

# CLEARY, JOSEM & TRIGIANI

CLEARY, JOSEM & TRIGIANI LLP  
Constitution Place  
325 Chestnut Street, Suite 200  
Philadelphia, PA 19106  
215.735.9099  
Fax: 215.640.3201  
www.cjtlaw.org  
E-Mail: labor@cjtlaw.org



Jeremy E. Meyer  
jmeyer@cjtlaw.org  
Admitted in PA & NJ

September 8, 2017

Mark Neary  
Office of the Clerk  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 970  
Trenton, NJ 08625

**Re: Docket Number 079852**

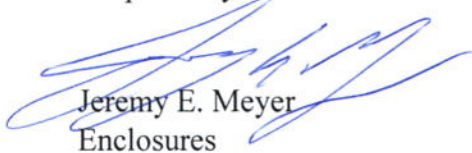
Dear Mr. Neary:

On July 27, 2017, petitioner Consumers for a Responsive Legal System (d/b/a Responsive Law) filed an original and eight copies of a Notice of Appeal in this case. Unfortunately, the Notice of Appeal was filed in error, and we respectfully request that the filing be withdrawn. In its place we are filing contemporaneously with this letter an original and nine (9) copies of a Notice of Petition for Review and accompanying Petition for Review. Also enclosed is an amended Motion to File as Within Time.

Kindly send me a file-stamped copy of each document in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



Jeremy E. Meyer  
Enclosures

cc: Steven Flanzman  
Office of The Attorney General  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 080  
Trenton, NJ 08625

Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

**IN THE SUPREME COURT OF NEW JERSEY  
DOCKET NO. 079852**

In the Matter of THE JOINT  
OPINION OF THE ATTORNEY COM-  
MITTEE ON PROFESSIONAL ETH-  
ICS OPINION 732, COMMITTEE  
ON ATTORNEY ADVERTISING  
OPINION 44, AND UNAUTHORIZED  
PRACTICE OF LAW OPINION 54

On Petition for Review of  
the final decision of the  
Attorney Committee on Pro-  
fessional Ethics, the Com-  
mittee on Attorney Advertis-  
ing, and the Committee on  
the Unauthorized Practice of  
Law

---

**AMENDED MOTION TO FILE AS WITHIN TIME**

---

Consumers for a Responsive Legal System (d/b/a Responsive Law) respectfully files this motion for leave to file as within time in this case and in support states as follows:

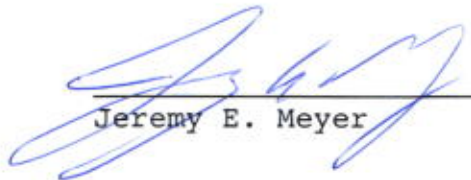
1. The above-styled joint opinion was issued on June 21, 2017, making Movant's notice of petition for review due on July 11, 2017.
2. Due to learning about the opinion the afternoon of June 22, 2017, office closure for the Fourth of July holiday, scheduled and unforeseen absences totaling four business days, and attorney for Responsive Law operating as its only full-time employee, only nine business days were left to prepare filings to challenge the opinion.

3. Due to Movant needing to find a sponsoring New Jersey attorney for pro hac vice admission, as well as obtaining a thorough understanding of New Jersey court rules, and for the reasons listed above, the notice of petition for review was filed on July 13, 2017.
4. On July 18, 2017, the Court rejected Responsive Law's filings as not being in compliance with applicable court rules.
5. The sponsoring attorney did not receive the July 18 letter from the Clerk of Court providing the explanation of noncompliance until July 24, 2017.
6. Due to the need to redraft documents and send them to the sponsoring attorney for physical signatures, and to have him return them to counsel for Responsive Law for filing, we filed the corrected documents on July 27, 2017.
7. On August 7, 2017, the Court again rejected Responsive Law's filings as not being in compliance with applicable court rules.
8. The sponsoring attorney received the August 7 letter just before leaving town on vacation. Responsive Law's lawyer was also on vacation during August.
9. Because its filings had been twice rejected, Responsive Law sought the advice of an experienced appellate litigator, who redrafted the documents as soon as he could on September 6, 2017.

10. Due to the need to again redraft documents and send them to the sponsoring attorney for physical signatures, and to have him return them to counsel for Responsive Law for filing, we are filing the corrected documents on September 11, 2017.

11. The Court would benefit from Responsive Law's expertise on the issues raised by the order.

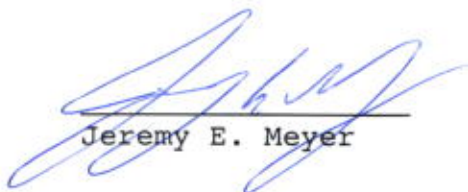
WHEREFORE, Responsive Law respectfully requests that the Court file its notice of petition for review and accompanying amended petition for review as within time.

  
\_\_\_\_\_  
Jeremy E. Meyer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing motion was furnished by express mail to the clerk of the Supreme Court of New Jersey at Richard J. Hughes Justice Complex, Supreme Court Clerk's Office P.O. Box 970 Trenton, NJ 08625, and to Steven Flanzman at the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 Market Street, Box 080 Trenton, NJ 08625, on September 11, 2017.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Jeremy E. Meyer

Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

**IN THE SUPREME COURT OF NEW JERSEY**  
**DOCKET NO. 079852**

In the Matter of THE JOINT  
OPINION OF THE ATTORNEY COM-  
MITTEE ON PROFESSIONAL ETH-  
ICS OPINION 732, COMMITTEE  
ON ATTORNEY ADVERTISING  
OPINION 44, AND UNAUTHORIZED  
PRACTICE OF LAW OPINION 54

On Petition for Review of  
the final decision of the  
Attorney Committee on Pro-  
fessional Ethics, the Com-  
mittee on Attorney Advertis-  
ing, and the Committee on  
the Unauthorized Practice of  
Law

---

**ORDER ON MOTION TO FILE AS WITHIN TIME**

---

This matter having been brought before the Court on applica-  
tion of Movant for an ORDER extending time to file a petition for  
review and accompanying amended petition for review pursuant to R.  
2:4-1, and the Court having considered the moving party's provided  
information.

