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“He Said What!?!” – Responding to Negative Online Reviews

Character is much easier kept than recovered – Thomas Paine

Almost every attorney has experienced a client with unreasonable expectations or one who has terminated the representation for no apparent or articulated reason. However, in this digital age when clients are only a few clicks away from anonymously venting their vitriol and airing grievances in real-time on blogs and social media sites, attorneys must be ever vigilant about monitoring their reputation. We no longer live in an era where word-of-mouth referrals and advertisements in the telephone book are the only means of generating business. Therefore, attorneys should be more cognizant and cautious regarding their online reviews. Whether or not you engage in social media, clients can freely and lacking veracity, post statements about the quality of the legal services rendered and your performance. In this circumstance and with this medium, sometimes even when you win, you lose.

So what can an attorney do and how can one respond in a manner that balances the protection of professional reputation and yet does not run afoul of the regulatory guidelines?

Maintaining Confidentiality is Paramount

Pursuant to Rule 1.6 of the ABA *Model Rules of Professional Conduct* (“MRPC”), except in limited circumstances, “[a] lawyer shall not reveal information relating to the representation of a client.”¹ Comment 21 clarifies that “information relating to the representation” should be interpreted broadly and is not limited to confidences and secrets. Rather, it applies to all information relating to the representation, irrespective of its source. Even if the client opens the door and publishes confidential information

related to the representation, the attorney may not reveal similar material herself unless the client gives informed consent or one of the other limited exceptions in MRPC Rule 1.6(b) is pertinent. While Rule 1.6(b)(5) does provide a “self-defense” exception for the attorney to disclose confidential information “to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client,”² there is no precedent to permit this exception when responding to negative online reviews.³

Attorneys have been sanctioned for revealing confidential information in this circumstance. See, for example, *People v. Isaac*, 15 PDJ 099 (Colo. 2016) (lawyer suspended for six months for revealing information in response to a negative online review; specifically, that the client had paid legal fees with an insufficient funds check and had committed two additional felonies), *In re Eversole*, ASB No. 2015-244 (Alabama 2015) (in responding to negative online review, attorney revealed, *inter alia*, that the client had been “locked up in the looney bin” for months due to “numerous and severe psychological conditions”), *James C. Underhill Jr.*, 2015 WL 4944192 (Colo. 2015) (lawyer suspended for, among other things, disclosing confidential information following internet complaints) and *In re the Matter of Tsamis* No. 2013PR00095 (Ill. 2014) (attorney reprimanded for revealing information following a negative online review).

² MODEL RULES OF PROF'L CONDUCT R. 1.6(B)(5) (AM.BAR ASS'N, 2019)

³ See, Bar Ass'n of Nassau Cty. Comm. On Prof'l Ethics, Op. No. 2016-01 (2016). However, in another 2016 ethics opinion, the D.C. Bar opined that an attorney would be allowed to reveal confidences in response to specific allegations. See, D.C. Bar Ethics Op. 370 (2016).

The American Bar Association⁴ and several bar ethics opinions also have reviewed this issue. For example, the Bar Association of San Francisco has stated that while an attorney “is not ethically barred from responding generally “to a negative online review, the duty of confidentiality would prohibit disclosing any confidential information.”⁵ A Texas State Bar Opinion 662 (2016) advised that a lawyer may not publish a response to a former client’s negative review on the internet if the response reveals any confidential information. The opinion further explained that the lawyer may post a proportional and restrained response that does not reveal any confidential information or otherwise violate the rules of ethics.⁶ See also *Pennsylvania Bar Association Opinion 2014-200 (2014)*, *Nassau County (N.Y.) Bar Association Committee on Professional Ethics Opinion 2016-01 (2016)*, and *New York State Bar Ethics Opinion 1032 (2014)*.

Best Practices for Dealing with a Negative Online Review

Don’t respond at all. Recall the “Streisand Effect⁷” and will your response actually result in greater publicity/attention to the negative and perhaps unfounded client comments. Sometimes, as difficult as it may be, you may determine that it is best to remain silent. If the negative review is irrational or nonsensical on its face, it may have no impact on your profile and responding will draw unwanted attention. In addition, depending on what you post, you may unknowingly open the door to defamation liability. See, *“Think Before Speaking: Defamation Pitfalls for the Unwary Lawyer,”* CNA *InPractice*, 2018-2.

Before posting a response, consider contacting the client directly, discussing the situation that led to the negative review, attempting to resolve the issue, and ultimately requesting that the client delete the post or post an updated review. Even the best outcome in a legal matter can leave a client unsatisfied. Initiating these types of discussions can be uncomfortable and difficult. However, in many circumstances, clients simply wish to be heard and have their feelings validated. Another quick and effective option involves a request that your satisfied clients post their positive experiences with your professional services. Depending on the website, the negative reviews will scroll out of sight as the positive reviews are posted. Further, sites such as LinkedIn permit you to respond to the original review and also uncheck a review to remove it from your profile, move reviews up or down in order, and “ask for changes” from the reviewer.

