How to Maneuver in the World of Negative Online Reviews, the Important Ethical Considerations for Attorneys, and Changes Needed to Protect the Legal Profession

Angela Goodrum
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Introduction

The advent of the Internet and social media has revolutionized the way society communicates, the speed in which news is disseminated, and the approach that people take in their daily decision making. Whether consumers are browsing on any ordinary store’s website looking for a vacuum cleaner, searching the web for the best physician to treat a rare condition, looking for a contractor to complete a bathroom remodel, or trying to locate a competent and reasonably priced attorney, consumers may now benefit from the feedback shared by global consumers. Online reviews are becoming more and more common place on nearly every consumer-related website. Moreover, there has been an increase in the creation of sites solely dedicated to providing consumers with a forum to broadcast their joy or misery over a product or service they have received. Consequently, attorneys are also being publicly scrutinized by their clients on a range of topics from price, competence, satisfaction, personality, communication, and effectiveness. On one side of the coin, this new phenomenon can be very rewarding. Before online reviews, an attorney may have been limited to receiving a small number of referrals from the word of mouth promotion offered by a former client. The referrals realized by the attorney were likely small in number because the former clients were not broadcasting their satisfaction from the mountain tops; rather, this information was being shared with a small group of friends or family members, or only provided upon request. Now, whether the client’s opinions appear as a comment or question posted on Facebook or a review posted on a website, the client’s feedback can lead to widespread effects previously unrecognized. When the client provides a positive evaluation of the attorney, this endorsement can lead to an instantly rewarding public advertisement. However, the exact opposite is true. Negative online reviews, whether accurate or

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1 Angela Goodrum is a May 2015 Juris Doctor Candidate at Barry University School of Law.

not, may deter potential clients from even giving the attorney a second thought. As a result, a firm’s business can feel the immediate impact of negative reviews. Attorneys, who legitimately need and want to protect their business and reputation, cannot speak freely online to defend their honor. Rather, an attorney must be mindful of not disclosing confidential client information or crossing other ethical lines that may then expose the attorney to potential discipline. Admittedly, there is a need for a delicate balance. There are several interests that must be considered such as allowing attorneys to exercise their First Amendment right to free speech, respect and adherence to the ethical rules of non-disclosure of confidential information, allowing attorneys to preserve their reputation, and protecting an attorney’s marketability and means of generating income. In addition, it is important to ensure that negative comments created by reviewers do not bring a dark cloud to the profession and to also ensure that an attorney’s conduct or statements in response to negative postings do not tarnish the legal profession. Indeed, this balance is not easy to strike. However, it is crucial that attorneys have clear guidelines and support to take appropriate action to protect their livelihood and the reputation of the legal profession.

This article will explore the trend in offering reviews online in a variety of industries, including legal services, the statistical findings regarding the prevalence of this information and consumers’ reliance on the information while making a purchasing decision. This article will then consider the positive and negative implications of the reviews being so widely spread, while highlighting unique considerations as it relates to the practice of law and factors that may greatly skew a reviewer and reader’s perceptions. Next, this article will outline the ethical considerations of attorneys if they want to respond to negative online feedback, such as disclosure of confidential information. Then, this article will analyze the American Bar Association (ABA) and several states’ ethics opinions for guidance for attorneys who wish to respond negative reviews. Finally, this article will detail the author’s recommendations for attorneys, the ABA, and the states and propose the areas where additional ethics opinions, rules and guidelines should be focused to establish a proper balance between the valuable insights discovered from a client’s review and attorneys’ legitimate interests in protecting their reputation and livelihood from inaccurate, malicious, or erroneous postings.

Currently, laws addressing the issue of negative online postings have only been written in favor of consumers and the web hosts housing these comments. In addition, guidance from the
ABA is lacking and there has been virtually no protection afforded to attorneys from the Legislature. Consequently, greater clarity from the ABA is suggested to provide clear and specific boundaries allowing attorneys to respond to negative on-line client reviews, while providing additional legal recourse for legal professionals to protect themselves. Specifically, there should be an expansion of the “self-defense” exception of Model Rule 1.6 to allow an attorney to categorize the reasons why the posting is erroneous. To set appropriate boundaries, the ABA may provide the approved language for each category, which attorneys may use when addressing adverse activity. For example, a category may be called “false or misleading information” which occurs when the client was not forthcoming with information. A proposed example of approved ABA language for such a category may be, “receiving false information is believed to be a contributing factor in the outcome of this case.” As a result, Model Rule 1.6 will need to be modified to eliminate language that only allows the attorney to disclose information in response to “controversy.” The rule should allow attorneys to “defend” themselves in response to any adverse activity initiated by a client whether the activity is an online review, complaint filed, or in anticipation of litigation.

