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Access To Justice and Routine Legal Services: New Technologies Meet Bar Regulators

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We are in the early stages of a technological revolution in legal services. Technology is displacing lawyers in a wide array of tasks such as document drafting, review, and assembly, and is also reshaping the way that lawyers find clients and deliver assistance. For most consumers, these are welcome developments. Such innovations generally reduce costs and increase both accessibility and efficiency. The potential gains are particularly great for low- and middle-income consumers, who lack access for a vast array of basic, often urgent, legal needs. Yet for lawyers, the consequences of technology have been more mixed. Many feel that their professional independence and livelihoods are threatened by the growth of online forms, computerized algorithms, and price competition with internet providers. Responding to these concerns, bar regulators have often fought back through ethics rulings that attempt to rein in organizations such as LegalZoom, Rocket Lawyer, and Avvo Legal Services.

This article explores the contested technological terrain of legal services for low- and middle-income Americans. It explores the battles brewing over Avvo Legal Services as a case study of how bar regulators are, and should be, responding to innovations in the legal market for consumers of limited means. Part I offers a brief overview of the rise of technology in this arena. Part II covers the three big players in consumer –oriented internet legal services, Avvo, LegalZoom, and Rocket Lawyer, with a special focus on the history of Avvo Legal Services. Part

¹ Helen and Charles Lockett Distinguished Professor of Law, The University of Tennessee College of Law. The author gives special thanks to Brannon Denning, Glenn Reynolds, Indya Kincannon, Alex Long, Jeff Hirsch, Wendy Bach, and the University of Tennessee College of Law for generous research support. Special thanks to Evan Sharber for expert research assistance.

² Ernest W. McFarland Professor of Law, Director of the Center on the Legal Profession at Stanford University. Professor Rhode served as an advisor to Avvo during its initial startup planning, and on its first advisory board, but has no current affiliation with the company.

III covers some of the lawsuits and regulatory restrictions that Avvo Legal Services has encountered. Part IV assesses the objections of bar regulators to that program and argues that it should be allowed with some minor reforms. Part V discusses the policy implications of this case history and concludes that initiatives such as Avvo Legal Services can not only enhance access to justice but also assist a struggling portion of the legal profession.

Our central argument is that lawyers should embrace the inevitable. Technological innovations are here to stay, and the organized bar should be looking for ways to harness their potential to help underserved constituencies that need it most. The best estimates are that over 80 percent of the legal needs of the poor, and 40 to 60 percent of the needs of middle-Americans remain unmet; these figures have not budged over the last three decades.³ According to the World Justice Project, the United States ranks sixty-seventh (tied with Uganda) of ninety-seven countries in the accessibility and affordability of civil justice.⁴ We can, and *must* do better, and technological innovations such as those pioneered by Avvo are part of the way forward.

We also argue that purely from the standpoint of self-interest, the legal profession should support Avvo's entry into this market. Lawyers in all fields, but particularly those who serve small businesses and middle-class consumers, face increasing competition from online legal services. In the past, Americans who wanted to handle their own routine needs without a lawyer might have tried to buy a book of forms or consulted a form-processing service with limited

³ For the poor, see LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL NEEDS OF LOW INCOME AMERICANS 1–13 (2009), <https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGaInAmerica2009.authcheckdam.pdf> [<https://perma.cc/47NR-N2J2>] [hereinafter DOCUMENTING THE JUSTICE GAP 2009]. For earlier estimates, see Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485, 487 n.12 (2017). For the middle class, see REBECCA BUCKWALTER-POZA, MAKING JUSTICE EQUAL 2 (Center for American Progress, 2016), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/12/08/294479/making-justice-equal/> [<https://perma.cc/VP3Y-DLAA>].

⁴ MARK DAVID AGRAS ET AL., THE WORLD JUSTICE PROJECT: RULE OF LAW INDEX 2012–2013 175 (2012–13).

ability to provide customized services or instructions. Now those customers can meet their legal needs with LegalZoom or Rocket Lawyer, frequently at a price that no attorney can afford to match.

In order to compete in this new reality, lawyers serving middle or low income consumers must learn how to do more legal work for less money. They will also need to spend more of their time servicing clients and less of their time finding clients or managing their businesses. And because no lawyers will be able to compete with internet computer programs like LegalZoom's on price, they must learn to compete on quality, the personal touch, and cost effectiveness.

That is no small task. But neither is it impossible, and Avvo Legal Services is an example of how to market routine legal services delivered *by lawyers*, not machines. Instead of trying to smother this attempt, bar regulators should find ways to make it work, because one way or another technology is going to increase competition and reduce prices in the market for legal services. Either Lawyers can get in the game and use technology to compete against online forms or onerous bar restrictions may drive lawyers out of that competition and leave the field open for computers to dominate.

We argue that Avvo Legal Services (and the inevitable imitators that will follow) are an opportunity for bar regulators and lawyers to do well *and* do good. We can expand access to justice at the same time as we make lawyers more competitive with machine-driven legal services.

I. Technological Innovation in the Market for Services

A. Market Trends

To what extent technology will transform the practice of law is in dispute. Some see a future in which legal artificial intelligence [AI] will largely replace humans in providing legal

advice and drafting documents.⁵ Others doubt that AI will progress that far.⁶ Everyone agrees that computers are already displacing human lawyers in areas like document review and assembly and will likely continue to do so.⁷

There is, however, a less noticed revolution occurring under our noses: the computerization of legal services aimed at America's low- and middle-income consumers. For individuals with relatively routine needs, technology is opening up whole new markets and disrupting existing markets. The companies at the forefront of this revolution are not just replacing lawyers on selected tasks, or using technology as part of a team run by a lawyer. Instead, they are replacing lawyers wholesale in areas of practice such as preparing wills and forming limited liability corporations. A vast array of interactive legal forms are now available for sale by LegalZoom, Rocket Lawyer, and others. Similar services are available for free to the poor through court-sponsored websites and programs such as A2J Author.⁸

Technology is also radically reshaping the way that middle class consumers find lawyers. Traditionally, most people found lawyers through personal referrals.⁹ The Yellow Pages were another common resource. In the early 2000s, a survey claimed that lawyers received 328 million references a year from ads in the Yellow Pages.¹⁰ As late as 2011, an American Bar Association

⁵ See, e.g., John O. McGinnis & Russell Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041 (2014) (arguing that legal AI will prove extremely disruptive and may largely replace humans).

⁶ See, e.g., Dana Remus & Frank S. Levy, *Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law*, <https://ssrn.com/abstract=2701092> [<https://perma.cc/RU74-4XHU>] (arguing that legal AI will be much more circumscribed in effect).

⁷ See, e.g., William Henderson, *What the Jobs Are*, A.B.A. J., (Oct. 2015), http://www.abajournal.com/magazine/article/what_the_jobs_are [<https://perma.cc/26X5-UMYB>].

⁸ See *Create Legal Documents & Forms*, ROCKET LAWYER, <https://www.rocketlawyer.com/legal-documents-forms.r1/> [<https://perma.cc/PS7K-YS46>]; *Legal Forms*, LEGALZOOM, <https://www.legalzoom.com/legalforms/> [<https://perma.cc/QU5U-VHF2>]; *Welcome to A2J Author*, A2J AUTHOR, <https://www.a2jauthor.org> [<https://perma.cc/H9N4-347M>].

⁹ Rhode, *supra* note 4, at n.40.

¹⁰ Barry Maher, *Getting the Most From Your Yellow Pages Advertising* 39 (2006).

