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LegalCURRENTS

NYS ethics committee on using Groupon-type services

It's been years since the economy was booming and although the recession is technically "over," it sure doesn't feel like it. Which is unfortunate for the legal profession since, when money is tight, the last thing people want to do is hire an attorney unless it's absolutely necessary.

For that reason, competition for those in the market for legal services can sometimes be fierce and many lawyers are seeking to market themselves as creatively as possible in an attempt to attract new clients.

Some are even turning to sites like Groupon, which are online platforms through which local businesses offer group discounts to potential customers. Through these sites, a business can offer customers the opportunity to purchase a service or product at a deeply discounted rate, so long as a minimum number of other patrons agree to purchase the service at that price. If the minimum number of people sign up, then the proceeds from the sale are split between the website and the business offering the discount.

In a previous column, I questioned the wisdom of lawyers using Groupon since, in my opinion, selling legal services alongside spa treatments or car washes does little to enhance the dignity of our profession.

Even so, lawyers continue to seek to advertise their services using sites like Groupon and for that reason, in Opinion 897 (12/13/11), the New York State Bar Association's Committee on Professional Ethics recently grappled with the ethical issues presented when lawyers do so.

One interesting issue considered by the committee was whether the money retained by Groupon constitutes an improper payment for a referral in violation of Rule 7.2(a). This rule provides, in relevant part, that "(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."

The committee sought guidance from Comment 1 to Rule 7.2(a), which provides that it is permissible for a lawyer to pay for advertising and communications as permitted by the rules. Accordingly, the committee concluded that as long as the fees

paid to websites like Groupon were reasonable, such fees were ethically permissible, since they are more akin to an advertising fee rather than a referral fee.

This is because the website takes no "action to refer a potential client to a particular lawyer — instead it ... carries a particular lawyer's advertising message to interested consumers and ... charges a fee for that service."

The committee then examined a number of other ethical quandaries presented by advertising via Groupon, including the need to refund excessive attorney's fees, compliance with advertising regulations and the risks of forming an improper or premature attorney/client relationship and concluded:

"A lawyer may properly market legal services on 'deal of the day' or 'group coupon' website, provided that the advertisement is not false, deceptive or misleading, and that the advertisement clearly discloses that a lawyer-client relationship will not be created until after the lawyer has checked for conflicts and

determined whether the lawyer is competent to perform a service appropriate to the client. If the offered service cannot be performed due to conflicts or competence reasons, the lawyer must give the coupon buyer a full refund. The website advertisement must comply with all of the Rules governing attorney advertising, and if the advertisement is targeted, it must also comply with Rule 7.3 regarding solicitation."

Thus, although marketing your services via websites like Groupon may not be the most dignified way to advertise your services, doing so isn't necessarily unethical.

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