

speaking of ethics

For-Profit Lawyer Referral Services: The Ethical Challenge

by Stephen C. Sieberson¹

Nebraska attorneys are well acquainted with nonprofit lawyer referral services. There are two operating in the state, the NSBA's Find a Lawyer Program and the Omaha Bar Association's Omaha Lawyer Referral Service. A more recent entry into the referral business is Avvo, a for-profit company that helps potential clients locate an attorney, and then charges the attorney a portion of the fee earned from the client. For Nebraska attorneys, involvement in Avvo's system may look like an efficient means of attracting clients, but there is a catch: participation may be unethical. The percentage-based fee charged by Avvo may well violate Rules 5.4 and 7.2 of the Nebraska Rules of Professional Conduct (RPCs).²

This article will briefly describe the NSBA and OBA lawyer referral services and contrast them with details of Avvo's operations. We will then review Rules 5.4 and 7.2, which, on their face, reject most forms of fee-splitting and payment for referrals. With that background, we will summarize ethics opinions in several states (all of which, so far, disapprove Avvo's fee arrangements), followed by a description of Avvo's argu-

ments in favor of its program – and how the ethics opinions have responded to those arguments.

1. Nebraska's Nonprofit Lawyer Referral Services

NSBA Find a Lawyer. The NSBA created the online Find a Lawyer Program³ in 2016, and there are currently 110 attorneys registered with the Program. Dues-paying NSBA members pay an annual fee of \$100 to be listed (others pay \$300), and they are identified by area of practice and geographical location. The lawyer must agree to provide an initial consultation of up to 30 minutes for no more than \$50. Many lawyers charge no fee for the initial consultation.

A consumer using Find a Lawyer simply inputs a practice area, and the service's web page produces a list of all participating lawyers in that field, a list that is randomly sorted. The client selects a lawyer and initiates contact.

OBA Lawyer Referral. The Omaha Bar Association Lawyer Referral Service⁴ was established in 1962 and works with attorneys and prospective clients in Douglas, Sarpy, Cass, and Washington Counties. OBA member attorneys pay a fee of \$125 per year (non-members pay \$195) to be listed on the LRS panel, and they inform the OBA of their areas of practice. At any given time, approximately 150 lawyers are listed with the LRS.

The OBA service is more "hands on" than the NSBA's. Prospective clients either call the OBA staff or fill in an online request form,⁵ and the staff then contacts a panel member, based on the type of matter. Within a given practice area, referrals are made on a strict rotation basis. Once the client and lawyer have been brought together, the lawyer must provide

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an initial thirty-minute consultation for \$40. No fee may be charged for the initial consultation in certain matters.

No fee sharing. A key aspect of both the NSBA and OBA referral services is that neither program demands a percentage of the fees earned by the attorney. The only compensation to the program is the member's registration fee. This fact is significant when we compare the NSBA and OBA services with Avvo's fee-sharing approach.

2. Avvo's For-Profit Referral System

Avvo, Inc. was founded in 2007 as an online lawyer listing and rating agency. The company's website, Avvo.com, claims to include 97 percent of all U.S. lawyers in its directory.⁶ The list's basic information is culled from public records, but attorneys can enhance their listing profiles⁷ and purchase ad space in the directory.⁸ Avvo also offers a free Ask a Lawyer service, in which a person can review questions and answers from a searchable database with millions of entries, or post a particular question and receive a direct answer from an attorney.⁹

Of primary interest in this article is the program called Avvo Legal Services, which Avvo launched in early 2016 and is currently being offered in Nebraska. The descriptions below are based on information provided in the Attorney FAQ page on Avvo's website.¹⁰

Avvo Legal Services. Attorneys are not automatically listed with Avvo Legal Services, as they are in the Avvo directory. Rather, a lawyer must join, providing detailed information as to the type of service he or she is willing to provide. These might include a fifteen- or thirty-minute consultation, document review, or "start-to-finish services" such as incorporation and will preparation. Avvo defines the scope and sets the fee for each service, and the attorney is bound by Avvo's terms.

Avvo Legal Services sorts its attorneys by geographical area and availability to provide an identified service for the specified fee. Lawyers on a given list are randomly displayed, and the list is shuffled at least one every hour. A person ("client") needing legal assistance will enter Avvo's website, navigate to the appropriate list of attorneys, and then fill in an online request form identifying the service desired and the attorney the client would like to work with. The client also provides his or her contact information and credit card number. Avvo then notifies the selected lawyer, and he or she is required to contact the client within one business day. The attorney calls the client on a special Avvo phone number that links to the client's phone, and Avvo tracks the length of the call (but not its contents). Once that call has been completed, Avvo charges the client's credit card for the full fee in the matter, and the lawyer is entitled to eventual payment (see below). For simple consultations, the matter may be concluded with the single phone call, and Avvo's chief legal officer has advised the author that 99 percent

of the services arranged by Avvo are a single consultation or quick turnaround document review. Thus, in most instances the lawyer has provided the full service before Avvo charges the client's credit card.

