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Advertising and Solicitation

Florida Lets Lawyers Use Avvo Ratings; New Jersey Releases Lawyer Data to Avvo

Changing its position, the Florida Bar's advertising committee April 8 decided that lawyers in that state may advertise their ratings issued by the Avvo attorney rating service.

The committee had voted in January to preclude Florida attorneys from advertising their Avvo rating, but reversed the vote after a conference call with Avvo representatives.

Avvo Inc. publishes a lawyer rating system on www.avvo.com, ranking lawyers on a scale from 1 to 10. Avvo now rates lawyers in the District of Columbia and 13 states, covering approximately 65 percent of licensed attorneys across the country, according to an Avvo press release dated April 30.

In a separate development favorable to Avvo, the New Jersey Supreme Court March 27 changed course and gave the company access to records so that it can rate lawyers in that state. New Jersey was the first state to balk at releasing attorney information to Avvo, founder Mark Britton told BNA.

Florida lawyers are now rated on avvo.com, but Avvo has not yet published its ratings for New Jersey lawyers. In New Jersey, a petition for review that involves the subject of professional ratings is pending before the New Jersey Supreme Court, in connection with a controversial ethics opinion that was issued by in 2006. A special master is expected to issue a report in the matter soon.

Avvo has already survived a lawsuit challenging its ratings. Late last year, a federal district court in Washington held that the First Amendment protects Avvo from a legal challenge by rated lawyers. *Browne v. Avvo Inc.*, 525 F. Supp.2d 1249, 24 Law. Man. Prof. Conduct 4 (W.D. Wash. 2007).

Volte-Face in Florida. On Jan. 18, the Florida Bar's Standing Committee on Advertising voted 3-0 to prohibit Florida lawyers from advertising their Avvo ratings because, according to minutes of the meeting, "the rating method lacks objectivity and the numeric rating system is qualitatively different from rating systems that evaluate attorney[s] based on a broad range of information."

At a meeting on April 8, the committee revisited the issue. "The Standing Committee on Advertising voted 3-1 to reconsider its previous decision and determined that Florida attorneys can advertise their AVVO ratings," Ethics Counsel Elizabeth C. Tarbert stated in an April 14 letter to Avvo.

Tarbert told BNA that after the negative vote, Florida bar staff asked for reconsideration, and Avvo representatives made a presentation to the committee. Britton and Joshua M. King, Avvo's general counsel, joined the meeting by conference call and explained the rating system.

Tarbert's letter included a note of caution. It related that at the meeting, the committee stated that, depending on how the ratings are characterized in a lawyer's advertisement, "various other rule violations could be triggered such as statements characterizing the quality of legal services."

Client Reviews. Tarbert told BNA that among other concerns about the rating process, the committee "had and still has concerns about the issue of testimonials appearing on the Avvo website in the form of reviews by clients and others, which was a major concern of the committee, as testimonials are prohibited under Florida Bar advertising rules." Committee members were concerned that the reviews were capable of manipulation, both good and bad, she explained.

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FLORIDA BAR ETHICS COUNSEL ELIZABETH C. TARBERT

Avvo representatives indicated during the conference call, Tarbert said, that the client reviews do not affect a lawyer's Avvo rating, although the reviews are posted on the Avvo Web site.

Britton told BNA that during the conference call with the advertising committee, he and King explained how the Avvo rating service works and compared it with other lawyer rating systems. The lone vote on the com-

mittee against allowing lawyers to advertise their ratings was cast by a nonlawyer, he noted.

On the issue of objectivity, Britton said that although any rating is an opinion, "Avvo ratings are highly unbiased." Avvo collects information from state bars and uses that information with Web crawlers to garner more data, which are aggregated into a profile for every licensed lawyer. Avvo allows clients and peers to submit reviews, and offers lawyers the opportunity to "claim" their Avvo profile and submit additional information, including personal details that Avvo calls "About Me."

"Any rating system is inherently subjective," but "Avvo is a better place to start" for those in search of counsel, Britton said. "In our system, not everyone is superb."

New Jersey Releases Data. In New Jersey, King filed March 11 a petition for access to public court records pertaining to attorneys. According to the petition and attached exhibits, the clerk of the New Jersey Supreme Court had refused to release data about attorneys to Avvo even though the court made a practice of giving out licensing status, contact information, and disciplinary history to individual callers who inquire about a particular named attorney.

Avvo's petition stated that "every one of the 29 other states Avvo has contacted make attorney licensing data available to the public either on-line, in electronic form on CD, or both."

A court spokeswoman, Winnie Comfort, told BNA that the court treated the filing as an informal petition rather than a formal pleading. On March 27, the court sent Avvo a CD-ROM with the attorney identification number, names, dates of admission, and bona fide office address and phone number for 66,443 active New Jersey lawyers, Comfort said.

The March 27 letter to Avvo said that "The Court decided to relax the confidentiality provision of Rule 1:20-1(c) (Annual Registration Statement)" to provide Avvo

with information regarding all New Jersey lawyers carried as "active" in its database.

Britton told BNA that Avvo has not been forced to prod other states to release public information on attorneys. "We found that most bars are happy to work with us," he said.

Report Expected Soon. The subject of attorney rating systems moved into the spotlight in July 2006, when the New Jersey Supreme Court's Committee on Attorney Advertising issued its Opinion 39, which found it misleading and therefore unethical for New Jersey lawyers to advertise their selection as "Super Lawyers" or "Best Lawyers."

A group of attorneys, along with *Super Lawyers* as a proposed intervenor, swiftly filed a petition asking the New Jersey Supreme Court to review Op. 39. In August 2006, the court granted a stay of the opinion until further order. See 23 Law. Man. Prof. Conduct 89.

The court subsequently appointed a special master to develop a factual record in the case, and a minitrial was held before him this past fall and winter, according to Jean-David Barnea of Heller Ehrman LLP. Heller Ehrman, along with two other law firms, is representing Key Professional Media Inc., the publisher of *Super Lawyers*, as well as six individual petitioners who are New Jersey lawyers affected by Op. 39.

The latest event in the Op. 39 case was the parties' submissions to the special master of proposed findings of fact and conclusions of law, as well as written summations on April 1. Pursuant to the supreme court's order, the special master's report is due within 45 days of the completion of the hearing, and then the case presumably will return to the New Jersey Supreme Court for further proceedings, Barnea told BNA.

The Committee on Attorney Advertising has continued to defend Op. 39 throughout the proceeding, Barnea said. In addition to *Super Lawyers* and *Best Lawyers*, Martindale Hubbell has also participated in the proceeding. Avvo has not taken part, Britton told BNA.

BY JOAN C. ROGERS