

COPING WITH NEGATIVE ONLINE REVIEWS

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"Reputation is an idle and most false imposition; oft got without merit, and lost without deserving."¹

Shakespeare may not have written those words with online reviews in mind, but his point rings true even today. With the recent proliferation of lawyer review sites on the internet, attorneys have become rightfully sensitive to the importance of cultivating a positive online reputation. Unfortunately, the good legal work it takes to generate a slew of glowing client reviews on sites such as AVVO and Yelp can come to naught quickly if an unhappy client or two decide to take to those same sites to impugn your competence and character. Should you suffer those slings and arrows? That is the question.

Although a lawyer who feels maligned by a negative online review may be tempted to strike back with a rebuttal aimed at discrediting the disgruntled former client, acting on such an impulse may invite consequences that are far worse for the lawyer's reputation and standing than the offending review itself. It can, in fact, lead to disciplinary action if the lawyer posts a response that discloses the identity of the client or reveals confidential information the lawyer gained through the representation. For this reason, lawyers need to understand the ethical constraints that apply when they set out to comment on their handling of a client matter in any kind of public forum, including online review sites.

Apart from the ethical constraints that limit a lawyer's ability to rebut a negative review, there are practical reasons for exercising caution and restraint in responding to online criticism. This article is intended to provide guidance on managing your online reputation prudently and within the bounds of the Rules of Professional Conduct.

Responding to the Negative Review

Most if not all lawyer review sites permit the subject of a negative review to post a response or rebuttal. Of course, the fact that the site facilitates the posting of a rebuttal does not mean that a response is necessary or advisable. Upon encountering a negative review, the lawyer should initially reflect on whether the posted comments merit a direct response at all. In making that determination, it's important for the lawyer to realize that his or her own subjective reaction to the review is not necessarily the reaction that others, who have no familiarity with the client or the representation, will have upon reading it. In order to gain a more objective perspective, the

¹ W. Shakespeare, Othello, act 2, sc. 3.

lawyer should show the offending review to trusted colleagues or friends who can offer a relatively neutral assessment of its impact.

If the review is unfair or irrational on its face, it may be best to say nothing in response. This is especially true if the lawyer has an array of *positive* reviews to his or her credit. In that case, the negative review may actually have the fortuitous effect of lending credence and a sense of authenticity to the feedback posted by former clients who were pleased with how their cases were handled.

Another approach to consider is to contact the author of the negative review to discuss the reasons for his or her dissatisfaction. Such a conversation might ultimately lead the client to withdraw or modify the review. However, even if reviewers are unwilling to withdraw or walk back the unflattering comments, lawyers who do elect to post a response can at least point out the initiative taken in attempting to resolve the matter.²

If nothing else, taking the time to weigh the impact of the review and attempting to speak with the client directly (if possible) may help to avoid a costly overreaction.

If a lawyer decides to post an online response to the review, it is essential he or she not provide any information that identifies the client or discloses confidential information about the representation. Lawyers who cross those lines will be subject to discipline under Mass. R. Prof. C. 1.6(a).

Rule 1.6(a) is the general rule prohibiting disclosure of confidential information gained during or relating to the representation. Confidential information is protected from disclosure by a lawyer in an online forum to the same extent it would be in any other setting. That the client took the initial step of posting the disparaging review and the lawyer may have simply wanted to set the record straight by setting forth additional facts and context would by no means insulate the lawyer from discipline under Rule 1.6(a).³

A disciplinary case in Georgia illustrates the application of Rule 1.6 in the context of online reviews. In Matter of Skinner, 295 Ga. 217, 758 S.E.2d 788 (2014), a divorce lawyer's disgruntled former client posted negative reviews on three attorney rating sites. In response, the lawyer posted a rebuttal that disclosed the client's name, the county in which the divorce case had been filed, the client's relationship status, and the amount of fees the lawyer had received from the client. The Supreme Court of Georgia upheld a decision of a special master finding a

² Of course, if the lawyer knows that the former client has retained counsel in regard to the issues raised in the negative review, the lawyer would be prohibited from communicating directly with the client concerning those issues. See Mass. R. Prof. C. 4.2.

³ Although Rule 1.6(a) does permit disclosure of confidential information if the client gives informed, written consent, it is unlikely the client's consent would be forthcoming under these circumstances.

violation of that state's version of Rule 1.6(a) and recommending that the lawyer receive a public reprimand for that violation and other misconduct.

