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Online Reviews: Paying for Them or Removing Them

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For lawyers in consumer-facing practice areas, positive online reviews by current and former clients are often a key marketing tool. By contrast, negative reviews can pose a long-lasting detraction to those same marketing efforts. Lawyers sometimes consider whether to pay clients as an incentive for leaving hopefully positive reviews or for removing a negative review. Both are sufficiently fraught that lawyers should carefully evaluate the risk of regulatory discipline resulting in “bad news” that undermines their marketing. In this column, we’ll look at both sides of that risky coin: first, paying for reviews and then turning to paying to remove them.

Paying for Reviews

At the outset, there is an important analytical line to draw: paying a current or former client to simply post a review versus offering an inducement to leave a *positive* review. Although there is some authority nationally for the former, paying for the latter is squarely prohibited by Oregon RPC 7.2(b).

Lawyers have long been prohibited from paying for recommendations. Rule 3 of an earlier set of Oregon Rules of Professional Conduct adopted in 1935 in conjunction with the State Bar Act, prohibited lawyers from “employ[ing] another to solicit or obtain, or remunerate another for soliciting or obtaining

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professional employment for [the lawyer].” Former DR 2-103(A) continued this prohibition when the Code of Professional Responsibility was adopted in 1970. When Oregon moved to the current Rules of Professional Conduct in 2005, RPC 7.2(b) again continued the prohibition:

A lawyer shall not give anything of value to a person for recommending the lawyer’s services[.]

Beyond the RPCs, ORS 9.505 has also long prohibited paying “runners” and “touts” for personal injury claims and lawyers in cases like *In re Black*, 228 Or. 9 (1961), and *In re Weinstein*, 254 Or. 392 (1969), were disciplined for this practice. More broadly, the Federal Trade Commission’s rule on consumer reviews (16 C.F.R. § 465.4) and its associated guidelines (16 C.F.R. § 255.2(e)(9)) generally classify paying for positive consumer reviews as deceptive.

By contrast, there is out-of-state authority, such as New York State Bar Opinion 1052 (2015), that permits lawyers to pay clients—either directly or through a billing credit—for simply posting a review that leaves the content to the client. The analytical distinction is that a lawyer in this scenario is simply providing an incentive for a review that the client controls rather than a “recommendation.” Even this line of authority, however, emphasizes that the

review must be truthful as a “testimonial” under state equivalents of ABA Model Rule 7.1 requiring truthfulness in all lawyer marketing communications. Further, although authority like the New York opinion addresses modest incentives—a \$50 credit in the New York opinion—payments beyond a nominal sum fail the proverbial “smell test” and begin to look like a prohibited inducement for a recommendation rather than simply a review.

Even if just providing an incentive for a review, other issues enter the mix. For example, a lawyer should counsel the client not to include confidential material in the review. Further, in some instances, it may not be in the client’s interest to even reveal that they consulted with the lawyer. Finally, once encouraged, the client may leave a not-so-flattering review. Lawyers leaning in this direction should carefully review OSB Formal Opinion 2024-204, which discusses the use of client information in lawyer marketing, and OSB Formal Opinion 2022-201, which addresses responding to negative online reviews. Both are available on the OSB website.

Paying for Removals

The ABA noted in its comprehensive opinion on responding to negative online reviews—Formal Opinion 496 (2021)—that a lawyer’s response to a negative review may include an offer of a refund or reduction of fees. By

contrast, lawyers paying directly for removing a negative review are asking for trouble for two principal reasons.

First, all lawyer marketing must be non-deceptive under RPC 7.1. RPC 7.1 puts it this way: “A communication is false or misleading if it contains a material misrepresentation . . . or omits a fact necessary to make the statement considered as a whole not misleading.” Paying a current or former client to remove a “bad” review invites the argument that the lawyer’s resulting profile is intentionally inaccurate because the negative elements have been removed. Although authority nationally is scant on this point, North Carolina State Bar 2020 Formal Ethics Opinion 1 takes this approach.

Second, while the FTC consumer review rules (16 C.F.R. § 465.7) and guidelines (16 C.F.R. § 255.2(d)) do not prohibit this practice outright, they note that the resulting distortion of a reviewee’s profile may amount to deception.

Both OSB Formal Opinion 2022-201 noted earlier and its ABA counterpart—Formal Opinion 496—outline practical steps lawyers can take in response to negative online reviews. They range from not responding—leaving the negative review as an outlier in the broader context of a positive profile—to responding professionally without revealing client confidential information. Lawyers thinking about responding with more than a short rejoinder should also

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review *In re Conry*, 368 Or. 349 (2021), before hitting “submit.” The lawyer in *Conry* was disciplined for violating the confidentiality rule—RPC 1.6—for responding to negative online reviews with a more detailed rebuttal that the Supreme Court found included confidential information.

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