

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 635**

August 2013

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct is a lawyer permitted to advise, for a fee, a pro se litigant in a divorce or related family law matter concerning “self-help” forms prepared by the litigant if such services by the lawyer are conditioned on the litigant’s signed agreement that no lawyer-client relationship exists between the lawyer and the litigant? Is the lawyer permitted to limit the scope of his services in such cases to advice concerning the “self-help” forms?

STATEMENT OF FACTS

A Texas lawyer wishes to provide, for a fee, a service of reviewing and providing advice concerning “self-help” forms prepared by pro se litigants in divorce and similar family law matters. The lawyer proposes to require that, as a condition for providing such services, each pro se litigant enter into a written agreement providing that no lawyer-client relationship is established and that the lawyer has no legal or ethical obligation to provide legal representation to the pro se litigant. If a lawyer-client relationship is determined to exist in these circumstances, the lawyer wishes to limit the scope of his services to a review of, and advice concerning, the “self-help” forms.

DISCUSSION

There is no provision of the Texas Disciplinary Rules of Professional Conduct that expressly describes when a person who is licensed to practice law is acting as a lawyer. The Preamble: A Lawyer’s Responsibilities of the Texas Disciplinary Rules discusses in paragraph 2 various functions a lawyer performs as a representative of clients, including the role of acting as an advisor in which “a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications.”

A relationship of lawyer to client is a contractual relationship and results from the mutual agreement and understanding of the parties about the nature of the work to be done. To establish a lawyer-client relationship, the parties must explicitly or by their conduct manifest an intention to create such a relationship. *LeBlanc v. Lange*, 365 S.W.3d 70, 79 (Tex. App.-Houston [1st Dist.] 2011, no pet.) (citations omitted).

Here the lawyer is providing for a fee to pro se litigants a service of reviewing forms relating to legal proceedings and advising the litigants concerning the use of the forms in the

legal proceedings. The intent is to review the forms and point out areas of potential concern that may require further inquiry, such as child support and retirement benefits. Thus, the lawyer's role is as an advisor in which he has explicitly agreed to provide the client with an understanding of legal rights and obligations. These services constitute the practice of law by the lawyer. Consequently, the lawyer has obligations and responsibilities as a lawyer arising from the nature of the relationship with the pro se litigant. These obligations include the obligation to protect the client's confidential information and to represent the client with loyalty and diligence. In such circumstances, the lawyer cannot seek to avoid his obligations as a lawyer by seeking the client's agreement to a disclaimer of the existence of a lawyer-client relationship. Moreover, requiring such a clearly invalid disclaimer in the lawyer's agreement with the client may in itself constitute deceptive or misleading conduct in violation of Rule 8.04(a)(3), which prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"

Rule 1.02(b) of the Texas Disciplinary Rules of Professional Conduct provides that "[a] lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." As long as a lawyer ensures that his client is aware of and consents to the limited scope of the lawyer's services and the risks associated with proceeding without full legal representation, limiting the scope of the lawyer's services is permitted under the Texas Disciplinary Rules. Thus, the lawyer in the circumstances considered here may limit the scope of his services to advice concerning the "self-help" forms so long as it is clear to the client that the lawyer's services are so limited.

It should be noted that because the lawyer in these circumstances has a lawyer-client relationship with a spouse in a divorce or related proceeding, the lawyer is not permitted to provide legal services to the other spouse in the same proceeding. Even though the lawyer's services with respect to a divorce may be limited in scope by agreement, a lawyer is not permitted to advise both spouses in a divorce proceeding since such spouses are adverse parties in a litigation matter. See Rule 1.06(a) of the Texas Disciplinary Rules of Professional Conduct; Professional Ethics Committee Opinion 583 (September 2008). Moreover, in such circumstances, a lawyer must take care that the spouse that is not being advised by the lawyer does not mistakenly believe that the lawyer is providing advice to such spouse.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct a lawyer is not permitted to advise, for a fee, a pro se litigant in a divorce or related family law matter concerning "self-help" forms prepared by the litigant if such services by the lawyer are conditioned on the litigant's signed agreement that that no lawyer-client relationship exists between the lawyer and the litigant. A lawyer is permitted under the Texas Disciplinary Rules to limit by agreement the scope of his services in such cases to advice concerning the "self-help" forms. A lawyer providing limited advice with respect to "self-help" forms in divorce and related cases is not permitted to advise both parties in such proceedings.