In addition, this article recommends that the ABA and the States should push for clear legislation that will motivate these on-line review sites to remove information when challenged by the attorney, rather than just providing blanket immunity for the sites that house these negative and damaging comments. To promote accuracy and creditability of online reviews, the Legislature should create laws which would require sites offering forums to post reviews to mandate user account creation and verification of authenticity (identity) before the subscriber may initiate a post. Moreover, in instances where a post is challenged by the subject of the negative review and the author does not provide an adequate response or support for their claims, the web site should be given an incentive to remove the negative posting or else be subject to fines. In more egregious scenarios where a known author is found to have repeatedly posted erroneous comments for the purpose of harming one’s business, newly enacted laws should also provide the harmed business owner with options to seek fines. These suggested changes will foster an environment where postings are more likely to be authentic, while creating the proper incentive for each side, the consumers and the attorneys to provide the most accurate and honest information. Additionally, properly balanced laws and incentives will also serve as a deterrent to
individuals who desire to post false information or for attorneys who desire to battle valid complaints.

**Who Offers Legal Ratings Systems?**

With the explosion of digital social media, coupled with the demand to understand more, consumers are taking to the web to research professionals and their value of service prior to making a decision. Numerous on-line sites cater to answering the call for evaluations of attorneys.

Martindale-Hubbell has been in existence since 1868. In 2009, this organization began offering a mechanism for clients to post ratings for attorneys within the Martindale listing. However, here, attorneys have the flexibility to select whether feedback will be displayed on their profile.

LinkedIn, established in 2003, allows users to establish an online professional network. It boasts that it provides the world’s largest professional network spanning more than 200 countries and 300 million members. LinkedIn offers users the ability to offer and receive endorsements of their knowledge, skills, and expertise in various areas, as well as soliciting recommendations from others to incorporate into their online profile. In 2009, an online marketing group for attorneys, Stem Legal, determined that approximately 17% of LinkedIn’s then 50 million users worked within the legal industry.

Yelp, established in 2004, is a website founded for the purpose of facilitating consumers’ search for “great local businesses” for a variety of industries. By the second quarter of 2014, Yelp reported receiving an average of 138 million unique users per month, which has generated

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4 Id.
5 LinkedIn, http://www.linkedin.com/about-us?trk=hb_ft_about.
6 Id.
7 See generally, LinkedIn, http://www.linkedin.com; Ward, supra note 3.
8 Ward, supra note 3.
over 61 million reviews. Yelp employs special software to identify what is believed to be the “most helpful and reliable reviews for the Yelp community.” Yelp reports that the software considers numerous variables to assess the reliability, quality, and authenticity of a review. Yelp does not reveal the algorithms or logic used to execute this task. However, the site reports that only 75% of reviews are recommended by the software. While all reviews are available for viewing on their site, only the “recommended” reviews are factored in to the star rating given to a business.

Avvo is a website that was launched in 2007 by an attorney Mark Britton. Its sole purpose is to “empower you to make smarter, more confident legal decisions—in other words, to have no legal fear.” Its name pays homage to the country Mark Britton was teaching in when the need for this service was revealed to him, Italy. Thus, “Avvo” is the shortened Italian word for lawyer, which is “’avvocato.” As of September 2014, Avvo reports that its site has garnered more than 600,000 attorney reviews from clients and peers and has rated over 95% of U.S. based attorneys.

The Association of Corporate Counsel (ACC) offers a “value index” rating system. According to the Association’s 2009 press release, “the ACC Value Index is a client satisfaction measurement tool where members share evaluations of the law firms they engage. It is also an instrument to help shape the thinking and dialogue between firms and in-house counsel about what constitutes ‘good value’ in legal services.” The rating system is based on a five-point scale, which scores members in six areas: understanding objectives of the representation, expertise, efficiency, communication, predictability in estimating costs/budget, and execution or

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10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
19 Id.
Reliance on Online Reviews

Results of a study conducted at the University of California found that consumers are influenced by the substantial information made available to them from a variety of online sources. The information and opinions shape the reader’s “opinions, attitudes, and beliefs, particularly when available cues align to establish trustworthiness of the information through consensus…” This reliance on the opinions of others is known as informational social influence and has been defined as “the tendency to accept information obtained from another as evidence about reality.” The researchers state that it is “long-known and well-established” that people respond to a variety of social pressures, generated by opinion and actions of others, thereby accepting others’ elucidations when they lack their own firsthand experience or knowledge.

In 2013, a study was conducted by BrightLocal, which found that 79% of consumers trust the information they read in online reviews just as much as they trust a personal recommendation. The study was based on responses from 2,100 consumers regarding their practice of using online reviews as part of their decision making process when selecting a local business. Eight-five percent of the respondents indicated that they read online reviews to determine if a local business is a “good business.” Approximately 67% percent said they read six or less reviews before they decided whether they could trust a business. Seventy-three percent indicated that seeing positive reviews would cause them to have more trust in a business.

In April 2014, FindLaw of Thomson Reuters Corporation conducted a survey to determine how likely it was for a consumer to use the Internet to begin their search to hire an

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20 Id.
22 Id. at 1633.
24 Flanagin, supra note 19, at 1627.
27 Id.
28 Id.
The results from this 2014 survey were compared to results received in a 2005 survey regarding the same questions. Thirty-eight percent of the respondents to the 2014 study said they would use the web. This was a 31% increase from 2005. In 2005, the option of searching the web was last on the list with only seven percent of the respondents saying this would be their method. At that time, 65% of respondents said they would ask a friend or relative, followed by 13% consulting the local bar association, and 10% who would use the Yellow Pages. The shift to utilizing the Internet rather than recommendations from friends or family is thought to be due to the ease of use, breadth of information available, and the speed at which the information sought is made available.

