



## Legal Ethics Committee Concludes that Lawyers May Not Participate In Avvo Legal Services

ON SEPTEMBER 13, 2017, the Standing Committee on Legal Ethics voted to present Legal Ethics Opinion 1885 (LEO 1885) to the Council of the Virginia State Bar (VSB) for approval at its next meeting on October 27, 2017. If Council approves the opinion, the VSB will petition the Supreme Court of Virginia to adopt LEO 1885. LEO 1885 holds that a lawyer may not pay the current marketing fee to participate in Avvo Legal Services (ALS) because the marketing fee payment is an improper sharing of legal fees with a nonlawyer entity and an improper payment for recommendation of employment. See Virginia Rules of Professional Conduct, Rules 5.4(a) and Rule 7.3(d). Although the opinion does not mention ALS anywhere, the business model described in the opinion obviously applies to ALS.

On March 23, 2017, the VSB published a proposed draft of LEO 1885 for comment. At its next meeting on May 17, 2017, after discussion of some of the comments received, the committee voted not to submit the proposed LEO to Council at its June meeting, in order to study further the issues raised by the comments. The current proposed draft differs very little from the draft previously published for comment. So far, five states have issued ethics opinions<sup>1</sup> holding that lawyer participation in Avvo Legal Services is unethical and violates their Rules of Professional Conduct: Ohio, South Carolina, Pennsylvania, New Jersey, and New York. One state, North Carolina, has issued a proposed

opinion for comment going the other direction, holding that lawyers may participate in an online platform for finding and employing lawyers if certain requirements are met.<sup>2</sup>

Avvo Legal Services is operated by a privately owned corporation that describes itself as an online legal services marketplace. ALS disputes the characterization in some ethics opinions that it is a “lawyer referral service.” Proposed LEO 1885 does not reach that conclusion nor is it necessary, although Virginia lawyers currently may not participate in a for-profit lawyer referral service. Rule 7.3(d)(2).

ALS allows a consumer to choose a fixed-fee, limited-scope service that could include, for example, legal advice for matters such as immigration, divorce, custody, employment, real estate, landlord-tenant; document review services; document preparation (wills, trusts, powers of attorney lease agreements, eviction notices, employment contracts, contracts and documents for starting up a business); or start to finish support for legal services such as, for example, an uncontested divorce, which ALS advertises for \$995. Once the customer has chosen a legal service, she selects a lawyer in the selected area of practice and locale, purchases the legal service or elects to “have a lawyer call me now.” Once the consumer has selected a lawyer (or opted for “have a lawyer call me now”), the consumer clicks on a button that says “buy now,” makes a credit card payment for the desired legal service and the lawyer then contacts the client.

Avvo insists that it does not “recommend” the participating lawyer but rather allows the consumer to choose from a list of lawyers that offer the desired legal service in the particular location. At the beginning of each month, Avvo pays each participating lawyer all of the legal fees generated by that lawyer in the preceding month and separately charges a “marketing fee,” the amount of which is tethered to the specific fixed fee charged for each type of legal service. As the price of the legal service increases, so does the “marketing fee.” The range starts as low as a \$10 marketing fee for a \$39 service (i.e., a 15 minute telephone consult) up to a \$400 marketing fee for a \$2,995 service. The marketing fee for the uncontested divorce priced at \$995, is \$200.

Proposed LEO 1885 concludes that the business model used by ALS is one in which lawyers are ceding control of the delivery of legal services to a nonlawyer because the company sets the legal fees, not the lawyer, and the company collects and holds the legal fees and disburses earned fees to the participating lawyer after the service is completed. In so doing, the participating lawyer is circumventing Rule 1.15’s requirements to hold advance fees in the lawyer’s trust account. The Rules of Conduct also require that the lawyer and the client agree on the scope of the representation. Rule 1.2(a). A third party intermediary, such as ALS, interferes with that process by prescribing a legal service that may not be suited to the consumer’s needs and the fee for

which may not be reasonable. See Rule 1.5 (a lawyer's fee shall be reasonable and adequately explained to the client). Some are concerned whether the ALS website informs a consumer accurately of all the necessary expenses and fees associated with all of the fixed-fee limited-scope services it advertises on its website. Lawyers have an obligation to advertise and explain their fees accurately and not make any misleading statements about the fees they charge for legal services. Rule 7.1.

Under the current rules, the "marketing fee" charged by ALS cannot be construed as a reasonable and usual payment for advertising and marketing, but rather an improper sharing of legal fees with a nonlawyer and an improper payment for a recommendation of

employment. Nevertheless, the questions and concerns raised by ALS have generated an extensive and vigorous policy debate over whether these Rules of Professional Conduct unreasonably stifle innovative methods of delivering legal services, and that alternative business methods such as ALS fill a legal need or "gap" that more traditional methods of marketing and providing legal services have left unfulfilled. On the other hand, a business model such as ALS raises traditional and fundamental concerns that nonlawyer entities should not control or manage the delivery of legal services or interfere with the lawyer-client relationship and a lawyer's professional judgment and independence. See Cmt. [1], Rule 5.4.

## Endnotes:

- 1 Supreme Court of Ohio, Bd. Of Prof. Conduct, Ethics Op. 2016-3 (June 3, 2016); South Carolina Bar Ethics Op. 16-06 (July 14, 2016; Pennsylvania Bar Assoc. Legal Ethics & Prof. Resp. Comm. Op. 2016-200 (September 2016). A joint opinion issued by three committees appointed by the Supreme Court of New Jersey, ACPE Joint Opinion 732 (June 21, 2017) accompanied by an alert to all bar members, warned that it is impermissible for lawyers to participate in Avvo Legal Services, Legal Zoom, Rocket Lawyer, and other similar online companies. The latest opinion issued by the New York State Bar Association on August 8, 2017 holds that a lawyer may not pay the current marketing fee to Avvo Legal Services without violating New York's Rules of Professional Conduct. New York State Bar Ass'n Comm. on Prof. Ethics, Op. 1132 (August 8, 2017)
- 2 North Carolina State Bar. Proposed 2017 Formal Eth. Op 6 (July 27, 2017)