

Avvo is Recruiting – Can You Join the Team?

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Creighton/Omaha Bar Association Seminar on Ethics and Professionalism
April 13, 2018

1. Look-back: 2016 OBA survey “Law Practice in the 21st Century – Where are We Heading?”

- A single bar exam, multistate practice and licensing, online legal assistance, limited law licenses, multi-disciplinary firms, for-profit referral fees, outsourcing support services
 - See follow-up article, *Changing Times in the Legal Profession – a Survey of Practicing Lawyers*, 50 CREIGHTON L. REV. 443 (June 2017)
- Today we will focus on one of these topics – for-profit referral fees
 - This is subject of recent article, *For-Profit Lawyer Referral Services: The Ethical Challenge*, 21 THE NEBRASKA LAWYER 57 (Jan/Feb 2018)

2. For-profit referral fees – the Avvo model

2.1 Traditional non-profit referral services

- OBA Lawyer Referral Service & NSBA Find a Lawyer
 - Annual fee to be listed (\$125 OBA, \$100 NSBA)
 - OBA: staff matches client need with lawyer’s stated expertise
 - NSBA: client selects lawyer from computer-generated list
 - Client pays fee of \$0 to \$40/50 for initial 30-minute consultation
- Neither OBA nor NSBA takes a percentage of lawyer’s fee

2.2 How Avvo handles its referrals – Avvo Legal Services (2016)

- Lawyer joins list and specifies available services
- Avvo sets fees for all services
- Client does online search on Avvo website and gets lawyer list by practice area and geographical area – client selects lawyer
- Client requests services through Avvo and provides contact information and credit card number
- Avvo notifies lawyer, and lawyer calls client on phone number tracked by Avvo
- After phone call, Avvo charges client full fee and holds the funds
- At end of month, Avvo pays full fee to attorney
- Two days later, Avvo withdraws a “**marketing fee**” from lawyer’s operating bank account (not trust account)
- Marketing fee varies from 13% to 27% of lawyer’s fee

2.3 Nebraska Rules 5.4 and 7.2

- 5.4(a) – lawyer may not share fees with a nonlawyer, except for nonprofit organization that employs, retains, or recommends the lawyer
- 7.2(b) – lawyer may not give anything of value for recommending lawyer’s services, except (1) advertising costs, (2) fee to legal service plan, (3) fee to “not-for-profit or qualified lawyer referral service.”

2.4 Legal opinions in other states – lawyers may not pay Avvo’s “marketing fee”

- Ohio, South Carolina, Pennsylvania, New Jersey, New York, Virginia
- North Carolina is considered changing Rule 5.4(a) to permit Avvo’s fees

2.5 Avvo’s arguments

- (a) Not a referral service
- (b) No fee-splitting, no payment for “recommending”
- (c) Marketing fee is advertising cost
- (d) Fee reasonably reflects Avvo’s efforts
- (e) Fee is similar to credit card fee
- (f) Fee is similar to participating in Groupon
- (g) No Rule 5.4 concern if Avvo does not interfere with attorney’s work
- (h) Avvo fee is protected by First Amendment
- (i) Avvo is assisting underserved constituencies to connect with legal system

2.6 Other Rules that pose problems for Avvo

- 1.15 – handling of client funds
- 2.1 and 5.4(c) – independent professional judgment
- 5.3(c) – responsibility for conduct of nonlawyer assistants
- 8.4(a) – misconduct through acts of another
- 1.16(d) – duty to refund advance payment of fees
- 1.2(c) – limiting scope of representation
- 1.6(a) – confidentiality

- Sources – see Pennsylvania Bar Ass’n Formal Opinion 2016-200 (Sep. 2016), Virginia State Bar Legal Ethics Opinion 1885 (Oct. 2017)

2.7 Nebraska is studying the issue

2.8 2016 OBA survey: May lawyers pay referral fees to for-profit companies?

- No, such fees should be limited to bar association or nonprofit referral agency (49%)
- Yes, but only if fees *not* based on number of referred cases or size of legal fee (30%)
- Yes, allow such fees after the referral and based on size of legal fee earned (12%)
- Yes, there should be no restrictions on referral fees to anyone (9%)

3. **Online legal assistance** – a topic for another day – Legal Zoom, Rocket Lawyer

- These have generally been accepted by ethics authorities