unclear whether a presentation to an audience on a general topic of law, unaccompanied by any request for professional employment or plans to solicit future employment from audience members, is a “communication substantially motivated by pecuniary gain.” Rule. 7.01(b).

Finally, if an audience member chooses to contact the lawyer about possible representation following the presentation, the presenting lawyer may communicate with the audience member without concern about impermissible solicitation under Rule 7.03(b). To fall within the definition of “solicitation communication,” the communication must be “made *by or on behalf of a lawyer* to a specific person who has not sought the lawyer’s advice or services.” Rule 7.01(b)(2). If an audience member voluntarily contacts the presenting lawyer about possible representation, the lawyer’s response is not a solicitation communication.

## CONCLUSIONS

- 1) A lawyer may accept payment from a company not owned by lawyers for providing educational presentations on general legal topics. Because merely providing an educational presentation on general legal topics does not create a lawyer-client relationship with the audience members, payments for attending such a presentation are not “legal fees” and may be shared by the non-lawyer presentation company and the presenting lawyer.
- 2) A lawyer may not assist a non-lawyer company in the unauthorized practice of law or form a partnership with a non-lawyer when any part of the partnership’s activities consists of the practice of law. A lawyer who does no more than provide an educational presentation on general legal topics is not thereby engaged in the practice of law and is not assisting the sponsoring organization in the unauthorized practice of law.
- 3) A lawyer providing an educational presentation on general legal topics may answer questions from the audience regarding specific individual problems. As a best practice, a lawyer should (1) caution the audience that the lawyer’s presentation is not legal advice or a substitute for legal advice, (2) discourage reliance on hypothetical discussions based on limited facts, and (3) recommend that audience members retain a lawyer to address their own legal problems. A lawyer should decline to answer an audience member’s question when, despite such warnings, it reasonably appears that the audience member is confused about the lawyer’s role or believes the lawyer is providing legal advice.
- 4) A lawyer who merely provides an educational presentation on general legal topics, unaccompanied by any request for professional employment, does not thereby make a “solicitation communication” or engage in impermissible solicitation. A lawyer may communicate with and agree to represent an audience member who contacts the lawyer after viewing the lawyer’s educational presentation.