

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 662**

August 2016

QUESTIONS PRESENTED

May a Texas lawyer respond publicly to a former client's adverse comments on the internet? If so, what information may the lawyer disclose?

STATEMENT OF FACTS

A former client posted negative comments about a Texas lawyer on an internet review site. The lawyer believes that the client's comments are false. The lawyer is considering posting a public response that reveals only enough information to rebut the allegedly false statements.

DISCUSSION

The internet allows consumers to publish instant reviews and comments about goods or services. Once posted, consumer reviews are usually searchable, easily accessible to other potential consumers, and effectively permanent. With the internet becoming an increasingly common source of referrals for legal services, consumer reviews on various sites have assumed a greater importance for attorneys in recent years.

Vendors of commercial goods or services are relatively free to respond to negative reviews as they see fit. But when a former client posts a negative review about a lawyer, the lawyer's duty of confidentiality limits the information the lawyer may reveal in a public response.

In general, Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct defines the scope and extent of a Texas lawyer's duty of confidentiality. Rule 1.05(a) broadly defines "confidential information" to include not only information protected by the lawyer-client privilege but also "all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client."

A lawyer may not publicly reveal the confidential information of a former client unless expressly permitted by an exception stated in Rule 1.05. Absent an applicable exception found in Rule 1.05, a lawyer may not post a response to a negative review that

reveals any information protected by the lawyer-client privilege, or otherwise relating to a client or furnished by the client, or acquired by the lawyer during the course of or by reason of the representation of the client. This is true even though the information may have become generally known. Compare Rule 1.05(b)(3) (allowing lawyer to use confidential information to the disadvantage of a former client after the information has become generally known) with Rule 1.05(b)(1) (generally prohibiting revelation of confidential information absent an applicable exception).

No exception in Rule 1.05 allows a lawyer to reveal information in a public forum in response to a former client's negative review. The only exceptions potentially applicable to the facts presented in this opinion appear in Rule 1.05(c) and (d):

“(c) A lawyer may reveal confidential information:

* * *

(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.

(6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.

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(d) A lawyer also may reveal unprivileged client information:

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(2) When the lawyer has reason to believe it is necessary to do so in order to:

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(ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;

(iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.”

It is the opinion of the Committee that each of the exceptions stated above applies only in connection with formal actions, proceedings or charges. The exceptions to Rule 1.05 cannot reasonably be interpreted to allow public disclosure of a former client's confidences just because a former client has chosen to make negative comments about the lawyer on the internet. This approach is consistent with the guidance issued by the ethics authorities in other jurisdictions. *See, e.g.*, Los Angeles County Bar Association Professional Responsibility and Ethics Committee Formal Opinion No. 525 (Feb. 2013); Bar Association of San Francisco Ethics Opinion 2014-1 (Jan. 2014); New York State Bar Association Ethics Opinion 1032 (Oct. 2014); and Pennsylvania Bar Association Formal Ethics Opinion 2014-200 (2014).

Accordingly, a lawyer may not reveal confidential information, as that term is defined in Rule 1.05, merely to respond to a former client's negative review on the internet. A lawyer may, however, post a response to a former client's negative review so long as the response is proportional and restrained and does not reveal confidential information or violate any other provision of the Texas Disciplinary Rules. For example, posting the following response, suggested in Pennsylvania Bar Association Formal Ethics Opinion 2014-200 (2014), would not violate the Texas Disciplinary Rules:

“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.”

Nothing in this opinion is intended to suggest that a lawyer may not seek judicial relief against a former client who commits defamation or other actionable misconduct through an internet publication.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a Texas lawyer may not publish a response to a former client's negative review on the internet if the response reveals any confidential information, i.e., information protected by the lawyer-client privilege, or otherwise relating to a client or furnished by the client, or acquired by the lawyer during the course of or by reason of the representation of the client. The lawyer may post a proportional and restrained response that does not reveal any confidential information or otherwise violate the Texas Disciplinary Rules of Professional Conduct.