("ABA") survey asked respondents how they would find a lawyer for a personal legal matter, and "look in the Yellow Pages" out-poll "look online."¹¹

In response to this demand, lawyers often bought larger and splashier Yellow Page ads, some of which featured surprisingly unflattering photos of the lawyers themselves.¹² But as Americans spent more of their lives online, their legal search methods followed suit. By 2014, the Internet was the primary way of finding a lawyer, preferred by 38 percent of the public. Only 29 percent would ask a friend, and only 4 percent reported that they would consult the Yellow Pages.¹³ Another recent survey found that three quarters of consumers seeking a lawyer would use online resources at some point in the process.¹⁴

Technology has not only changed the ways that Americans find lawyers, it has created new ways of retaining them. LegalZoom and Rocket Lawyer both sell monthly plans for legal advice from attorneys.¹⁵ Avvo sells a one-time, 15-minute legal consultation for \$39.00.¹⁶ Avvo is also the source for one of the most innovative and controversial new uses of technology for marketing legal assistance to individuals. Avvo Legal Services, described more fully below, advertises flat fees for basic legal needs such as divorces, wills, and incorporations.¹⁷ At first

¹¹ *Perspectives on Finding Personal Legal Services: The Results of a Public Opinion Poll*, A.B.A. STANDING COMM. ON THE DELIVERY OF LEGAL SERVS. 8 (Feb. 2011), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf [<https://perma.cc/4Q5Q-3D9B>].

¹² See, e.g., Lloyd Duhaime, *Outrageous Attorney Ads: The Good, The Bad and The Ugly*, DUHAIME.ORG (Dec. 13, 2012), <http://www.duhaime.org/LawFun/LawArticle-1394/Outrageous-Attorney-Ads-The-Good-The-Bad-And-The-Ugly.aspx> [<https://perma.cc/UC4G-LR5C>].

¹³ *Id.* The internet is now so dominant in this area that we thought the weirdest finding of the survey is that there were still people in 2014 who have the internet but would use the Yellow Pages for anything, let alone finding a lawyer.

¹⁴ Sarah Mui, *People Look to Yelp to Find Lawyers Online, Survey Says: Fallout over Facebook Mood Study?* A.B.A. J. (Jul. 2014), http://www.abajournal.com/news/article/around_the_blawgosphere_yelp_facebook_e-signature [<https://perma.cc/5PWY-LELV>].

¹⁵ *Let's Do This Together: We'll Make Sure You're on the Right Path to Success for Your Legal and Tax Matters*, LEGALZOOM, <https://www.legalzoom.com/attorneys/> [<https://perma.cc/Y8KS-YTVR>]; *Tell Us What You Need – We'll Recommend the Plan for You*, ROCKET LAWYER, <https://www.rocketlawyer.com/plans-pricing.r/#/> [<https://perma.cc/LZY4-CXP5>].

¹⁶ *Avvo Advisor*, AVVO, <https://www.avvo.com/advisor> [<https://perma.cc/4D52-9LSN>].

¹⁷ *Avvo Legal Services*, AVVO, <https://www.avvo.com/legal-services> [<https://perma.cc/UR69-VU3C>].

glance, this may not appear all that innovative. Low, flat fees for routine services are the hallmark of LegalZoom and Rocket Lawyer. Avvo Legal Services' innovation is that the customers hire a licensed lawyer to do the work, rather than proceeding through a computer-driven forms program.¹⁸

In some ways, this approach seems like the least tech savvy of these recent online innovations. Unlike LegalZoom or Rocket Lawyer, Avvo Legal Services only automates the shopping experience, not the work itself. Given its modest fees, participating lawyers may well be using their own standardized forms, but that's between the lawyer and the client, not the lawyer and Avvo. What makes this program innovative is its pivot from computer programs that replace lawyers to computer programs that connect lawyers with clients. LegalZoom and Rocket Lawyer started this trend with their legal advice subscription services, but those programs do not directly link attorneys and consumers on specific legal work. Avvo provides this link in a readily accessible and affordable form.

B. The Mixed Benefits of New Technologies

One key benefit of new technologies is that they enhance providers' ability to differentiate their offerings. So, if customers want a true do-it-yourself experience of legal services, they can buy a form through LegalZoom and fill it out themselves. If they want somewhat more guidance, they can opt for an interactive program that asks questions and then generates completed forms. Or if consumers seek a traditional lawyer-client relationship, they can pay up front for the service through Avvo Legal Services. Its matching service demystifies the process and helps lawyers and clients find each other with minimal transaction costs and a fixed price point that works for both.

¹⁸ See *infra* notes 85-111 and accompanying text.

There are some further upsides for consumers from this tech explosion. First, when a service or product is commoditized and sold on the internet, the price of that service tends to drop, sometimes dramatically. This is of particular benefit in the legal services market for low- and middle-income Americans, which, as noted earlier, is characterized by pervasive unmet needs. Second, the internet offers greater transparency and information in a market that has lacked both for years. One reason that consumers traditionally relied so heavily on the recommendations of friends or family in hiring lawyers was that it was difficult to find more credible information concerning quality. Bar-run referral services did not rate lawyers. Nor did bar regulatory authorities disclose lawyer disciplinary and malpractice records in a form accessible to consumers.¹⁹ One of Avvo's greatest contributions to the market for legal services is its national data bank on lawyer disciplinary actions, as well as its platform for client reviews and its own quality rating.²⁰

The impact of these technologies on lawyers is more mixed. Some experts, including Great Britain's leading authority Richard Susskind, believe that technologies will eventually displace attorneys in any context where services can be routinized and commodified.²¹ Other commentators are less pessimistic.²² They believe that technology has the potential to bring new consumers into the market by making services more accessible and affordable. In their view, a growing market and more demand for services would balance out against the inevitable fall in prices. Many commentators similarly argue that technological innovation and standardization can help lawyers increase profits by reducing costs. A wide array of research indicates that solo

¹⁹ Deborah L. Rhode, *The Trouble With Lawyers* 107–08 (2015).

²⁰ See *infra* notes 37-49 and accompanying text.

²¹ Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* 57 (2013).

²² Benjamin H. Barton & Stephanos Bibas, *Rebooting Justice: More Technology, Fewer Lawyers, and the Future of Law* (2017).

and small practitioners are spending too much time on running their businesses and seeking clients.²³ Technology can help streamline these processes as well as relieve lawyers from some of the most routine, mind-numbing aspects of legal practice.

The rank and file of the profession, however, has not always been eager to embrace these opportunities. At first, this allowed early adopters to capitalize on technological innovations without attracting competition or regulatory attention. For example, bar regulators did not get around to trying to stem LegalZoom until 2007, long after the company was already well known and hard to dislodge.²⁴ This late start may help explain why the organized bar has largely failed in its efforts to curtail LegalZoom's online forms business.²⁵

By contrast, bar regulators have immediately sought to ban lawyers from participating in the new Avvo Legal Services plan. By the fall of 2017, ethics committees in Ohio, South Carolina, New Jersey, New York, Virginia, and Pennsylvania had all issued opinions condemning certain aspects of the plan.²⁶ There is an irony to this result. Bar regulators have been unable to restrict the technological innovations that are in direct competition with lawyers: computerized forms and sources of free legal advice. Instead, regulatory authorities are attempting to curtail a technology that seeks to bring consumers and lawyers together (albeit at a much lower price), which could benefit under-employed tech-savvy practitioners.

What accounts for this anomalous outcome? One explanation is that bar regulators are at their most powerful when regulating licensed lawyers, rather than non-lawyer competitors. For example, when LegalZoom received a cease and desist order from the North Carolina Bar, it just

²³ See *infra* notes 183-96 and accompanying text.

²⁴ Deborah L. Rhode & Benjamin H. Barton, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance Activity*, 20 CHAP. L. REV. 267, 277-79 (2017).

