



ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 738

Responding to Negative Online Reviews

Several lawyers have sought guidance from the Advisory Committee on Professional Ethics and the attorney ethics research assistance hotline regarding negative online reviews. Lawyers have stated that former prospective clients or former clients have posted false, misleading, and/or inaccurate statements about the lawyer on online reviews and ask whether, consistent with Rules of Professional Conduct 1.6 and 1.18, they may publicly respond to these online reviews.

Rule of Professional Conduct 1.6(a) provides that “[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for . . . disclosures of information that is generally known” Rule of Professional Conduct 1.18(a) provides that “[a] lawyer who has had discussions in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues”

Lawyers are permitted to respond to online reviews posted by clients, former clients, or prospective clients, but that response cannot reveal “information relating to representation,”

except information that is “generally known,” unless the client consents to the release of such information.¹ See RPC 1.6(a). Hence, while lawyers may express general disagreement with the prospective client’s statements, they may not reveal confidential “information relating to the representation” unless the information is “generally known.”

Rule of Professional Conduct 1.6(d)(2) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes it necessary to “establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved.” Hence, pursuant to Rule of Professional Conduct 1.6(d)(2), a lawyer may disclose certain confidential information to the extent necessary to defend a discipline charge or legal malpractice action brought by the client, to pursue an action seeking fees from the client, or similar matters when the information is relevant to the defense or the claim.

The Committee finds that an informal “controversy” between a lawyer and a prospective or former client, arising from the posting of a negative online review, does not fall within the

¹ In the Official Comment to Rule of Professional Conduct 1.6, the Court adopted the comment in the Restatement (Third) of the Law Governing Lawyers on confidential information, which states:

Whether information is “generally known” depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known.

safe harbor of Rule of Professional Conduct 1.6(d)(2). Lawyers may not disclose confidential information merely to protect their online reputation in response to negative comments of this type.

The Committee reviewed ethics opinions from other jurisdictions on revealing information in response to online reviews. There is general agreement that a lawyer may not disclose client information in response to a former client's negative online review, though a lawyer may respond in a "proportionate and restrained" manner and state that the lawyer disagrees with the facts presented by the reviewer. See Pennsylvania Bar Association Formal Opinion 2014-200 (2014); New York State Bar Association Opinion 1032 (October 30, 2014); Bar Association of San Francisco Opinion 2014-1 (January 2014); The Professional Ethics Committee for the State Bar of Texas Opinion No. 662 (August 2016); Los Angeles County Bar Association Professional Responsibility and Ethics Committee Opinion No. 525 (December 6, 2012); Bar Association of Nassau County Committee on Professional Ethics Opinion No. 2016-01 (November 2015); Colorado Bar Association Opinion 136 (April 15, 2019); West Virginia Legal Ethics Opinion No. 2015-02 (September 22, 2015). See also In re Skinner, 758 S.E.2d 788 (Ga. 2014) (State Bar disciplined a lawyer who responded to online negative reviews from a client, providing personal and confidential information about the client).

The Pennsylvania Bar Association suggested that lawyers respond with this language: "A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events." Pennsylvania Bar Association Formal Opinion 2014-200 (2014). The Committee agrees that this language accords with New Jersey lawyers' ethical obligations.

Lastly, the Committee notes that lawyers' ethical obligations to maintain confidentiality under Rule of Professional Conduct 1.6 differs from their obligations to maintain lawyer-client privilege. As noted above, Rule of Professional Conduct 1.6 broadly requires lawyers to maintain confidentiality of "information relating to representation of a client." In contrast, the attorney-client privilege protects only "communications" made in confidence between a lawyer and his or her client. The privilege is part of the Rules of Evidence and applies to admissibility of information in court proceedings. The body of law concerning waiver of the evidentiary privilege is inapplicable to lawyers' ethical obligations under Rule of Professional Conduct 1.6.

In sum, lawyers may respond to negative online reviews posted by clients, former clients, or prospective clients by stating that they disagree with the facts presented by the reviewer, but they may not disclose "information relating to representation," except information that is "generally known."