NEW YORK STATE BAR ASSOCIATION
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ETHICS OPINION 1132

New York State Bar Association
Committee on Professional Ethics

Opinion 1132 (8/8/17)

Topic: Paying nonlawyers for a recommendation or referral

Digest: A lawyer may not pay the current marketing fee to participate in Avvo Legal Services, because the fee includes an improper payment for a recommendation in violation of Rule 7.2(a).

Rules: 1.0(a), 5.4(a), 7.1(a), 7.1(b)(1), 7.1(f). 7.1(h), 7.2(a)

FACTS

1. The inquirer is a lawyer who wishes to participate in Avvo Legal Services, which is a service of Avvo, Inc. Avvo, Inc. is a privately-owned corporation that describes itself as an online legal services marketplace. (Avvo, Inc. and Avvo Legal Services are sometimes each referred to in this opinion as "Avvo" and lawyers who offer Avvo Legal Services are referred to as "participating lawyers"). The inquirer would offer legal services through Avvo's website and pay the marketing fees that Avvo charges to lawyers who obtain clients via the Avvo website. The inquirer asks whether the New York Rules of Professional Conduct (the "Rules") permit New York lawyers to pay Avvo's marketing fees. Because Avvo's method of operation is crucial to our response, we will devote several paragraphs to describing the Avvo Legal Services product.

2. Avvo allows potential clients to choose participating lawyers in various practice areas for a fixed (*i.e.,* flat) fee. The Avvo website (*www.avvo.com)* says: "Experienced lawyers on demand. Hire yours" and "Work with highly rated, local lawyers near you," and it contains a guide called "How to find and hire a great lawyer."

Avvo Ratings

3. Avvo assigns every lawyer in a jurisdiction an "Avvo rating." The rating is calculated based on information Avvo collects from lawyer websites and other public sources (such as the type of work the lawyer does and the number of years the lawyer has been engaged in that work), as well as on information the lawyer has chosen to add to the lawyer's Avvo profile (such as publications, CLE presentations, speaking engagements and positions with bar associations and their committees). Avvo's website says that each attorney's rating "is calculated using a mathematical model, and all lawyers are evaluated on the same set of standards. ... At Avvo, all lawyers are treated equally." Avvo does not seek or accept any payment for an Avvo rating. However, lawyers who supply more information may receive higher ratings

than lawyers who supply less information. Avvo says it scores all information objectively, and does not use subjective data such as client reviews. Although Avvo assigns a rating to all lawyers in a jurisdiction, lawyers cannot offer their services through Avvo unless they meet Avvo's minimum criteria and sign up with Avvo to be listed on the site and agree to Avvo's pricing schedule and marketing fees. According to Avvo, the criteria for participation include a minimum Avvo Rating, a minimum client review score, and a clean disciplinary history.

How a Prospective Client Chooses a Lawyer and Service

3. A prospective client seeking legal services through Avvo first chooses an area of law practice and a state or city. (Avvo lists all 50 states and the District of Columbia, and separately lists about 50 major cities.) The Avvo site says: "Choose an area of law to find top-rated attorneys near you." The site lists numerous areas of law practice, such as Business, Family, Government, Immigration, Bankruptcy and Debt, Criminal Defense, Landlord & Tenant, Employment & Labor, Real Estate, and Estate Planning.

5. Next, the prospective client chooses a type of legal service or "package." The Avvo website says: "Packages include advice sessions, document reviews, and start-to-finish support." Advice sessions (called "Avvo Advisor") come in two varieties – the prospective client may either (i) click on a specific lawyer, who is required by Avvo to call back within one business day, or (ii) click on "have a lawyer call me now," in which case Avvo sends a text message to all lawyers in the selected practice area and locale, and the first available lawyer calls the prospective client. When using the first of these varieties of advice session, the client is free to choose from the entire list of lawyers who are licensed in the client's state and who offer the service the client seeks to purchase.

6. Avvo's website does not say, "We recommend that you choose this lawyer," or "This lawyer is the best fit for your situation." Rather, Avvo furnishes information about lawyers (including client reviews, peer reviews, and Avvo ratings) and allows clients to choose the lawyer. Avvo describes its service as simply "facilitating a marketplace" where consumers can choose from among all of Avvo's participating lawyers.