If you decide to respond, the first step is to take a deep breath and pause. Personal attacks and criticisms on our professional abilities hit close to home and can provoke an immediate and often impetuous response. We feel the need to defend our work even from the slightest perceived affront. Do not lash out at the client or assume a defensive posture. These types of responses will typically serve to exacerbate the situation and may bring other negative posts from former/current clients or the general public.

The second step is to take a critical look at the negative review and ask whether the negative review appropriate or is it in violation of the terms of service of the website? If you can prove that the review is defamatory, false or written by a competitor, you may be able to contact the site and request that the review be removed.⁸ Is the individual actually your client or former client, or a family member who is upset on behalf of the client, an opposing party, a marketing company trying to discredit the competition, etc.? Did the individual mistake you for another attorney with a similar name? When was the review posted? If the negative review has been posted for a while and nothing further has occurred, is it necessary or gratuitous to post a reply? Where was the review posted and is it easy to find? Google yourself and your firm. If you cannot easily locate the negative review, the likelihood of others seeing it is miniscule. Finally, be honest with yourself and reflect on whether there is any truth to the review. Perhaps you may use this review as a self-appraisal of your legal services and present an opportunity to review some of your law practice management skills?

Rather than posting a response about the inaccurate review, you may wish to address the comment with a genuine apology or an acknowledgment of the client’s perceived dissatisfaction, appreciation for the feedback, and an online invitation to address the matter with the client personally. Depending on the medium used to post the review, Twitter for example, you may decide to invite the client to DM you (a direct message in a private conversation) so that you can address the issue privately. When another client or potential client reads your candid and sincere response, reflecting your effort to understand the client’s concern and find a solution, it will blunt the negativity of the original criticism. Perhaps, it may convince prospective clients to retain your services.

⁴ ABA Formal Op. 480, Confidentiality Obligations for Lawyer Blogging and Other Public Commentary (March 6, 2018).

⁵ Bar Assoc. of S.F., Ethics Op. 2014-1 (2014).

⁶ Texas State Bar Opinion 662 (2016).

⁷ Term refers to a 2003 lawsuit where Barbra Streisand sued photographer Kenneth Adelman for a violation of privacy seeking to remove an aerial photograph of Streisand’s mansion from a publicly available collection of California coastline photographs for scientists to study coastal erosion. Prior to the lawsuit being filed, the picture had only been accessed six times. After the press publicity, the website had over one million views and the picture had been reprinted in various news publications.

⁸ Anonymous online reviews may not fit into this removal provision. See, *Thomson v. Jane Doe*, 189 Wn. App. 45, 356 P.3d 727 (2015).

In drafting the response, in addition to strict compliance with your obligations under *MRPC Rule 1.6*, the following strategies should be considered:

- Simple, succinct and straightforward: Explain that due to your duty of confidentiality, you cannot address the facts contained in the review, but that you do not believe it presents a fair and/or accurate portrayal of the representation. If you believe that more explanation is warranted to explain the facts and circumstances, then offer to continue the discussion offline with the client.
- Subdued: You do not want the review to become a public shouting match using ALL CAPS and exclamation points!!! Be restrained, measured, civil and professional in language choices, usage and punctuation.
- Sincere: An acknowledgment of the client's feelings and an expression that you (and your firm) take all client feedback seriously can go a long way to minimizing the impact of the negative review.

If you are having trouble with any of the above parameters, consider having a colleague with no involvement in the representation review the draft response for tone and content. His or her independent analysis will serve to further ensure that your response is proportionate, restrained and genuine. Remember, in posting a reply, you are not only responding, but providing potential clients with an insight into your professionalism, demeanor, and method. Your response ultimately may serve as an unintended marketing tool for you and/or your firm.

Finally, in a more proactive context, two approaches to consider: (1) from a law practice management perspective, it can be helpful to respond to client reviews regularly, whether positive or negative. A *Harvard Business Review* study found that when businesses responded to customer reviews, ratings subsequently increased;⁹ and; (2) try to avoid further negative reviews by soliciting client feedback openly and directly as the representation continues and in exit interviews. Providing your clients with every opportunity to air their grievances with you and your firm in real-time and on an ongoing basis will diminish the motivation to vent in public through negative online reviews.

⁹ Davide Proserpio and Giorgos Zervas, [Study: Replying to Customer Reviews Results in Better Ratings](#), *HARVARD BUSINESS REVIEW*, (February 14, 2018)

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