To determine the impact of and consumer’s reliance user generated feedback, a study was conducted to examine reliance on reviews generated by users versus content generated by advertising. The study surveyed ninety participants ranging in age from 16 to 56+ years and concluded that 65% trusted information posted by other consumers, even if the posting is done under anonymity. The stated reason for the reliance on consumer postings is that it takes effort to post reviews, which is an indication of a desire to tell the truth rather than mislead. Another 23% indicated that they sometimes trust others’ reviews. Within this segment of the population, several participants indicated they find credibility in reviews that seem balanced and void of statements the come across as “too opinionated and not objective enough.” The study concluded that “word of mouth via user generated content is starting to take a strong hold on Internet users in our society.”

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30 Id.
31 Id.
32 Id.
33 Id.
34 Id.
36 Id. at 18.
37 Id. at 19.
38 Id.
39 Id.
were not used daily, when the consumers were looking to make a purchasing decision, these review sites were utilized as part of their decision making process.  

A 2014 study conducted by a Texas based software research company, Software Advice, found that among 3,465 respondents, “Yelp is the most popular and trusted website for legal reviews.” In second and third place were Martindale-Hubbell and Avvo, respectively. Eighty-three percent of respondents indicated that their review of online feedback was their first step to finding an attorney. The survey concluded that consumers were most interested in the reviews relating to the attorney’s quality of service. Respondents believe quality of service is demonstrated by five factors: how well options are explained, the attorney’s win/loss record, the attorney’s professionalism, listening skills, and duration of the case. The results also suggested that consumers are willing to travel to inconvenient locations if it means that they will receive better representation.

As demonstrated by the statistics, a negative image created online through the words of others is a legitimate threat to many industries. Specifically, attorneys practicing in certain areas of law, like Family Law, often rely on repeat business and referrals to generate ongoing business. With consumers’ growing reliance on review sites, it is becoming more and more critical for attorneys to ensure they have an online presence, but more importantly, to ensure that it is a positive image. Similarly, it is equally important that attorneys have the ability to take action to protect their online reputation in the event of erroneous negative reporting about their skills and services.

40 Id. at 20.
42 Id.
43 Id.
44 Id.
45 Id.
46 Martha Chan, Have You Googled Your Name Lately?, Fam. Advoc., Winter 2013, at 38 (discussing that many family law firms have an online presence for shaping their reputation and negative online reviews can harm their business).
Reviews and Their Effect on the Bottom Line

In 2011, an assistant professor at Harvard Business School conducted a study on the effects the consumer reviews had on businesses.\(^47\) The study found that in the restaurant industry, each rating star could amount to a five percent to nine percent effect on the business’ revenue.\(^48\) Interestingly, local, independent restaurants were the ones that felt the greatest effect from these reviews. The speculation on why this is the case was “probably because diners have little information about them before the review were posted.” This effect on small restaurants is analogous to how many attorneys are situated, small local firms where little information is widely known, and the impact of negative reviews would likely be as significant. These statistics demonstrate the importance of a small practice being aware and able to manage their online reputation. The study also went on to conclude that large chain restaurants did not feel the same effect from negative reviews for the opposite reason, diners had familiarity and their own impression of these chain from its marketing efforts.\(^49\) Still, even in the restaurant industry, owners have complained about negative reviews killing off their business.\(^50\) The researcher acknowledged that sites offering review capabilities can help by creating features that will boost the credibility of the content being posted.\(^51\) Specifically, they noted Yelp’s efforts to enhance quality by requiring users to create a profile that is publically accessible.\(^52\) The researcher recognized that features creating user accountability serves to make it “stronger” when compared to similar sites that do not offer the same quality control mechanisms.\(^53\)

Therefore, although the ABA may not be able to direct or change the behavior of sites, the legal profession and individual states should be interested in advocating for change to

\(^{47}\) Blanding, *supra* note 1.

\(^{48}\) *Id.* (The researcher, Michael Luca, used data from the state of Washington to compare ratings received for over time with revenue data to gauge how reviews impacted restaurants’ bottom lines. In order to establish causality between reviews and a restaurant’s success, Luca took advantage of the fact that Yelp rounds its ratings to the nearest half-star-so, for example, a 3.26 rating would be rounded up to 3.5 stars, and a 3.24 rating would be rounded down to 3 stars. Hence restaurants with similar ratings can have very different rounded ratings displayed to consumers. By applying a regression discontinuity analysis, Luca could study how revenues jumped when star thresholds were crossed and compare these with the more steady changes over time. The result: Luca could directly trace the effect to the ratings on Yelp.

\(^{49}\) *Id.*

\(^{50}\) *Id.*

\(^{51}\) *Id.*

\(^{52}\) *Id.*

\(^{53}\) Blanding, *supra* note 1.
features offered on these review sites by requiring consumers to create online accounts, necessitating verification of accounts for authenticity, and by allowing businesses to respond or challenge the content posted. By ensuring the site knows the identity of the poster will allow business owners to specifically address the facts surrounding the service the reviewer speaks about in the posting. Similarly, when a business owner challenges the content of the post, the site should be required to remove the comment if the poster does not respond or provide adequate information to support their position regarding the experience they had with the business. One or two negative reviews of a small practice, which does not have the volume of business generate multiple positive reviews, will likely feel the impact on their bottom line. Moreover, these firms have no way of tracking how many people looked at the reviews and decided not to inquire any further so the real damage is not ascertainable. These scenarios demonstrate the need for more oversight and guidance to ensure attorneys are equipped with options to fight for their success.