²⁵ *Id.*

²⁶ See *infra* notes 135-55 and accompanying text.

plowed on, and eventually challenged the bar in the courts.²⁷ By contrast, the bar ethics opinions condemning Avvo Legal Services place the participating lawyers at risk of professional discipline. Many may be reluctant to assume that risk.

Another reason that the bar has targeted Avvo is that lawyers serving individual consumers have long hated price competition. For years, bar associations published mandatory fee schedules and banned advertising to avoid this necessity.²⁸ Now Avvo has created a national, fixed price point for a large number of bread and butter legal services. If it catches on, other lawyers will have to match these prices or explain to consumers why they should pay more.

II. Avvo's Place in the Online Market for Legal Services

The earliest version of online legal services was basically just a set of fill-in forms for purchase. LegalZoom launched in 2001. Its original business model built on earlier books of forms pioneered by Nolo Press in the 1970s.²⁹ These publications included documents that consumers could fill out themselves together with limited advice about how to do so.³⁰ At first, LegalZoom just replicated this approach online. Over time, it added a more sophisticated, interactive question and answer approach that assembled the completed forms online.³¹

Rocket Lawyer launched in 2008 with a slightly different business model. It, too, provided interactive legal forms, but it offered the first form “free,” as long as the client signed up for a legal advice subscription service.³² This may seem like a small difference, because the main draw at both sites was the forms. But prioritizing subscriptions actually signals a very different business model. Rocket Lawyer uses its forms business to drive clients into its lawyer-

²⁷ Rhode & Barton, *supra* note 24, at 277–79.

²⁸ Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975) (applying antitrust laws to minimum fee schedules); Bates v. State Bar of Ariz., 433 U.S. 350 (1977) (same for advertising).

²⁹ *About Us*, LEGALZOOM, <https://www.legalzoom.com/about-us> [https://perma.cc/55JS-THFJ].

³⁰ *Our History*, NOLO, <https://www.nolo.com/about/history> [https://perma.cc/QQ34-TDZ7].

³¹ Benjamin H. Barton, Glass Half Full: The Decline and Rebirth of the Legal Profession 88–97 (2015).

³² *Id.*

centered legal advice business. When Rocket Lawyer was founded in 2008, LegalZoom still pitched itself mostly as a replacement for the work of lawyers.

Rocket Lawyer's approach was apparently promising, because LegalZoom added a similar offering in 2010, "creating an 'independent attorney network' for people to get personalized legal advice to address their individual needs."³³ Although other interactive internet forms providers have sprung up, LegalZoom and Rocket Lawyer remain the largest players.³⁴

A. Avvo Launches as a Ratings Site for Lawyers

Mark Britton co-founded Avvo in 2007.³⁵ As the general counsel for Expedia, he watched his company cut into the market for travel services by replacing individual agents with online programs that quickly compared prices and services while cutting out the middle man. This experience led Britton to wonder whether there was a similar way to monetize online information about legal services. As noted earlier, the traditional sources of information about lawyers' performance were quite limited. Neither the Yellow Pages nor bar referral networks offered reliable quality assessments, and friends and family members seldom had enough expertise to evaluate the cost- effectiveness of the assistance they received or how it compared with that available from other practitioners. Nor was there any easy way to find out if a lawyer had been subject to disciplinary charges. Avvo was designed to fill this market gap. Britton named the company Avvo as a shorthand for *avvocato*, the Italian word for lawyer.³⁶

³³ *About Us*, *supra* note 29.

³⁴ Lawdepot.com offers a free week, and then guides users into a subscription model, for example. *See About*, LAWDEPOT, <https://www.lawdepot.com/about.php> [<https://perma.cc/Z5BR-E2W3>].

³⁵ *Five Questions: Mark Britton on the Avvo Online Legal Directory*, THE OREGONIAN (Jun. 11, 2009), http://www.oregonlive.com/business/index.ssf/2009/06/five_questions_mark_britton_on.html [<https://perma.cc/67M2-HJ79>].

³⁶ Kevin O'Keefe, *Coffee with Avvo Founder Mark Britton*, REAL LAWYERS HAVE BLOGS (Jul. 3, 2007), <http://kevin.lexblog.com/2007/07/03/coffee-with-avvo-founder-mark-britton/> [<https://perma.cc/PRD2-DNNF>].

Avvo began by gathering as much public information on lawyers as it could, including information from bar disciplinary authorities and lawyers' own websites.³⁷ Eventually Avvo provided a 10-point rating for individual attorneys based on the data it was able to collect. Its exact formula is proprietary, but Avvo has provided the following general explanation:

We calculate the rating based on public data we've collected on each attorney and the information they have provided in their profile. Information not supplied by the attorney comes from a variety of sources, including public records (state bar associations, regulatory agencies, and court records) and published sources on the internet (including attorneys' websites).

This information is then considered and weighted by our mathematical module to calculate a numerical rating, ranging from 1 to 10. If we have limited information on an attorney, we may give them a rating of "Attention" or "No Concern." We take into account factors that consumers and legal professionals believe are relevant to an attorney's qualifications, including experience, professional achievements, and disciplinary sanctions.³⁸

Avvo claims that it does not disclose exactly how it weighs information "primarily because we don't want anyone gaming the Avvo Rating system."³⁹ For lawyers who find the system overly opaque, a cottage industry of websites and advisors have sprung up to help practitioners boost their Avvo scores.⁴⁰ The easiest way is to "claim" your Avvo profile and then provide as much positive information as possible on your experience, awards, and so forth.⁴¹ By providing lawyers an incentive to become active participants on the site, Avvo also enlists them as potential purchasers of advertising and related services.⁴²

³⁷ Id.

³⁸ *What is the Avvo Rating?*, AVVO, <https://support.avvo.com/hc/en-us/articles/208478156-What-is-the-Avvo-Rating-> [<https://perma.cc/73FY-2WGM>].

³⁹ Stacey L. Romberg, *Attorney Rating Systems: Should You Play? Part 1*, GPSOLO EREPORT (May 2015), https://www.americanbar.org/publications/gpsolo_ereport/2015/attorney_rating_systems_should_you_play_part_1.html [<https://perma.cc/5ER6-RHCA>].

⁴⁰ See, e.g., *Understanding & Increasing Your Avvo Rating*, JURIS DIGITAL, <https://jurisdigital.com/guides/increase-avvo-rating/> [<https://perma.cc/PR4G-ALDG>]; William Pfeifer, *What Is Avvo and the Avvo Lawyer Ranking System?*, THE BALANCE, <https://www.thebalance.com/what-is-avvo-and-the-avvo-lawyer-ranking-system-2151221> [<https://perma.cc/M882-ZDPA>].

⁴¹ *Understanding & Increasing Your Avvo Rating*, supra note 40.

⁴² Scott H. Greenfield, *Avvo: Up to 5, Down from 10*, SIMPLE JUSTICE: A CRIMINAL DEFENSE BLOG, <https://blog.simplejustice.us/2012/09/11/avvo-up-to-5-down-from-10/> [<https://perma.cc/5Y7M-U6VS>].

This is, of course, the genius of the Avvo model. It is hard to make money providing free information on the internet, especially in a niche market like law. Anyone who doubts this point should just ask their local newspapers how the online revolution has worked out for them. Avvo sidesteps this difficulty by drawing potential clients onto the site with free information, and then charging lawyers to advertise to those clients. Avvo was founded to provide information to consumers, but its profits come from sales to lawyers. This is a textbook illustration of the internet quip: “if you're not paying for a website, you're not a consumer, you're the product.”

