

Watch What You Say!

Lawyers Have Much to Consider In Writing Online Review Responses

Go to Google or any other search engine and type in the name “Betty Tsamis.” When I did it while writing this column, there were 4,810 results, and two of the first three highlight this lawyer’s decision to disclose confidential client information in response to a negative review a client posted on AVVO, a website that rates lawyers on a scale of 1 to 10.

According to the Aug. 26, 2013 complaint filed against Tsamis by the Illinois Attorney Registration And Disciplinary Commission,¹ one of Tsamis’s clients posted a review on AVVO, in which he stated, among other things, that “She only wants your money, claims ‘always on your side’ is a huge lie. Paid her to help me secure unemployment, she took my money knowing full well a certain law in Illinois would not let me collect unemployment. [N]ow is billing me for an additional \$1,500 for her time.” Eventually, the client removed this posting, but subsequently posted a second review that said, “I paid Ms. Tsamis \$1,500 to help me secure unemployment while she knew full well that a law in Illinois would prevent me from obtaining unemployment benefits.”

Tsamis replied to this review, stating it was “simply false. The person did not reveal all the facts of his situation up front in our first and second meeting. [*sic*] When I received his personnel file, I discussed the contents of it with him and informed him that he would likely lose unless the employer chose not to contest the unemployment (employers sometimes do is [*sic*]). Despite knowing that he would likely lose, he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I feel badly for him but his own actions in beating up a female coworker are what



caused the consequences he is now so upset about.”

When she stated that the client beat up a female coworker, the lawyer revealed confidential information that she had obtained about the termination of the client’s employment. The Illinois Disciplinary Board noted that these “statements in the posting were designed to intimidate and embarrass [the client] to keep him from posting additional information about her on the AVVO website.”

Thereafter, on Jan. 15, 2014, Tsamis entered into a Joint Stipulation And Recommendation For A Reprimand² in which she admitted, among other things, that she “replied to [the client’s] post and revealed confidential information about his case [and that the] second posting contained information relating to her representation ... and exceeded what was necessary to respond to [the client’s] accusations.”

This is one example of many in which lawyers, in an effort to address a negative online client review, have revealed confidential client information. And in many of these situations, the lawyers have found themselves subject to professional discipline. Fortunately for Tsamis, she *only* received a private reprimand, but it could have been far worse. Of course, now when potential clients search for her online, they find out very quickly about her prior indiscretion.

For lawyers, negative reviews create

a number of problems. First, no one wants to be seen in a bad light. Second, because we are lawyers, we are trained to respond. And third, because we are lawyers, we enjoy confrontations and want to respond.

Yes, we really *want* to respond to negative reviews, but unlike online merchants, lawyers have an additional duty to maintain client confidentiality – and that is a problem.

The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility tackled the issue in Formal Opinion 2014-200 (“Lawyer’s Response to Client’s Negative Online Review”). In that opinion, the committee addressed whether the Pennsylvania Rules of Professional Conduct impose restrictions upon a lawyer who wishes to publicly respond to a client’s adverse comments on the internet about the lawyer’s representation of the client. The Committee concluded that the “lawyer’s responsibilities to keep confidential all information relating to the representation of a client, even an ungrateful client, constrains the lawyer [noting] that a lawyer cannot reveal client confidential information in response to a negative online review without the client’s informed consent.”

In the opinion, the committee replies upon Rule 1.6 (“Confidentiality of Information”), which prevents lawyers from revealing information relating

to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation. The committee further noted that Rule 1.6(c)(4), commonly called the “self-defense exception,” only arises in the context of a civil, criminal, disciplinary or other proceeding, and not to negative internet reviews.

The committee then concluded that, although “it is understandable that a lawyer would want to respond to a client’s negative online review about the lawyer’s representation the lawyer’s responsibilities to keep confidential all information relating to the representation of a client, even an ungrateful client, must constrain the lawyer [and] a

lawyer cannot reveal client confidential information in a response to a client’s negative online review absent the client’s informed consent.”

So what is a lawyer to do when a client posts a negative review? One, the lawyer can ignore the review. Second, the lawyer can use any constructive criticism as a teaching moment. Thus, if the client complained that the lawyer’s receptionist was discourteous, the lawyer could address the concern. Third, the lawyer could respond gently.

In one situation, one of my clients was reviewed negatively by a purported former client; however, the complaints clearly seemed to be misdirected. The complaint stated that the lawyer was “incompetent and can’t articulate a clear

defense for his clients. His billings are fraudulent and he will wait just before he goes to trial or before he files a motion for you, to tell you that you have to come up with an[sic] additional funds depending on how rich he thinks you are.”

In reply, the lawyer stated, “This review confuses me with a different attorney. The information in the review does not and could not apply to me. First, because it references a ‘defense,’ it appears to apply to a defense attorney, which I am not. Second, the review addresses how I handle trials, although I am no longer a trial attorney, and have not done trial work in more than 14 years. Third, when I did conduct trials (generally on behalf of plaintiffs in personal injury matters), I never had a paralegal, and all fees were on a contingency basis. Fourth, my practice is and has for more than a decade been primarily focused on handling wills and estates and alcoholic beverage law. None of these matters has ever gone to trial. Fifth, I have never had a client complain about my bills, which are usually based on flat fee or percentage arrangements. Sixth, I do not have a record of ever representing a client named ‘Morgan.’ While I regret that Morgan was unhappy with her attorney, she must have confused me with someone else.”

In this circumstance, the lawyer addressed the complaint without revealing any client confidences. Of course, it’s easier when you do not know the client. But if you do, consider this advice from Forbes.com: “Even if you do get negative feedback, you can turn it into a positive by engaging in a constructive way and showing that you’re a genuine business. People are not looking for perfection online. What they’re really looking for is humanity and a genuine response, so a negative review can be a great opportunity to respond in a positive and transparent manner. And that has a good impact on all your customers.” ■

¹ <http://www.iardc.org/13PR0095CM.html>

² http://www.iardc.org/HB_RB_Dispatch.html?id=11221

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