

# Oh, What a Tangled WEBINAR WE WEAVE

A LOCAL BAR ASSOCIATION OFFERS A MONTHLY WEBINAR FOR NON-LAWYER MEMBERS OF THE PUBLIC, with sessions focusing on providing general information about particular legal issues.

At one of these webinars, attorney Dale gives a presentation on recent changes to the tax code and responds to audience questions through the online platform's chat feature. Dale regularly advises the audience that: (1) the presentation is not intended to provide legal advice or substitute for legal advice; (2) hypothetical discussions based on limited facts are discouraged; and (3) audience members should retain a lawyer to address their own legal problems.

One audience member, Harper, begins posting increasingly specific questions and seeking advice. Although originally presenting the questions as hypotheticals, Harper begins using personal pronouns, suggesting that Harper's inquiries are personal in nature. Dale repeats the warning about not providing legal advice and suggests that Harper retain counsel. Harper acknowledges these admonitions but is persistent in seeking answers to specific questions.

Harper also asks if Dale handles these kinds of matters and what Dale's retainer would be. Dale says yes and identifies a typical retainer fee but tries to steer the presentation back to general matters. Harper keeps asking specific questions, and Dale becomes concerned that Harper is hijacking the presentation. To prevent that and redirect the discussion, Dale provides a couple of specific answers to Harper's questions and changes the subject.

Harper is satisfied that Dale has provided sufficient answers and appreciates the advice. While the webinar is still in progress, Harper finds Dale's information online and sends the retainer fee previously identified by Dale via Venmo with the message, "I would like to retain you as my tax attorney." After the webinar concludes, Dale acknowledges that communication and begins representing Harper once a conflict check is completed.

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

- A. Dale acted improperly by providing specific legal advice during an educational presentation.
- B. Dale acted improperly by soliciting legal work from Harper.
- C. Both A and B.
- D. Neither A nor B.



#### 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](http://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:** In Ethics Opinion 489 (1992), the Professional Ethics Committee for the State Bar of Texas concluded that in a public seminar "[i]t is improper for an attorney to answer questions of laymen concerning their specific individual problems." But in recent Opinion 702 (2024), the committee reconsidered the quoted sentence from Opinion 489 and concluded the sentence "is overbroad and should be clarified."

Opinion 702 concludes that "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." However, the opinion notes that the lawyer "should decline to answer if the audience member appears to be confused about the lawyer's role." Here, Harper acknowledged the admonitions and does not appear to be confused about the lawyer's role.

Opinion 702 also makes clear that "a general educational presentation is not a solicitation communication" and expressly blesses engagement of services after the presentation: "[I]f 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)."

The wrinkle here is that Harper contacted Dale during the presentation. However, there is no indication that Dale was aware of the attempted engagement during the webinar; Dale did not accept the engagement until after the webinar and did not alter any conduct during the webinar because of the engagement. The best answer is D. For more analysis, go to [legalethictexas.com/ethics-question-of-the-month](http://legalethictexas.com/ethics-question-of-the-month). **TBJ**