

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Should lawyers use Groupon to offer discounts?

Since you're likely busy practicing law instead of scouring online sites for the latest and greatest way to market your legal services to clients, you may not be familiar with Groupon.

Groupon is an increasingly popular online platform through which local businesses can offer group discounts to potential customers.

Using Groupon, a business offers 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. Groupon sends an e-mail to subscribers, which includes the specifics of the offer, and if the required minimum number of people sign up, the proceeds are split between Groupon and the business offering the discount.

It is the division of the proceeds that arguably presents problems for lawyers — at least that's the initial take of a North Carolina ethics sub-committee, which recently issued a proposed opinion on this very issue.

Late last week, the ethics subcommittee of the North Carolina bar reviewed a proposed opinion to determine whether it should be officially adopted. At issue was whether a law firm could ethically use Groupon to offer discounted legal services to a group of purchasers or if doing so ran contrary to North Carolina's ethical guidelines.

The conclusion reached in the proposed opinion is that the use of Groupon by lawyers constitutes impermissible fee splitting with a non-lawyer.

As explained in the proposed opinion, the fee collected by Groupon from the lawyer "is a percentage of the amount actually paid to the lawyer and appears to constitute revenue sharing with a nonlawyer. ..." Of course, that opinion has yet to be adopted by the ethics sub-committee, but the writing is on the wall.

Not all jurisdictions have reached this conclusion, however. For example, a Missouri attorney, Craig Redler, has used Groupon to offer estate planning services, with the blessing of Missouri legal ethics regulators. Prior to participating in Groupon, Redler sought, and received, the approval of the Missouri Advisory Committee and Legal Ethics Counsel. Thus, as the familiar expression goes, reasonable minds, or in this case,

ethics committees, can differ.

Of course, because services like Groupon and LivingSocial, another popular group discount website, are such a new phenomenon, most jurisdictions have yet to address the issue of whether lawyers can ethically participate in such group discount services. Over time, as more lawyers seek to use these platforms, more jurisdictions will undoubtedly issue decisions that will offer much-needed guidance in this regard.

However, just because your jurisdiction might permit participation in Groupon doesn't necessarily mean it's a good idea to use this service. Even if a firm breaks even after offering a steep discount and sharing the proceeds with Groupon, I question whether potential clients would be impressed by a law firm that offers discounted services through Groupon.

There's a lot to be said for the appearance of professionalism and the importance of maintaining the dignity of our profession. Legal services are not akin to a haircut or car wash. Law firms that offer discounts using Groupon run the risk of cheapening the perception of their firm and of the profession as a whole.

While the Internet and emerging technologies offer many new tools that amplify marketing opportunities and streamline the practice of law, it's important to carefully consider the ramifications of implementing new platforms prior to jumping into the fray.

Thus, in its current format, I'm not convinced that Groupon is an ideal platform for attorneys. But, as with any service, its functionality may very well change over time, thus making it a more palatable marketing alternative for law firms.

*Nicole Black is of counsel to Fiandach & Fiandach in Rochester. She co-authors the ABA book *Social Media for Lawyers: the Next Frontier*, co-authors *Criminal Law in New York*, a West-Thomson treatise, and is currently writing a book about cloud computing for lawyers that will be published by the ABA in early 2011. She is the founder of *lawtechTalk.com* and speaks regularly at conferences regarding the intersection of law and technology. She publishes four legal blogs and can be reached at nblack@nicoleblackesq.com.*



By **NICOLE BLACK**

Daily Record
Columnist