**How to Handle Negative Reviews: Write at Your Own Risk**

Attorneys should temper their fury when discovering a less than favorable online review. Firing a response back in the heat of the moment, it may cause the unintended effect of placing a magnifying glass on a situation that the attorney would rather detract attention from. Debra Bruce, President of a law practice management business, urges attorneys to speak privately with clients who have posted negative reviews so the matter may be resolved. If the attorney decides to post a response, Bruce stated, “I still believe that when a client posts an unfavorable review of a lawyer, in most circumstances the wisest course of action is to respond online with empathy and concern regarding the client’s dissatisfaction.” The Pennsylvania State Bar ethics committee has offered suggested language for responding to online reviews, “A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond

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55 Debra Bruce, *How Lawyers Can Handle Bad Reviews and Complaints on Social Media*, 75 Tex. B.J. 402, 403 (2012) (Discussing the lawsuit of Brown v. Avvo, which the attorneys lost. When a Google search is performed on the attorneys’ names, this litigation is the first thing to appear, creating a long lasting trail of the less than stellar ratings.).

in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.”

Josh King, general counsel for Avvo, believes receiving a negative review actually poses a “golden marketing opportunity.” King advocates the belief that responding politely, professionally, and resisting the urge to counter specific claims made by the poster, the attorney can send a “powerful message” of character, responsiveness, and professionalism.

Model Rules and Ethical Considerations

The Preamble of the ABA’s Model Rules reminds attorneys that to whom much is given, much is required. With the autonomy in the profession comes along the responsibility of self-government, and each member of the bar is responsible for adhering to the Rules of Professional Conduct. Section 6 of the Preamble states:

[6] As a public citizen, a lawyer should seek *improvement* of the law, access to the legal system, the administration of justice and the *quality of service rendered* by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, *a lawyer should further the public's understanding of and confidence* in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. (emphasis added)

What is the meaning of §6 when read in the context of negative online reviews, which are believed to be inaccurate? Do attorneys have to stand by idly, allowing the harm to their personal reputation and mark on the profession as a whole or should attorneys push for guidelines that will afford them the means to protect their reputation and to improve the legal

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59 Id. at 614.
60 Biblical reference to a passage of scripture, Luke 12:48, which reads “but the one who did not know it, and committed deeds worthy of a flogging, will receive but few. From everyone who has been given must, much will be required; and to whom they entrusted must, of him they will ask all the more.”
62 Id.
63 Model Rules of Prof'l Conduct, Preamble, §6 (2013).
system? Attorneys are told to further the public’s understanding and confidence in the justice system and the rule of law, but erroneous negative comments tarnish consumers’ confidence in the system and those licensed to represent them. Similarly, attorneys are to strive to provide excellent quality of service to their clients, but are not provided with a means to speak up to defend the services they offered. How does stifling attorney’s speech help to further the principles of the Preamble? Before attempting to answer this question, it is necessary to evaluate other Rules of Professional Conduct to establish the boundaries within which an attorney must function. One of the most relevant rules is likely to be 1.6 which sets parameters for an attorney’s duty to maintain confidentiality.64

**Model Rule 1.6 Does Not Offer a Green Light to Respond**

Generally speaking, under ABA Model Rule 1.6, an attorney shall not disclose confidential information pertaining to the representation of the client.65 However, the rule also provides a “self-defense exception” under sub-paragraph 5, which states that confidential information may be disclosed by an attorney, as follows:

> (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client (emphasis added).66

Some may hope that such language means it is “fair game” for lawyers to respond to a client’s negative post in defense of their honor and reputation. Not so, says a few ethics committees.67 The Pennsylvania State Bar ethics opinion concluded that responding to an online review is not protected by the self-defense exception because the difference in opinion does not amount to a “controversy” nor does it suggest the imminence of a “proceeding.” The Los Angeles County ethics committee and San Francisco ethics committee have also issued opinions

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64 Model Rules of Prof'l Conduct R. 1.6 (2013).
65 Id.
stating responses disclosing confidential information would be a violation and California statutes offer no self-defense exception.

In early 2013, the Supreme Court of Georgia reprimanded an attorney who violated Rule 1.6 of the Georgia Rules of Professional Conduct. The attorney, Margaret Skinner, had been a member of the Bar since 1987 and did not have a disciplinary history. While the specifics of the disclosure are unknown, Ms. Skinner responded to a negative on-line review from her former client, and in doing so, she revealed information gained during the course of the representation. It was acknowledged that Ms. Skinner has been dealing with some personal matters around the time of the incident, had refunded the fee paid by the client, and had made a statement of remorse, however, none of these mitigation factors saved her from receiving the reprimand.

