



ETHICS OPINION 1052

New York State Bar Association
Committee on Professional Ethics

Opinion 1052 (3/25/15)

Topic: Compensating clients to rate lawyer on Internet website

Digest: A lawyer may give clients a \$50 credit on their legal bills if they rate the lawyer on an Internet website such as Avvo that allows clients to evaluate their lawyers, provided the credit against the lawyer's bill is not contingent on the content of the rating, the client is not coerced or compelled to rate the lawyer, and the ratings and reviews are done by the clients and not by the lawyer.

Rules: 7.1(a)-(d), 7.2(a), and 8.4(c)

FACTS

1. A lawyer would like more of his clients to rate him on Avvo, a website that allows clients to rate their lawyers with one to five stars. To rate a lawyer, a client would visit the Avvo website, look up the lawyer by name, and submit a review. A sample review might say, "I could not be more pleased with Ms. X. She is thorough, honest, caring and available. Her prices are reasonable compared to others. She specializes in elder law and knows her specialty," or "Attorney Z did a great job on my case. He was very upfront about what to expect and he got very good results. Highly recommended." (Many reviews are longer.) Clients also rate the lawyer on a scale of 1 to 5 for five categories: "Overall rating," "Trustworthy," "Responsive," "Knowledgeable," and "Kept me informed," and clients either check or do not check a box saying that they would "recommend" the lawyer. (For more information about Avvo ratings and how they are calculated, see http://www.avvo.com/support/avvo_rating.)
2. After a client writes a review online, the review is read internally at Avvo before it is posted on the website. Once Avvo has approved a review, it will be posted under the heading "Client Reviews" on the attorney's page on the Avvo website and will become part of the attorney's profile. The inquiring attorney is apparently confident that if clients take the time to rate him, he will receive high ratings and positive reviews, which will help to boost his reputation and encourage other clients to hire him. The inquirer therefore wants to offer clients a \$50 credit on their bills for legal fees if they rate him on Avvo. The credit would not be contingent on the content of a review, the scores in the ratings, or whether a client checks the box recommending the lawyer to others.

QUESTION

3. May a lawyer give clients a \$50 credit on their legal bills if they rate the lawyer on an Internet website that allows clients to evaluate their lawyers?

OPINION

4. The inquiry raises issues under several provisions of the New York Rules of Professional Conduct (the "Rules"). We take these issues in turn.

A. Rule 7.2(a): Giving a person something of value to recommend the lawyer

5. The first issue is whether giving clients a \$50 credit against their legal bills if they rate the lawyer would violate Rule 7.2(a), which provides, in pertinent part, as follows:

A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client

Rule 7.2(a) also has certain exceptions that do not apply here.

6. Rule 7.2(a) does not apply because the inquirer is asking for a rating, not a recommendation. The inquirer says he will give a \$50 credit to any client who rates the lawyer, without regard to the content of the rating and without regard to whether the client recommends the lawyer to others. A client thus remains free to give the lawyer a bad rating and remains free not to check the box saying that she

would recommend the lawyer to others. Moreover, the inquirer is not making the \$50 credit contingent on whether some future person retains the lawyer as a result of the rating. Thus, the credit is not a “reward” for making a recommendation “resulting in employment by a client.”

7. If the inquirer made the credit contingent on receiving a positive review or high scores, or if the inquirer made the credit contingent on being retained by a new client as a result of the rating, then the credit would violate Rule 7.2(a). Those are not the facts before us.

B. Rules 7.1(a), (d) and (e) and Rule 8.4(c): Testimonials from clients

8. Rule 7.1(d)(3) allows lawyers to advertise testimonials from current and former clients – but Rule 7.1(e)(4) requires that “in the case of a testimonial or endorsement from a client with respect to a matter still pending, the client gives informed consent confirmed in writing.” The term “testimonial” is not defined in the Rules of Professional Conduct, but the term “advertisement” is defined in Rule 1.0(a) as follows:

“Advertisement” means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm’s services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers. [Emphasis added.]

9. A client’s freely given review or rating is not an “advertisement” within the definition in Rule 1.0(a) because the review is not made “by or on behalf” of the lawyer.

10. If the inquirer were to coerce or compel a client to rate the lawyer with respect to a pending matter, then the rating (i.e., testimonial) would be “on behalf of the lawyer, and would hence be an “advertisement” subject to Rule 7.1(e)(4). And if the lawyer, rather than the client, were to write the review or fill in the ratings, then they would be “by ... the lawyer,” and would be advertisements under Rule 1.0(a) subject to Rule 7.1(a), which prohibits advertisements that are “false, deceptive or misleading.” A rating that purports to be made by a client but was actually made by the lawyer would be deceptive and misleading (and perhaps false as well). See N.Y. State 661 (1994) (“a dramatization using a fictional client testimonial is unethical because it is inherently false, deceptive and misleading”).

11. Moreover, a coerced rating would violate Rule 7.1(e)(4) because the lawyer would lack the client’s “consent.” Consent must be voluntary – it cannot be compelled. But according to the inquirer, clients can freely choose whether to rate the lawyer. The only inducement is a \$50 credit to those who do so. That is not coercion or compulsion; it is an incentive. Cf. N.Y. State 873 (2011) (Rules of Professional Conduct do not prohibit an attorney from offering a prize to join the attorney’s social network as long as the prize offer is not illegal).

12. Furthermore, Rule 8.4(c) provides that a lawyer or law firm shall not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Even as to testimonials from former clients – which are not subject to Rule 7.1(e)(4)’s requirement of informed consent – a coerced rating, or one written by the lawyer, would constitute not only an advertisement subject to Rule 7.1(a) but also conduct involving deceit and misrepresentation in violation of Rule 8.4(c), attempting to pass off the lawyer’s words and opinions as the former client’s. See Rule 7.1, Cmt. [6] (“all communications by lawyers, whether subject to the special rules governing lawyer advertising or not, are governed by the general rule that lawyers may not engage in conduct involving dishonesty, fraud, deceit or misrepresentation”); N.Y. State 873 ¶ 15 (2011) (“Whether or not the prize offer is an advertisement, the inquirer must be honest”).

13. Since the inquirer has not asked about advertising the Avvo rating, we do not address whether Avvo ratings are “bona fide professional ratings” within the meaning of Rule 7.1(b)(1), or how other advertising provisions might apply if the inquirer were to advertise his Avvo rating. Nor do we address whether Rule 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, requires the inquirer to disclose that he has given certain clients a \$50 inducement to rate him on Avvo. Finally, we do not address whether the inquirer’s plan complies with the Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255. (The FTC Guides are available online at <http://1.usa.gov/1CikwjJ>.) Whether a lawyer’s conduct complies with FTC guidelines is a question of law beyond our jurisdiction.

CONCLUSION

14. A lawyer may give clients a \$50 credit on their legal bills if they rate the lawyer on an Internet website such as Avvo that allows clients to evaluate their lawyers, provided the credit against the lawyer’s bill is not contingent on the content of the rating, the client is not coerced or compelled to rate the lawyer, and the ratings and reviews are done by the clients and not by the lawyer.

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