



Fee-Splitting & Avvo

Avvo is a web-based lawyer “marketplace” site that additionally provides lawyer ratings using information provided by the lawyer and reviews posted by colleagues and/or clients. Many lawyers are not even aware of the rating applied to their names. Google your name with “avvo” and see what you get. You may be surprised. Avvo provides other services for lawyers, including advertising and promotional facilities, all as described on its website.¹

Beside those ratings and services, Avvo has introduced a program called Avvo Legal Services (ALS).² It’s attracting a lot of attention, not all of it complimentary. Recently launched in 25 states, including Arizona, ALS connects potential clients seeking specific fixed-fee limited-scope legal services with lawyers listed on its website willing to do that work for a fee set by and collected by Avvo. The prospective client selects the service desired, ranging from a review of legal documents (starting at \$39) to uncontested divorces and green card applications (as high as \$2,995), then selects the lawyer from the group participating in the program. Avvo collects full payment in advance through its website and notifies the lawyer chosen who then has to contact the client within a certain time period and who then completes the service. Once a month, Avvo deposits earned fees on completed representations into the lawyer’s operating account and then, once a month and as a “separate transaction,” withdraws from that account a per-service “marketing fee.” Importantly, the fee varies in amount according to the service provided; i.e., the larger the amount paid by the client, the larger the marketing fee withdrawn by Avvo.³

Without specifically naming the program, there have recently been criticisms of the business model used by ALS published by ethics authorities in three jurisdictions—Ohio,⁴ South Carolina,⁵ and Pennsylvania⁶—to the effect that the business model amounts at the very least to fee-splitting with a nonlawyer (i.e. Avvo), universally deemed to be unethical under rules similar to Arizona’s ER 5.4(a)⁷, prohibiting a lawyer or law firm from sharing legal fees with a nonlawyer except under certain exceptions that don’t apply to Avvo.

None of the opinions published by these jurisdictions seem to be impressed by the fact that Avvo takes its fee via a transaction separate from that whereby the client pays Avvo: the opinions state that any fee affected or determined in part by the amount charged for the underlying legal services does not

correspond to any traditional notion of advertising specifically allowed under ER 7.2(b). There, a single advertising charge is all the lawyer pays, regardless of how many clients result or the amount of fees generated. The opinions apparently honor substance over form, and find the Avvo model to constitute impermissible fee-splitting.

Other problems are noted concerning the ALS business model. To the extent that non-lawyers at Avvo make any decisions concerning the representation—the type of service offered, the scope of the representation, or when the representation is “completed”—they may interfere with the lawyer’s duty to exercise independent judgment as required under ER 2.1 (Advisor). To the extent the lawyer

participates in ALS, he or she must ensure that all communications and advertising made on the lawyer’s behalf are accurate, not misleading, and don’t create unjustified expectations in violation of ERs 7.1 (Communications Concerning a Lawyer’s Services), 7.2 (Advertising), or 7.3 (Solicitation of Clients). Under the ALS model, the lawyer seemingly has little or no control over these considerations, presenting potential problems. So too with the requirements concerning a lawyer’s obligations in limited-scope representations under ER 1.2(c), the holding of prepaid fees in a place other than the lawyer’s trust account as regulated by ER 1.15(c), and the return of unearned

The ethics opinions concerning the Avvo business model have generated considerable commentary on both sides of the issue. To be forewarned is to be forearmed.

Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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fees if the representation is terminated prematurely as required by ERs 1.5(d)(3) and 1.16(d).

What can we expect the Arizona authorities to say about all this? Interpretations of Arizona's Rules of Professional Conduct are the province of the courts and of the State Bar's Committee on the Rules of Professional Conduct. As of this writing, the ALS program has not been the subject of either a court or an Arizona ethics opinion. However, two Arizona ethics opinions from a few years ago⁸ may give us some indication of how our Ethics Committee may rule on this one: In those opinions, both concerning internet referral services, "advertising" charges could not be based on the amount of fees ultimately paid by the clients who actually engage the lawyer. To do so would, the opinions hold, constitute fee-splitting with a nonlawyer in contravention of ER 5.4(a).

The ethics opinions concerning the ALS business model have generated considerable commentary on both sides of the issue.⁹ The only comfort that Arizona lawyers may take in this situation is that to be

forewarned is to be forearmed. Neither ALS nor the other internet lawyer referral services being offered to the public have been approved by the State Bar of Arizona and are thus not "qualified lawyer referral services"

as contemplated by ER 7.2(b)(2). Be cautious in determining where, when and how to use this service: Any complaint to the State Bar from an unhappy Avvo customer will most probably be addressed to you. 

endnotes

1. www.avvo.com
2. Go to the Avvo website and follow the link to "Avvo Legal Services."
3. See support.avvo.com/hc/en/articles/208458216/services-FAQ, at "Getting Paid."
4. Ohio Ethics Op. 2016-3, Lawyer Participation in Referral Services (June 3, 2016).
5. S.C. Ethics Op. 16-06 (July 14, 2016).
6. Pa. Formal Op. 2016-200, Fees; Fee Agreements; Referrals; Referral Fees; Lawyer referral services; Division of fees with nonlawyers; Independent professional judgment; Nonlawyers (September 2016).
7. Rule 42, ARIZ.R.S.Ct.
8. Ariz. Ethics Op. 10-01, Referral Service; Fee Sharing; Referral Fees (January 2010); Ariz. Ethics Op. 11-02, Internet; Advertising; Referral Service; Fee Sharing (October 2011).
9. Compare Susan Cartier Liebel, *Is Avvo's New "Marketing Fee" Really a "Referral Fee" in Sheep's Clothing?* at solopracticeuniversity.com/2016/01/12/is-avvos-new-marketing-fee-really-a-referral-fee-in-sheeps-clothing (Jan. 12, 2016) with Carolyn Elefant, *Stupid Bar Decisions on Fee Splitting Don't Just Kill Avvo, But Entire Future of #AltLaw*, at [myshingle.com/2016/10/articles/ethics-issues/stupid-bar-decisions-fee-splitting-don't-just-kill-avvo-entire-future-altlaw](http://myshingle.com/2016/10/articles/ethics-issues/stupid-bar-decisions-fee-splitting-don-t-just-kill-avvo-entire-future-altlaw) (Oct. 6, 2016). A "neutral" discussion of the issues can be found at Samson Habte, *Third Ethics Panel Dings Avvo Flat-Fee Referral Service*, 32 LAW. MAN. PROF. CONDUCT 589 (Oct. 5, 2016).