Admitted to the Illinois Bar in 2006, Betty Tsamis found herself before the Disciplinary Commission in 2013 for accusation of “…conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute . . . .” Tsamis represented a man who had been fired from his job and was seeking unemployment benefits. He had been accused of assaulting another worker. His claim was denied and given his unhappiness with the outcome of the case, he took to Avvo posting the following,

She only wants your money, claims ‘always on your side’ is a huge lie. Paid her to help me secure unemployment, she took my money knowing full well a certain law in Illinois would not let me collect unemployment. [N]ow is billing me for an additional $1500 for her time.

Tsamis attempted to resolve the matter by contacting the client and requesting for the posting to be removed, however, the client refused to comply under Tsamis issued a full refund and release the file to the client. Avvo did eventually remove the posting, but the client then made a second

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69 Id. at 640.
70 Id. at 641.
71 Id. at 642, fn. 5.
72 In re Tsamis, Comm’n File No. 2013PR00095 (Ill. 2013).
73 Id.
74 Id.
75 Id.
76 Id.
posting reasserting his displeasure with Tsamis’ representation. The second post stated, “I paid Ms. Tsamis $1500 to help me secure unemployment while she knew full well that a law in Illinois would prevent me from obtaining unemployment benefits.” This time, the attorney posted a reply, which said in pertinent part, as follows:

[t]his is simply false. . . . [w]hen I received his personnel file, I discussed the contents of it with him and informed him that he would likely lose. . . . [H]e chose to go forward with a hearing to try to obtain benefits. 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 coworker are what caused the consequences he is now so upset about.

Tsamis received a reprimand for her actions, which were found to be in violation of revealing confidential information in violation of Rule 1.6(a) of the Illinois Rules of Professional Conduct (2010); using means with no purpose other than to embarrass or burden a person, in violation of Rule 4.4 of the Illinois Rules of Professional Conduct (2010); and of conduct which is prejudicial to the administration of justice or tends to “defeat the administration of justice or to bring the courts or the legal profession into disrepute.”

To date, there have been few ethics opinions addressing the specific issue of protecting a lawyer’s reputation when a client posts negative comments. The only guidance offered has been for lawyers to respond politely and professionally. The remainder of the opinions have demonstrated “what not to do” because the attorneys had clearly divulged protected confidential client information. But, what are the real limits? Are attorneys due no more guidance or empowerment to protect their livelihood other than to be told to “play nice?”

77 In re Tsamis, supra note 72.
78 Id.
79 Id.
80 Id.
82 Id.
No Recourse Against the Websites Used to Post Negative Reviews

Current laws do not force the hand of web hosts to remove information posted on their sites that is having an adverse effect on a business. It does not matter if the negative review has been posted anonymously or if the request is to remove an unfair rating, the web host is not required to cooperate. The frequently asked questions section on LawyerRatingz.com reminds readers that sites like theirs are immune from liability for statements posted on their website and it is not their responsibility to validate the authenticity of any review.83 Under the federal Communications Decency Act ("CDA"), providers of computer services are not considered the publisher or speaker of the content generated by others.84 Courts interpreting the CDA have said, "By its plain language, Section 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service."85 In 2010, a dentist brought a defamation claim against Yelp!, Inc. for negative reviews that were posted on its site. The Supreme Court of New York held that the CDA barred any defamation claim against Yelp.86 It makes no difference whether the content is posted under anonymity.87 Not only are the sites insulated from liability for the content they house, the sites are not required to remove content even if there was a successful suit won against the individual who posted the content.88

Success Story: Attorney Fights Back Through Defamation Suit

Despite ethical concerns when attorneys respond to negative online client reviews, they may file a defamation lawsuit when the author’s identity is known. A lawyer may file a lawsuit when the contents of the posting rise to the level of defamation and the attorney can identify the

83 Frequently Asked Questions, LawyerRatingz, http://www.lawyerratingz.com/faq.jsp#3; see also 47 U.S.C. § 230 (e)(3) ("[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section").
84 47 U.S.C. § 230 ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").
85 Zeran v. AOL, 129 F.3d 327, 330 (4th Cir. 1997).
author. One Georgia divorce lawyer prevailed in a defamation suit against a client who posted negative reviews. Attorney Jan Hinson, was retained by Vivek Pampattiwar to initiate a divorce action. The client gave Ms. Hinson false information regarding the status of the case. Throughout the course of the representation, the attorney and client had several “confrontations” over a variety of issues and ultimately, the attorney withdrew from the case in September 2010. A month later, Pampattiwar contacted the office to complain about his legal bills and told them that they were “crooks” and that they had “duped” him. By November 2010, Hinson “became concerned because ‘the phones just stopped ringing’ in her office.” Hinson’s employee conducted a web search of Hinson’s name and discovered a review that used some of the same language Pampattiwar used when he called Hinson’s office. The review said Hinson was “a CROOK Lawyer” and an “Extremely Fraudulent Lady.” The review went on to claim that legal bills had been inflated and that Hinson had “duped” numerous people within the last few years. Hinson was able to prove that the reviews, which were posted under a screen name, “STAREA” originated from an IP address that Pampattiwar had used previously when emailing Hinson. Hinson initiated a suit against Pampattiwar, for libel per se among other things. Even after initiating the claim, another review appeared online under the name “REALPOLICE” which suggested that any positive reviews for Hinson could not be trusted because her office posts erroneous reviews. Hinson secured a $405,000 verdict in the suit and the verdict was upheld by the Georgia Court of Appeals in March 2014.