---

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
**ORDERED** that the motion to file as within time is

☐ **Granted**

☐ **Denied**

**IN THE SUPREME COURT OF NEW JERSEY  
DOCKET NO. 079852**

In the Matter of THE JOINT  
OPINION OF THE ATTORNEY COM-  
MITTEE ON PROFESSIONAL ETH-  
ICS OPINION 732, COMMITTEE  
ON ATTORNEY ADVERTISING  
OPINION 44, AND UNAUTHORIZED  
PRACTICE OF LAW OPINION 54

On Petition for Review of  
the final decision of the  
Attorney Committee on Pro-  
fessional Ethics, the Com-  
mittee on Attorney Advertis-  
ing, and the Committee on  
the Unauthorized Practice of  
Law

---

**NOTICE OF PETITION FOR REVIEW**

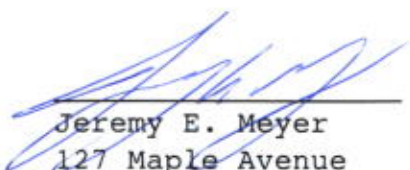
---

To: Office of the Clerk  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 970  
Trenton, NJ 08625

Steven Flanzman  
Office of The Attorney General  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 080  
Trenton, NJ 08625

Notice is hereby given that petitioner Consumers for a Respon-  
sive Legal System (d/b/a Responsive Law), of 1380 Monroe Street  
NW, #210, Washington, DC 20010, will petition the Supreme Court of  
New Jersey under N.J. Court Rules 1:19-8, 1:19A-3(d), and 1:22-3A  
for review of the Joint Opinion of the Attorney Committee on Pro-  
fessional Ethics (Joint Opinion 732), the Committee on Attorney

Advertising (Joint Opinion 44), and the Committee on the Unauthorized Practice of (Law Joint Opinion 54), issued June 21, 2017. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. Petitioner is aggrieved by the order because, contrary to Responsive Law's core mission, the order restricts access to legal services.



---

Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

Thomas M. Gordon  
*Pro hac vice* motion pending  
1380 Monroe St NW, #210  
Washington, DC 20010  
(202) 649-0399

Dated: September 11, 2017



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing notice was furnished by express mail to the clerk of the Supreme Court of New Jersey at Richard J. Hughes Justice Complex, Supreme Court Clerk's Office P.O. Box 970 Trenton, NJ 08625, and to Steven Flanzman at the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 Market Street, Box 080 Trenton, NJ 08625, on September 11, 2017.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Jeremy E. Meyer

IN THE SUPREME COURT OF NEW JERSEY  
DOCKET NO. 079852

In the Matter of THE JOINT  
OPINION OF THE ATTORNEY COM-  
MITTEE ON PROFESSIONAL ETHICS  
OPINION 732, COMMITTEE ON AT-  
TORNEY ADVERTISING OPINION 44,  
AND UNAUTHORIZED PRACTICE OF  
LAW OPINION 54.

On Petition for Review of the  
final order of the Attorney  
Committee on Professional Eth-  
ics, the Committee on Attorney  
Advertising, and the Unauthor-  
ized Practice of Law

PETITIONER CONSUMERS FOR A RESPONSIVE LEGAL SYSTEM'S  
AMENDED PETITION FOR REVIEW AND APPENDIX

Thomas M. Gordon  
*Pro hac vice* motion pending  
1380 Monroe St NW, #210  
Washington, DC 20010  
(202) 649-0399

On the petition

Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099  
  
Counsel for petitioner

## TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of the Matter Involved.....	1
Questions Presented.....	2
Errors Complained Of.....	2
Argument.....	4
I.    The Joint Opinion Would Widen the Growing Access-to-Justice Gap.....	4
II.   The Joint Opinion Is Anticompetitive and Requires this Court's Active Review to Avoid Potential Antitrust Liability.....	7
III.  A Lawyer's Payment of a Marketing Fee to a Lawyer-Client Matching Service Falls Under the Advertising Exception to the Prohibition on Giving Anything of Value to One Who Recommends the Lawyer's Services.....	9
IV.   Lawyers Participating in a Lawyer-Client Matching Service Are Not Engaged in Unethical Fee Splitting with Non-Lawyers.....	10
Conclusion.....	12

## APPENDIX

Notice of Petition for Review.....	1a
Joint Order.....	4a

## TABLE OF AUTHORITIES

### Cases

*North Carolina State Bd. of Dental Examiners v. FTC*,  
135 S. Ct. 1101 (2015)..... 2, 3, 7, 8, 9

*Patrick v. Burget*,  
486 U.S. 94 (1988)..... 9

### Rules and Interpretations

N.J. Court Rules, Rule of Professional Conduct 5.4..... 11

N.J. Court Rules, Rule of Professional Conduct 7.2..... 9

N.J. Court Rules, Rule of Professional Conduct 7.3..... 9

Committee on Attorney Advertising Op. 43,  
205 N.J.L.J. 155 (2011)..... 10

### Miscellaneous Sources

Gillian K. Hadfield, *Innovating to Improve Access:  
Changing the Way Courts Regulate Legal Markets*,  
143 *Dædalus* 83 (2014)..... 5

Gillian K. Hadfield & Jamie Heine, *Life in the  
Law-Thick World: The Legal Resource Landscape  
for Ordinary Americans in Beyond Elite Law:  
Access to Civil Justice for Americans Of  
Average Means* (Samuel Estreicher & Joy Radice  
eds., 2015)..... 5

Gillian K. Hadfield, *The Cost of Law: Promoting  
Access to Justice through the (Un)Corporate  
Practice of Law*, 38 *Int'l. Rev. L. & Econ.*  
43 (2014)..... 5

LegalShield, *Decision Analyst Survey: The Legal Needs  
of Small Business* (2013)..... 6

New Jersey Courts, *Supreme Court Committee on Access  
and Fairness*..... 7

Deborah L. Rhode, <i>Access to Justice</i> (2005).....	5
World Justice Project, <i>WJP Rule of Law Index 2016</i> (2016).....	4

### **STATEMENT OF THE MATTER INVOLVED**

Consumers are increasingly turning to lawyer-client matching services to find legal help. With legal services out of reach for many consumers, matching services like Avvo, LegalZoom, and Rocket Lawyer help the public to locate and compare lawyers who are ready and able to assist with particular legal problems. Unfortunately, New Jersey consumers are now cut off from these useful services because several committees appointed by this Court concluded that it is unethical for a lawyer to participate in them.