It is the lawyer's responsibility to run a conflicts check and enter into an engagement letter with the client. Additional work beyond the defined project may be arranged between the lawyer and client, with no involvement by Avvo.

Avvo's fee and payment structure. It is the matter of fees and payments in Avvo Legal Services that is of primary interest in our analysis.¹¹ These are handled in three steps:

1. As noted above, Avvo collects the fixed fee from the client after the initial phone call between the lawyer and client.

2. After the selected lawyer has consulted with the client, the lawyer is entitled to the full fee. However, Avvo's payment to the lawyer is made on the seventh day of the month *after* the initial consultation, via a deposit by Avvo into a bank account specified by the lawyer, which may be the lawyer's trust account or operating account. As a result, if services are provided on the first day of a month, Avvo could be holding the money for more than five weeks.

3. One or two days after Avvo has forwarded the client fee to the lawyer's specified account, Avvo withdraws its "marketing fee" from the lawyer's operating account (and not from the lawyer's trust account). In signing up as a participant in Avvo Legal Services, the attorney has given such withdrawal rights to Avvo.

Avvo's marketing fees have proven to be controversial, because the fees are based on a percentage of the fee earned by the lawyer. We will review the ethics of these fees below, but to illustrate the marketing fee structure, we will quote from Avvo's website:

The amount [of the marketing fee] depends on the service, and ranges from a \$10 marketing fee for a \$39 service, to \$40 marketing fee for a \$149 service, up to a \$400 marketing fee for a \$2995 service. For example, if a client purchases a \$149 document review service with you, you will be paid the full \$149 client payment into your deposits account. As a separate transaction, you will be charged a \$40 marketing fee from your withdrawals account.¹²

These marketing fees, as described by Avvo, range from 13 to 27 percent of the attorney's fee.

Avvo Advisor. Avvo offers an additional service, not yet available in Nebraska, called Avvo Advisor.¹³ That program allows a client to purchase a fifteen-minute telephone consultation for \$39, charged up front to the client's credit card. Avvo then sends a blast notification to all attorneys within the geographical area and the requested field of practice who have joined the Advisor program. The first attorney to contact the

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client is awarded the consultation – Avvo indicates that the average response time is eight minutes. Upon completion of the telephone call, the attorney has earned the full fee, and Avvo charges a \$10 marketing fee. Fee payments and marketing fee withdrawals are handled on the same monthly schedule as described above for Avvo Legal Services.

3. Nebraska Rules 5.4 and 7.2

As a prelude to our further analysis, we will briefly review the relevant language of Rules 5.4 and 7.2, and their Official Comments.

Rule 5.4. This Rule is titled “Professional Independence of a Lawyer,” and part (a) provides that a “lawyer or law firm shall not share legal fees with a nonlawyer,” except in a few limited cases. The only relevant exception is subsection (4), which permits the sharing of court-awarded legal fees with “a non-profit organization that employed, retained or recommended employment of the lawyer in the matter.”

Author’s comment: The exception does not apply to Avvo, which is a for-profit business, and without an applicable exception, the prohibition seems rather straightforward. Nevertheless, in Section 5 of this article we will present Avvo’s argument that Rule 5.4 does not apply to Avvo Legal Services.

Rule 7.2. This Rule is titled “Advertising,” and its part (a) offers broad permission for lawyers to advertise. Part (b) is more relevant to fee splitting, and it states that a “lawyer shall not give anything of value to a person for recommending the lawyer’s services,” with several exceptions. These exceptions include “reasonable costs of advertisements,” but subsection (b)(2) states that a lawyer may also pay “the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service.” A qualified referral service is defined as “a lawyer referral service that has been approved by an appropriate regulatory authority.”

Author’s comment: Avvo does not qualify as not-for-profit, nor has it sought approval from any regulatory authority in Nebraska.

Official Comment 5 to Rule 7.2. The comment notes that permitted advertising may include “on-line directory listings,” and that a lawyer may “compensate employees, agents and vendors who are engaged to provide marketing or client development services.”

Author’s comment: There is no suggestion that such compensation may include a share of legal fees earned by the lawyer.

