

Clients as GATEKEEPERS

By Ken Moscarel

Last summer, a new, venture capital-backed Internet company in Seattle, Avvo, launched its Web site and was promptly sued in federal court. Avvo computes and publicizes "ratings" for private practice attorneys across the country. The plaintiffs in the lawsuit were prominent Seattle attorneys who were upset with the

the question of how attorneys should respond in a post-Avvo world. By enabling and empowering clients to sing the praises of, or vent frustrations with, their attorneys in full public view, the Internet may diminish the ability of attorneys to control how they are perceived in the broad, faceless marketplace. Their reputations could be based in part on their actual law practice credentials and achievements and

The Internet may diminish the ability of attorneys to control how they are perceived in the broad, faceless marketplace.

low ratings assigned to them by Avvo. Months later, after a firestorm of publicity, the federal court dismissed the lawsuit on First Amendment "protected opinion" grounds.

Overlooked in the litigation surrounding Avvo's attorney ratings, however, was the role of client-generated content on Avvo's Web site. Not only does Avvo allow smaller clients, such

as consumers and individuals, to search for and vet an attorney before hiring him or her, but it also allows clients to post comments and reviews about their experiences with the attorneys they hire. Sites like Avvo eventually may become not just a portal for starting the attorney search process itself but also an online repository of all kinds of client-generated attorney reviews, both good and bad, for the entire world to read. Furthermore, there appears to be nothing that practicing attorneys can do to stop that from happening.

Thus far, Avvo has marketed itself only to smaller clients, yet it is not a great leap to imagine some client-review site one day offering in-house corporate counsel a similar opportunity to post online reviews of the law firms whom their companies typically hire. Such in-house critiques, either anonymous or for attribution, would make an interesting adjunct to the formal request for proposal and hiring competitions that large corporations employ with their outside counsel. As we have so often heard, everything on the Internet is fair game for public consumption now.

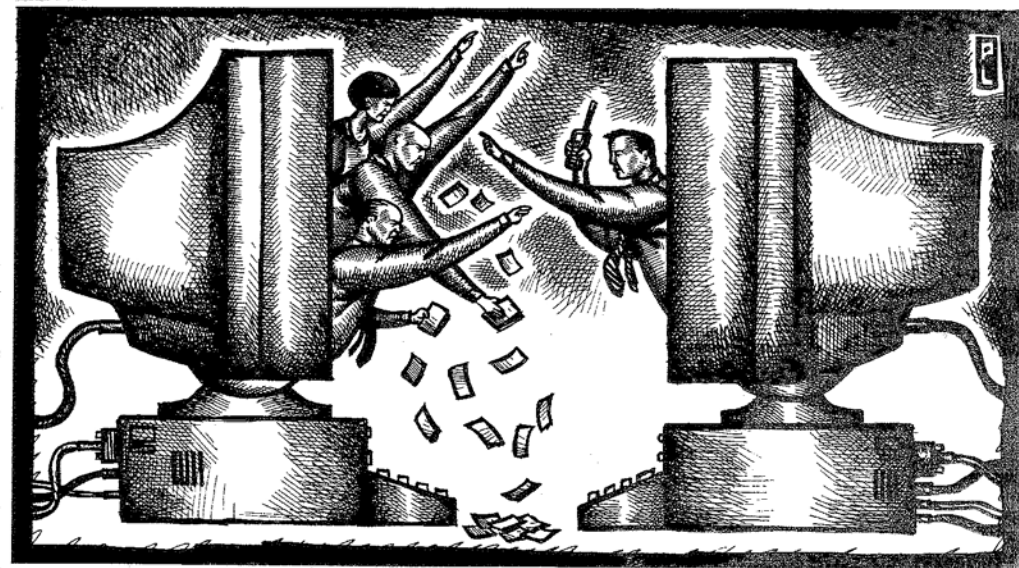
A recent article published in Internet Law and Strategy addressed

in part on what clients are saying about them online. It could end up being a combination of fact and fiction. The legal profession has not begun to feel the full ramifications of this paradigm shift and won't for several more years. But it's coming.

I recently interviewed Mark Britton, co-founder and CEO of Avvo. Britton was formerly general counsel of Expedia and later a top executive at IAC, Barry Diller's company. Before going in-house, Britton was a partner-elect at a major law firm. He has bona fide blue-chip legal credentials. He does not have the demeanor of a "firebrand" agent of change. Yet he clearly understands Avvo's potential. No more will attorney ratings be confined simply to the traditional peer-to-peer variety popularized by Martindale-Hubbell or SuperLawyers. Clients themselves will begin to weigh in through client-review sites.