Consumers for a Responsive Legal System (d/b/a Responsive Law) files this petition to ask the Court to reverse the joint opinion and reinstate lawyer-client matching services in New Jersey. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. It has testified on numerous occasions to the American Bar Association and to state regulators about the bar's responsibility to give greater weight to increasing access to justice when interpreting rules of professional conduct, and to avoid interpretations that have an anticompetitive impact.

This Court has a duty to increase access to justice. Innovative business models such as lawyer-client matching services have the potential to narrow the enormous access to justice gap that consumers face. The joint opinion would chill this innovation and others like it, leaving millions of New Jersey residents with fewer ways to find legal help.

### QUESTIONS PRESENTED

1. Did the committees err in issuing a joint opinion that will make access to justice more difficult for consumers?

2. Is the joint opinion anticompetitive because it favors market participants at the expense of the public?

3. Does a lawyer's payment of a marketing fee based on business generated fall under the advertising exception to the prohibition on giving anything of value to one who recommends the lawyer's services?

4. Does paying marketing fees to lawyer-client matching services constitute an unethical fee split under Rule 5.4, or are the marketing fees permissible fees for services?

### ERRORS COMPLAINED OF

1. Access to justice is increasingly out of reach for ordinary Americans. Lawyer-client matching services can provide consumers with a broad range of lawyers to choose from based on location and expertise. Matching services also promote competition by providing a convenient way to comparison shop among available lawyers, and provide consumers with a measure of price certainty through fixed-fee services. The committees, however, failed to recognize the benefit of such services to consumers and the legal marketplace. As a result, their opinion makes access to justice harder for consumers without any countervailing benefit.

2. The Supreme Court's recent decision in *North Carolina Board of Dental Examiners v. Federal Trade Commission* holds that when a

controlling number of the decision makers on a state licensing board are active participants in the occupation the board regulates, the board is entitled to state-action immunity to antitrust liability only if it is subject to active supervision by the state. Under *Dental Examiners*, the Advisory Committee on Professional Ethics, the Committee on Attorney Advertising, and the Committee on the Unauthorized Practice of Law are not entitled to immunity. The committees are overwhelmingly made up of lawyers, and their decisions regulating the profession are thus made almost entirely by market participants. To avoid the potential for antitrust liability, this Court thus must carefully exercise its active supervision of the committees. In particular, the Court should engage in de novo review and should carefully consider whether the anti-competitive elements of the joint opinion serve the public interest.

3. Although a lawyer may not generally pay anyone to recommend the lawyer's services, RPC 7.2(c) and RPC 7.3(d) provide an exception for the reasonable costs of advertising. It is increasingly common for advertisers to pay advertising fees based on the business generated by an advertisement. Given that it is established that the rules allow payment of advertising fees based on the number of clicks on an advertisement, there is no reason why those fees could not instead be based on the amount of business generated. Nothing about that model of payment violates Rule 7.3(b).



4. The marketing fee charged by lawyer-client matching services is not a violation of Rule 5.4's prohibition on fee splitting. Just as credit cards charge higher transaction fees for larger purchases, lawyer-client matching services should be allowed to charge more for higher-fee services. Those higher rates help compensate the matching service for the risk it takes on in covering more expensive legal services.

#### **ARGUMENT**

##### **I. The Joint Opinion Would Widen the Growing Access-to-Justice Gap.**

The United States is facing an access to justice crisis. While many calculations of the extent of this crisis focus on the poorest Americans, the scope of the crisis extends all the way to Americans of modest means and beyond, to encompass most of the middle class.

The World Justice Project reports that the U.S. is currently tied with Bangladesh and Egypt in terms of the affordability and accessibility of its civil justice system.<sup>1</sup>

At hourly rates that do not dip much below \$200 and which routinely exceed \$300, few average Americans can afford to pay lawyers for assistance with everyday legal needs: simple estate planning; providing for elder care; arranging child custody and obtaining child support; addressing consumer debt problems and foreclosure; managing disputes over employment conditions or pay;

---

<sup>1</sup> World Justice Project, *WJP Rule of Law Index 2016* (2016), available at <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>.

obtaining access to legal entitlements to health care, education and public services.<sup>2</sup> Surveys of legal needs of low- and moderate-income Americans find that roughly 50%-60% of American households faced an average of two significant legal problems in the previous year. Lack of access to legal representation leads Americans to take no action to address their legal problems at rates much higher than in countries, such as England and the Netherlands, with fewer restrictions on how legal services may be offered: roughly 25%-30% compared with 5%-10%.<sup>3</sup>

Small businesses and entrepreneurs also face enormous hurdles in obtaining affordable legal services. They form business entities, file for trademarks and patents, take on debt or equity investment, determine their regulatory obligations, file taxes and manage contracts with customers, suppliers, franchisors and the public. A 2012 survey found that nearly 60% of small businesses had faced serious legal problems in the preceding two years—collections, contract review, supplier disputes, security breaches,

---

<sup>2</sup> Deborah L. Rhode, *Access to Justice* (2005); Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice through the (Un)Corporate Practice of Law*, 38 Int'l. Rev. L. & Econ. 43 (2014); Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 Dædalus 83 (2014).

<sup>3</sup> Gillian K. Hadfield & Jamie Heine, *Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans in Beyond Elite Law: Access to Civil Justice for Americans Of Average Means* (Samuel Estreicher & Joy Radice eds., 2015).

products liability, employee theft, tax audits, employee confidentiality issues, threats of customer lawsuits, etc. Close to 60% of small businesses faced these problems without lawyer assistance. For those that did hire lawyers, the average expenditure was \$7,600—an enormous cost for a small business.<sup>4</sup>

A lawyer-client matching service addresses the justice gap in numerous ways. Fixed fee services provide price certainty, which can be even more valuable to consumers than lower costs. In addition, a matching service provides a measure of convenience that is not available through traditionally marketed lawyers. It can provide its customers with a broad range of choices in regard to both location and subject matter expertise. Finally, matching services can allow consumers to easily comparison shop among their many options through an online interface.