7. Once the prospective client has chosen a lawyer (or opted for "have a lawyer contact me now") and selected a specified legal service, the client clicks on a button that says "Buy now." The lawyer then contacts the client. (Phone calls from a participating lawyer to a client initially go through an automated Avvo "switchboard" so that Avvo can time the calls, but Avvo asserts that it cannot listen to the calls.) Once the lawyer and client have completed a phone call of at least eight minutes, Avvo charges the client's credit card for the full amount of the fee for the selected legal service.

Avvo's Satisfaction Guarantee

8. Part of the Avvo product is that Avvo gives a "satisfaction guarantee" and will refund the fee to the client (or allow the client to choose a different participating lawyer at no additional charge) if (a) the lawyer does not deliver the services for which the client has paid, or (b) the client is not satisfied with the lawyer's services. Avvo's website describes the satisfaction guarantee as follows:

RULE 1.1:
RULE 1.2: If you're not 100% happy with the service you purchased, we'll make it right.

We stand behind our services and expect our clients to be 100% satisfied with their experience. If you are unhappy with the service you purchased, we'll make it right. We will help you switch lawyers or services to make sure you get the legal help you need, at no cost to you. If you don't want to continue to solve your issue through Avvo Legal Services, we will fully refund your purchase.

(a) What if I don't get the results I expect?

We guarantee the services listed on our website, but we can't guarantee any specific outcome. Every legal case is unique. The success of your case depends on many different factors.

(b) How do I request a refund or file a complaint?

To file a complaint or seek a refund, contact customer care . . . . Depending on your situation, documentation may be needed. Your customer care rep will work with you to fix the situation to your satisfaction.

Avvo considers this satisfaction guarantee to be part of its marketing costs, reasoning that the satisfaction guarantee makes participating lawyers more attractive than lawyers who do not offer a satisfaction guarantee.

Avvo's Marketing Fee

9. At the beginning of each month, Avvo pays each participating attorney all of the legal fees generated through Avvo by that attorney in the previous month, and separately charges each attorney a "marketing fee" for each legal service the attorney has completed during the prior month (unless Avvo has refunded the client's payment). As an example, Avvo's website tells lawyers that "if a client purchases a $149 document review service with you, you will be paid the full $149 client payment into your deposits account. As a separate transaction, you will be charged a $40 marketing fee from your withdrawals account." *See* *http://bit.ly/2fIlOxM* ("Attorney FAQ for Avvo Legal Services").

10. The amount of Avvo's marketing fee depends on the service. For more expensive legal services, Avvo generally charges lawyers a higher marketing fee. An FAQ on Avvo's website explains the marketing fee as follows: "The amount depends on the service, and ranges from a $10 marketing fee for a $39 service, to $40 marketing fee for a $149 service, up to a $400 marketing fee for a $2,995 service." As these examples show, the marketing fee is not directly proportional to the price of the legal service – a $10 marketing fee is 25.6% of a $39 service and a $40 marketing fee is 26.8% of a $149 service, but a $400 marketing fee is only 13.4% of a $2995 service.[1] Thus, the marketing fee is not a fixed percentage of the legal fees, but it is generally greater for higher-priced services than for lower-priced services.

11. To understand Avvo's rationale in setting its marketing fees, this Committee posed various questions directly to Avvo. Avvo explained that the correlation between its marketing fees and the price of Avvo legal services reflects two interrelated concepts.

12. First, Avvo says that more expensive legal services cost more to market. For example, Avvo says that its ad placements on Google and on online advertising networks cost more for more expensive services, and cost more for more competitive keywords. Also, Avvo's marketing fee covers the credit card processing

fee, which is a fixed percentage of the total legal fee, so a higher legal fee necessarily entails a higher credit card processing fee.

13. Second, Avvo says that its customer service costs are higher for more expensive services. For example, Avvo says that its "platform usage" and "customer care" expenses are higher for more expensive services, because clients raise more questions about more expensive services. Avvo employs a team of live customer care representatives who handle client inquiries via phone, email, and electronic chat – see *https://support.avvo.com/hc/en-us/requests/new* . In addition, Avvo says that requests for refunds, voids, chargebacks, and other forms of what it calls "breakage" are higher for more expensive services. We have not verified any of Avvo's facts or claims regarding its marketing expenses, but we accept them as true for purposes of our analysis in this opinion.