An even more serious sanction was meted out to a Colorado lawyer whose online rebuttal to two former clients' negative reviews disclosed confidential information protected by that state's version of Rule 1.6(a). See People v. Isaac, 470 P.3d 837 (Colo. 2016). The first client posted a brief online review calling the lawyer the "worst attorney" in Denver, alleging that the lawyer "did nothing" to earn his \$3,500 fee, and accusing the lawyer of losing his temper and calling the client's wife names. In his response, the lawyer disclosed that the client had been charged with felony theft and disparaged the client's conduct during the representation as "abusive, demanding, insulting and offensive."

The second negative review in Isaac similarly characterized the lawyer as one of the city's "worst attorneys." It accused him of being late and unprepared for hearings, leaving court before a proceeding had concluded, and ignoring evidence given to him by the client. In his rebuttal to these allegations, the lawyer disclosed the nature of criminal charges against the client and accused her of submitting false affidavits and paying the lawyer's fees with a bad check. The lawyer's conduct in disclosing such confidential information as part of his rebuttal to the two negative reviews resulted in a six-month suspension.

In Skinner and Isaac, the disciplined lawyers may have assumed that the clients' disparaging reviews "opened the door" for the disclosure of negative information about the clients. If so, the lawyers made the mistake of treating reviews on an online forum as the equivalent of a formal legal proceeding, such as a legal malpractice case, in which the lawyer would have the right, as defendant, to present evidence concerning the representation that would otherwise be protected by client confidentiality and/or the attorney-client privilege. Rule 1.6(b) includes an exception that permits the limited disclosure of otherwise confidential client information to "establish a claim or defense on behalf of the lawyer in a *controversy between the lawyer and client*" or "to respond to allegations in *any proceeding* concerning the lawyer's representation of the client." See Mass. R. Prof. C. 1.6(b)(5) (italics added). Although the scope of that exception has not been clearly defined by case law, both Comment [10] to the rule and ethics authorities outside of Massachusetts strongly suggest that the exception would *not* apply to a lawyer who disclosed confidential client information in an online forum, where the lawyer's sole interest was in defending his or her professional reputation. See ABA Form. Op. 10-456; S. F. Bar Assn. Op. 2014-1; Restatement (Third) the Law Governing Lawyers, Section 64, comment e. Simply put, a client's mere use of an online review site to express criticism of the lawyer's representation does not give rise to a Rule 1.6(b)(5) "controversy" or "proceeding" in which the lawyer is entitled to reveal client confidences as part of his or her defense. Because the client's negative review would not fall under the Rule 1.6(b)(5) exception, any disclosure of confidential client information in the lawyer's rebuttal to an online review would likely be deemed a violation of Rule 1.6(a).

Lawyers would also be mistaken to assume that, because a negative review was posted anonymously or by first name only, the lawyer who likewise refrains from including the client's surname can therefore safely disclose additional information concerning the representation. There are two problems with that assumption. First, even without express mention of the client's last name, the information contained in the original review, combined with information contained in the lawyer's rebuttal, may be sufficient to enable the client to be identified by third parties, especially family members, friends, and neighbors who already have some preexisting knowledge of the client's situation. See Mass. R. Prof. C. 1.4, Comment [4] (Rule 1.6(a)'s prohibition on revealing confidential information "also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonable lead to the discovery of such information by a third person"). Cf. Matter of Smith, 35 Mass. Att'y Disc. R. ___ (2019) (lawyer publicly reprimanded for revealing information on his Facebook page concerning care and protection proceeding he was handling; although client was not identified by name, the information revealed by lawyer would have been sufficient to enable a hypothetical third party to recognize the client based on other information). The second problem is that clients may post reviews anonymously on one site but use their full names on another site, but in each case telling substantially the same story about their experiences with the lawyer in question. A lawyer who has only seen the anonymous review, and who relies on the client's anonymity in posting a rebuttal, may only realize after the fact that the client has already been identified by name on another site.

Because Rule 1.6(a) applies even when lawyers are faced with what they may regard as undeserved and/or misleading negative reviews, lawyers must be exceedingly cautious in posting a rebuttal to such online criticism. The rebuttal simply cannot contain "confidential information," which is generally defined in Comment [3A] as "information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the lawyer has agreed to keep confidential." Information such as the nature and purpose of the legal representation, the fees paid or owed by the client, the client's background and history, and the client's conduct during the representation would all qualify as confidential information that is generally protected from disclosure under Rule 1.6(a). The fact that the lawyer believes that additional facts concerning the client's situation are needed to "set the record straight" does not make such information any less confidential for purposes Rule 1.6(a). In other words, in this context, truth is no defense.