Official Comment 6 to Rule 7.2. This comment elaborates on what would constitute a “not-for-profit or qualified lawyer referral service,” emphasizing that such services “are understood by laypersons to be consumer-oriented organizations.”

The Comment refers to ABA model rules on lawyer referral services,¹⁴ whose Rule IX permits a “qualified” service to charge a fee calculated as a percentage of the fee earned by the attorney in a referred matter, but with the limitation that such fees may be used only to pay expenses of the referral service or to support public service activities.

Author’s comment: A for-profit referral service would not meet the ABA’s criteria as to the use of percentage fees, and thus payments to a for-profit service would not fall within the exceptions to RCP 7.2(b).

4. Emerging Opinions on Avvo’s Marketing Fee

Several states have addressed Avvo’s marketing fee. **As of the end of 2017, all of the ethics boards and committees who have issued opinions have determined that a lawyer may not participate in Avvo’s marketing fee arrangement.** In this Section we will identify and briefly summarize these ethics opinions, presented in chronological order, while in Section 5 we will refer back to these opinions in relation to specific arguments made by Avvo in defense of its fee.

It is important to note that certain of these state opinions address issues beyond the fee-sharing and payment prohibitions of Rules 5.4 and 7.2, and although we may mention those other issues, their analysis is beyond the scope of this Article.

Ohio. The Ohio Board of Professional Conduct issued Opinion 2016-3 on June 3, 2016.¹⁵ Its general conclusion:

The business model presents multiple, potential ethical issues for lawyers. These include fee-splitting with nonlawyers, advertising and marketing, a lawyer’s responsibility for the actions of nonlawyer assistants, interference with the lawyer’s professional judgment, and facilitating the unauthorized practice of law.¹⁶

South Carolina. On July 14, 2016, the Ethics Advisory Committee of the South Carolina Bar rendered its Ethics Advisory Opinion 16-06.¹⁷ Its summary conclusion:

The arrangement described herein violates the prohibition of sharing fees with a non-lawyer as described in Rule 5.4(a). In the alternative, assuming, for the purposes of this question only, that the arrangement does not violate Rule 5.4(a), the arrangement would violate the SC Rule 7.2(c) prohibition of paying for a referral and is not saved by the exceptions found in SC Rule 7.2(c) (1), (2), or (3). [SC Rule 7.2(c) is comparable to Nebraska Rule 7.2(b).]

Pennsylvania. The Legal Ethics and Professional Responsibility Committee of the Pennsylvania Bar released Formal Opinion 2016-200 in September, 2016.¹⁸ The Committee concludes that the Avvo model violates the fee-



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sharing prohibition of Rule 5.4(a), but it also finds that participation in such a program poses a “substantial risk” that a lawyer would violate Rules 1.15 (handling of client funds), 2.1 and 5.4(c) (independent professional judgment), 5.3 (responsibility for conduct of nonlawyer assistants), 8.4(a) (misconduct through acts of another), 1.16 (duty to refund advance payment of fees), 1.2 (limiting scope of representation), and 1.6 (confidentiality).¹⁹

New Jersey. Three committees of the New Jersey Bar issued a joint opinion on June 21, 2017,²⁰ analyzing various practices of Avvo, Rocket Lawyer, and LegalZoom. With regard to Avvo, the Committees concluded that participation in the marketing

fee would violate the fee-sharing prohibition in Rule 5.4(a) and the referral fee prohibition in NJ Rules 7.2(c) and 7.3(d) [both of which are comparable to Nebraska Rule 7.2(b)].²¹

New York. August 8, 2017, the Committee on Professional Ethics of the New York State Bar Association issued Ethics Opinion 1132.²² The Committee concludes: “A lawyer paying Avvo’s current marketing fee for Avvo Legal Services is making an improper payment for a recommendation in violation of Rule 7.2(a) [comparable to Nebraska Rule 7.2(b)].”²³ The Committee describes other issues such as fee-splitting, confidentiality, and the reasonable cost of advertising, but it declines to state conclusions on those questions.²⁴



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Virginia. On October 27, 2017, the Virginia State Bar Council issued its Legal Ethics Opinion 1885,²⁵ which has been submitted to the Virginia Supreme Court with a petition for its approval. The Council concludes that while a lawyer may be listed on a for-profit website that “identifies limited scope services available to the public for fixed fees,” a marketing fee like Avvo’s is an impermissible “sharing of fees” [Rule 5.4(a)] and violates the prohibition on giving something of value “to one who recommends the lawyer’s services” [VA Rule 7.3(d), comparable to Nebraska Rule 7.2(b)]. The Council is also of the opinion that the flow of payments through a company like Avvo is a violation of Rule 1.15 (handling of client funds) and 1.16(d) (duty to return unearned fees).²⁶