QUESTION

14. May a New York lawyer pay Avvo's current marketing fee to participate in Avvo Legal Services?

OPINION

Issues Not Decided Here

15. Avvo's mode of operation raises many questions under the Rules in addition to the marketing fee issue. For example:

•Avvo markets the services of participating lawyers. Rule 7.1(a) prohibits a lawyer from participating in an advertisement that "(1) contains statements or claims that are false, deceptive or misleading; or (2) violates a Rule." Rule 7.1(a) also requires that certain ads contain prescribed disclosures, such as the label "Attorney Advertising," and information about the lawyer whose services are advertised. *See* Rules 7.1(f), 7.1(h). Rule 1.0(a) defines an "advertisement" to mean "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 layer or law firm." As we said in N.Y. State 1131 (2017):

Even though the Service, not the lawyer, creates and disseminates the Service's website, each participating lawyer is "participat[ing] in the use and dissemination of" this advertisement within the meaning of Rule 7.1(a) and therefore has a duty to assure that the website is consistent with Rule 7.1. This means that a participating lawyer must determine that the website does not make false, misleading or deceptive statements or claims, or otherwise violate the Rules.

•Under Rule 7.1(b)(1) and Comment [13] to Rule 7.1, lawyers may not use Avvo ratings (or any other ratings) in their advertising unless those ratings are "bona fide professional ratings." As noted in ¶ 19, the Avvo website constitutes advertising of lawyers who participate in Avvo Legal Services. Consequently, participating lawyers must determine whether the ratings provided by the service are bona fide. Comment [13] to Rule 7.1, headed "Bona Fide Professional Ratings," provides guidance, saying that ratings are not "bona fide" unless (among other things) the ratings "evaluate lawyers based on objective criteria or legitimate peer review in a manner unbiased by the rating service's economic interests," and are "not subject to improper influence by lawyers who are being evaluated." If the rating is not bona fide, it would

be false and misleading in violation of Rule 7.1(a)(1). We lack sufficient facts to determine (and do not decide) whether Avvo's rating system meets the criteria for a bona fide professional rating.

•Many of the services under the Avvo Legal Services program involve limited services, such as a 15-minute advice session or review of a document and a 30-minute advice session but not revision of the document. Both the Rules and our opinions have approved limited scope representations under certain conditions that we do not repeat here. *See* Rule 1.2(c) and Cmts. [6] and [7], N.Y. State 856 (2011), N.Y. State 604 (1989).

•The fact that Avvo sets the amount of the legal fee for each service raises questions about whether a participating lawyer can deliver competent legal services for Avvo's chosen price and whether a lawyer is allowing Avvo to interfere in the lawyer's independent professional judgment regarding how much time to spend on a matter.

•The marketing fee raises questions about whether lawyers who participate in Avvo Legal Services are improperly sharing legal fees with a nonlawyer.[2]

•Avvo's satisfaction guarantee raises questions about confidentiality. If clients call Avvo to complain, does the "documentation" that Avvo asks for or receives include "confidential information" within the meaning of Rule 1.6(a)? How does Avvo avoid receiving confidential information when evaluating whether to refund the legal fee a client has paid through Avvo?

16. In this opinion, we do not address or answer any of those additional issues, because we believe our answer to the question posed by the inquirer is dispositive. Similarly, we express no opinion as to whether Avvo's operations implicate § 495(1)(d) of the Judiciary Law, which provides that "[n]o corporation . . . shall . . . furnish attorneys or counsel". That is a question of law beyond our jurisdiction. Instead, we focus in this opinion only on whether the marketing fee that Avvo charges to participating lawyers constitutes an improper payment for a recommendation (*i.e.,* an improper referral fee) within the meaning of Rule 7.2(a) of the Rules.

Does the marketing fee constitute an improper payment for a recommendation?

17. Rule 7.2(a) sets forth the following general rule:

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 .... [Emphasis added.]

(Rule 7.2(a) also states two exceptions not relevant here.)

18. Whether paying Avvo's marketing fee complies with Rule 7.2(a) depends primarily on what a lawyer is purchasing when the lawyer pays Avvo's marketing fee. If the lawyer is paying the marketing fee solely to obtain advertising and marketing services from Avvo, then the lawyer is not giving Avvo something "of value" to recommend the lawyer, but is instead paying Avvo for marketing services, which does not violate Rule 7.2(a). If, however, the marketing fee also includes a payment to Avvo for recommending the lawyer, then the payment constitutes giving something "of value" for a recommendation, which does violate Rule

7.2(a).

