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## Take heed on new law on online reviews

As online review websites like Yelp and Avvo have continued gaining popularity, ethics attorneys often field questions from lawyers requesting guidance in handling online reviews, especially negative reviews.

Some lawyers completely ignore such reviews, choosing not to draw attention to bad press. Other lawyers are sometimes too quick to respond to such reviews, often to their own peril. Still other attorneys, in an attempt to avoid the problem altogether and prevent clients from leaving negative reviews at all, have started to include provisions in their engagement letters that seek to prevent clients from doing just that.

The new federal Consumer Fairness Review Act, which went into effect on March 14, and which will begin to be enforced by the Federal Trade Commission, state attorneys general and other state-level officials in December may further change the landscape of this issue.

The stated purpose of the act is to prohibit the use of nondisparagement clauses in form contracts that have generally been used to restrict the ability of a consumer to publicly review goods or services offered in interstate commerce.

In short, the act invalidates contractual provisions in form contracts that prohibit or restrict the ability of the client or customer to engage in a "covered communication," namely, a written, oral or pictorial review or

performance assessment. The act also makes such provisions unlawful.

The significance of the act to attorneys is twofold. Since many law firms have clients whose form contracts may be affected by the act, it is worth reading for that reason alone. In addition, lawyers should review the act with an eye to their own practices and procedures.

To the extent that engagement letters constitute "form contracts," the plain text of the act makes it possible that the act could be applied to lawyers themselves. While some engagement letters are almost certainly not form contracts, many others arguably could be.

Nothing in the act or published guidance appears to exempt lawyers from the act's provisions. Even if the act ultimately does not apply to lawyers, it remains to be seen whether courts will uphold "no negative review" provisions in lawyer-client contracts.

So, if you don't have such a clause or your client violates the clause and posts something anyway, what can or should you say in response?

As a general proposition, our advice is to not respond to online reviews at all. This is so for two reasons.

First, your response may lead to far more negative publicity than would have resulted from the negative review alone.

Second, and even though you are responding to something that the client has already posted, there is a risk that your re-

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sponse may violate your duties of confidentiality to the client — whether because you cannot reasonably believe that any response is necessary or because your response exceeds what is reasonably necessary in light of what the client has posted.

Just because a fact appears in a pleading or other publicly filed document does not necessarily make it fair game for your use. Please note that the duty of confidentiality becomes even more important here if the complaint is filed by a nonclient such as a former adversary in litigation. Rule 1.6 does not have a black-letter exception that automatically allows a lawyer to disclose all information relating to a client just because that information happens to appear in some court documents.

If you feel that you must respond to an online review, address it briefly and, hopefully, in as positive a way as possible. If you have spent time reading online reviews, you know that restaurant managers have mastered this technique.

A perfectly appropriate response would be something like this: "We are sorry to hear you had an experience that was not

to your satisfaction. Please contact us directly so that we may resolve this issue."

If you believe that something in the review is false or defamatory, you may also be able to work with the review site to have the review removed. This is difficult to do but can, from time to time, be a successful strategy.

Another tactic you can use to blunt the force of a bad review is to solicit positive reviews from satisfied clients. If you have only one review and it is negative, it will stand out much more than if you have one negative review and 10 positive ones.

Also, if you are able to successfully resolve the issue that upset your negative reviewer, you can ask the client to update his or her review on the website. Most review sites allow for such updated reviews.

Please note, however, that it is not permissible to offer a client a reduction in fees or anything else of value in exchange for a positive review.

With respect to engagement letters, we would also like to note that it is a good idea for all law firms to review their form engagement letters from time to time.

Fashions change, and so do best practices in engagement letters. A firm may wish to consider whether it would benefit by clarifying who is and is not a client, by being more specific about the scope of work being undertaken, by changing the firm's retainer policy, by adding or deleting a provision calling for the arbitration of disputes or by making countless other potential changes.