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Avvo, LegalZoom, Rocket Lawyer Declared Off-Limits

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A joint opinion by three New Jersey Supreme Court committees has blacklisted three web-based services that match litigants with attorneys because of concerns over illicit fee-sharing and referral fees.

Avvo facilitates improper fee-splitting, while LegalZoom and Rocket Lawyer operate legal service plans that aren't registered with the judiciary, according to the June 21 opinion, issued by the Advisory Committee on Professional Ethics, the Committee on Attorney Advertising and the Committee on the Unauthorized Practice of Law.

The opinion decrees 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)."

It adds: "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)."

All three companies have defended their services.

The New Jersey State Bar Association sent an inquiry to the ACPE, asking whether lawyers may "participate in certain online, non-layer, corporately owned services," and named Avvo, LegalZoom and Rocket Lawyer specifically.

According to the opinion, Avvo offers "Avvo Advisor"—through which customers buy 15-minute phone conversations with a lawyer for a \$40 flat rate, of which Avvo keeps a \$10 marketing fee—and "Avvo Legal Services," which allows customers to pay flat fees to Avvo for legal services provided by affiliated lawyers, after which Avvo pays the lawyer but keeps a marketing fee.

LegalZoom offers a monthly subscription to legal services for a flat fee, through "Business Advantage Pro" and "Legal Advantage Plus," through which customers get 30-minute phone consultations with lawyers of their choosing, or the "first available" lawyer. Lawyers do not pay to participate in LegalZoom, and LegalZoom keeps its subscription fees, the committees said.

Rocket Lawyer, which offers "limited legal advice on document-related matters" and a free 30-minute phone consultation, does not take payments from lawyers to join—though the lawyers "agree to offer a discounted fee for additional services"—and does not share its subscription fees with the lawyers, according to the opinion.

LegalZoom and Rocket Lawyer's services "appear to be legal service plans," which are permissible under RPC 7.3(e)(4), but "as of the date of this Joint Opinion ... neither organization has registered a legal service plan with the Administrative Office of the Courts," the committees said.

The Avvo plans have a different problem, according to the opinion: They are "pay-for-service plans," and the company's business model violates RPC 5.4(a), which prohibits fee-sharing.

"The participating lawyer receives the set price for the legal service provided, then pays a portion of that amount to Avvo," the committee said. "The label Avvo assigns to this payment ("marketing fee") does not determine the purpose of the fee. ... Here, lawyers pay a portion of the legal fee earned to a nonlawyer; this is impermissible fee sharing."

The committees found that the LegalZoom and Rocket Lawyer models do not violate the fee-sharing stricture.

The opinion also holds that marketing fees lawyers pay to Avvo are not for advertising but amount to an "impermissible referral fee" by the definition contained in RPCs 7.2(c) and 7.3 (d).

"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," the committees said.

On the bright side for Avvo, the committees did find that its model does not "unduly interfere with a lawyer's professional judgment in violation of Rule of Professional Conduct 5.4(c)" by limiting the scope of representation.

"Avvo does not insert itself into the legal consultation in a manner that would interfere with the lawyer's professional judgment," they said. "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."

The committees also found that Avvo's practice of holding the lawyer's fee until the service is provided violates an attorney's requirement to maintain a registered trust account per Rule 1:28(a)-2.

Avvo submitted a response contending that it wasn't giving referrals and its marketing fee is a separate transaction—meaning that it doesn't amount to fee-sharing. The company also

"claimed to be serving a public purpose of improving access to legal services," according to the opinion.

"The Committees acknowledge that improving access to legal services is commendable, but participating lawyers must still adhere to ethical standards," they said.

The opinion also dispensed with the notion that Avvo is engaged in commercial speech that's protected by the First Amendment.

The committees noted that Avvo's business model has been found to violate ethics standards in Pennsylvania, South Carolina and Ohio.

LegalZoom submitted a response emphasizing that its employees don't offer legal services, and has a contract with a New Jersey firm to which it pays a monthly fee based on the number of participants in the service plan. The opinion does not identify the name of the firm. Judiciary spokeswoman Winnie Comfort said any documents identifying the firm are confidential.

Rocket Lawyer, too, submitted a response, stating that the actual legal services are provided by independent lawyers, who are "paid an undisclosed sum by Rocket Lawyer for participation in the 'Q&A Service,'" according to the opinion.

Avvo Chief Legal Officer Josh King said in a statement that the company is "happy the Committees concluded that Avvo Legal Services doesn't interfere with the independent professional judgment of lawyers, but disappointed that the Committees focused solely on mechanistic application of the rules rather than what the law requires: consumer protection and respect for the First Amendment."

He added: "Avvo is attempting to address the pressing need for greater consumer access to justice, and we will continue to do so despite this advisory opinion."

Rocket Lawyer, through a spokeswoman, declined to comment on the opinion.

A representative of LegalZoom, reached by email, did not provide comment by press time.

NJSBA President Robert Hille issued a statement saying the association "has in recent years frequently expressed concern about the growing number of organizations that have sought to open the door to fee sharing, which could interfere with a lawyer's independent professional judgement."

The NJSBA sent the inquiry "since many of our colleagues have taken advantage of the services some companies offer, without a thorough vetting of how they comport with the ethics rules," added Hille, of McElroy, Deutsch, Mulvaney & Carpenter in Morristown. "The association will continue to monitor developments as these issues evolve and will provide guidance to its members."

The opinion was accompanied by a notice to the bar, which included an appendix listing 46 legal service plans that are registered in the state, including plans offered through labor unions, government entities and corporations.

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