Responsive Law is unaware of any consumer complaints against a lawyer-client matching service—in New Jersey or elsewhere—claiming harm of the types that the Proposed Opinion warns against. Without a demonstration of consumer harm, action by the bar, through the committees, that restricts new entrants and new means of delivery to the legal services industry looks less like the bar acting as a force for consumer protection and more like the bar acting as a cartel.

---

<sup>4</sup> LegalShield, *Decision Analyst Survey: The Legal Needs of Small Business* (2013), available at <https://www.legalshield.com/news/legal-needs-american-families-0>.

Chief Justice Rabner created the Supreme Court Advisory Committee on Access and Fairness to guide the judiciary on how to administer justice fairly to all. The committee emphasizes "The Judiciary is guided by its four core values: independence, integrity, fairness and quality service. Access and fairness are the foundation of those values and shape the experience of every litigant. Fairness cannot be attained without access to the courts, the most important component of quality service."<sup>5</sup>

Unlike the committees, this Court should not abrogate its responsibility to promote access to the justice system, fairness in its administration, and the independence and integrity of the judicial branch. In the absence of evidence that lawyer-client matching services harm consumers, and that the harms of the services outweigh the benefits, the Court should reverse the joint opinion.

## **II. The Joint Opinion Is Anticompetitive and Requires this Court's Active Review to Avoid Potential Antitrust Liability.**

The current structure of the committees leaves them open to antitrust action, as the U.S. Supreme Court's recent decision in *North Carolina Board of Dental Examiners v. Federal Trade Commission* makes clear. *Dental Examiners* holds that when a controlling

---

<sup>5</sup> New Jersey Courts, *Supreme Court Committee on Access and Fairness*, available at <https://www.judiciary.state.nj.us/public/access/accessfairness.html#about> (last visited July 21, 2017).

number of the decision makers on a state licensing board are active participants in the occupation the board regulates, the board can invoke state-action immunity to antitrust liability only if it is subject to active supervision by the state.<sup>6</sup> *Dental Examiners* makes clear that the committees do not receive state action immunity.

The Advisory Committee on Professional Ethics, Committee on Attorney Advertising, and the Committee on the Unauthorized Practice of Law consist of an overwhelming majority of lawyers (versus lay members). Therefore, any action the committees take with regard to regulation of the legal profession is being made almost entirely by market participants.

The *Dental Examiners* decision allows active market participants to receive state action immunity if their anticompetitive decisions are actively supervised by the state.<sup>7</sup> Active supervision requires that the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy and that the state supervisor may not itself be an active market participant.<sup>8</sup> In this instance, the active state supervision requirement mandates that the this Court engage in de novo review of the committees' opinion so as to fully exercise its supervision over the decision made by a body of active market participants. Any deference given to the committees would not fulfill the *Dental*

---

<sup>6</sup> *North Carolina State Bd. of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1107.

*Examiners* active supervision requirement because it would fail to demonstrate the committees' actions promote state policy and not simply their own anticompetitive interests.<sup>9</sup>

The Court should carefully consider whether any anticompetitive elements of the Joint Opinion are purely in the public interest and that they do not favor existing market participants over new entrants. Additionally, it should apply a *de novo* standard of review to the committees' opinion, as undue deference to the bar would leave committee members subject to antitrust law under the *Dental Examiners* decision.<sup>10</sup>

**III. A Lawyer's Payment of a Marketing Fee to a Lawyer-Client Matching Service Falls Under the Advertising Exception to the Prohibition on Giving Anything of Value to One Who Recommends the Lawyer's Services.**

Although a lawyer may not generally pay anyone to recommend the lawyer's services, RPC 7.2(c) and RPC 7.3(d) provide an exception for the reasonable costs of advertising that is otherwise permissible.<sup>11</sup> For at least the last decade, large parts of the economy have been operating on the Internet (even if lawyers have been slower to do so). As the ability to track potential customers grows, advertisers have been able to move from paying for poorer proxies for business generated (e.g., size of an ad, size of the audience potentially viewing the ad) to paying for better proxies for business generated (e.g., number of people to express interest

---

<sup>9</sup> *Patrick v. Burget*, 486 U.S. 94 (1988).

<sup>10</sup> *Dental Examiners*, 135 S. Ct. 1101.

<sup>11</sup> N.J. Court Rules, RPC 7.2; N.J. Court Rules, RPC 7.3.

in an ad by clicking on it) to paying precisely for the business generated by the ad.

When looking at cost of advertising, the Committee on Attorney Advertising has stated that it is reasonable that costs may be based on measurable levels of interest evoked (through Internet "clicks" or "hits").<sup>12</sup> This allows lawyers to pay for advertising based on a closer proxy for the value they derive. Why, though, would the ethics rules allow lawyers to use clicks, but not business generated, to measure levels of interest evoked when the latter is a more accurate measure than the former? It is commonplace and reasonable for Internet advertising platforms to charge based on the volume of business generated. Putting aside (until the next section) concerns about sharing fees with non-lawyers, there is nothing about this model of payment that falls outside of the advertising exception to Rule 7.3(b).

#### **IV. Lawyers Participating in a Lawyer-Client Matching Service Are Not Engaged in Unethical Fee Splitting with Non-Lawyers.**

The marketing fee charged by lawyer-client matching services is not a violation of the Rule 5.4 prohibition on fee splitting. The committees gave multiple reasons why it believes the marketing fee violates Rule 5.4. One, addressed above, is that the marketing fee should not be considered the reasonable cost of advertising.

---

<sup>12</sup> Committee on Attorney Advertising Op. 43, 205 N.J.L.J. 155 (2011).

Another, addressed below, is that basing the size of the marketing fee on the dollar value of attorney fees generated is inherently an unethical fee split.

Rule 5.4(a)(4) allows lawyers to accept credit cards, even though a credit-card company takes a percentage of the fees charged by the lawyer.<sup>13</sup> It does not cost the credit company more to process a charge of \$100 than it does to process a charge of \$10,000. However, the credit-card company is allowed to charge more money for the higher transaction because it exposes itself to a greater loss if the customer does not pay.

