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INFORMAL OPINION 2012 – 03

**MARTINDALE.COM CLIENT REVIEW RATINGS**

The requestor asks whether participation in Martindale-Hubbell’s Martindale.com client rating system is ethical. Specifically, the requestor asks whether it is ethical for a lawyer to (1) direct clients to the client rating portion of Martindale.com’s website to rate the requestor; and (2) permit client ratings to appear in the lawyer’s Martindale Hubbell listing. In the Committee’s opinion, for the reasons that follow, the answer to each question is a qualified “yes.”

**Background:**

For years, Martindale-Hubbell has surveyed lawyers concerning the abilities and ethics of other lawyers and has published ratings of lawyers based on responses to those surveys. Those ratings continue to appear in the annually published multi-volume Martindale-Hubbell Law Directory. LexisNexis now owns Martindale-Hubbell and has expanded its offerings to include, among other things, the Martindale.com website. Martindale.com is not intended as a tool for use solely or even primarily by lawyers, but is apparently intended for use by the consumer market as well. According to Martindale.com:

Today, Martindale-Hubbell offers solutions for both professional and consumer markets. Our online destinations contain profiles for over one million lawyers and firms in the United States, Canada and 160 other countries, serving as a fundamental legal resource and marketing tool.

See [http://www.martindale.com/About\\_Martindale-Hubbell/index.aspx](http://www.martindale.com/About_Martindale-Hubbell/index.aspx).

Martindale.com now permits clients to rate their lawyers. A lawyer’s clients can access the

Martindale.com rating system in a number of ways. In some cases, lawyers provide the names of their clients to Martindale.com, and Martindale.com contacts the client, directing the client to Martindale.com to review the lawyer.<sup>1</sup> Clients can also access their lawyer's Martindale.com profile and link from the lawyer's profile to a review questionnaire that permits clients to rate the lawyer.

Clients may rate lawyers from one (poor) to five (excellent) in the following four categories: (1) communication ability; (2) responsiveness; (3) quality of service; and (4) value for money. Clients may also indicate whether they would recommend the lawyer and may provide narrative comments about the lawyer. There is no charge to clients or lawyers when the client utilizes the client rating system. According to the Martindale.com website:

The idea behind Client Review Ratings is to create an objective platform on which clients can share their experiences working with a specific lawyer or law firm. This information assists other potential clients with their decision-making process.

See [http://www.martindale.com/Products\\_and\\_Services/Client\\_Review\\_Ratings.aspx](http://www.martindale.com/Products_and_Services/Client_Review_Ratings.aspx), under the "What" tab.

Some lawyers and law firms pay for their Martindale-Hubbell and Martindale.com listings; others do not. Lawyers and firms who pay for their listings may include in their listings extensive biographical information and information concerning the lawyers' or firms' practices. Lawyers and law firms who do not pay for listings are still listed, but the listings are very limited. In either case, however, clients are equally able to submit reviews of their lawyers and/or law firms. These client reviews appear automatically on the lawyer or law firm's Martindale.com listing without approval by the lawyer or firm and regardless of whether the lawyer or law firm pays for the listing.

Lawyers and law firms have very limited control over what appears in the client review section of Martindale.com. According to Martindale.com:

All client reviews will be posted automatically. The lawyer has a one-time opportunity to respond to any Client Review Rating comment. In addition, the lawyer has the option of suppressing a Client Review Rating, but if that is done, all of that lawyer's reviews are removed

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<sup>1</sup> A lawyer may reveal the name of a client to Martindale.com only if the lawyer has the client's permission to do so. See Rule 1.6.

from display and they will be suppressed for a minimum of two years.

See, [http://www.martindale.com/Products\\_and\\_Services/Client\\_Review\\_Ratings.aspx](http://www.martindale.com/Products_and_Services/Client_Review_Ratings.aspx), under the “FAQ” tab. Accordingly, lawyers and law firms cannot control the content of client reviews appearing on Martindale.com. Lawyers and law firms can only publish a response to a particular client review or suppress all client reviews for a minimum of two years.

**Is it permissible to direct clients to the client rating portion of Martindale.com?**

The answer to this question primarily involves Rules 7.1 and 7.2 of the Rules of Professional Conduct. Rule 7.1 requires that a lawyer’s communications concerning the lawyer’s services shall not be “false or misleading.” Rule 7.2, entitled “Advertising” contains restrictions on lawyer advertising. Subsection (c) of Rule 7.2 provides, with limited exceptions, that “a lawyer shall not give anything of value to a person for recommending the lawyer’s services . . . .”

