



NEW YORK STATE BAR ASSOCIATION V AVVO: WILL THE UBERIZATION OF IMMIGRATION LAW PRACTICE OVERCOME OUTDATED ADVERTISING RULES GOVERNING LAWYERS

Posted on December 11, 2017 by Cyrus Mehta

Companies like [Avvo](#) are using their marketing platform to provide more opportunities for younger and solo lawyers to gain clients and thus level the playing field. Avvo Legal Services seeks to disrupt the traditional legal model where a client seeks out a lawyer based on his or her reputation rather than on a web-based network, and the lawyer sets the fee. One of the immigration services Avvo offers is a “family based green card” for \$2995 that involves preparing and filing the requisite forms, but no representation at an adjustment of status interview or to respond to a Request for Evidence. The consumer pays \$2995 to Avvo directly, but may choose the attorney in the Avvo network that they want to work with. That attorney has 24 hours to directly contact the consumer/client, and do the work as they would any other client. When the work is completed, Avvo releases the funds to the attorney, and in a separate transaction withdraws from the attorney’s account a \$400 marketing fee.

Under this unique business model, which I have termed as the Uberization of immigration practice in a [prior blog](#), the immigration attorney is contracting with Avvo as a vendor to gain clients and business through its superior marketing reach. Avvo views this new service as benefitting both lawyers and clients. The lawyer will rely on Avvo to get business and also get paid easily, without keeping track of billable hours or worrying about trust accounts. It would also help lawyers build their practices as it would lead to further work by the same client, according to Avvo. The client is also benefitted as s/he will get access to a legal service that is both affordable and fixed, and will also

understand exactly what legal service is being purchased. Avvo Legal Service should be distinguished from the “Avvo rating” a lawyer may receive, which is ethically permissible.

The question is whether paying the marketing fee to Avvo is ethically impermissible when an attorney receives a matter through the Avvo legal services platform. The New York State Bar Association issued [Ethics Opinion 1132](#) holding that a lawyer may not pay the current marketing fee to participate in Avvo Legal Services because the fee includes an improper payment for a recommendation in violation of New York Rule 7.2(a). Under 7.2(a), “a lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client...” At issue for the NYSBA Committee on Professional Ethics was whether the lawyer is paying the fee to obtain marketing and advertising services from Avvo or whether it was giving Avvo something of value to recommend the lawyer to clients. The former scenario would not be a violation of Rule 7.2(a) while the latter would be. The NYSBA, in concluding that paying a marketing fee violated Rule 7.2(a), analyzed Avvo’s business model in great detail. Avvo gives each lawyer a rating from a scale of 1 to 10. While Avvo never describes a rating as a recommendation, the NYSBA opined that the Avvo website extols the benefits of being able to work with highly-rated lawyers. While a lawyer is not precluded from advertising bona fide professional ratings generated by third parties in advertisements, Avvo is not a third party, according to the NYSBA, as it benefits financially if potential clients hire the lawyers rated by Avvo. The NYSBA’s conclusion was bolstered by Avvo’s satisfaction guarantee by which the client is guaranteed a refund of the full amount, even Avvo’s marketing fee, if the client is not satisfied. “This guarantee contributes to the impression that Avvo is ‘recommending’ the lawyers on its service because it stands behind them to the extent of refunding payment if the client is not satisfied,” according to the NYSBA.

While the NYSBA dwelt a lot on what constitutes a recommendation under Rule 7.2(a), it skirted discussing whether the Avvo service would in reality compromise the attorney’s ability to competently represent the client. That analysis is more relevant than whether there was a violation of an archaic advertising rule. There is a [growing recognition that the advertising rules governing lawyers are outdated](#) and need an update in light of the use of social

media by attorneys to both market and communicate with clients. Many immigration lawyers, firms, and non-profits providing legal services to indigent clients rely on social media such as LinkedIn, Twitter and Facebook. They use social media not just for advertising but also as part of advocacy efforts to raise awareness on immigration issues. If any message disseminated on social media constitutes an attorney advertisement, [it triggers additional requirements that may be impossible to comply with in a social media post](#). Reform of the advertising rules should focus primarily on lawyer communications that are false or misleading. All other requirements in an advertisement such as requiring the words “Attorney Advertising” and requiring the name, principal law office address and telephone number of the law firm are outdated in an era dominated by tweets.

Rather than focus on the advertising rules that are outdated, including splitting hairs on what constituted a recommendation under Rule 7.2(a), the NYSBA could have opined on other aspects of the Avvo service that limits both the competence and independence of the attorney.

The NYSBA highlighted three salient issues, which it said it was not deciding on:

- The fact that Avvo sets the amount of the legal fee for each service raises questions about whether a participating lawyer can deliver competent legal services for Avvo’s chosen price and whether a lawyer is allowing Avvo to interfere in the lawyer’s independent professional judgment regarding how much time to spend on a matter.
- The marketing fee raises questions about whether lawyers who participate in Avvo Legal Services are improperly sharing legal fees with a nonlawyer.
- Avvo’s satisfaction guarantee raises questions about confidentiality. If clients call Avvo to complain, does the “documentation” that Avvo asks for or receives include “confidential information” within the meaning of Rule 1.6(a)? How does Avvo avoid receiving confidential information when evaluating whether to refund the legal fee a client has paid through Avvo?