Similarly, although it does not cost a matching service more to market and process a \$2,995 service than a \$149 service, it is a reasonable business practice to charge \$400 for the former and \$40 for the latter. The matching service is not only providing marketing services; it is providing payment collection services as well. The matching service faces a much greater potential loss if it cannot collect a \$2,995 fee than if it cannot collect a \$149 fee. These costs are undoubtedly reflected in the matching service's own credit-card processing fees.

Perhaps if the matching service called its fee a "marketing and payment processing fee," it would better illuminate the actual nature of this transaction. However, regardless of the transaction's name, the committees should have looked to the purpose of

---

<sup>13</sup> N.J. Court Rules, RPC 5.4.

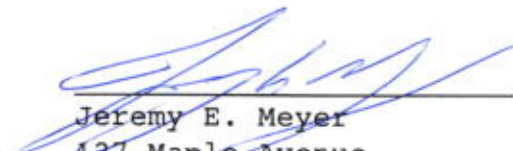


the transaction when applying the ethics rules. If they did so, they would have seen that the transaction is a permissible fee for service, and not an unethical fee split.

#### CONCLUSION

The Court should reverse the joint opinion of the committees and permit New Jersey lawyers to participate in lawyer-client matching services.

Respectfully submitted,



---

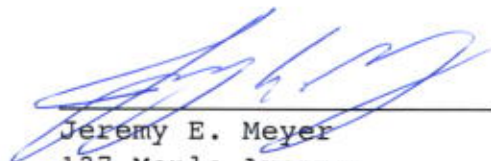
Jeremy E. Meyer  
427 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

Thomas M. Gordon  
*Pro hac vice* motion pending  
1380 Monroe St NW, #210  
Washington, DC 20010  
(202) 649-0399

*Counsel for Petitioner*

**CERTIFICATION OF COUNSEL**

Counsel hereby certifies that this petition presents a substantial question and is filed in good faith and not for purposes of delay.



---

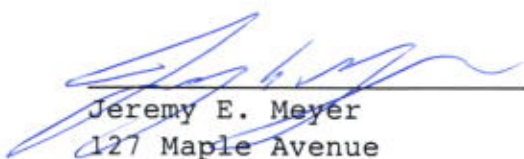
Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

Dated: September 11, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing petition was furnished by express mail to the clerk of the Supreme Court of New Jersey at Richard J. Hughes Justice Complex, Supreme Court Clerk's Office P.O. Box 970 Trenton, NJ 08625, and to Steven Flanzman at the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 Market Street, Box 080 Trenton, NJ 08625, on September 11, 2017.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

## **APPENDIX**

**IN THE SUPREME COURT OF NEW JERSEY  
DOCKET NO. 079852**

In the Matter of THE JOINT  
OPINION OF THE ATTORNEY COM-  
MITTEE ON PROFESSIONAL ETH-  
ICS OPINION 732, COMMITTEE  
ON ATTORNEY ADVERTISING  
OPINION 44, AND UNAUTHORIZED  
PRACTICE OF LAW OPINION 54

On Petition for Review of  
the final decision of the  
Attorney Committee on Pro-  
fessional Ethics, the Com-  
mittee on Attorney Advertis-  
ing, and the Committee on  
the Unauthorized Practice of  
Law

---

**NOTICE OF PETITION FOR REVIEW**

---

To: Office of the Clerk  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 970  
Trenton, NJ 08625

Steven Flanzman  
Office of The Attorney General  
Richard J. Hughes Justice Complex  
25 West Market Street  
PO Box 080  
Trenton, NJ 08625

Notice is hereby given that petitioner Consumers for a Responsive Legal System (d/b/a Responsive Law), of 1380 Monroe Street NW, #210, Washington, DC 20010, will petition the Supreme Court of New Jersey under N.J. Court Rules 1:19-8, 1:19A-3(d), and 1:22-3A for review of the Joint Opinion of the Attorney Committee on Professional Ethics (Joint Opinion 732), the Committee on Attorney

Advertising (Joint Opinion 44), and the Committee on the Unauthorized Practice of (Law Joint Opinion 54), issued June 21, 2017. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. Petitioner is aggrieved by the order because, contrary to Responsive Law's core mission, the order restricts access to legal services.

---

Jeremy E. Meyer  
127 Maple Avenue  
Red Bank, NJ 07701  
(215) 735-9099

Thomas M. Gordon  
1380 Monroe St NW, #210  
Washington, DC 20010  
(206) 734-4113

Dated: September 11, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing notice was furnished by express mail to the clerk of the Supreme Court of New Jersey at Richard J. Hughes Justice Complex, Supreme Court Clerk's Office P.O. Box 970 Trenton, NJ 08625, and to Steven Flanzman at the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 Market Street, Box 080 Trenton, NJ 08625, on September 11, 2017.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

---

Jeremy E. Meyer



**ADVISORY COMMITTEE ON PROFESSIONAL ETHICS  
COMMITTEE ON ATTORNEY ADVERTISING  
COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW**

**Appointed by the Supreme Court of New Jersey**

**ACPE JOINT OPINION 732  
CAA JOINT OPINION 44  
UPL JOINT OPINION 54**

**Lawyers Participating in Impermissible Lawyer  
Referral Services and Providing Legal Services for  
Unregistered Legal Service Plans – Avvo, LegalZoom,  
Rocket Lawyer, and Similar Companies**

The Advisory Committee on Professional Ethics received an inquiry from a bar association requesting a formal opinion on “whether it is ethical for lawyers to participate in certain online, non-lawyer, corporately owned services that offer legal services to the public.” Inquirer stated that three companies (Avvo, LegalZoom, and Rocket Lawyer) are soliciting New Jersey lawyers to provide legal services to customers of the companies. The inquiry was jointly considered by the Advisory Committee on Professional Ethics, Committee on Attorney Advertising, and Committee on the Unauthorized Practice of Law. 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). The Committees further find that LegalZoom and Rocket Lawyer appear to operate legal service plans through their websites but New Jersey lawyers may not participate in these plans because they are not registered with the Administrative Office of the Courts in accordance with *Rule of Professional Conduct* 7.3(e)(4)(vii).