Note on North Carolina – a first win for Avvo? The Ethics Committee of the North Carolina State Bar and a special Subcommittee on Avvo Legal Services are considering a proposed Formal Ethics Opinion²⁷ which, if adopted, would permit that state’s attorneys to participate in Avvo Legal Services. Among the conclusions under consideration are the following: (a) Avvo is not a lawyer referral service, because the client selects the attorney from Avvo’s list, and thus payments to Avvo do not violate Rule 7.2; (b) Avvo does not interfere with a lawyer’s professional judgment, and thus Avvo’s percentage-based marketing fee does not violate the primary thrust of Rule 5.4(a); and (c) since Avvo’s fees are not compensation for a referral nor an impermissible fee-sharing, they are deemed to be a cost of advertising. Note that the proposed opinion is accompanied by a proposed amendment to Rule 5.4(a), a new exception that would specifically permit a lawyer to pay a portion of a legal fee to an “online platform for identifying and hiring a lawyer” if the amount paid is reasonable and there is no interference with the lawyer’s independence.²⁸

5. Avvo’s Arguments and Responses in Other States

Avvo’s arguments in favor of its marketing fee and overall business model may be found at several places in its website, Avvo.com, but our primary source from Avvo in this Section is a letter from Avvo to the Virginia State Bar, dated May 5, 2017.²⁹

A. Definitional Arguments

(1) *Not a referral service.* Avvo argues that it is not a “referral” service, because Avvo does not match the consumer with a particular lawyer.³⁰ Rather, the potential client selects the attorney from Avvo’s list, and thus Avvo is “simply facilitating a marketplace where consumers can choose amongst all of the participating providers.”³¹

Response: Under Avvo’s terminology, the NSBA Find a Lawyer Program would not be a refer-

ral service, which would no doubt be news to the NSBA. The Ohio Board specifically rejects Avvo’s definition of “referral service.”³² The New Jersey Committees reject Avvo’s argument that the client’s ability to choose a lawyer means that Avvo is not a referral service.³³ The Pennsylvania Committee states that whether the Avvo model is a “referral service” or not is irrelevant, because fee sharing is permitted only with a not-for-profit service.³⁴

(2) *No fee-splitting; no payment for recommending.* Avvo maintains that it does not engage in “fee-splitting” per Rule 5.4(a), because the marketing fee is a separate transaction. It argues: “Mechanically, that’s no different from how attorneys pay for advertising today.”³⁵ Avvo also asserts that it is not “recommending” a lawyer’s services,³⁶ thus implying that the marketing fee cannot violate Rule 7.2(b).

Response: The Ohio Board rejects Avvo’s description of the marketing fee as a separate transaction, affirming that this is a fee-splitting arrangement.³⁷ The Virginia Council agrees that this is fee-sharing, no matter what it is called, and it deems the two-step payment-and-deduction sequence a “technical nicety which does not change the substance of the transaction.”³⁸ The South Carolina Committee states that “disguising” the marketing fee as a separate transaction “does not mean that the arrangement is not fee splitting.”³⁹ The Pennsylvania Committee and the New Jersey Committees concur in that conclusion.⁴⁰

As to compensation for “recommending,” the New York Committee refers to the type of promotional information Avvo offers to the public on its website, including statements like “We only work with highly qualified attorneys,” and the Committee concludes that Avvo “either expressly states or at least implies or creates the reasonable impression that Avvo is recommending those lawyers.”⁴¹ The New York Committee also mentions Avvo’s “satisfaction guarantee,” by which Avvo agrees to refund fees to dissatisfied clients, and states that this “contributes to the impression that Avvo is ‘recommending’ the lawyers . . . because it stands behind them.”⁴² Both the South Carolina Committee and the Virginia Council agree that Avvo’s marketing fee is improper compensation for recommending the lawyer’s services.⁴³

(3) *Marketing fee is an advertising cost.* Avvo’s contends that its marketing fee is an “advertising fee” based on Avvo’s creation and management of its marketplace.⁴⁴

Response: The South Carolina Committee concludes that the Avvo-type marketing fee does not fall within the advertising costs exception to SC Rule Rule 7.2(c)(1) [Nebraska Rule 7.2(b)(1)].⁴⁵ The Pennsylvania Committee states that basing advertising fees on revenue from the legal services would make the advertiser a “joint venturer” with the lawyer, which would violate Rule 5.4(a).⁴⁶



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The New Jersey Committees conclude that the marketing fee is not for the “reasonable cost of advertising.”⁴⁷ The Virginia Council agrees.⁴⁸

