



## Web-Based Client Reviews

**Life as a lawyer** got more complicated with the advent of social media, where prospective clients (and anybody else) can post and read comments about you, pro and con. These can be seen, anonymously, by hundreds of potential clients. For better or worse, ethical problems have accompanied the process.

**Sending in good reviews about yourself.** You read that correctly—fake reviews written by the lawyers being reviewed. An article in Lawyers.com<sup>1</sup> tells of a lawsuit brought by Yelp alleging that San Diego’s McMillan Law Group had its own employees, purporting to be clients, write positive Yelp reviews on the firm’s link. Also alleged is that the firm is among some San Diego firms that trade “glowing reviews” of each other though they have never had relationships as clients or co-counsel. The suit claims, among other things, that this was false advertising entitling it to punitive damages.

**Retaliating for bad client reviews.** The ABA Journal online<sup>2</sup> reports on an Illinois employment lawyer who responded on her Avvo page after a former client gave her a bad review and refused to remove it unless he got his money back. The response: “I dislike it very much when my clients lose, but I cannot invent positive facts for clients when they are not there. I feel badly for him, but his own actions in beating up a female co-worker are what caused the consequences he is now upset about.” The Illinois disciplinary authorities responded,<sup>3</sup> alleging the lawyer violated the ethical rules regarding client confidentiality and respect for the rights of others.<sup>4</sup> And in Georgia,<sup>5</sup> a lawyer responded to a client’s criticism on several “consumer websites,” giving what the opinion calls “personal and confidential information” about the client.” The lawyer admitted wrongdoing and agreed to a reprimand, but the court remanded the matter for a more severe sanction based on unrelated charges.

**Discussing your clients online.** In a reported decision,<sup>6</sup> a public defender was disciplined after she blogged about her traumatic trial experience when her client, accused of home invasion and armed robbery, punched her in the face in open court. Her attempts to withdraw as counsel, claiming acute stress disorder, were denied, and she was forced to represent the client in a retrial. The Wisconsin Supreme Court wasn’t impressed, however, and found that though the lawyer said she tried to conceal the identity of the client, posting the story violated client confidentiality. In Oregon,<sup>7</sup> a lawyer sent an email to the 275-member Oregon State Bar Workers Compensation Section listserv to warn them about a former client whom she described as “difficult” and whom she suspected of “attorney shopping.” The lawyer was disciplined after she admitted violating the client confidentiality rules and her duties to former clients.

So what are the rules? First is the problem about posting false endorsements on the Internet. ER 7.1 of the Arizona Rules of Professional Conduct<sup>8</sup> forbids making or permitting to be made a false or misleading communication about a lawyer or the lawyer’s services. Posting phony “client” endorsements would qualify as a violation of the rule, as well as ER 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresenta-

tion) and ER 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For retaliating against critical reviews, ER 1.6(a) forbids us from revealing any information relating to a client representation. There are exceptions, only one of which is relevant here, in ER 1.6(d)(4), allowing a lawyer to reveal such information reasonably necessary to establish a defense on behalf of the lawyer in a “controversy” between the lawyer and a client. Whether an Internet criticism is a “controversy” covered by the exception may not always be clear, but Comment [12] to ER 1.6 gives us a clue: It says that a lawyer doesn’t have to await the commencement of “an action or proceeding” to defend herself, a view confirmed by our State Bar Ethics Committee.<sup>9</sup> The same exception would hold true for the duties of confidentiality found in ER 1.9(c) when a former client makes the complaint.

The bottom line: Be careful if and when you respond online to client criticisms, be they on- or offline. The best response may be to try to resolve the problem and ask that the critical posting be removed. Barring that, the best exit from the situation may be a professional and dignified response, without any “zingers” about what brought the client to you in the first place or that the client would find embarrassing. **RD**

**Ethics Opinions and the Rules of Professional Conduct are available at [www.azbar.org/Ethics](http://www.azbar.org/Ethics)**



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### endnotes

1. <http://blogs.lawyers.com/2013/09/yelp-sues-for-fake-reviews>
2. [www.abajournal.com/news/article/lawyers-alleged-response-to-bad-avvo-review](http://www.abajournal.com/news/article/lawyers-alleged-response-to-bad-avvo-review)
3. *In re Tsamis*, Comm. No. 2013PR00095, Ill. Att’y Registration & Disciplinary Comm’n.
4. This is ER 4.4 in Arizona and applies when a lawyer does something disrespectful to “any other person” while “representing a client.” Thus, that part of the charge probably wouldn’t apply here.
5. *In re Skinner*, 29 LAW. MAN. PROF. CONDUCT 192 (Ga., Mar. 18, 2013).
6. *Office of Lawyer Regulation v. Peshek*, 798 N.W.2d 879 (Wis. 2011).
7. *In re Quillinan*, 20 DB 288 (Ore. 2006).
8. Rule 42, Ariz.R.S.Ct.
9. Ariz. Ethics Op. 93-02 (Mar. 17, 1993) (assertions against an attorney that he acted incompetently are sufficient to establish a “controversy” under ER 1.6(d)).