However, other attempts to protect an attorney’s reputation through litigation have proved to be unfruitful. Consider two failed lawsuits initiated by attorneys in Washington, where

90 Id. at 163.
91 Id. at 165.
92 Id. at 163–66.
93 Id. at 166.
94 Id.
95 Pampattiwar , 326 Ga. App. 163 at 166.
96 Id.
97 Dan Grooking, TROUBLESHOOTING YOUR PC FOR DUMMIES, page (Wiley Publishing, Inc., 3rd ed. 2006), available at http://www.dummies.com/how-to/content/what-is-an-ip-address.html (“An IP address is assigned to every computer on an Ethernet network. Like the street address for your home, an IP address identifies network computers. It helps traffic flow between computers because each one has its own IP address.”).
98 Pampattiwar , 326 Ga. App. 163 at 166.
99 Id.
100 Id. at 167.
101 Id. at 174.
the subject of the litigation was ratings posted on Avvo. In *Browne v. Avvo Inc.*, attorneys challenged their numeric ratings as posted on Avvo. The federal court held that Avvo ratings protected speech under the First Amendment because they are opinions. Then, in *Davis v. Avvo Inc.*, Avvo ratings were again challenged under anti-SLAPP protection. Larry Davis, attorney, was unsatisfied with the ratings being shown on Avvo. Also, Davis found that information presented about him on the site was incorrect. Davis gained access to his profile in an attempt to resolve the discrepancies, but after doing so, he requested for his profile to be removed because he was not pleased with the ratings given to his firm. The court dismissed the claim.

**Recommendations**

Subvert the effects of a negative review by responding succinctly, professionally, and reiterating client satisfaction is of the utmost importance. Additionally, offering contact information to discuss the matter further is also helpful because it demonstrates a desire to hear about the concern and to bring closure to the issue. This approach to providing feedback is not only appropriate based on interpersonal skills, but is also in line with ABA rule 4.4, “[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

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103 *Browne*, 525 F. Supp.2d at 1250.
104 *Id.* at 1253.
106 *Davis*, 2012 BL 90336 at *1.
107 *Id.*
108 *Id.*
109 *Id.*
111 *Id.*
To further counteract the negative postings, encourage clients who are satisfied with the representation to post feedback about their experience. However, it is important that no other ethical rules are broken by asking people to post false information or by compensating them for their support. By generating positive reviews, not only will it push the negative ones to the bottom of the list, but it can also demonstrate more reliability because there will be a mix of reactions, which is expected when you deal with a broad array of people, personalities, backgrounds, and expectations. Alternatively, while it may be a bit more time consuming, some sites allow the person who received a review to dispute the contents of the posting. In some instances, if the poster does not respond or substantiate the statements, the site may agree remove the negative review.

**Mitigating Potential for Negative Reviews at the Beginning of Client Relationship**

Being confronted with the issue of negative online postings, yet being bound by ethical standards, the medical profession has similar considerations to make as does the legal profession. The medical profession can be considered a bit of a “guinea pig” when it comes to the viability of strategies to control a client’s behavior at the start of the attorney-client relationship. One company’s approach was to provide physicians with a non-disclosure agreement, which the physicians would ask their patients sign at the beginning of the physician-patient relationship. After being met with challenges, a second strategy was to offer physicians with a Mutual Agreement to be signed by their patients, which would grant the physician a copyright in any views posted about the physician’s services. Again, met with criticism and questions over ethics, the organization, created for the purpose of offering physician with

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116 Id.

services to manager their online reputation, has agreed to sunset the use of the non-disclosure agreement and Mutual Agreement.\textsuperscript{118}

Still, attorneys may still look to employ similar agreements at the inception of their relationship in the hopes of mitigating a negative online reputation. Comment 6 of Model Rule 1.2 does allow for an attorney to limit the scope of services offered through an agreement.\textsuperscript{119} Therefore, attorneys may wish to constrain the client’s ability to post negative feedback regarding the representation or empower the attorney to have copyright interests in any reviews that are posted.\textsuperscript{120} However, taking such an approach may be constricting the behavior of a satisfied client who would have sung your praises had they not signed an agreement to remain silent.\textsuperscript{121} Therefore, one must weigh the pros and cons of restricting the positive along with the negative that may come. Moreover, even if the client did not abide by the agreement, it may be difficult to prove since many sites do not require the poster to provide identifying information before revealing their opinions.\textsuperscript{122} Should an attorney choose to use these contracts when engaging with a new client, it will be important for the attorney to comply with Model Rule 1.4, which requires an attorney to thoroughly communicate the resulting effects of entering into such an agreement so that the client has the information needed to make an informed decision.\textsuperscript{123} However, neither Rule 1.7 nor its comments, suggest that an attorney advise the client to seek advice from independent counsel when entering into an agreement that would limit the client’s ability to discuss the opinion of the representation publicly.\textsuperscript{124} To date, the ABA has not

\textsuperscript{118} \textit{Id.} at 398–403 (2012); see Eric Goldman, \textit{You Shouldn't Need a Copyright Lawyer to Pick a Dentist}, FORBES (Apr. 17, 2013, 1:14 PM), http:// www.forbes.com/sites/ericgoldman/2013/04/17/you-shouldnt-need-a-copyright-lawyer-to-pick-a-dentist/ (discussing the a medical practice is not the appropriate forum for using copyright agreements).