B. Reasonableness of Marketing Fee

(1) *Avvo incurs higher costs on larger attorney projects.* Avvo acknowledges that in traditional advertising the cost of an ad is often the same, “regardless of the underlying value of the good or service,” but contends that that is not true in online advertising. Avvo argues that its larger fees for more expensive legal services reflect its own higher costs and risks, as follows: (a) use of sophisticated data allows targeting of its ads to potential clients – at increased cost to Avvo; (b) Avvo’s own purchases of ad space and prominence with search engines like Google vary widely, “depending on the value of the underlying service;” (c) Avvo pays the clients’ credit card fees, which are percentage-based; (d) for the larger attorney projects, Avvo’s customer service representatives typically invest more time with potential clients in phone calls, chats, and emails; and (e) Avvo takes responsibility for voided credit card transactions and refunding dissatisfied clients. As Avvo sees it, these factors prove that the size of its marketing fee is “strongly correlated to the value of the underlying service.”⁴⁹

Response: Avvo is undoubtedly correct that its costs can vary, but it has not given evidence of such costs in sufficient detail to justify its assigned “marketing fees.” The South Carolina Committee does not indicate what data was presented to it, but it refers to a lack of information on “market rate or comparable services,” and it concludes that “[t]here does not seem to be any rational basis for charging the attorney more for the advertising services of one type of case versus another.”⁵⁰ The New Jersey Committees conclude that the sliding scale of marketing fees “bears no relationship to advertising.”⁵¹ The Pennsylvania Committee is even more emphatic on this point, comparing [Avvo’s] \$10 fee for a \$39 consultation with its \$400 fee for a \$2995 legal project, and stating: “Clearly there cannot be a 4000% variance in the operator’s advertising and administrative costs for these two services.”⁵² The Virginia Council favorably cites the South Carolina and Pennsylvania opinions on this issue, and states that appropriate factors in advertising costs include “quality of presentation, market exposure, demography, and measurable levels of interest evoked (through Internet ‘clicks’ or ‘hits’).”⁵³

(2) *Marketing fee similar to a credit card fee.* Avvo compares its marketing fee to the percentage fee a lawyer pays to a credit card company when accepting credit card payments from clients.⁵⁴

Response: Lawyers have long been permitted to accept client payments via credit card, even though the lawyer pays a percentage of the transaction as a processing fee.⁵⁵ A credit card processing fee is a standard aspect of modern commerce, and it constitutes a relatively small percentage of the

underlying transaction – normally no more than 3 percent⁵⁶ – while Avvo’s disclosed marketing fee ranges from 13 to 27 percent of the lawyer’s fee. In addition, the Pennsylvania Committee notes that unlike the Avvo-type services that receive client fees up front, “the credit card companies’ risk of non-payment varies directly with the dollar amount of the transactions it processes on the merchant’s behalf.”⁵⁷ In subsection (b)(1) above, Avvo maintains that it shares a similar risk of non-payment.

(3) *Marketing fee comparable to Groupon.* Avvo maintains that its fee structure is comparable to Groupon and other deal-of-the-day websites,⁵⁸ which work as follows: On prearrangement with a lawyer, the website will offer a limited scope service, such as preparing a simple will, for a discounted flat fee. The online customer purchases the legal service from the website, making payment online to the website and receiving a voucher for the legal service. The website then deducts its advertising charge (a percentage of the legal fee) and transmits the balance to the lawyer. The customer/client then contacts the lawyer and presents the voucher, and the lawyer provides the service. Nebraska and other jurisdictions have found that lawyers may participate in this type of promotion⁵⁹ and Avvo argues that its fee structure is similar enough to merit the same approval.

Response: In its advisory opinion on Groupon, the Nebraska Lawyers’ Advisory Committee reasons that the principle underlying the Rule 5.4(a) prohibition on fee splitting is “risk of undue influence upon the attorney,” that there is little risk that Groupon will influence the lawyer’s work, and thus the Groupon fee-split is not problematic. The Committee also finds that Groupon provides advertising services, and not referrals, thus eliminating concerns under Rule 7.2(b).⁶⁰

The only Avvo opinion to specifically address the Groupon comparison is New York’s Opinion 1132. In it, the New York Committee refers back to a 2011 opinion in which it concluded that a Groupon-type arrangement constituted a payment for advertising and not a referral, and thus was not a violation of Rule 7.2(a).⁶¹ In Opinion 1132 the Committee states that it does not have enough information to reach the same conclusion as to Avvo, and yet, the Committee significantly notes that in 2011 it explained that the deal-of-the-day website “has no individual contact with the coupon buyers other than collecting the cost of the coupon.”⁶² That is a far cry from Avvo’s interactions with clients, and we will see in subsection (c)(1) below that the opinions in Pennsylvania and Ohio express serious concerns about Avvo’s involvement with the client.

