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Oregon Lawyer Disciplined Over Rebuttals of Negative Online Reviews

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A trial panel of the Oregon Disciplinary Board recently suspended a lawyer over the content of his rebuttals to negative reviews posted by a former client on Yelp, Avvo and Google. The lawyer is appealing to the Oregon Supreme Court. The trial panel decision, No. 18-104, should be available soon on the Oregon State Bar Disciplinary Board Reporter. A decision by the Supreme Court is likely several months away.

The lawyer had represented the client in post-conviction criminal proceedings and a related immigration hearing triggered by the conviction. Eventually, the client discharged the lawyer and retained new counsel to handle his immigration appeal. The by-then former client posted negative reviews of the lawyer on Yelp, Avvo and Google. The reviews blended general criticism (“He lost my case.”) with a specific allegation that the lawyer made a legal error that new counsel was able to turn around on appeal (“[H]e made lots of mistakes, and the biggest one was that I was not deportable with the charges I had.”).

When the lawyer became aware of the reviews, he first requested that the sites remove the posts. The sites refused—telling the lawyer they considered the reviews the former client’s personal opinions. The lawyer then posted rebuttals on all three sites. Unlike the comparatively vague criticisms, the lawyer’s

rebuttals included details of the former client’s criminal convictions. Further, although the former client had not used his full name in his reviews, the lawyer included the former client’s full name in his rebuttals.

When the former client discovered the rebuttals, he filed a bar grievance against the lawyer. The Oregon State Bar followed with formal charges against the lawyer and the case went to a hearing before a Disciplinary Board trial panel late last year. The trial panel issued a written opinion earlier this year.

The Disciplinary Board trial panel found that both the details of the convictions and the client’s identity were confidential under Oregon’s version of the confidentiality rule—RPC 1.6—and noted (at 5) that “Respondent admitted at trial that he disclosed this information with the intent to discredit his client and undermine the credibility of the critical reviews[.]”

The trial panel next addressed the often-called “self-defense” exception to the confidentiality rule, which in Oregon is found at RPC 1.6(b)(4) and is patterned generally on its ABA Model Rule counterpart. The Oregon State Bar argued that this exception is limited to formal proceedings such as a bar grievance or a legal malpractice claim. The trial panel concluded, however, that it did not need to reach this legal issue because even if the exception applied it is limited to confidential information that the lawyer “reasonably believes necessary”

to use in self-defense. The trial panel found (at 11) that the lawyer failed to meet this standard: “[R]espondent admitted that the criminal convictions were not disclosed to defend his work; they were instead intended to publicly discredit his former client in order to impeach the trustworthiness of his reviews.”

Having concluded that the information revealed was confidential and that the exception did not apply, the trial panel found the lawyer violated RPC 1.6 and suspended him for 30 days. As noted, the lawyer is appealing and the suspension is stayed pending the outcome of his appeal. In Oregon, disciplinary appeals move directly to the Supreme Court. Supreme Court review in bar proceedings is *de novo* based on the record developed by the Disciplinary Board trial panel. Therefore, the Supreme Court is not limited to either the trial panel’s legal reasoning or its result. Stayed tuned for further developments in this increasingly frequent dilemma. For a discussion of steps lawyers can take to “safely” respond to reviews of this kind, see my Ethics & the Law column—“The Delicate Art of Responding to Negative Online Reviews”—in the April-May 2018 issue of the *NWLawyer*.

ABOUT THE AUTHOR

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