Inquirer asked four specific questions:

1. Does a lawyer's participation in these services constitute impermissible fee sharing with nonlawyers in violation of *Rule of Professional Conduct* 5.4(a)?
2. Does participation in these services interfere with a lawyer's independent professional judgment in violation of *Rule of Professional Conduct* 5.4(c)?
3. Are Avvo, LegalZoom, and Rocket Lawyer impermissible attorney referral services in violation of *Rule of Professional Conduct* 7.2?
4. Do the services violate *Rule* 1:28A-2, which requires lawyers to establish an IOLTA account in which to hold client funds until they are earned, by having a nonlawyer company hold such funds instead and/or by allowing a nonlawyer company to have direct access to a lawyer's trust or bank accounts?

The Committees reviewed the websites and public information posted on the internet by Avvo, LegalZoom, and Rocket Lawyer, and considered written responses provided by the companies setting forth their positions on the ethical issues. Avvo offers, on its website, two legal services products: Avvo Advisor and Avvo Legal Services. Through Avvo Advisor, users may purchase a 15-minute telephone conversation with a lawyer for a flat fee. The user pays the fee to Avvo, Avvo contacts participating lawyers, and the first lawyer who responds to Avvo gets the job. Users can also select a lawyer from the Avvo profiles of participating lawyers. After the telephone conversation is completed, Avvo electronically deposits the flat fee into the lawyer's bank account and then withdraws a "marketing fee" (currently \$10, about 25% of the \$39.95 flat fee for the legal consultation). Avvo suggests that the deposit be made into the lawyer's trust account, and the withdrawal be taken from the lawyer's operating account.

Through Avvo Legal Services, users may purchase various legal services for fixed fees paid to Avvo, such as an uncontested divorce or a green card application. Participating lawyers provide these services to the user. When the services are completed, Avvo deposits the fees into the lawyer's bank account and then withdraws a "marketing fee" in set amounts that vary according to the fee charged for the specific legal service.

LegalZoom offers what appear to be legal service plans to users through its website. For Business Advantage Pro, users pay a monthly flat fee subscription and receive legal advice on limited business matters. For Legal Advantage Plus, users pay a monthly flat fee and receive legal advice on various matters such as estate planning, family law, and tax. Under both plans, users receive "unlimited" 30-minute consultations with lawyers. Users may make appointments with participating lawyers or request to receive a phone call from the "first available" lawyer. Users may receive additional services directly from participating lawyers at a discounted fee rate. The "Join Our Attorney Network" page of the LegalZoom website states that lawyers do not pay LegalZoom to participate; the monthly subscription fees are retained by LegalZoom.

Rocket Lawyer offers what appear to be legal service plans to users for a monthly flat fee; subscribing users receive limited legal advice on document-related matters, such as

enforcing a legal document (called “document defense”). Users also receive a “free” 30-minute consultation with a lawyer, and can use the “ask a lawyer” section of its website for legal advice. Participating lawyers do not pay Rocket Lawyer but agree to offer a discounted fee for additional services; Rocket Lawyer retains the monthly subscription fees.

The Committees find that the LegalZoom and Rocket Lawyer websites appear to offer legal service plans to paying subscribers, rather than an attorney referral service. *Rule of Professional Conduct* 7.3(e)(4) governs legal service plans. That *Rule* permits a “bona fide organization” to “recommend[, furnish[, or pay[.]” for legal services to its “members or beneficiaries” under certain conditions. If the organization is for profit, the legal services cannot be rendered by lawyers “employed, directed, supervised or selected by it . . . .” *RPC* 7.3(e)(4)(i). The participating lawyers must be separate and apart from the bona fide organization and cannot be affiliated or associated with it. *RPC* 7.3(e)(4)(ii) and (iii). The member or beneficiary must be recognized as the client of the lawyer, not of the organization. *RPC* 7.3(e)(4)(iv). The member or beneficiary must be entitled to select counsel other than that furnished, selected, or approved by the organization for the matter (though the switch in counsel may be at the member’s or beneficiary’s own expense). *RPC* 7.3(e)(4)(v). Participating lawyers must not have any cause to know that the organization is in violation of applicable laws, rules, or legal requirements. *RPC* 7.4(e)(4)(vi). Lastly, the organization must register its plan with the Supreme Court (Administrative Office of the Courts, Professional Services). *RPC* 7.4(e)(4)(vii).

LegalZoom submitted a response that stressed that its employees do not provide legal advice or assistance; it merely offers prepaid legal service plans. It stated that it contracts with a New Jersey law firm to provide legal consultations for its members and pays this law firm a monthly capitated fee per plan member in New Jersey.

Rocket Lawyer submitted a response, including its Service Provider Agreement. It stated that it offers prepaid legal service plans through independent lawyers who are not employees of the company. The Service Provider Services Appendix A states that participating lawyers are paid an undisclosed sum by Rocket Lawyer for participation in the “Q&A Service.”

The LegalZoom and Rocket Lawyer offerings appear to be legal service plans, as they “furnish” and “pay for” limited legal services through outside participating lawyers to “members” who pay a monthly subscription (“membership”) fee. Members select lawyers from the respective websites; participating lawyers are not officially affiliated with LegalZoom or Rocket Lawyer; and members become clients of the participating lawyer. As of the date of this Joint Opinion, however, neither organization has registered a legal service plan with the Administrative Office of the Courts. Therefore, New Jersey lawyers may not provide legal services to members of these unregistered legal service plans.

The Avvo plans do not meet the definition for legal service plans; they are pay-for-service plans. There are no “members or beneficiaries” to whom legal services are “furnished” and “paid for” through a legal service plan.