C. Policy Arguments

(1) *Purpose of Rule 5.4.* Avvo argues that fee-splitting is not inherently unethical, because the “substance of 5.4 is that fee-splitting is only a problem if the third party’s (Avvo’s) inter-

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est in the fee threatens the professional independence of the lawyer,⁶³ and Avvo in no way interferes with how the lawyer provides services to the client.

Response: The title of Rule 5.4 is indeed “Professional Independence of a Lawyer,” but Avvo ignores the clear language of the text of the Rule. Furthermore, the Ohio Board states that a business like Avvo “controls nearly every aspect of the attorney-client relationship” and thus the lawyer’s exercise of independent professional judgment is “eviscerated.”⁶⁴ The Pennsylvania Committee likewise contends that “there are a number of aspects of the [Avvo-type] programs that pose a substantial risk of interfering with a lawyer’s professional independence.”⁶⁵ The New Jersey Committees disagree, stating that “Avvo does not insert itself into the legal consultation in a manner that would interfere with the lawyer’s professional judgment,” but they emphasize that that conclusion does not override the fee-sharing violation of Avvo’s model.⁶⁶ The Virginia Council states that a lawyer in an Avvo-type program could exercise independent judgment “if she adheres to the Rules governing those aspects of every representation.”⁶⁷

(2) *First Amendment.* Avvo contends that its services fall within the ambit of lawyer advertising, and thus any restriction must meet the enhanced scrutiny of the First Amendment lawyer advertising cases.⁶⁸

Response: The Pennsylvania Opinion rejects Avvo’s argument out of hand, stating that Avvo-type marketing fees “do not correspond to any traditional model of compensation for advertising.”⁶⁹ The New Jersey Committees emphasize that they “are not restricting Avvo’s marketing,” but that the “First Amendment does not protect lawyers who seek to participate in prohibited attorney referral programs or engage in impermissible fee sharing.”⁷⁰ The Virginia Council concludes that (a) its Opinion 1885 does not restrict lawyer advertising or public access to information, and (b) the state’s interest in preventing “consumer deception” and “maintaining lawyers’ independent professional judgment” are reasonable restrictions.⁷¹

(3) *Wake up and smell the benefits.* Avvo wants the legal profession to recognize that Avvo’s services are inherently beneficial to the public and the profession. After stating that there is currently a substantial, unfilled need for legal services for individuals and small businesses, Avvo argues that its “marketplace of easy-to-understand, fixed-price legal services” provides the ideal vehicle to meet those needs by “making access to legal services easy and predictable.”⁷² In Avvo’s opinion, its programs are all about enhancing access to justice.⁷³


Response: Along with all bar associations and other legal profession organizations, the Pennsylvania Committee affirms the need to make legal services more accessible, but it states that compliance with the RPCs “should not be considered inconsistent”

with enhancing such access.⁷⁴ The New Jersey Committees concur.⁷⁵ The Virginia Council states that access is not accomplished “when a third party controls the representation.”⁷⁶


Note on North Carolina. The proposed North Carolina opinion appears to agree with Avvo’s arguments cited above in paragraphs (a)(1), (a)(2), (a)(3), (b)(2), (b)(3), and (c)(1). If the opinion is adopted in its proposed form, that would be of great benefit to Avvo in pressing its case in other jurisdictions.

6. Time for Nebraska to Act

Avvo’s attempts to modernize the matching of clients and lawyers are certainly creative, and, in the age of Amazon and Angie’s List, they seem almost inevitable. Nevertheless, under Rules 5.4 and 7.2 as currently worded in Nebraska, it is a stretch to conclude that Avvo’s fee structure is permissible. It is the author’s opinion that the authorities in Ohio, South Carolina, Pennsylvania, New Jersey, New York, and Virginia have appropriately told their attorneys that they may not participate in Avvo Legal Services. North Carolina’s potential conclusion to the contrary seems less sound – that is, unless the state’s change to Rule 5.4 is also implemented.

The author suggests that it is time for Nebraska to address these issues and to join the states who disapprove participation in Avvo Legal Services. In fact, this article has been submitted to the Nebraska Attorney Ethics Advisory Committee for their consideration in issuing an opinion. On the other hand, if Nebraska’s authorities believe that Avvo provides a useful service, Rule 5.4 should be amended to legitimize that service. 