Avvo’s original business model is thus quite different from that of LegalZoom or Rocket Lawyer, which started out as direct competitors to lawyers. Avvo started in the opposite place; it makes its money from lawyers. Therefore, Avvo has a stake in the success of at least some practitioners, i.e. those who pay to support it. As to other lawyers, not so much.

Avvo offers a number of services to practitioners.⁴³ “Avvo Pro” costs \$49.00 a month and entitles purchasers to “customize [their] profile and maximize [their] reach.”⁴⁴ If a lawyer buys in, Avvo adds a small blue rectangle to their Avvo lawyer page that says “pro” – a not so subtle suggestion that they are, in fact, “pros.”⁴⁵ Lawyers can also purchase advertising on the Avvo site or pay Avvo to manage their personal website.⁴⁶

In addition, the company offers peer ratings and client ratings with comments.⁴⁷ The client rating runs from one to five stars, and client testimonials appear in a section of the lawyer’s profile. The testimonials tend to be positive, partly because savvy lawyers likely encourage their happy clients to post on Avvo, and partly because Avvo lawyers may be more

⁴³ *Pricing*, AVVO, <https://www.avvo.com/for-lawyers/pricing> [<https://perma.cc/9QD4-3V99>].

⁴⁴ *Id.*

⁴⁵ *Avvo Pro*, AVVO, <https://www.avvo.com/for-lawyers/avvo-pro> [<https://perma.cc/TJ3B-UKGV>].

⁴⁶ *Pricing*, *supra* note 43.

⁴⁷ *Avvo: Love It? Loathe It? Or Maybe a Little of Each?*, FOSTER WEB MARKETING, <https://www.fosterwebmarketing.com/blog/should-attorneys-claim-their-avvo-listing-.cfm> [<https://perma.cc/9UDD-9FCM>]. The remaining facts in this paragraph come from this source.

keenly aware that positive client feedback is critical to success on the internet. But Avvo includes some scathing client reviews as well, which is naturally a source of concern to practitioners. Bad client reviews do not affect the Avvo rating described above, but can still sit on an Avvo profile as a black mark.⁴⁸ The problem is common enough that there are websites and consultancies dedicated to how to react to bad reviews (escalating the dispute never helps).⁴⁹

Compared with other websites, Avvo offers a very uncluttered experience, without any intrusive pop up videos or sidebar advertisements showing the last page you visited. Because Avvo started as an attorney advertising site, the company wanted to avoid content that might distract or drive potential clients away.

In early 2018, Internet Brands purchased Avvo.⁵⁰ Internet Brands is a “portfolio company” owned by two of the world’s largest hedge funds, KKR and Temasek.⁵¹ It is a “fully integrated online media and client services organization” that focuses on four categories of internet companies: automotive, health, legal and travel.⁵² Avvo will join Internet Brands’ other legal offerings, including martindale.com, lawyers.com, and Nolo.⁵³ The management will stay the same and there are no announced plans to change any of their offerings.⁵⁴

B. Avvo’s Place in the Dog–Eat–Dog World of Online Legal Services

At the time of its launch, it was not clear that Avvo would end up in direct competition with LegalZoom or Rocket Lawyer. Avvo was primarily a site for clients to find lawyers. Its

⁴⁸ Larry Bodine, *Lawyer is Denied Identity of Online Critic Who Disparaged Her on Avvo*, LARRY BODINE: WEB AND MARKETING CONSULTANT (Jul. 11, 2015), <https://www.larrybodine.com/lawyer-denied-identity-of-online-critic-who-disparaged-her-on-avvo> [<https://perma.cc/254V-YCAW>].

⁴⁹ *How Should an Attorney Handle Negative Online Reviews?*, THE MODERN FIRM (Apr. 5, 2016), <https://www.themodernfirm.com/blog/qotw/how-should-an-attorney-handle-negative-online-reviews/> [<https://perma.cc/5LVZ-8SWA>].

⁵⁰ See Internet Brands, *Internet Brands to Acquire Avvo*, PR Newswire, January 11, 2018, <https://www.prnewswire.com/news-releases/internet-brands-to-acquire-avvo-300581042.html>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

revenue came from lawyers who purchased advertising or services to reach those clients. In order to stay successful, Avvo needed to keep drawing in potential clients, because without their eyeballs, lawyers would have no reason to buy advertising.

LegalZoom and Rocket Lawyer ran on a different business model. They made their money when consumers purchased legal services or a subscription for legal advice. The amount of traffic matters to LegalZoom and Rocket Lawyer, because traffic is necessary to sell services, but not in quite the same existential way that Avvo needs eyeballs. Consider the difference between Amazon and BuzzFeed. Amazon naturally cares about its web traffic. If no one visits, no one buys. But Amazon does not rely 100% on the number of visits to its site sell advertising the way content providers such as BuzzFeed or Avvo does. This makes web traffic the main priority for online content providers such as Avvo, while it is one of several priorities for online marketplaces like LegalZoom or Rocket Lawyer.

The differences in these business models may help explain why most of what was originally on Avvo's platform was free (the rankings, the "ask a lawyer" Q&A function) and most of what was on LegalZoom or Rocket Lawyer came with a charge. The major exception, Rocket Lawyer's "one free form," was the exception that proved the rule. The point of this "free" form was to get customers to purchase the subscription service.

Based on these original business models, it initially seemed possible that Avvo could coexist in uneasy détente or even in alliance with its internet siblings. But the economic forces operating on high tech companies pushed in a different direction. Avvo, LegalZoom, and Rocket Lawyer are all are under continual, hydraulic pressure to expand revenues and eventually profits for at least three reasons.

First, all of these companies have benefitted from major investments by from some very serious and savvy venture capital and all three are still privately held.⁵⁵ In 2011, LegalZoom filed the paperwork to go public, but sold itself to the private equity firm Permira instead when it looked like the offering might not be as profitable as hoped.⁵⁶ The investors in internet companies do not just want to see steady growth. They want to see explosive growth.⁵⁷ This puts significant pressure on company leaders either to expand existing product areas or to enter new product areas.⁵⁸ Steady or flat growth can be a death sentence for a tech company with venture capital financing.

Second, consumer review sites such as Avvo (and to a lesser extent legal services sites such as LegalZoom and Rocket Lawyer) have to worry about what economists call network effects. These effects occur when the value of a product increases when more people use the product.⁵⁹ The classic example is a fax machine. If there were only one fax machine on earth, the owner of that machine would not find it very useful. Each additional fax machine makes all the other fax machines more useful.

Social media networks are a more modern example. A public social network with few users is pretty useless. Most people don't want to join multiple social networks or buy different types of fax machines. Thus, over time, network effects guide users to one dominant player,

⁵⁵ *Avvo*, CRUNCHBASE, <https://www.crunchbase.com/organization/avvo#/entity> [<https://perma.cc/EY5W-K8HG>]; *LegalZoom*, CRUNCHBASE, <https://www.crunchbase.com/organization/legalzoom-com#/entity> [<https://perma.cc/S4PP-CTRN>]; *Rocket Lawyer* CRUNCHBASE, <https://www.crunchbase.com/organization/rocketlawyer> [<https://perma.cc/9B9M-GHD2>].

⁵⁶ BARTON, *supra* note 31, at 94–95.

⁵⁷ See, e.g., Mara Zepeda & Jennifer Brandel, *Out with the Old: Silicon Valley Needs a New Kind of Sex Education*, QUARTZ, (Feb. 18, 2016), <https://qz.com/618886/feminism-can-fix-silicon-valley/> [<https://perma.cc/CHR9-NNFB>].

