

Scruples

RESPONDING TO NEGATIVE ONLINE REVIEWS

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“Can you review this for me?” Paradox asked, handing Ethox a short, typed paragraph.

Ethox surveyed the sentences with a knowing smile. “Wow. You must really be angry. What’s going on?”

“Our law firm handled an employment discrimination case for a client, Dee,” Paradox growled. “Dee set us up for failure. The employer kept poking holes in Dee’s story. Then Dee became totally uncooperative.

“Finally, we settled the case. We thought it was a good settlement. At first, Dee agreed. Then Dee turned on us, tried to back out of the settlement, and—when we advised that wasn’t possible—demanded we waive our fee.

“We refused,” Paradox wrapped up the story. “Dee took us to fee arbitration and we won. Then Dee posted negative reviews on a bunch of websites. Most of what Dee is saying is total garbage.”

“So you want to post this paragraph to counter Dee’s stories and protect our reputation?” Ethox asked.

“Precisely.” Paradox was confident. “No one should be able to treat us like Dee has.”

“Your response uses client information learned while representing Dee,” Ethox warned.

“Yes,” Paradox was adamant. “I want everyone to know the truth, that we did a good job.”

“But under ABA Model Rule 1.6(a), lawyers owe a duty of confidentiality to all clients, even dishonest and frustrating clients like Dee,” Ethox reminded Paradox.

“The ethics rules permit us to use client-related information to defend ourselves from attack, right?” Paradox countered.

“Not exactly,” Ethox said. “ABA Model Rule 1.6(b)(5) creates a self-defense exception to the duty of confidentiality. But that exception is quite limited. It allows lawyers to disclose client confidences only to the extent reasonably necessary, and only in three circumstances.

“First, lawyers can disclose client-related information to ‘establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client.’ Second, lawyers can disclose client information to ‘establish a defense to a criminal charge or civil claim against the lawyer

based upon conduct in which the client was involved.’ And, third, lawyers may ‘respond to allegations in any proceeding concerning the lawyer’s representation of the client.’”

“Right,” Paradox interjected. “We are defending ourselves in a controversy with our client, and this concerns our representation of our client, Dee.”

“You are reading the exceptions too broadly,” Ethox warned. “The references to ‘claim,’ ‘defense,’ and ‘proceeding’ are all intended to limit the right of reply to formal court proceedings, not online arguments.”

“Well, we could sue,” Paradox suggested.

“It’s probably not worth it,” Ethox consoled Paradox. “Opinions do not give rise to defamation. Plus, Dee has little money, right?” Seeing Paradox nod, Ethox continued, “And most websites are going to be protected from liability because they are just posting Dee’s comments.

“Also, we need to beware the ‘Streisand effect,’” Ethox cautioned. “That’s when an attempt to remove negative information or punish the source unintentionally causes greater distribution of the negative information. Most people don’t know about Dee’s bad reviews now. But if we file suit, a lot more people are going to hear about it—and think we must be jerks for filing a lawsuit against an unhappy former client.”

“So there’s nothing we can do?” Paradox seemed perplexed.

“No, there are two things we can do,” Ethox offered. “First, we can encourage clients who like our work to post good reviews about our firm and its services. Hopefully, good reviews will drown out Dee’s bad reviews.

“Second,” Ethox continued, “some ethics opinions advise that a lawyer may post a response, but the response should be thoughtful and restrained, not disclose any client confidences, and not injure the client with regard to the former representation.

“I hope you feel better typing out everything that frustrated you about Dee, but I don’t think you can post this.”

“You’re right. I think I’ll go call some former clients . . . and ask them to write candid, positive reviews,” Paradox sighed. ■