

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 674**

August 2018

QUESTION PRESENTED

Does a 501(c)(3) public charity nonprofit law firm violate the Texas Disciplinary Rules of Professional Conduct by directly soliciting *pro se* Texans for the purpose of providing civil legal services at below-market flat-rate fees?

STATEMENT OF FACTS

A law firm in Texas operates as a 501(c)(3) public charity nonprofit law firm and provides civil legal services using limited-scope representation to *pro se* litigants for “below-market flat-rate fees.” The law firm targets “clients who earn too much to qualify for free/pro bono legal services, but also earn too little to afford a traditional private attorney.” The law firm proposes to directly solicit *pro se* litigants. These *pro se* litigants are not members of the qualified nonprofit organization to which the law firm belongs.

DISCUSSION

Rule 7.03(a) of the Texas Disciplinary Rules of Professional Conduct provides, in part:

“[a] lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer’s advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.”

Notwithstanding this provision, Rule 7.03(a) also provides that lawyers “for a qualified nonprofit organization may communicate with the organization’s members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services.” Comment 3 to the Rule identifies “nonprofit legal aid agencies” and “unions” as examples of qualified nonprofit organizations.

Professional Ethics Opinion 519 (March 1997) states that a foreign government acting with respect to its nationals residing in Texas, and which cooperates with a law firm and its lawyers to provide information concerning legal services, may also function in that regard like a private nonprofit organization created to benefit a class of persons. However, Opinion 519 further

provided that, insofar as the law firm and lawyers affiliated with such an organization, “a contact that results in fee-paying legal work for the law firm would not be within this exception since one significant purpose of such a contact by the law firm’s lawyers would inevitable [sic] be to generate legal business for the law firm rather than simply to meet the needs of the foreign nationals for information on legal services.” Opinion 519 concluded that in such circumstances, “the law firm and its lawyers may not accept employment on a fee-paying basis arising from such communications.”

Under the facts presented, the 501(c)(3) status of the organization to which the law firm belongs is not relevant because the direct solicitation is targeted to persons who are not members of the qualified nonprofit organization. In addition, the law firm and its lawyers are not proposing to undertake pro bono legal services, or to merely provide information on legal services. Instead, the law firm and its lawyers propose to provide legal services for below-market flat-rate fees. Providing legal services on a reduced fee, below-market, or flat-rate fee basis is no indication that a significant motive for the solicitation is not for the lawyer’s pecuniary gain. Pursuant to Rule 7.03(a), lawyers may not solicit prospective clients or non-clients when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain – even if it is a modest pecuniary gain.

CONCLUSION

A lawyer, including a lawyer with a 501(c)(3) nonprofit law firm, violates the Texas Disciplinary Rules of Professional Conduct by soliciting prospective clients or non-clients who have not sought the lawyer’s advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship for the purpose of providing legal services at a below-market flat-rate fee if those services would generate a pecuniary gain for the lawyer and the persons being solicited are not members of the qualified nonprofit organization to which the law firm belongs.