⁵⁸ For an example of the pressure on Twitter, see, e.g., Dan Frommer & Kurt Wagner, *Twitter Only Grew by Two Million Users During Trump Mania – Facebook Grew by 72 Million*, RECODE, (Feb. 9, 2017, 8:58 AM), <https://www.recode.net/2017/2/9/14558890/trump-twitter-user-growth> [<https://perma.cc/3GCW-YTX8>].

⁵⁹ Catherine Tucker & Alexander Matthews, *Social Networks, Advertising, and Antitrust*, 19 GEO. MASON L. REV. 1211, 1217–20 (2012).

crowding out competitors. This is why Facebook has become so omnipresent and other competitors like MySpace have failed or stalled.⁶⁰

Ratings sites like Avvo benefit from network effects in at least two ways. To the extent that they rely on user-generated content such as customer or peer reviews, the more the merrier. Users of the site prefer seeing large numbers of reviews. And because the point of the ratings is to draw eyeballs and advertising dollars, the larger the audience, the better.

The network effects for Rocket Lawyer and Legal Zoom are less clear, but scale is also an advantage to them for reasons in addition to increased revenue. The more users a site has, the more data it can collect on what legal forms are most popular and what features work the best. It can also share that information with consumers. For example, LegalZoom often offers a feature indicating “How did most people answer this question” on some of its interactive forms. Users can then see the most common response, which may help them answer the same question.⁶¹ The more users, the better the information available to everyone. More users also offer more data about potential problems with the forms. LegalZoom and Rocket Lawyer have obvious reasons to want to improve the consumer experience and to avoid potential liability for mistakes. More feedback allows for more tweaking, and over time this process improves the product.

⁶⁰ On MySpace, see Harrison Jacobs, *Former MySpace CEO Explains Why Facebook Was Able to Dominate Social Media Despite Coming Second*, BUSINESS INSIDER (May 9, 2015, 6:13 AM), <http://www.businessinsider.com/former-myspace-ceo-explains-why-facebook-was-able-to-dominate-social-media-despite-coming-second-2015-5> [https://perma.cc/UAY4-N2CE]. On Twitter, and with a bonus discussion of Snap, see Nick Bolton, *Oh Snap: Is Snap the Next Facebook—Or Twitter?*, VANITY FAIR (Mar. 1, 2017, 6:00 PM), <https://www.vanityfair.com/news/2017/03/is-snap-the-next-facebook-or-twitter> [https://perma.cc/J84G-MHFQ].

⁶¹ To find this feature, start any of the LegalZoom interactive forms. For LLC creation, for example, answer the first few pages of questions and you get to a page that asks “[h]ow many owners will your business have?” and “[a]re you forming a new business?” For each of these questions LegalZoom lets you see how most users answered the question. *Business Formation: LLC (Limited Liability Company)*, LEGALZOOM, <https://www.legalzoom.com/business/business-formation/llc-overview.html> [https://perma.cc/4PRD-K4TJ] (answer the first few pages of questions to see the common responses).

Finally, network effects push information markets toward monopoly, and once a monopoly position is established, it is generally hard to dislodge.⁶² This is why there are so many internet monoliths.⁶³ There are system-wide advantages to having only one eBay for online auctions, one Facebook for social networking, and one Google for search. In these markets, individuals generally prefer to go to the one site that everyone uses, because as more people use the service, the service actually improves.

Network effects make the competition in emerging information markets particularly fierce, because often there will be only one survivor.⁶⁴ This is one of the central drivers of the “winner-take-all” economy.⁶⁵ The victor will also reap monopoly profits, which further increases the stakes.

Add all of these factors together and you have a pretty rough and tumble battle within this market for dominance. For example, in 2012 LegalZoom sued Rocket Lawyer for false advertising.⁶⁶ LegalZoom and Rocket Lawyer have also expanded the fight into the UK and other countries.⁶⁷

Avvo, LegalZoom, and Rocket Lawyer have all tried out various other business models along the way in an effort to drive traffic and boost profits. LegalZoom’s addition of a

⁶² Alan Devlin, *Analyzing Monopoly Power Ex Ante*, 5 N.Y.U. J. L. & BUS. 153, 182 (2009).

⁶³ Deepak Ravichandran, et al., *Network Effects – The Keys to Ascending the Consumer-Internet Throne*, BATTERY VENTURES, (Feb. 3, 2017), <https://www.battery.com/powered/network-effects-keys-ascending-consumer-internet-throne/> [<https://perma.cc/7FK2-BNJY>].

⁶⁴ Adi Ayal, *Monopolization Via Voluntary Network Effects*, 76 ANTITRUST L.J. 799, 799–810 (2010).

⁶⁵ ROBERT H. FRANK & PHILIP J. COOK, *THE WINNER-TAKE-ALL-SOCIETY: WHY THE FEW AT THE TOP GET SO MUCH MORE THAN THE REST OF US* (1996).

⁶⁶ Leena Rao, *Online Legal Services Company LegalZoom Sues Rival RocketLawyer for Misleading Advertising, Trademark Infringement and More*, TECH CRUNCH, (Nov. 12, 2012), <https://techcrunch.com/2012/11/20/online-legal-services-company-legalzoom-sues-rival-rocketlawyer-for-misleading-advertising-trademark-infringement-and-more/> [<https://perma.cc/X9Z9-MQ42>].

⁶⁷ Laura Snyder, *Does the UK Know Something We Don’t About Alternative Business Structures?*, A.B.A. J., (Jan. 2015), http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures [<https://perma.cc/2HNX-7WQX>].

subscription service for legal advice (similar to Rocket Lawyer's) is a textbook example. Avvo once featured reviews of doctors and dentists, as well as a medical Q&A portal similar to the legal version.⁶⁸ Avvo sold this part of its business in 2012, but its effort illustrates the strategies that these companies develop to boost growth and usage and choke out their competitors.⁶⁹ Over time, Avvo's various expansions have brought it into more direct competition with LegalZoom and Rocket Lawyer. By 2017, it was, by its own account, the web's largest and most heavily trafficked legal resource with over 8 million visits per month.⁷⁰ Despite, or perhaps partly because of that success, it has also come into increasing conflict with state regulators of legal services.

3. Avvo's Free Legal Services

Avvo's earliest efforts at expansion involved adding free legal services to its site in the way of searchable legal advice. At first this move seems puzzling. If Avvo makes money from lawyer advertising, wouldn't free legal advice or forms undercut the business? Apparently, no. Avvo wants to be the first (and hopefully only) site that an American with a legal question or problem consults. A site with only lawyer profiles would limit its reach. Providing some free legal services drives traffic to the site, and some of the visitors decide that they do, in fact, need a lawyer, and browse for one right there on Avvo. Of course, some of these visitors will just take the free advice without retaining a lawyer. But others may decide that their matters are too complicated to handle themselves and look to Avvo listings as the simplest way to identify a qualified practitioner.

⁶⁸ Migs Bassig, *HealthTap Acquires Health Network and Doctor Reviews Aggregator Avvo*, REVIEW TRACKERS (Dec. 10, 2012), <https://www.reviewtrackers.com/healthtap-acquires-health-network-doctor-reviews-aggregator-avvo/> [<https://perma.cc/P6RA-3E8L>].

⁶⁹ *See id.* (on Avvo's sale of the medical Q&A business).

⁷⁰ Letter from Avvo to the Virginia State Bar (May 5, 2017) (on file with authors) (commenting in opposition to proposed Lethal Ethics Opinion 1885).