Endnotes

- ¹ Professor of Law, Creighton University School of Law. The author would like to acknowledge the invaluable contributions of his student research assistants, Carola Cintrón-Arroyo and Yoonsung Park.
- ² Nebraska Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond §§3-505.4, 3-507.2. In this article we will use the standard ABA Model Rule numbering, thus 5.4 and 7.2.
- ³ <http://nefindalawyer.com>.
- ⁴ <http://www.omahabarassociation.com/?page=LRS>
- ⁵ <http://www.omahalawyerreferral.com/requestalawyer/>
- ⁶ https://www.avvo.com/about_avvo#founded
- ⁷ <https://support.avvo.com/hc/en-us/articles/209993713-How-can-I-increase-my-Avvo-Rating->
- ⁸ <https://www.avvo.com/for-lawyers/pricing>
- ⁹ <https://www.avvo.com/ask-a-lawyer>
- ¹⁰ [https://support.avvo.com/hc/en-us/articles/208458216-Attorney-FAQ-for-Avvo-Legal-Services \(“Attorney FAQ”\).](https://support.avvo.com/hc/en-us/articles/208458216-Attorney-FAQ-for-Avvo-Legal-Services-(Attorney-FAQ))
- ¹¹ *Id.*; see also *Avvo Legal Services Walk-Through*, published online by the author with Avvo’s permission, available at <https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/115052/Avvo%20Walk-Through.pdf?sequence=3&isAllowed=y> (“Avvo Walk-Through”).
- ¹² Attorney FAQ.
- ¹³ <https://www.avvo.com/advisor>
- ¹⁴ American Bar Association, Model Supreme Court Rules 