Even if we leave alone the concerns of fee splitting with a non-lawyer, a “family - based green card” is not like ordering a ride through Uber, where you know that any driver in a functioning vehicle and GPS, will take you to your destination. But unlike an Uber car ride, there are many traps and pitfalls in family -based immigration practice, even when it appears relatively straight

forward. One's eligibility for adjustment of status based on a marriage to a US citizen spouse is also subject to variables. If the client's arrival in the US was not through a straight forward inspection at a port of entry, then the case immediately becomes more complex. If the client is potentially inadmissible for a host of reasons, including claiming to be a US citizen when seeking employment many years ago, that too would throw the Avvo \$2,995 family based green card package out of the window. The client will disappointingly realize that the Avvo family green card package and price is virtually meaningless, and would rather seek out an attorney who has the reputation and expertise to handle difficult family -based immigration cases. There are other variations even if the client appears prima facie eligible to adjust status. For example, the marriage may have been bona fide at its inception, but the spouses are quarreling and living separately, and still desire to cooperate on the green card for the sake of the children. This too requires the agile immigration attorney to appropriately advocate for the client by educating and allaying the suspicion of malevolent intent by a USCIS examiner that the marriage presently under consideration not be viable so long as it was bona fide at its inception. *See Matter of Boromand*, 17 I&N Dec. 450 (BIA 1980); *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980).

There are other problematic aspects of immigration legal services provided by Avvo. It offers a 15-minute immigration advice session for \$39. After 15 minutes, the telephone line gets cut off. It is difficult to provide a comprehensive consultation on an immigration law issue in 15 minutes. While the client may have the option of following up with the attorney, the very fact that Avvo suggests that a 15-minute consultation can satisfy the client's need in a complex area of the law may be misleading. Avvo also provides a service where an attorney will review immigration applications that the client has prepared pro se, but that is fraught with dangers and pitfalls as referenced in the marriage example preceding. 8 CFR 1003.102(t) provides for sanction of an immigration practitioner who fails to submit a Notice of Entry of Appearance as Attorney or Representative who has engaged in practice or preparation. Under the terms of the Avvo arrangement, since the client will be filing pro se after the attorney reviews it, the attorney will not be able to submit a Notice of Appearance if the attorney's review of the form is considered to be "practice or preparation." Presumably Avvo, as an intermediary in connecting a potential client to a lawyer and as a non -legal entity, would not be entering a Notice of

Appearance.

The NYSBA opinion has been issued by a voluntary organization and is non-binding. To the best of this author's knowledge, no New York lawyers have been disciplined because they paid a marketing fee to Avvo. Other state bars have also issued opinions, [here](#), [here](#) and [here](#), that raise concerns about fee splitting. Fee splitting is a concern if it undermines the independence of the lawyer. [Avvo says](#) it does not as it is made totally transparent to the consumer of legal services and could be a violation of the First Amendment. The key issue is that a client who uses Avvo Legal Services should be made completely aware of the scope of the services and its variation, which at least in the immigration context, may not be the case. Perhaps, one way to alleviate the concern of a bar association's professional ethics committee is to make sure that the lawyer and prospective client have a phone call first to discuss the scope of the matter before the client purchases the service on the Avvo platform. If the issues presented by the prospective client are more complex than advertised, then Avvo should provide the ability for the lawyer to modify the fees based on the new scope of representation. As Avvo has pointed out, the NYSBA opinion "actively *discourages* lawyers from using technology to reach out to clients who see an increasing gap between them and meaningful access to the legal system." This may be true, but the consumer must also be made aware whether his or her case fits the service that Avvo markets on behalf of the law. A lawyer may undertake limited representation and unbundle legal services, which Avvo facilitates, but the limitation must be reasonable under the circumstances pursuant to New York Rule 1.2(c). Thus, the 15-minute consultation should probably be extended to at least 30 minutes or even longer. Perhaps, the service promoted by Avvo of reviewing a pro se client's naturalization or I-130 petition should be halted unless some understanding is reached by the disciplinary counsel in the Department of Homeland Security and the Executive Office for Immigration Review regarding the scope of 8 CFR 1003.102(t).

NYSBA Formal Opinion 1132 against Avvo will not be the last word. The professional ethics committee of the NYSBA too acknowledges that the "lawyers and clients who are using Avvo Legal Services suggest that the company fills a need that more traditional methods of marketing and providing legal services are not meeting" and "uture changes to Avvo's mode of operations – or future changes to the Rules of Professional Conduct – could

lead us to alter our conclusion." For now, at least, lawyers who choose to pay a marketing fee to Avvo after they connect with a client through its platform do so at their own peril. Avvo, though, has promised to defend these lawyers if disciplinary action is taken against them.