1. *Is the marketing fee solely a payment for advertising and marketing services?*

19. A marketing fee is not *per se* prohibited by Rule 7.2(a). A lawyer may pay nonlawyers to advertise or market the lawyer's services. Comment [1] to Rule 7.2 says explicitly that Rule 7.2(a) "does not prohibit a lawyer from paying for advertising and communications permitted by these Rules," and that a lawyer "may also compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, marketing personnel, business development staff, and web site designers." We believe Avvo's website is an "advertisement" within the meaning of Rule 1.0(a). The Avvo website is a public communication on behalf of each participating lawyer, about that lawyer, for the primary purpose of helping the participating lawyers obtain employment by potential clients who use the Avvo website. And the participating lawyers "use or . . . participate in use" of the advertisement within the meaning of Rule 7.1(a) because they must take action to participate in Avvo Legal Services.

20. We addressed payments to nonlawyers for advertising in N.Y. State 897 (2011), which addressed a "deal-of-the-day" service similar to Groupon or Living Social. There, the deal-of-the-day service negotiated with lawyers to obtain a discounted legal fee. Potential clients who wanted the lawyer's discounted services used a credit card on the deal-of-the-day website to purchase a voucher for the lawyer's services. The website then deducted "a percentage of the gross receipts as its compensation" and paid the balance to the lawyer. (Opinion 897 does not specify the percentage.) We asked "whether the money retained by the website is merely an appropriate payment for a novel form of advertising or is a compensation for the referral of a client." We concluded that the deal-of-the-day arrangement was an appropriate payment for advertising, and was not payment for a referral, and therefore did not violate Rule 7.2(a). To explain our rationale, we said (in ¶12):

We note that the website has no individual contact with the coupon buyers other than collecting the cost of the coupon. The website has not taken any action to refer a potential client to a particular lawyer – instead it has carried a particular lawyer's advertising message to interested consumers and has charged a fee for that service.

21. Opinion 897 did not reach a categorical conclusion, however, because we were "not privy to the percentage amount retained by these various websites…." We said: "[A]ssuming that it is a reasonable payment for this form of advertising, we conclude that there is no violation of Rule 7.2." We then qualified our opinion by saying: "Different arrangements between the lawyer and the website could lead to the opposite conclusion, *i.e.,* that the lawyer is paying for a referral in violation of Rule 7.2."

22. Here, we again lack sufficient information to determine whether Avvo's marketing fee is "a reasonable payment for this form of advertising." We therefore do not decide this question.[3]

2. Is the marketing fee a payment for a recommendation?

23. Under Rule 7.2, although lawyers may ethically pay nonlawyers for advertising and marketing services, they may not pay for a "recommendation." Therefore, we must determine whether the marketing fee is or

includes a payment to Avvo to recommend the participating lawyers.

24. The term "recommendation" is not defined in the text of the Rules. However, in March 2015, after we issued N.Y. State 897 (2011), the New York State Bar Association amended Comment [1] to Rule 7.2 to address, among other things, whether a third party that connects lawyers with clients or potential clients is "recommending" the lawyer, and to define a "recommendation." Comment [1] now states, in part:

[1] ... A communication contains a recommendation *if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.* [Emphasis added.]

See also N.Y. State 1131 ¶ 19 (2017), (to "recommend" includes identifying a particular lawyer or lawyers to a potential client as "a right" or "the right" lawyer for the client's situation after an analysis of either the potential client's legal problem or the lawyer's qualifications to address that problem, which implies a qualitative, comparative assessment of the lawyers available to perform the services the potential client requires).

25. Comment [1] to Rule 7.2 adds that recommendations by so-called "lead generators" are improper:

... [A] lawyer may pay others for generating client leads, such as Internet-based client leads, as long as *(i) the lead generator does not recommend the lawyer*, (ii) any payment to the lead generator is consistent with Rule[] ... 5.4 (professional independence of the lawyer), (iii) the lawyer complies with Rule 1.8(f) (prohibiting interference with a lawyer's independent professional judgment by a person who recommends the lawyer's services), and (iv) the lead generator's communications are consistent with Rules 7.1 (advertising) and 7.3 (solicitation and recommendation of professional employment). ... [Emphasis added.]

Indeed, Comment [1] prohibits a lead generator not only from *stating* that it is recommending a lawyer, but also from *implying or creating a reasonable impression* that it is making such a recommendation:

... To comply with Rule 7.1, a lawyer must not pay a lead generator that *states, implies, or creates a reasonable impression that it is recommending the lawyer,* is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. ... [Emphasis added.]

We must therefore determine whether Avvo is "recommending" a lawyer or "implying or creating a reasonable impression" that it is making a recommendation.