As noted above, Inquirer asked four questions. The first question asks whether lawyers who participate in these programs are engaged in impermissible fee sharing in violation of *Rule of Professional Conduct* 5.4(a) (“[a] lawyer shall not share legal fees with a nonlawyer”). The

Committees find that the Avvo business model violates *Rule of Professional Conduct* 5.4(a). The participating lawyer receives the set price for the legal service provided, then pays a portion of that amount to Avvo. The label Avvo assigns to this payment (“marketing fee”) does not determine the purpose of the fee. *In re Weinroth*, 100 N.J. 343, 349-50 (1985) (referral fee was disguised as a credit for future legal services to client; law firm was aware that client intended to forward that amount to the nonlawyer who referred the firm the case); *In re Maran*, 80 N.J. 160 (1979) (improper referral fee to a doctor took the form of an inflated medical bill). Here, lawyers pay a portion of the legal fee earned to a nonlawyer; this is impermissible fee sharing, prohibited under *Rule of Professional Conduct* 5.4(a). See also *In re Bregg*, 61 N.J. 476 (1972); Joint ACPE Opinion 716/UPL Opinion 45 (June 2009).

The Committees further find that the monthly subscription fees paid by consumers to LegalZoom and Rocket Lawyer for the “free” consultations with lawyers do not violate this *Rule*. Those monthly subscription fees are not paid to the lawyers providing the service; the lawyers have not shared their legal fees. In legal service plans, members pay membership fees to the plan and, in return, get access to limited legal services by participating lawyers. Participating lawyers usually are paid a lump per-capita amount by the plan for providing the limited-scope legal services to plan members who select them.

The second question presented by Inquirer asks whether these services unduly interfere with the lawyer’s professional judgment in violation of *Rule of Professional Conduct* 5.4(c). This *Rule* provides that “[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.” Inquirer suggested that Avvo directs or regulates the lawyer’s professional judgment because it “defines the scope of the legal services offered, receives payment from clients, sets the fee and pays lawyers only when legal tasks are completed.” The Committees disagree. Avvo does not insert itself into the legal consultation in a manner that would interfere with the lawyer’s professional judgment.

As for LegalZoom and Rocket Lawyer, Inquirer suggested that lawyers may be constricted in the service they provide for clients in the limited phone consultations. Again, however, this is the nature of legal service plans. Members get a limited consultation with participating lawyers and if the member needs more, they can retain the lawyer separately (usually at a discounted rate).

The third question presented by Inquirer asks whether the companies offer impermissible attorney referral services. *Rule of Professional Conduct* 7.2(c) provides in relevant part:

A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; . . . and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

*Rule of Professional Conduct 7.3(d)* provides:

A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by the client except that the lawyer may pay for public communications permitted by *RPC 7.1* and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

Accordingly, the *Rules* prohibit a lawyer from giving anything of value to a person for recommending the lawyer's services, or compensating or giving anything of value to a person or organization to secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client. *RPC 7.2(c)*; *RPC 7.3(d)*. Both of these *Rules* provide that lawyers may, however, "pay the reasonable cost of advertising" or "public communication."

The Committees find that the "marketing fee" that lawyers pay Avvo after providing legal services to clients is not for the "reasonable cost of advertising" but, instead, is an impermissible referral fee. The fee "bears no relationship to advertising." ACPE Opinion 481 (May 1981); Joint ACPE Opinion 716 / UPL Opinion 45 (June 2009). Rather, it is a fee that varies with the cost of the legal service provided by the lawyer, and is paid only after the lawyer has completed rendering legal services to a client who was referred to the lawyer by Avvo.

Lawyers may "advertise" by placing an ad on the Avvo website or participating in other parts of the website without paying this "marketing fee." Lawyers may pay a set, flat amount for *potential* client inquiries or "leads" that may or may not result in retention of a client for a specific matter, but they may not pay a fee in exchange for referral or retention of a client for a specific case. CAA Opinion 43 (June 2011). This service offered by Avvo is a lawyer referral program that does not conform to the requirements of *Rule of Professional Conduct 7.2(c)* and *Rule of Professional Conduct 7.3(d)*. Accordingly, New Jersey lawyers may not participate in the program.

The Committee on Attorney Advertising has issued several opinions on the distinction between "advertising" and an impermissible referral service. *See, e.g.*, CAA Opinion 13 (October 1992); CAA Opinion 43 (June 2011). Because the companies at issue in those opinions did not charge a fee for each case a lawyer received (as opposed to inquiries or "leads"), the opinions focused on whether the companies were making improper statements or restricting information about the participating lawyers. When the lawyers pay a fee to the company based on the retention of the lawyer by the client or the establishment of an attorney-client relationship, the answer to the inquiry is simple: the company operates an impermissible referral service.

LegalZoom and Rocket Lawyer offer what appear to be legal service plans through a different business model. Participating lawyers do not pay referral fees to those companies.

The fourth question raised by Inquirer asks whether payment of the legal fee by the user to Avvo violates *Rule 1:28A-2*, which requires lawyers to maintain a trust account registered with the IOLTA program. Avvo holds the legal fee until the services are performed and then electronically transfers the monies to the law firm bank account.

In New Jersey, lawyers are not required to hold advance payment of fees in their trust account absent an agreement with the client; while that is the better practice, they may deposit such monies in their operating account. *In re Stern*, 92 N.J. 611 (1983); Michels, K., *New Jersey Attorney Ethics*, § 8:4-3a, p. 126-27 (Gann 2017). The arrangement by Avvo does not violate Rule 1:28A-2.

The Committees notified Avvo, LegalZoom, and Rocket Lawyer that they were considering whether New Jersey lawyers may, consistent with the rules governing attorney ethics and advertising, participate in their programs, and requested written responses setting forth their position. In its response, Avvo claimed to be serving a public purpose of improving access to legal services. The Committees acknowledge that improving access to legal services is commendable, but participating lawyers must still adhere to ethical standards.

Avvo stated that it is not recommending or referring lawyers to potential clients. The Committees disagree; Avvo is connecting its users to the lawyers who have signed up with Avvo to provide those specific services. Avvo asserted, in essence, that all lawyers licensed in a jurisdiction are listed on its pages and, conceivably, a user could select any lawyer, even those who do not participate in this service, by merely finding that lawyer's contact information on its site and reaching out directly to that lawyer for representation. Avvo is conflating its two services – the attorney-referral service and the attorney-directory service. Only those lawyers participating in the “Avvo Legal Services” plan can provide users with the requested legal services. It is irrelevant that other lawyers can be found on the general lawyer directory.

