NEGATIVE ONLINE REVIEWS

Preserving your legal reputation without violating our ethical duty

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Multidevice world
Social media use in the United States alone has increased by more than 900 percent since 2005.

Currently, 65 percent of Americans have at least one social media profile,

Over a billion people use Facebook each month,

Twitter has over 310 million active users (1.3 billion registered users) posting more than 125 billion tweets so far this year alone.
Does Social media effect your business?

My Cloud Score
People Business

BBB  Yelp  Goggle  AVVO  Facebook
My Cloud Score

#BadReviews
Negative Reviews
Destroys Reputation
Public Reprimand

“Suspension or Disbarment” is a real possibility


Ethical Considerations
Duty of Loyalty
Case Law

• *Flatt v Superior Court* (1994) 9 Cal.4th 275 - most fundamental quality of the attorney-client relationship is the absolute and complete fidelity owed by an attorney to his or her client, i.e., the duty of loyalty.

• *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811 - Even after termination of the representation, a lawyer may not act in a manner that will injure the former client with respect to the matter involved in the prior representation.
Case Law Cont’d

- *Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564 – “an attorney is forbidden to do either of two things after severing [the] relationship with a former client. [The attorney] may not do anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client] nor may [the attorney] at any time use against [the] former client knowledge or information acquired by virtue of the previous relationship.”
Application

• Given these principles, any public response by a lawyer to a former client’s online critique that undermines the former client’s legal matter could run afoul of the duty of loyalty.

• Lawyers must tread very carefully in making any public statements about a former client or the matter that the lawyer handled for the client.
• “If the matter previously handled for the client has not concluded, depending on the circumstances, it may be inappropriate for the attorney to provide any substantive response in the online forum, even one that does not disclose confidential information.”

• Otherwise, weigh:
  • (1) the status and nature of the ongoing proceedings;
  • (2) the content of the attorney’s contemplated response; and
  • (3) the negative impact the response could have on the ongoing proceedings.
Duty of Confidentiality
It is the duty of an attorney . . . To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

Rules of Prof. Conduct, rule 3-100(A): A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.
Scope of Duty

- Includes, but is not limited to, communications protected by the attorney-client privilege.

- *In re Soale* (1916) 31 Cal.App. 144 - also encompasses information that client requests be secret, or is likely detrimental or embarrassing to client.


- Survives termination of attorney-client relationship.
Application

- Since the duty of confidentiality survives termination of the attorney-client relationship, unauthorized disclosure by the lawyer of confidential information in responding to a former client’s online critique would run afoul of such duty.
Evidence Code § 958

• “There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.”

• Typically limited to situations involving a former client’s assertion of a legal claim against a lawyer, or a lawyer’s assertion of a fee claim against the former client.
• “There is no currently recognized self-defense exception in the context of third party actions against attorneys.”

• Evidentiary application of section 958 has been limited by the California courts to situations in which a claim is made by the client against the lawyer, or vice versa, or there is a client-initiated State Bar inquiry.

• No waiver of duty by client making comments.

• Consistent with ABA Formal Opn. No. 10-456 in analyzing Model Rule 1.6(b)(5).
• Addresses whether, and if so how, an attorney may respond to a former client’s adverse public comments about the attorney.

• Attorney may publicly respond to such comments as long as the rebuttal:
  • (1) does not disclose any confidential information;
  • (2) does not injure the former client in any matter involving the prior representation; and
  • (3) is proportionate and restrained.
Scope of Permissible Responses

• Consider resisting the urge to set the record straight and debunk inaccuracies in the client’s statements.

• Navigate duties of loyalty and confidentiality.

• Consider limiting the response to a comment that while the lawyer disagrees with various statements contained in the review, professional and ethical considerations prohibit the lawyer from responding more directly to the statements.
Preserving a Reputation

"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.”

Warren Buffett
“LAWER” JOHN RODRIGUEZ DANGEROUS, CORRUPT, CROOK!

Watch out for your souls!

“Attorney” JOHN RODRIGUEZ from San Diego is a real crook & dangerous lawyer! I hired him to represent me in criminal case. Real quick I find that he is cooperating with the prosecutor against me and I have all the evidence.

THIS SNITCH WAS A COP BEFORE HE BECAME A LAWYER. I am working hard to make sure his license will be taken from him and it can take some time. Mean time YOU OR FRIENDS please make sure to stay away from this danger!

I fell victim to this dangerous crook And I hope to prevent others from being his next victims.
John Rodriguez’s Client Review

Not profesional

John Rodriguez was (I fired him) my lawyer and represent me in criminal case. Most in the time he ignore me even after I pay him all he ask and didn't care of my case.

John R Rodriguez's response: "'Client Satisfaction" and keeping client issues confidential is very important to me. I am very committed to Client Satisfaction and giving them an aggressive representation. Please take a moment to review my company web page to learn more about my pledge to our clients. The State Bar has licensed me since 1997 with no complaints or disciplinary action. I invite this person or any unsatisfied client to please call us and I promise we will try to resolve your complaint. Web:

http://lawdefense.com"
How Should We Respond

Unethical tactics can lead to real-life consequences for lawyers

1. The Los Angeles County bar wrote that responses should be “proportionate and restrained.”

2. Response not exceed what is absolutely necessary to counter the information in the review.

3. Do not get defensive or directly refute what you perceive is wrong with the review.

4. A sincere and well-crafted response will have positive results.

5. Acknowledging the reviewer’s feelings, and letting him know that you care about the reviewer’s opinion and want to resolve the practice that lead to their dissatisfaction.
Takeaways
Thank you!

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