Since 2007, Avvo has offered limited free legal advice in a Q & A Forum.⁷¹ Users who ask an anonymous question online receive a brief answer by a lawyer.⁷² The question is limited to 128 characters, supplement by a 1200-character section entitled “Explain your situation.” The Forum (wisely) encourages consumers to “ask a concise question—be brief and to the point” and to “provide key details,” but to feel no pressure “to tell the whole story.” The website indicates that a lawyer will likely respond within 12 hours. There are a lot of these questions and answers. By September, 2017, Avvo claimed to offer “free legal guidance” to a customer every 5 seconds, and to have 10.7 million searchable legal questions and answers.⁷³

Avvo also allows lawyers to create longer form “legal guides.”⁷⁴ The guides do not respond to an individual question. Instead they offer an overview of an area of law. For example, Boston lawyer Nikki Tavia Bogle has a brief guide to your constitutional rights during a criminal prosecution.⁷⁵

Avvo aggregates these questions, answers, and guides into a permanent and searchable “legal advice page,” where users can browse previous answers or guides before or after asking a specific question.⁷⁶ There are a wide range of topics available on these page, including divorce, bankruptcy, debts, wills, wills, evictions, and almost every other routine consumer need. Avvo

⁷¹ Press Release: Avvo Launches Free Legal Advice Forum to Answer Consumer Questions, AVVO (Dec. 11, 2007), <http://stories.avvo.com/media-resources/press-releases/avvo-launches-free-legal-advice-forum-to-answer-consumer-questions> [<https://perma.cc/A9WJ-LPLD>]. You can find the current version here: Avvo Q&A Forum, AVVO, <https://www.avvo.com/for-lawyers/legal-qa> [<https://perma.cc/ZMR9-293U>].

⁷² *Ask a Lawyer: Free Q&A with Attorneys*, AVVO, <https://www.avvo.com/ask-a-lawyer#> [<https://perma.cc/8ZTB-R256>]. The remaining facts in this paragraph come from this source.

⁷³ *About*, AVVO, https://www.avvo.com/about_avvo [<https://perma.cc/96QD-CPV5>].

⁷⁴ Stephen Fairley, *Internet Marketing for Lawyers: How to Use Avvo to Generate Leads*, THE RAINMAKER BLOG (Dec. 27, 2011), <http://www.therainmakerblog.com/2011/12/articles/law-firm-marketing/internet-marketing-for-lawyers-how-to-use-avvo-to-generate-leads/> [<https://perma.cc/BGQ5-Q8ZZ>].

⁷⁵ Nikki Tavia Bogle, *Criminal Legal Guide: Knowing Your Constitutional Rights*, AVVO (Jan. 9, 2010), <https://www.avvo.com/legal-guides/ugc/knowing-your-constitutional-rights> [<https://perma.cc/R27X-SLGY>].

⁷⁶ *Research Legal Advice*, AVVO, <https://www.avvo.com/free-legal-advice> [<https://perma.cc/Z58T-PH65>]. The rest of the facts in this paragraph are supported by this source.

has also drafted a guide to legal research for ordinary Americans that can help them find answers to basic legal questions themselves.

Avvo encourages lawyers to provide this free assistance in order to “generate 10x more contacts” by answering questions.⁷⁷ According to Avvo, as well as other websites for practitioners, offering unpaid advice serves to “boost your [Avvo] contributor level” and also to “generate new leads from potential clients.”⁷⁸ Not everyone agrees. A 2012 Philly Law Blog post titled “How Not to Find Clients: Avvo.com” describes the surly and unprofitable potential clients whom the author encountered while answering questions on Avvo.⁷⁹ Likewise, Luke Ciciliano of SEO for Lawyers warned (presciently) in 2013 that lawyers providing free content for Avvo were undercutting their own websites by driving traffic to Avvo.⁸⁰

Avvo further encourages lawyers to answer questions and write guides by publishing their “contributor level” on their Avvo page.⁸¹ These ratings are based upon “attorney interaction” on Avvo, and the site offers a very transparent blueprint for how to advance in contributor levels.⁸² It also provides a weekly and “All-Time Leaderboard” for engagement on Avvo.⁸³ The sheer volume of free legal work shown on these leaderboards is astounding.⁸⁴ Avvo’s top ranking “All Time Leader” is a Philadelphia personal injury lawyer who has

⁷⁷ *Avvo Q&A Forum*, AVVO, <https://www.avvo.com/for-lawyers/legal-qa> [<https://perma.cc/ZMR9-293U>].

⁷⁸ Megan Hargroder, *Avvo to Attract New Clients*, LAW FIRM AUTOPILOT (Oct. 4, 2016), <https://smallfirmbootcamp.com/avvo-to-attract-new-clients/> [<https://perma.cc/HGA6-GMB5>].

⁷⁹ Leo M. Mulvihill, *How Not to Find Clients: Avvo.com*, PHILLY LAW BLOG (Jan. 23, 2012), <https://phillylawblog.wordpress.com/2012/01/23/how-not-to-find-an-attorney-avvo-com/> [<https://perma.cc/8CSS-N2DU>].

⁸⁰ Luke Ciciliano, *Should Attorneys Use Avvo?*, SEO FOR LAWYERS, LLC (Nov. 27, 2013), <https://www.seo-for-lawyers.com/should-attorneys-use-avvo/> [<https://perma.cc/H89V-VMEF>].

⁸¹ *How Do I Earn Contributor Points?*, AVVO, <https://support.avvo.com/hc/en-us/articles/209974833-How-do-I-earn-contributor-points-> [<https://perma.cc/H5PH-4LET>].

⁸² *Id.*

⁸³ *See Legal Leaderboard: This Week*, AVVO, <https://www.avvo.com/legal-leaderboards/weekly> [<https://perma.cc/VGP7-LG7N>].

⁸⁴ *Legal Leaderboard: All-Time*, AVVO, <https://www.avvo.com/legal-leaderboards> [<https://perma.cc/P7C3-7TG8>].

answered over 140,000 questions by users of the site.⁸⁵ If you assume that he has been providing such assistance every day for ten years without taking a single holiday or vacation, this valiant soul has averaged more than 38 answers a day. Avvo's ability to convince lawyers to provide free legal advice for its site is quite impressive. Some of it is due to the free PR these lawyers get from the site. It is also true that lawyers are naturally competitive and obsessed with rankings, so providing a "leaderboard" and a "contributor level" helps as well.

Avvo also offers a limited number of free legal forms.⁸⁶ The offerings are much more limited than those available for sale from LegalZoom or Rocket Lawyer, and the forms themselves typically offer fewer bells and whistles, but the price (free) is hard to beat. Avvo's last will and testament form is a case in point. It includes a form will with a series of blank spaces for the user to fill in and some instructions on how to do so.⁸⁷ By contrast, LegalZoom offers a guided series of questions and answers that lead to a completed form for a modest fee.⁸⁸ Rocket Lawyer offers one free form if the user also signs up for a paid subscription service. Avvo is the only major player that just gives its forms away.⁸⁹ Its expectation is presumably that enough customers who are lured to the site by the prospect of something for nothing will nonetheless end up purchasing further legal advice or services directly from Avvo or retaining a lawyer via Avvo instead.

4. Avvo Legal Advisor

⁸⁵ *Christian K. Lassen II*, AVVO, <https://www.avvo.com/attorneys/19102-pa-christian-lassen-1580478.html> [<https://perma.cc/WXY7-CZ3A>].

⁸⁶ *Free Legal Forms*, AVVO, <https://www.avvo.com/legal-forms> [<https://perma.cc/VA7Z-93XQ>].

⁸⁷ *Create a Last Will and Testament*, AVVO, <https://www.avvo.com/legal-forms/estate-planning/last-will> [<https://perma.cc/6MMZ-JSB4>].

⁸⁸ BARTON, *supra* note 22, at 125–27 (offers a full description of the LegalZoom process).