The fact that a response to a negative review cannot include confidential client information dictates that the lawyer take a minimalist approach. Therefore, if a Massachusetts attorney is inclined to respond to an online review at all, bar counsel would advise the lawyer simply to note disagreement with the review while pointing out that any further discussion will have to be between the lawyer and the client. For example, the lawyer may respond: "I am sorry the reviewer feels this way. Although I disagree with the reviewer's comments about my

representation, the Rules of Professional Conduct prevent me from discussing the facts of the engagement in a public forum such as this. I have, however, reached out to the reviewer directly to discuss her concerns.”

Note that the sample response set forth above registers the lawyer’s disagreement with the negative review without revealing any facts about the client or the representation that could be construed as “confidential information.” Moreover, such a response serves to assure the reader of the lawyer’s concern and sense of professional responsibility. By contrast, a response that displays anger or, even worse, expresses ill will toward the dissatisfied client, even if it manages to avoid revealing information protected by Rule 1.6(a), will likely do little to assure the reader of the lawyer’s professionalism and good judgment. The more restrained response represents the better approach from both an ethical and a business standpoint.

Ethical Issues in Generating Positive Reviews

Before concluding this discussion of how best to cope with negative reviews, it’s worth noting the ethical issues that may arise in a lawyer’s efforts to generate *positive* reviews.

There is no ethical prohibition on encouraging a satisfied client to post positive comments about a lawyer on AVVO or a similar review sites. However, such a request should come after the conclusion of the representation so that the client has no occasion to worry that the contents of the review or rating posted by the client could affect the relationship with the lawyer. Lawyers should also take care to assure clients that they are not under any obligation to post a review.

Although asking a satisfied client to post a review is ethically permissible, Mass. R. Prof. C. 7.2(b) prohibits lawyers from “giv[ing] anything of value to a person for recommending the lawyer’s services. . . .” Therefore, offering to provide a client with any sort of compensation or material incentive, such as a reduction in the amount of fees owed by the client, in exchange for a positive review, would run afoul of the rule. See Matter of Lewis, 34 Mass. Att’y Disc. R. 244 (2018) (three-year suspension for misconduct that included promising to reduce client’s bill in exchange for a favorable online review); In re Steele, 45 N.E.3d 777 (Ind. 2015) (disbarment for theft of client funds and other serious misconduct; grounds for discipline included the fact that lawyer manipulated his AVVO reviews by financially “incentivizing positive reviews” and punishing clients who wrote negative reviews by exposing confidential and/or false information about them).

Not surprisingly, it would also constitute a violation of the Rules of Professional Conduct for lawyers to create or solicit *fake* reviews as part of their marketing or public relations strategies. Rule 7.1 prohibits any false or misleading communications about a lawyer or a lawyer’s services. A communication is false or misleading if it includes “a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a

whole not materially misleading.” A glowing review purportedly submitted by an actual client, but in fact generated by the lawyer, would constitute a false and misleading communication under Rule 7.1. Posting a sham review in the name of a purported client would also violate the requirement in Rule 7.2(c) that lawyer advertising include the name of the lawyer or firm responsible for its content.

Conclusion

Lawyers must exercise extreme caution in responding to unfavorable reviews or ratings. Although a lawyer’s initial instinct may be to launch a rebuttal based on additional facts or observations that might cast doubt on the reviewer’s assertions, the ethical rules do not permit the lawyer to disclose confidential information relating to the client in an online forum. For this reason, the best response, both ethically and from a public relations standpoint, is likely to consist of a simple statement that notes the lawyer’s disagreement with the client’s comments, explains that the lawyer is barred from responding in detail, and shows the lawyer’s willingness to address the matter directly with the client.

A lawyer who is the subject of a negative review should attempt to maintain perspective and avoid assigning outside importance to a bad review. Damage to a lawyer’s reputation caused by an anonymous internet review is unlikely to match the damage that would result from public discipline for violation of Rule 1.6. Taking the care and effort to elicit authentic, voluntary reviews from satisfied clients will help lawyers maintain a respectable online reputation and cushion the impact of an occasional bad review.