

THE **RECORDER**

Viewpoint: The Ethical Obligations Your Avvo Profile Presents

Richard Zitrin, The Recorder

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My [last column](#), about Avvo's lawyer profiles, ended where I "accepted" my profile, without which I couldn't correct the many inaccuracies discovered there.

But once I accepted my profile, what duties had I taken on to make sure it remains accurate? And might I find myself with a client even without knowing that person's name?

After I accepted my profile, I was able to edit it, update information, and add a statement under the section "About Me." Because I didn't intend to use Avvo as a business resource, I added this "About Me" statement:

"I do not use this site. I 'accepted' my profile only to say that in several respects, it is not accurate, nor is my NY atty profile. Thank you. - R. Zitrin"

I decided to just stick with the disclaimer and not correct any of the errors in the profile—including an address and law firm that are seven years out-of-date, and a practice that says "100 percent" mediation, and is 100 percent wrong.

Here's my concern: If an attorney "accepts" his or her profile, even if the lawyer must do so to correct published errors, that acceptance implies that the information in that profile may be relied on by the public as accurate. The problem comes not with the initial profile; that's easy enough to fix. But what about subsequent endorsements from other lawyers or former clients? Accepting the profile seems like a form of advertising, albeit passive without doing more, such as signing up for "Avvo Pro," answering proffered questions, or soliciting client comments. And what if a client wants to endorse you?

Most states allow such endorsements as part of regulated advertising; constitutionally, accurate endorsements are best seen as protected commercial free speech. All states, however, prohibit

false or misleading advertising. And many place specific restrictions on endorsements or "testimonials," such as Standard 1-400(E)(3) in California, requiring "an express disclaimer such as 'this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.'"

So lawyers in most states, including California, must meet two requirements: (1) the posted information must be accurate; and (2) endorsements and testimonials require disclaimers about results.

Let's say, then, that a satisfied client posts the following about me on Avvo: "Richard Zitrin did a great job with my legal malpractice case. I won the case and got \$1,000,000." If the case actually settled just before trial, the client's inadvertent reference to having "won" is inaccurate; in order for me to comply with ethics rules, I should get that comment modified. And Avvo is not set up to provide a disclaimer about results with the posted endorsement. So I should at the least say something in the "About Me" section stating that endorsements about successes do not guarantee or predict success in any other case.

I should add here that other sites, such as LinkedIn, also provide endorsements. I've been registered on LinkedIn for years; though I don't use it as a source of business, my "page" is certainly available to prospective clients. One principal difference between LinkedIn and Avvo is that the latter is a site specifically designed to advertise lawyers. LinkedIn, on the other hand, is a large and universal agora in which people in all walks of life list their backgrounds. Still, even though I joined LinkedIn back in the pre-endorsement-module days, and even though the endorsements there are not narratives, I do have a degree of concern about the accuracies of those endorsements. At the least, my own profile must be accurate, neither false nor misleading.

Giving Legal Advice?

I recently went back to my Avvo page as any client might, in order to ask myself a legal question. I wanted to test out the proposition, claimed by Avvo, that no lawyer gives legal advice through the site. On Avvo, if someone asks a question of a particular lawyer, that lawyer gets an email from Avvo with the question and the questioner's email address, and the lawyer provides a reply to the specific questioner by return email. When legal advice is sought, disclaiming that it's not doesn't make that so.

Then there's "Ask a Lawyer." Avvo maintains that "Information posted or made available on or through the Site, including without limitation any responses to legal questions posted in Avvo Q&A, ... is not intended as legal advice." But is that really so?

By clicking a link on Avvo's home page, anyone may ask a question to the assemblage of Avvo lawyers who have signed up to reply. I clicked and asked the following question, followed by an "add details" explanation:

"Does a lawyer signed up with Avvo have an ethical obligation to maintain the accuracy of his or her profile or endorsements? (details) I want to know whether what I read about a lawyer is

vouched for by that lawyer under the laws and ethics rules of California." Sounds to me as if this question calls for legal advice, though here, I'm anonymous and without an email address.

The answer I received largely (and wisely) begged the question with generalities, but did include this statement: "The issue is always reasonableness of the conduct." But is that correct? Under our ethics rules, disclaimers and accuracy are mandated, whether the lawyer is "reasonable" or not.

Here's another recent question posed in San Francisco: "I was living outside the country when my parents were served papers that were intended for me is this legal?"

This question was answered by three San Francisco attorneys. One said, inter alia, "Sounds like you have been improperly served based on the facts..." but "plaintiff will probably try to serve you again if his statute of limitation has not run out," and then cited to the Code of Civil Procedure section on sub-serving summonses. Another said, "The judgment against you is probably still voidable for lack of personal jurisdiction, depending on the date when it was entered." The third noted, inter alia, "I disagree with one of the prior answers regarding the statute of limitations. If the lawsuit was filed in time, then the statute is not involved in improper service cases." The third lawyer was correct on the statute, and the first misleading if not wrong. But all three appeared to be giving specific legal advice.

After my first article, Avvo Vice President and General Counsel Joshua King generously engaged in an email dialogue with me about "legal advice" and other issues. King wrote me that "the Avvo Q&A Forum" was designed to provide "general, orientation level legal guidance that attorneys have long provided to friends, family members, and associates when asked off-line. While such information is 'legal advice' on a semantic level (just as it would be if you or I answered a question at a conference or on a listserv about the ethics rules), it's not 'legal advice' in the narrower legal sense of engaging in the practice of law with a client or prospective client."

His point is well-taken to the extent that the question is asked in an open forum by an anonymous questioner, and the analogy to a Q&A session at a conference has some merit. But that analogy falls a bit short. Specific information on specific facts may be relied on by the questioner. Here, if the questioner relies on incorrect information provided by the lawyer, might the questioner have recourse? I think so.

A clearer "legal advice" concern comes when the questioner is not anonymous because of identifying email information, and is given a specific reply by a specific lawyer to whom the query was directed. All the admonitions in the world can't morph legal advice into non-legal advice.

Ratings and Due Diligence

Let's return to the focus of the first column: the ratings system. Here, King writes that "the Avvo Rating is an opinion. It's no more or less 'accurate' than any other opinion. And like any good opinion, it's informed by the information available to us. ... The Avvo Rating operates in a very

similar fashion to what you would do, if asked for your opinion about an attorney you did not know."

Not really. Going to the State Bar's "Member Search" would at least yield a generally accurate address, not one—as in my listing—three addresses and two law firms ago. And two of five members of my family were listed in the wrong state. Not much due diligence there. Moreover, most lawyers I know would never guess when asked for their opinion of another lawyer, which is really all Avvo is doing. Avvo's "opinion" is often more misleading than providing no information.

The ratings inaccuracies are Avvo's problem, not the rated lawyers'. But the more inaccurate the profile, the more a lawyer may be tempted to "accept" it order to fix it. And when it comes to accuracy, once that profile is accepted—and because acceptance can't be revoked—the attorney takes on a lifetime obligation to keep it accurate.

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