There is nothing in Rules 7.1 or 7.2 or any other Rule of Professional Conduct that prohibits a lawyer from directing a client to the client rating portion of Martindale.com provided the lawyer does not:

- (1) instruct or suggest to the client that the client’s review contain any information that would be “false or misleading” under Rule 7.1 because doing so would violate Rule 8.4(1) which provides, in part, that a lawyer may not “violate or attempt to violate the Rules of Professional Conduct . . . through the acts of another”<sup>2</sup>; or
- (2) give something of value to the client in exchange for submitting a review, because doing so would, if the client recommends the lawyer, violate Rule 7.2(c).

**Is it permissible for client ratings to appear in a lawyer’s Martindale.com listing?**

In some senses, client reviews are similar to client testimonials that lawyers use in their advertising. The Committee has, in the past, approved of using client testimonials in lawyer advertising, provided the testimonials are not false or misleading under Rule 7.1. See Informal Opinion 01-07. Similarly, as long as a

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<sup>2</sup> The Committee notes that Rule 7.2(i)(10) provides “[n]othing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.” While this provision was certainly directed at publications like Martindale-Hubbell, it does not apply in this case because unlike the Martindale-Hubbell Law Directory (1) the Martindale.com website is not intended primarily for the use of the legal profession and (2) client reviews have not “traditionally” been included in Martindale-Hubbell.

client review published on Martindale.com is not false or misleading, it would not be prohibited by Rule 7.1.

The Committee recognizes that a review written by a client, without input from the lawyer, may contain content that would be considered “false or misleading” if Rule 7.1 applied. For example, a client could state “I have used many lawyers, and Lawyer A is the best, most knowledgeable lawyer in the state.” Such a statement might be considered “misleading” under Rule 7.1 as an “unsubstantiated comparison of the lawyer’s services . . . with the services . . . of other lawyers . . . presented with such specificity as would lead a reasonable person to conclude tht the comparison can be substantiated..” See RPC 7.1 Official Commentary; Informal Opinion 01-07. Nevertheless, under these circumstances the lawyer would not be violating Rules 7.1 and 7.2 as further explained below.

Regardless of whether lawyers pay for their Martindale.com listings, they retain a limited ability to edit the content of their listings. With respect to client reviews, however, this includes only the ability to comment on client review or suppress all client ratings for a minimum of two years. Lawyers do not have the ability selectively to suppress a particular “false or misleading” client comment or to expunge “false or misleading” language from a client comment.

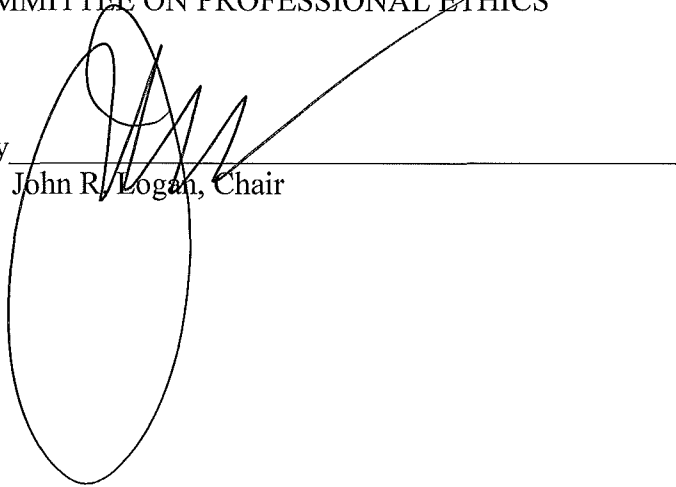
The Committee is of the view that any portion of the lawyer’s Martindale.com listing that the lawyer drafts or edits is advertising by the lawyer. By drafting or editing a portion of one’s listing, the lawyer takes responsibility for that content and must abide by Rules 7.1 and 7.2. The client review portion of Martindale.com, however, is not (or at least should not be) written by the lawyer, and the lawyer has no control over its content except the ability comment on a client review or to suppress all client reviews. In the Committee’s view, the client review portion of a lawyer’s or law firm’s Martindale.com listing is not advertising by the lawyer and is not subject to the requirements of Rules 7.1 and 7.2 unless the lawyer plays a role in shaping the content of a client review or posts a comment about a review. If the lawyer does shape the content of a client review or publishes a response to a client review, the lawyer would be responsible to ensure that whatever content he or she shaped or wrote complies with Rules 7.1 and 7.2.

Other websites, too, permit clients to publish narrative comments about their lawyers without the lawyers’ input or approval. The Committee does not view it as the lawyer’s responsibility to scour the internet

to ensure that all client comments comply with Rules 7.1 and 7.2 or to take action to ensure that comments that do not comply with those rules are removed or edited. Obligations under Rule 7.1 and 7.2 arise only when the lawyer has a hand in creating, shaping or publishing online client reviews.

THE COMMITTEE ON PROFESSIONAL ETHICS

By

  
John R. Logan, Chair