⁸⁹ *Id.*

Avvo now offers two different types of paid legal services. These services are in direct competition with LegalZoom and Rocket Lawyer. They are also in direct competition with more traditional legal services offered by solo practitioners and small firms all over the country.

The first service is brief oral advice from a participating lawyer. Avvo launched “Avvo Advisor” in 2014.⁹⁰ The program offers a fifteen-minute consultation with a lawyer for a one-time fee of \$39.00.⁹¹ Avvo promises that these lawyers will have “years of experience and average 4.5/5 star reviews.”⁹² Here’s how it works. Customers choose a state and a type of lawyer from a list that includes business, criminal defense, divorce, etc.⁹³ Then they pay \$39.00 and wait for a call from a lawyer. Avvo guarantees a call back within 15 minutes.⁹⁴

LegalZoom and Rocket Lawyer offer legal advice as well, but as part of a subscription service, rather than as a single, flat fee consultation.⁹⁵ These subscriptions range from \$9.99 a month on LegalZoom (prepaid and only for personal, not business, matters) to \$49.95 for Rocket Lawyer’s “Accelerate” package.⁹⁶ Each of those programs include 30-minute consultations with lawyers. If users need additional legal services, they can hire the lawyer they have spoken to at a discounted rate.⁹⁷

⁹⁰ Robert Ambrogi, *New from Avvo: On-Demand, Fixed-Fee Legal Advice*, LAW SITES (Oct. 27, 2014), <https://www.lawsitesblog.com/2014/10/new-avvo-demand-fixed-fee-legal-advice.html> [<https://perma.cc/TP6Z-8NB3>].

⁹¹ *Avvo Advisor*, AVVO, https://www.avvo.com/advisor?avvo_campaign=avvo_advisor&avvo_medium=askalawyer_howitworks&avvo_source=avvo [<https://perma.cc/AFW9-EBQW>]. The rest of the facts in this paragraph are supported by this source.

⁹² *Id.*

⁹³ *Id.*; *What Type of Lawyer Do You Want to Speak With?*, AVVO, <https://www.avvo.com/advisor/practice-area> [<https://perma.cc/XQ67-PNN3>] (click “checkout” for any state and find the practice area page).

⁹⁴ *Avvo Advisor*, supra note 86.

⁹⁵ *Legal Advantage Plus Prepaid Legal Plan*, LEGALZOOM, <https://www.legalzoom.com/attorneys/legal-plans/personal.html> [<https://perma.cc/8RTK-ZNKY>]; *Tell Us What You Need – We’ll Recommend the Plan for You*, ROCKET LAWYER, <https://www.rocketlawyer.com/plans-pricing.r/#/> [<https://perma.cc/Z5YT-ZUQ8>].

⁹⁶ *Legal Advantage Plus*, supra note 90; *Tell Us What You Need*, supra note 90.

⁹⁷ N.J. St. Bar Advisory Committee on Prof. Ethics, Committee on Att’y Adver., & Committee on Unauthorized Prac. L., *Joint Opinion 732/44/54*, 2–3 (Jun. 21, 2017), <https://www.dropbox.com/s/5plgfgi26zuym1/ACPE%20732%20Avvo%2C%20LegalZoom%2C%20Rocket%20Lawyer%206.21.17.pdf?dl=0> [<https://perma.cc/UTN2-WFMT>] [hereinafter N.J. St. Bar Joint Opinion 732/44/54].

How can lawyers make money on half-an-hour conversations under a subscription service that costs as little as \$10 a month? We do not know the answer for LegalZoom and Rocket Lawyer because they are privately held. The only information publicly available comes from answers to questions by New Jersey bar regulators. LegalZoom claimed to pay its New Jersey lawyers “a monthly capitated fee per plan member.” Rocket Lawyer likewise pays “an undisclosed sum” to its New Jersey lawyers.⁹⁸ Given the low monthly fee for these plans, the payments to these the lawyers are likely pretty small.⁹⁹

Avvo’s program is much more transparent. Clients pay \$39.95 for a fifteen-minute consultation. Once a month Avvo pays out the collected fees to its lawyers, and then Avvo withdraws a \$10 per consultation “marketing fee” from an account designated by the attorney, resulting in a net payment of \$29.95 to the lawyer for fifteen minutes of work.¹⁰⁰ This is doubtless not the level of income that lawyers were expecting when they entered law school, but given that many of these same practitioners are answering written questions on Avvo for free, receiving anything for this advice is probably good news. And, as with the Rocket Lawyer and LegalZoom advice programs, there is always the chance that the client will hire the lawyer for more extended services.

Note the first irony of the bar regulator fight with Avvo. Bar regulators do not mind if lawyers answer questions for free on Avvo. Nor do they mind if they answer questions in a “legal plan,” like LegalZoom or Rocket Lawyer’s, even though the price of those plans ensures that the payments to the lawyers answering the questions must be minimal. Instead, the bar has

⁹⁸ *Id.* at 3.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

chosen to pick its fight with the most transparent and likely the most lucrative site for lawyers because some of the legal fee is sent back to Avvo.

5. Avvo Legal Services

In January, 2016, Avvo launched Avvo Legal Services, which offers a range of legal services for a fixed fee.¹⁰¹ The services vary in cost and complexity. For example, for \$595, a lawyer will form a limited liability corporation. The assistance includes a 30-minute phone call and preparation of the necessary documents. For help challenging an eviction, the \$149 fee covers a 30-minute phone call and a review of paperwork.¹⁰² A living trust costs \$895. The most expensive service is a family green card, priced at \$2995.¹⁰³ Avvo also offers some services for undisclosed rates. For example, a user who clicks on “Criminal Defense” or “Bankruptcy & Debt” is sent to the Avvo Advisor page, which suggests a 15-minute consultation as an initial step, but offers no fixed fee services.¹⁰⁴

Here’s how the fixed fee services work. The process starts with a consumer choosing a general area of law, such as business, and then specifying a specific need, such as “employment and labor,” “starting a business,” or “contracts and agreements.”¹⁰⁵ Once the consumer identifies one of those areas, a list of fixed fee legal services comes up. For “Starting a Business” these include a 15-minute business advice session and starting a limited liability corporation.¹⁰⁶ After choosing a service, the consumer next chooses a lawyer from a list of lawyers within reasonable

¹⁰¹ Robert Ambrogi, *Avvo Begins Offering Fixed-Fee Legal Services in Certain Locations*, LAW SITES (Jan. 11, 2016), <https://www.lawsitesblog.com/2016/01/avvo-begins-offering-fixed-fee-legal-services.html> [<https://perma.cc/M953-6WWF>].

¹⁰² *Landlord or Tenant*, AVVO, <https://www.avvo.com/real-estate/landlord-tenant/legal-services> [<https://perma.cc/2BWL-GF3W>] (see heading “Document Review: Eviction Notice”).

¹⁰³ *Trusts*, AVVO, <https://www.avvo.com/estate-planning/trusts/legal-services> [<https://perma.cc/QK59-4SM4>]; *We Bring the Clients*, AVVO, <https://advisor.avvo.com/providers/welcome> [<https://perma.cc/D5K4-T72T>].

¹⁰⁴ Avvo Advisor, *supra* note 86.

¹⁰⁵ *Start Your Business Off Right*, AVVO, <https://www.avvo.com/business/legal-services> [<https://perma.cc/MAU8-8Y95>].

