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## Liar Liar Pants on Fire! **How to Handle a Negative Online Review**

By: Erin McCartney, Esq.

Sent to voicemail...again! A young law associate has been trying to contact a recent client who is no longer answering calls or responding to emails. Although the representation has ended, the client owes the firm past due legal fees. Just as the associate sets up another reminder to call the client tomorrow the phone rings. It is the managing partner asking about a scathing review written about the firm on social media. Frantically scouring the internet, the associate discovers that the client who has been dodging his calls has flooded several social media sites with negative reviews about the firm. Furious and embarrassed, he begins to draft a response to the review which refutes the false assertions and advises that the firm will be suing for defamation. In order to set the record straight, he discloses his version of the facts, while hinting at the client's unsavory past that he learned of during the course of representation. After all, he is out to defend his and the firm's reputation and integrity in the name of justice!

In today's virtual world, most people conduct their own research online for everything from law firms to coffee makers. Consequently, a negative online review has the potential to adversely affect, not only a business's reputation, but also its viability. Because of that, it is only natural to want to defend oneself or one's business when confronted with a review that one believes is inaccurate or derogatory. However, because lawyers are required to follow a specific code of ethics and are held to a higher standard than other professions, they need to proceed with caution when confronted with a negative online review. Although easier said than done, taking the high road is often the most respected and effective route.

There are several ways to handle a negative online review, however, risk management experts caution against certain approaches given the potential for negative repercussions. For example, directly contacting the person who posted the review may seem like a good idea, but emotions on both ends might run so high that the conversation may do more harm than good. If the lawyer believes a post is false and has damaged the firm's reputation, suing for defamation may seem like the next logical step. While defamation is governed by state law, it generally requires, among other things, a false statement. As anyone who has

perused an online review site knows, as scathing as they can be, reviews are usually expressed as opinions. One can also attempt to have a review removed from a website but removing a post can often draw further attention and additional circulation of the negative information. Yet, for many lawyers, the first reaction to a bad review is to reply with their side of the story which is ethically dangerous.

If a lawyer posts anything online, they need to be mindful of their duty of confidentiality to both current and former clients in accordance with the ethics rules. ABA Model Rule 1.6 advises that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.<sup>1</sup> Although the rule contains a self-defense exception which allows disclosure of otherwise confidential information, ethics committees that have addressed this matter agree that online reviews do not trigger this exception to confidentiality obligations.<sup>2</sup>

As such, one should analyze an online review and objectively consider whether the information is presented in a believable, credible manner. If the person who posted the review is making irrational pronouncements against a lawyer or firm, it is doubtful an impartial reader will be convinced of the merits of their claim.

Be mindful that responding to a post will most likely draw more attention to the review. Remember that the reply will be viewable by others, not just the person who wrote the negative review. By choosing to engage, the author is providing a glimpse into their demeanor and professionalism to anyone who may be visiting the online site including potential future clients. If an attorney feels that a response is necessary, the response must be accurate, truthful and not reveal any information relating to the representation of the client. The Pennsylvania Bar Ethics Committee had the following suggestion for a generic response to a negative online review:

*"A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events."*<sup>3</sup>

Professionalism and fidelity are not only expected but demanded of lawyers throughout the course of representation. This stands true whether there is a personality conflict with a client, a legal fee dispute or a negative online review written about the firm. Being a

member of the legal profession compels integrity and discretion. Realistically, the acts of individual attorneys can impact the reputation of the profession as a whole. With this in mind, as difficult as it may be to not respond to a negative review, sometimes it is best to take the high road and most often that means doing nothing. But by proceeding with respect and civility as we learned in law school *res ipsa loquitur!*<sup>4</sup>

<sup>1</sup> ABA Model Rule of Professional Conduct 1.6.

<sup>2</sup> New York State Bar Association Opinion 1032 (2014); Pennsylvania Bar Association Opinion 2014-200; Texas Center for Legal Ethics Opinion 662; Bar Association of San Francisco Opinion 2014-1; Los Angeles County Ethics Committee in Opinion 525 (2012).

<sup>3</sup> Pennsylvania Bar Association Opinion 2014-200.

<sup>4</sup> *res ipsa loquitur*- (rayz ip-sah loh-quit-her) n. Latin for "the thing speaks for itself".