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# Circuits

Newsletter of the Computer & Technology Section  
of the State Bar of Texas

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botnet statute. For that, we need more anti-botnet law cases. And you know what that means . . . more zombies. Don't fear the zombie apocalypse!

### About the Author

Reid Wittliff is a technology lawyer with a deep understanding of the fast-developing law governing online activity, privacy and data security. He has represented both fortune 100 companies and small start-ups in technology and intellectual property disputes. He also frequently negotiates and drafts software licenses and other technology contracts. He is a certified mediator. Reid's prior experience includes serving as the founding Division Chief of the Texas Attorney General Office's Computer Crime Division and as a federal prosecutor responsible for leading computer crime investigations and prosecutions in the Dallas, Texas area. In 2008, Reid founded R3 Digital Forensics, LLC as an independent company to provide digital forensics and e-Discovery services to clients throughout the nation.

## Dealing with Digital Detractors – A New Ethics Trap for Divorce Lawyers?

### By John Browning

Ah, the good old days – when dealing with an irate client meant fielding a few angry phone calls or responding to a curt letter informing you that your services were no longer needed. You moved on, presumably the client moved on and that was usually the end of it. But in today's digital age where everyone is just keys away from airing their grievances with the world, comments posted to lawyer ratings sites like AVVO.com or even consumer complaint sites like Yelp! or RipoffReport.com can live online forever and pop up in response to internet searches of your name. As with any criticism, there's a right way and a wrong way to respond – and the wrong way can land you in front of the disciplinary board.

Chicago employment attorney Betty Tsamis learned this lesson the hard way in January 2014, when she received a reprimand from the Illinois Attorney Registration and Disciplinary Commission for revealing client confidential information in a public forum. Tsamis had represented former American Airlines flight attendant Richard Rinehart during late 2012 and early 2013 in an unsuccessful quest for unemployment benefits (Rinehart had been terminated for allegedly assaulting a fellow flight attendant during a flight). After firing Tsamis, Rinehart posted a review of the lawyer on the attorney review site Avvo.com. In the post, Rinehart expressed his dissatisfaction bluntly, claiming that Tsamis “only wants your money,” that her assurances of being on a client's side “is a huge lie,” and that she took his money despite

“knowing full well a certain law in Illinois would not let me collect unemployment.” Within two days of the negative comments, Tsamis contacted Rinehart by email, requesting that he remove the post; Rinehart refused to do so unless he received a copy of his file and a full refund of the \$1,500 fee he had paid.

Sometime in the next two months, AVVO removed Rinehart’s posting from its online reviews of Ms. Tsamis. But on April 10, 2013, Rinehart posted a second negative review of her on AVVO. This time, Tsamis responded by posting a reply the next day on the site. In it, she called Rinehart’s allegations “simply false,” said he didn’t “reveal all the facts of his situation” during their client meetings, and stated “I feel badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about.” According to the Illinois disciplinary authorities, it was this online revelation of information Tsamis obtained from her client that violated the Rules of Professional Conduct, as well as the fact that her posting was “designed to intimidate and harass Rinehart and keep him from posting additional information about her on the AVVO website,” which constituted another violation of professional conduct rules as well as conduct that tends to “bring the courts or the legal profession into disrepute.

In a similar situation in Georgia, attorney Margrett Skinner’s petition for lesser sanction of voluntary discipline was rejected by that state’s disciplinary authorities. According to In re: Skinner, after being fired and replaced by new counsel, the lawyer responded to negative reviews “on consumer websites” by the former client by posting “personal and confidential information about the client that Ms. Skinner had gained in her professional relationship with the client.” The court didn’t go into detail about the exact comments posted, however, and specifically noted that the record didn’t reflect “the actual or potential harm to the client as a result of the disclosures.” And in an unpublished 2013 California opinion, Gwire v Bloomberg, a disgruntled former client anonymously posted comments about lawyer William Gwire on complaintsboard.com, accusing Gwire of committing “a horrific fraud” and including a “partial summary of Gwire’s incredibly unethical history.” Gwire responded with a post calling Bloomberg “unreliable,” “a proven liar,” “mentally unbalanced,” and made references to his divorce file and previous business failures. When Gwire sued Bloomberg for defamation and trade libel, the former client tried to have the lawsuit dismissed under California’s Anti-SLAPP statute. While the trial court allowed the defamation claims to go forward (and was affirmed by the appellate court), the appropriateness of Gwire’s response to the online remarks wasn’t raised as an issue on appeal.

Of course, there is an even more disturbing way for an attorney to get in trouble over reviews on websites – not by revealing confidential client information, but by posting fake or fabricated content, both negative and positive (false testimonials). In 2013, an attorney was publicly reprimanded by the Minnesota Supreme Court for “falsely posing as a former client of opposing counsel and posting a negative review on a website.” In Dallas, Texas, a pending lawsuit brought by one law firm accuses a rival firm of a campaign of false postings while posing as unhappy ex-clients. And in August 2013, consumer review site Yelp, Inc. took the extreme step of suing the McMillan Law Group, a San Diego bankruptcy firm, for allegedly “gaming the system” through the “planting of fake reviews intended to sway potential clients with false testimonials.”

So what can you do when faced with negative online reviews? Sure, suing for defamation is an option, as one Nevada family lawyer did when the ex-husband of a woman he had represented published nasty comments about him on Facebook. But most of what’s said in an online review is likely to be non-defamatory because it is opinion and/or protected free speech. Moreover, as the cautionary tales discussed here illustrate, posting a rebuttal that gets too specific and breaches attorney-client confidentiality can result in a trip to the disciplinary board. The best approach may be that advocated by Josh King, general counsel of AVVO, who calls negative commentary “a golden marketing opportunity.” He says “By posting a professional, meaningful response to negative commentary, an attorney sends a powerful message to any readers of that review. Done correctly, such a message communicates responsiveness, attention to feedback and strength of character. The trick is to not get defensive, petty, or feel the need to directly refute what you perceive is wrong with the review.”

### About the Author

John G. Browning is a partner in the Dallas office of Lewis Brisbois Bisgaard & Smith, where he practices a wide variety of civil litigation in state and federal courts. He is the author of three books and numerous articles on social media and the law, and he serves as an adjunct professor at SMU Dedman School of Law. Mr. Browning's work has been cited by courts across the country and in numerous law review articles, and publications like The New York Times, TIME magazine, Law 360, and others have quoted him as a leading expert on social media and the law.