

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 612**

November 2011

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, is it permissible for a lawyer to participate in a local bar association program, established in conjunction with local courts, in which lawyers cease to be subject to regular appointment to represent indigent persons in certain family court matters by paying an annual fee which is used to supplement payments made by the county to court-appointed lawyers who handle such matters?

STATEMENT OF FACTS

A local bar association has established, in conjunction with participating local courts, a program to supplement the fees paid by the county to lawyers who receive court appointments to represent indigent persons in certain family court matters. Under the program, the participating courts normally appoint for the specified matters those lawyers in the county who do not choose to pay to the local bar association an annual fee that is used to supplement the amounts paid by the county to lawyers who receive court appointments. Lawyers who pay the annual fee normally do not receive appointments from the participating courts.

DISCUSSION

The program here considered provides an opportunity and an incentive for some lawyers in the community to support financially the provision of legal services to disadvantaged persons. The creation of the program by the local bar association is consistent with the basic responsibility of lawyers in a community to participate in some way in the provision of essential legal services to persons who are unable to pay for such services. This responsibility is recognized in Paragraph 6 of the Preamble to the Texas Disciplinary Rules of Professional Conduct:

“Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally. A lawyer may discharge this basic responsibility by providing public interest legal services without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public

rights law, charitable organization representation, the administration of justice, and by financial support for organizations that provide legal services to persons of limited means.”

As noted in the passage quoted above, lawyers may appropriately act to support the provision of legal services to the disadvantaged either directly through the provision of services on a pro bono or reduced-fee basis or indirectly through financial support for a program providing legal representation to persons unable to pay for legal services.

Under Rule 6.01 of the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer is not permitted to attempt to avoid court-appointed representation of a person except for good cause. Rule 6.01 provides as follows:

“Accepting Appointments by a Tribunal

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of law or rules of professional conduct;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.”

In the opinion of the Committee, paying a fee to the local bar association under the program here considered does not constitute an improper attempt to avoid court appointment without good cause in violation of Rule 6.01. Although participation in a program along the lines of the program here considered is not listed as “good cause” in Rule 6.01, the specifications of “good cause” set forth in paragraphs (a), (b) and (c), which are preceded in Rule 6.01 by the introductory phrase “such as,” do not constitute an exclusive list but are merely examples of “good cause.” Participation in this program, which has been created by the local bar association, involves the active participation of the courts concerned, and involves the provision of funding for the very court-appointed legal services in question, is in the view of the Committee unquestionably “good cause” under Rule 6.01. Moreover, the operation of the program does not involve a lawyer’s seeking to avoid a specific appointment that has been made by a court. Instead, under the program, participating lawyers make payments that provide financial support for the provision of legal services to those unable to pay with the result that the participating courts will not normally consider the participating lawyers for specific appointments in the first place. In the unusual case where a court determines for whatever reason to appoint a lawyer notwithstanding the lawyer’s participation in the program, the lawyer will be required to accept the appointment without regard to participation in the bar association program unless the lawyer has other “good cause” under Rule 6.01 to seek to avoid the appointment.

CONCLUSION

It is permissible under the Texas Disciplinary Rules of Professional Conduct for a lawyer to participate in a local bar association program, established in conjunction with local courts, in which lawyers cease to be subject to regular appointment to represent indigent persons in certain family court matters by paying an annual fee which is used to supplement payments made by the county to court-appointed lawyers who handle such matters.