\textsuperscript{119} Model Rules of Prof'l Conduct R. 1.2 cmt. 6 (2013) (“The scope of services provided by a lawyer may be limited by agreement with the client or by terms under which the lawyer’s services are made available to the client.”).

\textsuperscript{120} Rigertas, \textit{supra} note 84, at 250.

\textsuperscript{121} \textit{Id.}


\textsuperscript{123} Model Rules of Prof'l Conduct R. 1.4(b) (2013) (“[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

\textsuperscript{124} Model Rules of Prof'l Conduct R. 1.7 (2013) (prohibits a lawyer from representing a client if there will be a significant risk that the representation of the client will be materially limited by the lawyer's personal interests); R. 1.7 cmt. 22 (The comment does not discuss any duty for the attorney to obtain a waiver when the attorney contractually limits the client’s ability to comment regarding the lawyers services).
expressed an opinion on whether these contracts are acceptable or if there are any steps an attorney should follow to remain in compliance with the rules.125

While there may not be an official word from the ABA yet, some advocate for these agreements to be void as a matter of public policy. Specifically, advocates for finding these agreements void raise concern over the public’s need to find “meaningful information about lawyers” and that such agreements should be seen as “undermining the legal profession's responsibility to assist consumers in their quest for access to information about legal services.”126

Yelp, working in conjunction with California Governor Jerry Brown, is attempting to attack the effectiveness of these agreements.127 Governor Brown signed into law what he believes to be “a measure that protects the right to leave bad reviews online.”128 The law prohibits businesses both, from creating contracts with consumers that would cause consumers to waive their rights to comment about their experiences and from businesses seeking to penalize a consumer for commenting. If the business is in violation of this law, the business may be subjected to a fine ranging from $2,500 to $10,000.129 Yelp states on its blog, “[w]e urge other states around the country to follow the example that California has set and adopt similar laws to clarify that non-disparagement clauses in consumer contracts are void and unenforceable. These types of laws are good public policy and will help to protect Yelp users and consumers worldwide.”130

Whether or not these types of agreements are ultimately supported by any state or the ABA, it may be wise for an attorney to consider the impression it would leave on a client if asked to sign such an agreement and whether it would be in the attorney’s best interest in the long run.131 Suggesting the creation of such an agreement may create a sense of distrust or

126 Rigertas, supra note 84, at 253 –54.
129 Id.
130 Id.
uneasiness at the onset of the relationship. Moreover, if the representation results in a satisfied client, the agreement would eliminate the opportunity of receiving a positive review. As for copyright assignments, where the attorney has an intellectual property interest of any comment posted about their services, it is possible that Model Rule 1.8(a) may be implicated. Rule 1.8(a) states that a lawyer “shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client” unless certain conditions are met, including informing the client of the advisability of seeking advice from independent counsel. Consequently, in the absence of any guidance from the ABA stating otherwise, it may be advisable for an attorney to follow the factors in 1.8 to avoid an issue with obtaining copyright interest in the client’s postings.

Conclusion

There is a need for a delicate balance between numerous factors relating to attorneys’ rights, protection of the legal profession, and consumers’ rights. These factors include, allowing attorneys to exercise their First Amendment right to free speech, respect and adherence to the ethical rules of non-disclosure of confidential information, allowing an attorneys to preserve their reputation, protecting attorneys’ marketability and means of generating income, ensuring negative comments do not bring a dark cloud to the profession, and ensuring that attorneys’ conduct or statements in response to negative postings do not tarnish the legal profession. Admittedly, this balance is not an easy one to strike.

Consumers have a legitimate interest in sharing their thoughts and opinions about the representation they received. This information may be quite beneficial to other consumers who have no real means of weighing the benefits and risks of hiring a particular lawyer. However, the legal profession is unique in many ways. In the medical field, physicians are often evaluated on the length of wait in their office, their ability to listen, their demonstration of care and concern, whether their staff is courteous, and whether their diagnosis and prognosis was correct. While the

“[T]he prevalence and growing use of ratings systems should motivate lawyers to deliver better value and client service. The result of this pursuit will be a more informed potential buyer armed with better and more comprehensive information about lawyers under consideration. All of this contributes to better-qualified leads for the law firm and improved service and legal outcomes for the client.”

physician cannot always change the outcome of a patient’s health, they can be attentive, thorough, and articulate the areas of concern, and the likely outcome if the patient does not change their behavior. Conversely, an attorney’s attentiveness, thoroughness, and expertise does not always guarantee a “win” in the legal world. As a result, there are factors that clients may use to judge their attorney, such as whether the client recovered as much money as the client thought they should, which cannot be controlled solely by the attorney’s actions or expertise. Of course, the more savvy the attorney, the better the representation. But, in the legal profession we have the client’s facts, the client’s behavior, the law, the judge or jury, and the opposing party which are all variables affecting the outcome of a case, and ultimately the client’s perception regarding the quality of the representation. Consequently, the feedback from a client that is influenced by these other variables may be unnecessarily harsh or critical of the attorney’s abilities. Moreover, clients are not always able to separate their personal feelings from the reality of the variables in the legal system. The clients certainly do not understand the nuances; this is the reason why they needed to seek counsel in the first place! Then, there is the bravado some experience when they can freely make online statement behind a mask of anonymity and not understanding or caring about the effects it has on the reputation and business of another. Not only do anonymous posts give the writer some sense of freedom to say absolutely anything, it also makes it difficult for an attorney to prove who the culprit was.