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- Governing Lawyer Referral Services, https://www.americanbar.org/groups/lawyer_referral/policy.html
- ¹⁵ Ohio Board of Professional Conduct, Opinion 2016-3, Jun. 3, 2016, http://www.supremecourt.ohio.gov/boards/boc/advisory_opinions/2016/op_16-003.pdf (“Ohio Opinion”).
- ¹⁶ *Id.* at 2.
- ¹⁷ South Carolina Bar Ethics Advisory Committee, Ethics Advisory Opinion 2016 16-06, Jul. 14, 2016, <https://www.scbar.org/lawyers/legal-resources-info/ethics-advisory-opinions/eao/ethics-advisory-opinion-16-06/> (“South Carolina Opinion”). No page numbers are indicated in the online version.
- ¹⁸ Pennsylvania Bar Association Legal Ethics and Professional Responsibility Committee, Formal Opinion 2016-200, Sep. 2016, <https://www.pabar.org/members/catalogs/Ethics%20Opinions/formal/F2016-200.pdf> (“Pennsylvania Opinion”).
- ¹⁹ *Id.* at 2, 14.
- ²⁰ Advisory Committee on Professional Ethics, Joint Opinion 732; Committee on Attorney Advertising, Joint Opinion 44; Committee on the Unauthorized Practice of Law, Joint Opinion 54; dated Jun. 21, 2017, <https://www.themodernfirm.com/wp-content/uploads/2017/09/ACPE-732-Avvo-LegalZoom-Rocket-Lawyer-6.21.17.pdf> (collectively, the “New Jersey Opinions”).
- ²¹ *Id.* at 1.
- ²² New York State Bar Association Committee on Professional Ethics, Ethics Opinion 1132, Aug. 8, 2017, <http://www.nysba.org/CustomTemplates/Content.aspx?id=74603> (“New York Opinion”).
- ²³ *Id.* at 12.
- ²⁴ *Id.* at 5-6.
- ²⁵ Virginia State Bar, Legal Ethics Opinion 1885, Oct. 27, 2017, appended to Petition of the Virginia State Bar to the Virginia Supreme Court, Nov. 17, 2017, http://www.vsb.org/docs/LEO1885_SCV_petition111717.pdf (the opinion and petition are published as a single document and are referred to hereinafter as the “Virginia Opinion”).
- ²⁶ Virginia Opinion at 28-29.
- ²⁷ North Carolina State Bar, Proposed 2017 Formal Ethics Opinion 6, titled “Participation in Online Platform for Finding and Employing a Lawyer,” published online by the author with the permission of the NC State Bar, available at <https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/115052/NC%20Proposed%20Avvo%20Opinion.pdf?sequence=4&isAllowed=y>.
- ²⁸ North Carolina State Bar, Proposed Amendments to Rule 5.4, published online by the author with the permission of the NC State Bar, available at <https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/115052/NC%20Proposed%20RCP%205.4%20Amendment.pdf?sequence=5&isAllowed=y>.
- ²⁹ Avvo letter to Virginia State Bar, May 5, 2017, published online by the author with Avvo’s permission, available at <https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/115052/Avvo%20VA%20Letter.pdf?sequence=2&isAllowed=y> (“Avvo VA Letter”).
- ³⁰ Avvo’s website offers the following “ethics tip”:
A “lawyer referral service” is a marketing program that purports to match a consumer with the right lawyer for their specific legal problem, while actually referring that consumer to whichever lawyer has bought the right to that “lead.” The touchstone is the consumer deception that such a program can create. Legal marketing programs that offer consumer choice or that do not purport to do such “matching” are not subject to RPC restrictions on lawyer referral services.
https://advisor.avvo.com/rules_of_conduct
- ³¹ Avvo Walk-Through at 3.
- ³² Ohio Opinion at 3.
- ³³ New Jersey Opinions at 5, 6, 7.
- ³⁴ Pennsylvania Opinion, at 3-5.
- ³⁵ Avvo VA Letter at 5.
- ³⁶ *Id.* at 7.
- ³⁷ Ohio Opinion at 5.
- ³⁸ Virginia Opinion at 23.
- ³⁹ South Carolina Opinion.
- ⁴⁰ Pennsylvania Opinion, at 3; New Jersey Opinions at 4.
- ⁴¹ New York Opinion at 10.
- ⁴² *Id.* at 11.
- ⁴³ South Carolina Opinion; Virginia Opinion at 12, 29.
- ⁴⁴ Attorney FAQ at 6; Avvo VA Letter at 7-8.
- ⁴⁵ South Carolina Opinion.
- ⁴⁶ Pennsylvania Opinion at 6-7.
- ⁴⁷ New Jersey Opinions at 5.
- ⁴⁸ Virginia Opinion at 23, 25.
- ⁴⁹ Avvo VA Letter at 7-8.
- ⁵⁰ South Carolina Opinion.
- ⁵¹ New Jersey Opinions at 5, 6.
- ⁵² Pennsylvania Opinion at 5.
- ⁵³ Virginia Opinion at 26-28.
- ⁵⁴ Avvo VA Letter at 6; Attorney FAQ at 6.
- ⁵⁵ *See, e.g.*, Lawyers’ Advisory Committee, Nebraska Ethics Advisory Opinion for Lawyers No. 81-2, 1981, https://supremecourt.nebraska.gov/sites/default/files/ethics-opinions/Lawyer/81-2_0.pdf, modified by Advisory Opinion No. 95-4, 1995, https://supremecourt.nebraska.gov/sites/default/files/ethics-opinions/Lawyer/95-4_0.pdf.
- ⁵⁶ Sara Angeles, Best Credit Card Processors 2017, BUSINESS NEWS DAILY, June 16, 2017, <https://www.businessnewsdaily.com/8061-best-credit-card-processing.html>.
- ⁵⁷ *Id.* at 6.
- ⁵⁸ Avvo VA Letter at 6.
- ⁵⁹ Lawyers’ Advisory Committee, Nebraska Ethics Advisory Opinion for Lawyers No. 12-03, 2012, https://supremecourt.nebraska.gov/sites/default/files/ethics-opinions/Lawyer/12-03_0.pdf (“Nebraska Opinion”). The Nebraska Opinion cites opinions from South Carolina, North Carolina, and New York that reached similar conclusions. *Id.* at 2868.
- ⁶⁰ *Id.* at 2867-2868. Nevertheless, the Nebraska Committee warns that the advertising fees paid to Groupon must be reasonable, that the rules on deceptive advertising must be complied with, and that client funds must be properly handled. *Id.* at 2871.
- ⁶¹ See discussion in New York Opinion at 7.
- ⁶² *Id.* at 7-8.
- ⁶³ Avvo VA Letter at 6. See also Attorney FAQ at 6, which says fee splits are not inherently unethical.
- ⁶⁴ Ohio Opinion at 3.
- ⁶⁵ Pennsylvania Opinion at 6.
- ⁶⁶ New Jersey Opinions at 4, 6.
- ⁶⁷ Virginia Opinion at 13.
- ⁶⁸ Avvo VA Letter at 2-4.
- ⁶⁹ Pennsylvania Opinion at 6.
- ⁷⁰ New Jersey Opinions at 6.
- ⁷¹ Virginia Opinion at 8.
- ⁷² Avvo Model at 1.
- ⁷³ Avvo VA Letter at 1-2.
- ⁷⁴ Pennsylvania Opinion at 13.
- ⁷⁵ New Jersey Opinions at 6.
- ⁷⁶ Virginia Opinion at 7.