Avvo claimed that the “marketing fee” is not a referral fee but an advertising cost, and because the “marketing fee” is a separate transaction, there is no improper fee sharing. The label and timing of the fee does not transform it into an advertising cost. This fee varies depending on the cost of the legal service provided, which is inconsistent with the essential elements of an advertising cost. Avvo defended the varying amounts of its “marketing fees” by stating that in the online market, bigger-ticket services should have bigger-ticket fees. It stated that it spends more to advertise the range of services and takes a bigger payment processing risk for more expensive services. The Committees are not convinced that the sliding scale of fees for legal services rendered bear any relation to marketing.

Avvo asserted that its marketing scheme is commercial speech that must be tested against the intermediate scrutiny standard applied to First Amendment commercial speech. The Committees are not restricting Avvo's marketing; the focus of this Joint Opinion is on the for-profit lawyer referral program and sharing of a legal fee with a nonlawyer. The First Amendment does not protect lawyers who seek to participate in prohibited attorney referral programs or engage in impermissible fee sharing.

Avvo further asserted that fee sharing is only unethical if it compromises the lawyer's professional judgment. The Committees acknowledge that concerns about independent professional judgment undergird the prohibition on sharing legal fees with nonlawyers. But the precedent in New Jersey, in case law, opinions, and the language of the *Rule of Professional Conduct* itself, do not restrict the prohibition to situations where there is a clear connection between the fee sharing and the lawyer's professional judgment. *See, e.g., In re Weinroth*, 100

*N.J.* 343, 349-50 (1985) (“The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney”). Sharing fees with a nonlawyer is prohibited, without qualification.

Avvo acknowledged that what it calls its “pay-per-action” model may look like a referral fee. It asserted that its model is permitted because the user chooses the lawyer, no “runners” are involved, and there is no element of deception in the Avvo website. The prohibition on for-profit referral fees or sharing legal fees with a nonlawyer does not depend on whether deception is involved; as noted above, it is unqualified.

One need not parse the Avvo website to determine if the language used improperly restricts choice or directs users to a particular lawyer. Avvo charges a pay-per-legal-service fee, which is a hallmark of an attorney referral service.

The Committees reviewed advisory opinions about Avvo-type companies issued by other states. Ohio found that the “marketing fee” was not payment for advertising but, rather, a referral fee because the amount is based on a percentage of the fee for rendering legal services. Supreme Court of Ohio, Board of Professional Conduct, Opinion 2016-3 (June 3, 2016).

Even where a business model states that it does not engage in impermissible fee splitting because the fees are separated into two different transactions or are called a “marketing fee” or similar term, fee splitting with a nonlawyer likely occurs. Such fees are not traditional advertising fees, as outlined in Adv. Op. 2001-2. Unlike advertising fees that are fixed amounts and paid for a fixed period of time, these “marketing fees” are a percentage of the fee generated on each legal service completed by the lawyer. Therefore, a fee-splitting arrangement that is dependent on the number of clients obtained or the legal fee earned does not comport with the Rules of Professional Conduct.

South Carolina found that the arrangement violates *Rule of Professional Conduct* 5.4(a), improper fee-sharing, and *Rule of Professional Conduct* 7.2(c), improper referral fee. South Carolina Ethics Advisory Opinion 16-06 (July 14, 2016). As for fee-sharing, South Carolina stated:

In the situation described above, the service collects the entire fee and transmits it to the attorney at the conclusion of the case. In a separate transaction, the service receives a fee for its efforts, which is apparently directly related to the amount of the fee earned in the case. The fact that there is a separate transaction in which the service is paid does not mean that the arrangement is not fee splitting as described in the Rules of Professional Conduct.

A lawyer cannot do indirectly what would be prohibited if done directly. Allowing the service to indirectly take a portion of the attorney’s fee by disguising it in two separate transactions does not negate the fact that the service is claiming a certain portion of the fee earned by the lawyer as its “per service marketing fee.”

South Carolina further found that the payment by the lawyer to the company is not payment for the cost of advertisement but, rather, a referral fee. It stated:

The service, however, purports to charge the lawyer a fee based on the type of service the lawyer has performed rather than a fixed fee for the advertisement, or a fee per inquiry or “click.” In essence, the service’s charges amount to a contingency advertising fee arrangement rather than a cost that can be assessed for reasonableness by looking at market rate or comparable services.

Presumably, it does not cost the service any more to advertise online for a family law matter than for the preparation of corporate documents. There does not seem to be any rational basis for charging the attorney more for the advertising services of one type of case versus another. For example, a newspaper or radio ad would cost the same whether a lawyer was advertising his services as a criminal defense lawyer or a family law attorney. The cost of the ad may vary from publication to publication, but the ad cost would not be dependent on the type of legal service offered.

Pennsylvania also found impermissible fee-sharing. Pennsylvania Bar Association, Legal Ethics and Professional Responsibility Committee Formal Opinion 2016-200 (September 2016). It stated:

The manner in which the payments are structured is not dispositive of whether the lawyer’s payment to the Business constitutes fee sharing. Rather, the manner in which the amount of the “marketing fee” is established, taken in conjunction with what the lawyer is supposedly paying for, leads to the conclusion that the lawyer’s payment of such “marketing fees” constitutes impermissible fee sharing with a non-lawyer.

Pennsylvania further found that the “marketing fee” was not the “usual cost of advertising” within the meaning of *Rule of Professional Conduct 7.2(c)*. It stated: “The cost of advertising does not vary depending upon whether the advertising succeeded in bringing in business, or on the amount of revenue generated by a matter.”

In sum, the Committees find that the Avvo website offers an impermissible referral service, in violation of *Rules of Professional Conduct 7.2(c)* and *7.3(d)*, as well as improper fee sharing with a nonlawyer in violation of *Rule of Professional Conduct 5.4(a)*. LegalZoom and Rocket Lawyer avoid those problems but appear to be offering legal service plans that have not been registered pursuant to *Rule of Professional Conduct 7.3(e)(4)(vii)*. New Jersey lawyers may not participate in the Avvo legal service programs. In addition, New Jersey lawyers may not participate in the LegalZoom or Rocket Lawyer legal service plans because they are not registered with the New Jersey Supreme Court (Administrative Office of the Courts).