As a result, it is important that attorneys receive support from the ABA as well as their states to have guidelines established allowing some recourse in the more extreme circumstances of libel and defamation. This support and safeguards can be established through express rules under the self-defense exception of the Model Rules and via laws enacted by the states, which would provide a framework for promoting more credible postings. Specifically, laws should require websites to implement account creation and verification requirements, as well as offering recourse to businesses by requiring web hosts to remove erroneous or defamatory comments if a posting is challenged and not adequately supported by the author.

It should go without saying that an attorney should always strive to provide the best service and representation to their clients. Attorney must adhere to the ethical rules and attempt to mitigate negative reviews by setting appropriate expectations through clear and frequent communication. It is also true that responding to an online review with a simple and plain
statement demonstrating professionalism and recognition of the importance of client satisfaction will often be the appropriate approach for many situations. Encouraging satisfied clients to post accurate reflections from their representation can also be an effective tool to counterbalance those nagging negative comments. Yet, there will still be those outliers, which are the more inflammatory or pervasive postings that will warrant more attention and a different approach.

While some may desire to establish more control regarding the client’s ability to speak through the creation of agreements or assignment of copyright interests, the author agrees this approach can create a sense of distrust and distance at the onset of a client relationship. Moreover, it can also throw the balance of agent and principal relationship out of whack within the attorney-client relationship. The client is the principal, who is to direct the attorney-agent about the goals of the relationship. However, as the principal, the attorney has the expertise and knowledge to drive the means by which they seek to address the client’s goals. Creating an agreement that creates the sense that the attorney-agent has more control and bargain power, can create the sense that it is the attorney-agent is running the show, rather the client who must determine the purpose of the representation and anticipated goals. Therefore, if the attorney feels strongly at the beginning of the representation that the client may cause an online “nightmare” later, the attorney should pass on the case.

Before entering into a legal battle or dealing with the adverse effects of a bad online reputation, the attorney should research the site’s policies regarding disputing a consumer review. Since some sites will agree to remove a post if a dispute arises and the poster does not provide an adequate response to justify the message, the matter may be resolved quickly and efficiently by using this approach. If this is not an option, the ethical rules should be enhanced to provide clear guidelines giving support to attorneys providing information in response to salvage their reputation. The self-defense exception in the Model Rules should allow attorneys to categorically state the reason for breakdown of the representation. Of course, the attorney should not reveal the specifics of confidential information. However, there should be some leeway under the self-defense exception of rule 1.6 to allow the attorney to say, for example, that receiving false information is believed to be a contributing factor to the outcome of the case. This leeway will provide readers of the posting with the context necessary to make a determination of whether the comment or response is plausible and whether the response is
enough to cause the reader to still consider hiring the attorney. To create the language needed to provide this support for attorneys, Model Rule 1.6 will need to be modified to eliminate language that only allows the attorney to disclose information in response to “controversy.” The rule should allow attorneys to “defend” themselves in response to any adverse activity initiated by a client whether the activity is an online review, complaint filed, or in anticipation of litigation. This latitude may serve several purposes: to deter individuals from posting false or inflammatory responses without due cause, providing the attorney with a defense mechanism, and together, the deterrence and defense, may be sufficient to avoid a flood of litigation regarding defamation suits.

Published guidelines from the ABA or state’s ethics committees alone will not remedy this issue; the state’ lawmakers must take action too. States’ attention to the negative review phenomena and its effect on businesses’ survival should be demonstrated through the creation of laws that promote equality for consumers and business owners. To date, laws have been directed at protecting the freedom of speech of consumers, but equal protection for the speech of the business owners has not been provided. In scenarios where the speech that is being protected is erroneous and unfairly bias, no one has benefited from the protection. As a result, newly enacted laws should generate movement toward ensuring consumer reviews are fair and of good quality, such as laws which would require sites offering forums to post reviews regarding services to mandate user account creation and verification of authenticity (identity) before the subscriber may initiate a post. Likewise, sites should be required to take more ownership of rooting out inflammatory comments when the subject of the comment has submitted a complaint about the content of the comments and the author does not provide an adequate response. Just like laws provide for fines if a business attempts to penalize a consumer for posting feedback, web sites and consumers should be similarly incentivized to provide timely responses and honest feedback. Protection of a business owner’s reputations and livelihood from erroneous and harmful reviews should be also be regarded as being crucial, just like a consumer’s First Amendment rights of free speech. Therefore, equal attention and safeguards should be employed by lawmakers to ensure the appropriate balance is struck and to foster an environment, which promotes businesses providing outstanding service and for consumers providing accurate reporting of their experiences.