29. As noted earlier, Avvo allows clients to choose from among all of the lawyers in a geographic area who have listed themselves as practicing the field of law in which the client wants legal services. (Avvo says lawyers are displayed randomly and the list is reshuffled at least once every hour.) Avvo says that it does not analyze (or even inquire about) a client's individual situation. No human being at Avvo talks directly to any prospective client to find out the facts or studies the prospective client's documents and then picks out a particular lawyer who is "right" for that client. Nor does Avvo's website suggest that a client hire any particular lawyer. Avvo is not "recommending" lawyers in that sense.

30. But Avvo does more than merely list lawyers, their profiles, and their contact information. Avvo also gives each lawyer an Avvo rating, on a scale from 1 to 10. As Avvo explains on its website, "It's as simple

as counting to 10. Ratings fall on a scale of 1 (Extreme Caution) to 10 (Superb), helping you quickly assess a lawyer's background based on our rating." (Emphasis in original.) The Avvo ratings suggest mathematical precision – the rating for each lawyer is calculated to a decimal place (*e.g.,* a rating of 6.7 or 8.4).

31. Moreover, some Avvo ads expressly state that the Avvo Rating enables a potential client to find "the right" lawyer, and Avvo's website claims that its ratings enable potential clients to choose the right lawyer for their needs:

Why the Avvo Rating can help you find the right attorney:

The model used to calculate the rating was developed with input from hundreds of attorneys, thousands of consumers, and many other legal professionals who deeply understand the work attorneys do. We created the Avvo Rating to reflect the type of information people have identified as important when looking to hire an attorney.

32. Even if Avvo ratings are "bona fide," within the meaning of Rule 7.1(b)(1), we must determine whether (i) Avvo's inclusion of Avvo Ratings in Avvo's advertising on behalf of participating lawyers, or (ii) Avvo's description of its ratings in its advertising, is or implies a "recommendation," i.e. whether the rating "endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities."

33. Avvo's website never describes a rating as a recommendation, and it contains several warnings about the limitations of its ratings. The website says:

•"A rating is not an endorsement of any particular lawyer, and is not a guarantee of a lawyer's quality, competency, or character. . . . Rather, the Avvo Rating is intended to be a starting point to gather information about lawyers who may be suitable for your legal needs."
•"Keep in mind that these ratings speak to a lawyer's background, but do not evaluate their knowledge of the law, past performance on individual cases, personality, or communication skills. These are elements that the Avvo Rating cannot evaluate, but can be better described in the client reviews and peer endorsements found on an attorney's profile."
•"[W]e don't recommend the Avvo Rating as the only piece of information you use to evaluate whether an attorney is right for you. The rating is a tool that provides a snapshot assessment of a lawyer's background, and should be considered alongside other information such as client reviews and peer endorsements."

34. Nevertheless, the Avvo website also extols the benefits of being able to work with highly-rated lawyers:

•"Work with highly rated, local lawyers near you."
•"Search top-rated lawyers near you."
•"We only work with highly qualified attorneys who are licensed to practice in your state."

Through these statements and through Avvo's description of its rating system, Avvo is giving potential clients the impression that a lawyer with a rating of "10" is "superb," and is thus a better lawyer for the client's matter than a lawyer with a lower rating. Avvo is also giving potential clients the impression that

Avvo's eligibility requirements for lawyers who participate in Avvo Legal Services assure that participating lawyers are "highly qualified."

35. We do not believe that a bona fide professional rating alone is a recommendation. But, even assuming that Avvo ratings are "bona fide professional ratings," we believe the way Avvo describes in its advertising material the ratings of participating lawyers either expressly states or at least implies or creates the reasonable impression that Avvo is "recommending" those lawyers.

36. In N.Y. State 799 (2011), in discussing the difference between an internet-based directory and a recommendation, we said that the line between the two was crossed when a website purports to recommend a *particular lawyer or lawyers* based on an analysis of the potential client's problem. Other jurisdictions also focus on the "particular lawyer" distinction. *See, e.g.*, South Carolina 01-03 (lawyer may pay internet advertising service fee determined by the number of "hits" that the service produces for the lawyer provided that the service does not steer business to any particular lawyer and the payments are not based on whether user ultimately becomes a client); Virginia Advertising Op. A-0117 (2006) (lawyer may participate in online lawyer directory in which publisher does not recommend or steer business to particular lawyers). We believe Avvo's advertising of its ratings, in combination with its statements about the high qualifications of lawyers who participate in Avvo Legal Services, constitutes a recommendation of all of the participating lawyers.

