

Q&A

LAWYER LIABILITY AND ETHICS



Online Legal Service Marketplaces: Improving Access to Justice? A Way for Non-Lawyers to Get a Piece of the Legal Market? Unethical Fee Splitting with Non Lawyers?



**By Jessica Beckwith,
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There is no doubt that online legal service marketplaces such as Avvo are disrupting the traditional legal marketplace that largely has had very little online presence other than law firm websites and online advertisements.

There is some evidence suggesting that more consumers are in need of legal services and willing to pay for it but either do not recognize their issue as a legal one or do not know where to go to find a lawyer to help them. Enter online legal service marketplaces. Avvo, for example, was founded in 2006 and is still going strong which at a minimum suggests that there is a demand for online legal service marketplaces.

Some claim that online legal service marketplaces increase access to justice because these services cater to individuals who would otherwise not know how to enter the legal marketplace or may not have the means to enter the traditional legal marketplace. The Preamble to the Rules of Professional Conduct states, in part, "A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest." To the extent that online legal service marketplaces increase access to the judicial system, they would seem to be consistent with the Preamble.

Online legal service marketplaces, however, are also for-profit enterprises that wish to make money from their business. But how exactly do these businesses make money? With Avvo Legal Services (a specific part of Avvo), for example, a lawyer who contracts with Avvo may be connected to a client seeking a 15-minute consultation. The client pays a \$39 "fixed fee" to Avvo, which is then sent to the attorney who handles the consultation. Soon after that, Avvo charges that attorney a "marketing fee" for that client.

In some states, Ethics Committees have decided definitively that such a model is unethical and constitutes impermissible fee splitting between attorneys and non-attorneys. A June 21, 2017 Joint Opinion from three New Jersey Supreme Court appointed committees (Advisory Committee on Professional Ethics, Committee on Attorney Advertising & Committee on the Unauthorized Practice of Law)

stated: "The Committees find that New Jersey lawyers may not participate in the Avvo legal service programs because the programs improperly require the lawyer to share a legal fee with a nonlawyer in violation of Rule of Professional Conduct 5.4(a), and pay an impermissible referral fee in violation of Rule of Professional Conduct 7.2(c) and 7.3(d)." Consumers for a Responsive Legal System (Responsive Law), a self-described nonprofit organization advocating "to make the civil legal system more affordable, accessible and accountable to its consumers" has challenged the Joint Opinion through a petition to the New Jersey Supreme Court.

Comment 1 to Arizona Ethical Rule 5.4 states, in part, "The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment." Do online legal marketplaces affect a lawyer's professional judgment? Online marketplaces argue that they in no way affect an attorney's professional judgment. State Bar of Arizona Ethics Opinion 99-06 held that attorneys could not pay a referral fee to Internet-based referral services. If the policy underlying the fee-splitting rule is protecting the independent professional judgment of lawyers, then whether or not the rule should be applied or enforced would depend upon on the extent of control exercised, or at a minimum potentially exercised, by a third party on the lawyer. If an online legal marketplace does not interfere with the lawyer's professional judgment, there would seem to be little reason to prohibit lawyers from entering into those arrangements. It is telling that when Avvo raised this issue with the New Jersey ethics committee, the Committee failed to address Avvo's professional judgment argument on the merits, and simply cited the rulings of other state's ethics committees that engaged in the same tautological analysis – fee sharing is prohibited because fee sharing is prohibited – rather than grappling with the issue of whether the application of the rule advances the rule's stated underlying policy.

There is a lot of talk in the legal community, and Arizona in particular, regarding the inaccessibility of the judicial system. This leaves us as lawyers pondering whether the ethical rules are constraining new mediums like online legal marketplaces that provide access to legal services. Should the ethical rules change to allow for these online legal marketplaces (assuming they do not violate the spirit of the ethical rules) or must these services find a way to operate within the confines of the current ethical rules? ■

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INSIDE THE COURTS

New Members Welcomed to the Arizona Judicial Council



**Judge Keith
Russell**



Steven B. Peru

The Arizona Judicial Council welcomed two new members to the policymaking body that oversees the judicial system in Arizona. Justice of the Peace Judge Keith Russell joined as a representative of the justice courts and Steven B. Peru joined as a public member. The Arizona Judicial Council was created in 1990 to assist the Supreme Court and the Chief Justice in the development and implementation of policies designed to provide a central direction for the administration of all courts, uniformity in court operations, and coordination of court services to improve the administration of justice in the state.

Judge Keith Russell is a native Arizonan and graduate of Arizona State University. He began his career in real estate, before moving into the appraisal business in the 1990s. Judge Russell has been active at the state and national level with the appraisal and real estate assessing business and is qualified to teach courses on the topic. In 2004, Russell was elected Maricopa County Assessor and subsequently

reelected twice. He also worked with the legislature and County Attorney's office on legislative and tax litigation issues. In June 2013, Judge Russell took his oath of office as East Mesa Justice of the Peace. Currently, he serves as Presiding Judge for the 26 Maricopa County Justice Courts.

Steven Peru is a resident of Flagstaff and obtained his bachelor and master's degrees from Northern Arizona University. He began a lengthy career with Coconino County rising from the Community Services Department to County Manager, a role he held from 2006 to 2011. After his career in public service, Mr. Peru worked in management at W.L. Gore & Associates in its Medical Products Division. In early 2015, Mr. Peru was hired to lead the United Way of Northern Arizona as President and Chief Executive Officer.

Judge Russell and Mr. Peru will serve a three-year appointment to the Arizona Judicial Council. The complete list of Arizona Judicial Council members is available at <http://www.azcourts.gov/ajc/Meet-the-Council>. The history leading to the creation of the Council is at <http://www.azcourts.gov/ajc/>.

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MCBA Board Member Joy Isaacs at the investiture for Judge Sara Agne, recently appointed to the Maricopa County Superior Court. Judge Agne, also a member of the MCBA, is currently assigned to the Juvenile Department.

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