

## Can lawyers respond to negative online reviews?

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Lawyers rely on referrals from existing and former clients to obtain new business and, of course, always run the risk that a client who had a bad experience will comment negatively on the experience to that person's immediate circle.

In the world of the internet, however, a negative online review from a client can reach a vast number of potential clients, for an unlimited period of time. Due to the proliferation of lawyer review portals like Avvo, and more generic review sites like Yelp, lawyers frequently question whether and how they should respond to a negative online review from a disgruntled client.

The short answer is yes, a lawyer can respond to a negative online review, just like any other professional or service provider.

The longer answer is that a lawyer may have more to lose than gain by posting such a response, unless the response is carefully calibrated to appear thoughtful and professional, and drafted in a way that avoids running afoul of the Rules of Professional Conduct.

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In considering whether to respond to an online review, you should first assess whether the review was in fact posted by a former client. If the review was posted by another lawyer, or by an opposing party, or by a friend or family member of the former client, the web site administrator may agree to flag it or take it down.

If the review was posted by a former client, do not fire off a hasty and angry response. Wait at least a day after first reading the negative review to take any action. When you have had a chance to cool down, think about whether responding to the online post is likely to bring more visibility to the negative review.

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### Picture your response attached to a complaint to bar counsel; would you be proud of its tone and content?

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Run a search for your own name on Avvo, Yelp or any other review sites on which you are likely to appear. If there are no signs of the negative review, and it appears to have had no effect on your overall rating, you may be best off just leaving it alone.

If the negative review comes as a surprise, it may be helpful to contact the client and explore what went wrong, and whether a simple apology for any misunderstanding or miscommunication will persuade the client to take down the review. If you and the former client parted on bad terms, however, that is unlikely to be successful and may further inflame the situation.

Let's assume that you decide that the negative review is harmful and that a response is warranted. Above all, your response

should be thoughtful and professional. Have a trusted friend or colleague review the response before you post it. If your firm has a general counsel or risk management partner, that person should review your proposed response. Picture the response attached to a complaint to bar counsel; would you be proud of its tone and content?

More importantly, in drafting your response, you must be conscious of your duty to avoid disclosing any confidential information. Massachusetts Rules of Professional Conduct 1.6(a) and 1.9(c)(2) prohibit a lawyer from revealing confidential information relating to the representation of a former client without the client's informed consent.

The definition of "confidential information" is broad enough to implicate most of the information that would be shared by a client during a representation, and it includes information that is available in a public record so long as that information is not "generally known." Rule 1.6, cmt. 3A.

Moreover, while a lawyer may disclose confidential information to the extent necessary to respond to a client's allegations in a civil complaint or other type of proceeding, those state and city bar associations that have considered the issue uniformly have concluded that this exception does not apply in the context of a negative online review. See Texas State Bar Ethics Op. 662 (2016); New York State Bar Ass'n Ethics Op. 1032 (2014);

Pennsylvania Bar Ass'n Ethics Op. 2014-200; San Francisco Bar Ass'n Ethics Op. 2014-1; Los Angeles County Bar Ass'n Ethics Op. 525 (2012).

Thus, it would generally be impermissible to refute a client's online complaint with specific reference to facts that you learned during the representation, or any sort of comment about the merits of the client's case.

In at least one reported case, a Massachusetts attorney was disciplined for responding to a negative online review with a posting of his own, making reference to the former client's substance abuse and disclosing other highly confidential information about the representation. Admonition 09-18, 25 Mass. Atty. Disc. R. 685 (2009).

So what is a lawyer to do? If a response is warranted, make sure it is proportional and restrained, and if possible, use it as an opportunity to demonstrate your empathy and good judgment. For example:

"Joe — I regret that you did not call me to discuss these issues in person. As a lawyer, I am bound by a code of conduct that prevents me from responding in a point-by-point fashion in this forum, but I can say that I do not believe your post presents a fair and accurate picture of events. I hope you will call me so that we can discuss the matter further."

Both the Pennsylvania and Texas bar ethics committees have expressed approval of that type of response. For the lawyer whose work has been impugned, that kind of neutral response, or no response at all, may not feel as satisfying as launching a specific and blistering rebuttal, but it certainly will prove less damaging in the long run.