37. Our conclusion is bolstered by Avvo's satisfaction guarantee, by which the full amount of the client's payment (including Avvo's portion of the fee) is refunded if the client is not satisfied. This guarantee contributes to the impression that Avvo is "recommending" the lawyers on its service because it stands behind them to the extent of refunding payment if the client is not satisfied.

38. This opinion does not preclude a lawyer from advertising bona fide professional ratings generated by third parties in advertisements, and we recognize that a lawyer may pay another party (such as a magazine or website) to include those bona fide ratings in the lawyer's advertisements. But Avvo Legal Services is different. It is not a third party, but rather the very party that will benefit financially if potential clients hire the lawyers rated by Avvo. Avvo markets the lawyers participating in the service offered under the Avvo brand, generates Avvo ratings that it uses in the advertising for the lawyers who participate in Avvo Legal Services, and effectively "vouches for" each participating lawyer's credentials, abilities, and competence by offering a full refund if the client is not satisfied. As noted earlier, Avvo says: "We stand behind our services and expect our clients to be 100% satisfied with their experience." Accordingly, we conclude that lawyers who pay Avvo's marketing fee are paying for a recommendation, and are thus violating Rule 7.2(a).

39. The questions we have addressed here have generated vigorous debate both within and outside the legal profession. The numbers of lawyers and clients who are using Avvo Legal Services suggest that the company fills a need that more traditional methods of marketing and providing legal services are not meeting. But it is not this Committee's job to decide policy issues regarding access to justice, affordability of legal fees, or lawyer quality. Our job is to interpret the New York Rules of Professional Conduct. Future changes to Avvo's mode of operation – or future changes to the Rules of Professional Conduct – could lead us to alter our conclusions, but at this point we conclude that, under Avvo's current structure, lawyers may not pay Avvo's marketing fee for participating in Avvo Legal Services.

CONCLUSION

40. A lawyer paying Avvo's current marketing fee for Avvo Legal Services is making an improper payment for a recommendation in violation of Rule 7.2(a).

(29-16)

[1]Avvo also provided this Committee with a list of many additional services, prices, and marketing fees. For example, marketing fees are generally $30 for a $99 service (33.3%); $50 for a $199 service (25.1%); $80 for a $295 service (27.1%); $125 for a $595 service (21%); and $150 for a $495 service (30.3%); and $200 for a $995 service (20%). Thus, while the marketing fee increases in absolute dollars as the price of the service increases, the marketing fee generally decreases in percentage terms as the price increases. But in a few instances, Avvo charges the same marketing fee for services of different prices – for example, filing for an uncontested divorce is $995, and creating an estate plan bundle for an individual is $795, but Avvo charges a $200 marketing fee for both. Also, Avvo charges a different marketing fee for some services of the same price – for example, Avvo charges $199 to review a non-compete agreement, to petition for an alien relative, or to create an employment offer letter, but Avvo charges $50, $55, and $60 respectively as a marketing fee for those services.

[2]Several ethics opinions from other jurisdictions have concluded that lawyers working with Avvo or similar entities are engaged in improper fee sharing or are violating other Rules of Professional Conduct. For example, NJ ACPE 732 (2017) concluded that New Jersey lawyers "may not participate in the Avvo legal service programs because the programs improperly require the lawyer to share a legal fee with a nonlawyer," and Pennsylvania 2016-200 (2016) concluded that a hypothetical program similar to Avvo was engaged in "impermissible fee sharing under RPC 5.4(a)." Noting that the "primary policy underlying RPC 5.4(a) is the preservation of the lawyer's professional independence," Opinion 2016-200 said: "[T]he assumption that the lawyer's payment to a non-lawyer of marketing fees amounting to 20% to 30% of legal fees earned does not interfere with the lawyer's professional independence is, at a minimum, of questionable validity." *See also* Ohio 2016-3 (2016) ("A lawyer's participation in an online, nonlawyer-owned legal referral service, where the lawyer is required to pay a 'marketing fee' to a nonlawyer for each service completed for a client, is unethical," citing Rule 5.4). We express no opinion on whether those opinions reach the correct conclusions. *Compare* N.Y. State 1131 (2017), in which we determined that a flat fee constituted a payment for advertising and not a sharing of legal fees.

[3]A deal-of-the-day service differs in at least one significant respect from Avvo Legal Services. A lawyer participating in a deal-of-the-day program negotiates a discounted fee, but the fee is ultimately set by the lawyer. A lawyer who participates in Avvo, in contrast, must agree to charge the fee set by Avvo for each particular service.

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