Interestingly, Britton told me that 80 percent of the attorney reviews posted by clients on Avvo are positive. At first blush, that statistic would seem to quell fears among private practice attorneys that client-review sites will become a mere venting ground for malcontents who have nothing good to say about their attorneys. Certainly, that is a legitimate concern for attorneys, because negative news seems to draw an audience, and positive news is ignored.

Even negative attorney reviews by clients online can sometimes be converted into positive ones, too, with some extra effort by the attorneys involved. Britton told me that some unhappy clients on



Avvo initially did not understand what their attorneys had done on their cases and why. Those clients became frustrated and posted negative reviews. Then, after the attorneys took the time to fully explain the circumstances to their clients, the clients felt more satisfied and rewrote their reviews into favorable ones. Many practicing attorneys probably have experienced similar episodes in dealing with their own clients, irrespective of the Internet. When clients become frustrated, they want to vent.

However, the bad news in Britton's statistic is that the remaining two of 10 client reviews, or 20 percent, may be indicative of some client satisfaction problems that need to be addressed by the attorneys involved. Even after taking into account the true malcontents who are lurking out there in the blogosphere, attorneys who get evaluated on client-review sites need to be prepared to ask themselves, What, if anything, can I learn from any negative comments?

That may not be the easiest thing for attorneys to do, especially litigators, who comprise the majority of private practice attorneys. Their first, natural inclination may be to dismiss negative reviews as aberrations. If client-review sites allow attorneys to post rebuttal comments to "explain away" negative reviews, attorneys may avail themselves of that feature. Avvo has that. Yet in the end, attorneys will not control those online sites, and they will

have to live with what is posted on them. Federal law exempts a Web site from liability for the content that users post on that site.

Perhaps the best response in the long run for attorneys who market to the kinds of clients served by those client-review sites will be to focus more on client satisfaction than ever before. Attorneys will need to keep handling and treating clients in the best manner possible. Those attorneys feeling worn down by the 24/7 demands of law practice may wonder how they can give any more of themselves to make clients happy. Yet if they don't, even simple client irritations like not getting phone calls returned promptly by their attorneys could find their way onto the Web. That kind of information might give pause to prospective new clients searching for an attorney online.

The flip side of this coming development in the legal marketplace is that clients themselves, particularly smaller ones, need to better understand not only what their attorneys can and can't do for them, especially in handling litigation, but also how much legal services really cost. I have seen clients sometimes set themselves up for frustration and disappointment by having unrealistic expectations of their attorneys.

The emergence of client-review sites will affect not only attorney reputations but also probably competition among attorneys. Right

now, attorneys compete in the public arena, among other ways, by touting their SuperLawyer, Best Lawyer or comparable peer rankings on their own law firm Web sites and in their marketing materials. Regardless of what attorneys may think about the validity of such peer rankings, they sound impressive to clients. In the future, client-generated comments and attorney reviews will become part of that mix.

If client-review sites succeed in capturing large amounts of Internet client traffic in coming years, they will become in effect new "gatekeepers" for the attorney search process, at least among those clients who are inclined to use them for that purpose. At that point, private practice attorneys will be wise to start taking those sites seriously and looking for ways to leverage the features on those sites to their advantage in the marketplace.

When that day arrives, attorneys will want to present themselves as attractively as possible on client-review sites compared to their competitors. That means having the best possible ratings, profiles and performance reviews for clients to find. Much has been written in the legal media in the past 10 years about how law firms have fewer opportunities these days to differentiate themselves. In light of that, published client satisfaction will become an important metric for differentiation from competitors. In the Internet age, that metric will apply as much to small law firms and

sole practitioners as to large firms.

For their part, client-review sites will have a vested interest in maintaining credibility about the contents of their sites, including client-generated reviews and attorney ratings, because those sites will, in turn, be critiqued by bloggers and other members of the media. No one is immune from scrutiny on the Internet anymore. Client-review sites probably will weed out client-generated reviews that are deemed too derogatory or defamatory toward attorneys.

Attorneys who doubt the coming impact of client-review sites should be aware that client reviews and attorney rankings from such sites, whether accurate or not, are "leaking" onto search engine listings like Google. Avvo is in the process of collecting state bar records on every attorney from every state around the country. Sooner or later, every licensed attorney in the U.S. will appear online in Avvo's database.

Bottom line, the "disruptive" power of the Internet finally is reaching the shores of the legal profession. The public reviews and rates a wide range of other products and services in the broad marketplace using the Web. It appears that the legal profession's turn is coming.

Ken Moscarel is a lawyer and an attorney fee expert witness in Pasadena. He frequently testifies for corporate policyholders and major law firms in large, complex cases.