¹⁰⁶ *Starting a Business*, AVVO, <https://www.avvo.com/business/starting-a-business/legal-services> [<https://perma.cc/AV69-FHHQ>].

geographic proximity.¹⁰⁷ The list includes short versions of their Avvo pages, including client reviews and their Avvo rating.¹⁰⁸

After the consumer chooses a lawyer and pays the fee to Avvo, the lawyer gets in touch with the consumer within a day. Participating lawyers can decide what matters to accept.¹⁰⁹ After taking a case and completing the work, lawyers get the full fee deposited in their bank account. Avvo then takes back a marketing fee, which varies in amount based on the cost of the services. Here are some examples of how much a lawyer gets paid and how much Avvo charges:

Document review services: \$199 client payment, \$50 marketing fee.

Creation of a limited liability corporation: \$595 client payment, \$125 marketing fee.

Uncontested divorce: \$995 client payment, \$200 marketing fee.

Green card application: \$2,995 client payment, \$400 marketing fee.¹¹⁰

Avvo offers a satisfaction guarantee for the services within 90 days of purchase, offering either a refund or a different lawyer if the client is unsatisfied.¹¹¹

It does not appear that Avvo provides forms or other assistance to the lawyers who provide this work, which means that the individual lawyers are responsible for figuring out how to provide satisfactory, low- cost fixed- fee services while still turning a profit. Above the Law speculates that the only lawyers who will be able to hit this sweet spot are those who can do the work quickly and routinely:

Usually an attorney new to a practice area will not have the requisite expertise to complete a client's task within the boundary of time and labor defined by the prescribed fee less the marketing fee. . . . But if you're an experienced attorney in business, family or immigration law and feel confident you can competently complete certain fixed-fee

¹⁰⁷ *Start a Single-Member LLC*, AVVO, <https://www.avvo.com/business/legal-services/start-a-single-member-llc> [<https://perma.cc/7L86-BFJA>].

¹⁰⁸ *Id.*

¹⁰⁹ Ambrogi, *supra* note 96.

¹¹⁰ *Id.*

¹¹¹ *Satisfaction Guarantee for Avvo Legal Services*, AVVO, <https://www.avvo.com/legal-services/satisfaction-guarantee> [<https://perma.cc/35PT-PZN3>].

services, the monthly check can augment your income and the new clients can become long-term customers.¹¹²

The chance to lose money working for Avvo is pretty clear. But the upside is the chance to spend less time looking for work or collecting payment and more time actually working as a lawyer. Particularly for practitioners who have expertise and some tech skills, Avvo is likely to produce a win-win relationship for both lawyer and client.

6. The Distinctive Aspects of the Avvo Model

To understand the business model and ethical implications of Avvo Legal Services, a comparison with LegalZoom and Rocket Lawyer is helpful. As noted previously, those latter companies currently sell guided legal forms along with legal advice or lawyer review of their forms. They do not, and under bar ethics rules and statutory prohibitions, cannot offer services that constitute the “practice of law.”¹¹³ The LegalZoom disclaimer page is illustrative. Its disclaimer, all in bold type, begins:

LegalZoom is not a law firm, and the employees of LegalZoom are not acting as your attorney. LegalZoom's legal document service is not a substitute for the advice of an attorney.

LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction.

LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies.¹¹⁴

¹¹² Sean Doherty, *Avvo Bares Fixed-Fee Legal Services*, ABOVE THE LAW (Jan. 14, 2016, 4:32 PM) <http://abovethelaw.com/2016/01/avvo-bares-fixed-fee-legal-services/?rf=1> [<http://perma.cc/A8AU-4P2L>].

¹¹³ For a review of rules and statutes concerning unauthorized practice of law, see Deborah L. Rhode & Lucy Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587 (2014).

¹¹⁴ *LegalZoom Disclaimer*, LEGALZOOM, <https://www.legalzoom.com/disclaimer.html> [<https://perma.cc/88GR-8TFZ>].

Rocket Lawyer similarly declares “Rocket Lawyer is not a law firm and does not provide legal advice. Rocket Lawyer provides a platform for legal information and self-help.”¹¹⁵ Of course, as noted above, LegalZoom and Rocket Lawyer also sell a subscription service for legal advice and then pay lawyers to provide that advice. But their original focus was self-help forms.

By contrast, Avvo Legal Services sells the work of licensed lawyers in single, discrete transactions. Avvo is not unique in this approach, DirectLaw and Lawdingo also advertise flat fee legal services. But Avvo is by far the largest and best known site with this business model.¹¹⁶ And its modest fees and easy process for selecting a lawyer have obvious advantages for many clients who would otherwise have to call around, consult websites and yellow pages, and then attempt to compare prices.

Of the three main competitors in this market for routine services, Avvo seems to be the most interested in helping lawyers make a living. Avvo is still primarily a lawyer ratings site; even with the addition of legal services, attorney pages appear to be the bread and butter of the business. But Avvo also wants to be the first site that people go to when they need to hire a lawyer, and all of its features seem calculated, directly or indirectly, to serve that end. And the lawyers working for Avvo, unlike those working for LegalZoom and Rocket Lawyer, can offer more than brief advice in order to earn client loyalty for more substantial matters.

III. No Good Deed Goes Unpunished – A Brief Tour Through Avvo’s Legal Challenges

Avvo has faced a series of legal challenges over the years, and initially escaped largely unscathed. The first wave of suits challenged the rankings themselves, and here Avvo has

¹¹⁵ *Legal Terms*, ROCKET LAWYER, <https://www.rocketlawyer.com/terms-of-service.rl> [<https://perma.cc/69P8-W7BA>].

¹¹⁶ DIRECTLAW, <https://www.directlaw.us> [<https://perma.cc/42SH-UHPU>]; Robert Ambrogi, *Another Site Offers ‘Instant’ Fixed-Fee Legal Advice*, LAW SITES (Nov. 3, 2014), <https://www.lawsitesblog.com/2014/11/another-site-offers-instant-fixed-fee-legal-advice.html> [<https://perma.cc/SF24-Y8BC>].

basically won the day. More recently bar regulators have challenged the Avvo Legal Services program, and that battle has just begun.

A. Lawsuits Challenging the Avvo Ratings

Just ten days after Avvo launched, it faced a class action lawsuit in Washington State.¹¹⁷ The plaintiffs were attorneys who claimed that they were harmed by Avvo's ratings system and that Avvo had violated the Washington State Consumer Protection Act by disseminating unfair and deceptive information.¹¹⁸ The suit's lead plaintiff, John Henry Browne, alleged that he had lost two clients because of a poor Avvo rating. Browne had a low Avvo rating partially because of previous public admonition by the state bar.¹¹⁹

The district court dismissed the lawsuit, on the ground that the First Amendment protected Avvo's ratings, and that the damages claimed were too speculative for a consumer protection claim.¹²⁰ Cyberspace Lawyer called it "a big win for Avvo."¹²¹ Avvo did change its website in response to the suit.¹²² Avvo now only rates lawyers from 1-10 if they have claimed their profile.¹²³ But Avvo still lists every lawyer it can find and notes a "caution if they have been subject to any public disciplinary sanctions."¹²⁴

¹¹⁷ Lior Jacob Strahilevitz, Reputation Nation: Law in an Era of Ubiquitous Personal Information, 102 Nw. U. L. REV. 1667, 1721 (2008).

¹¹⁸ Id.

¹¹⁹ Class Action Complaint at 178, Browne v. Avvo, 525 F. Supp. 1249 (W.D. Wash. 2007) (No. CV7-920 RSL), <https://docs.justia.com/cases/federal/district-courts/washington/wawdce/2:2007cv00920/144356/1/>.

¹²⁰ Browne v. Avvo, 525 F.Supp. 1249 (W.D. Wash. 2007).

¹²¹ Eric Goldman, Avvo Wins Big in Ratings Lawsuit – Browne v. Avvo, December 19, 2007, Technology & Marketing Blog, http://blog.ericgoldman.org/archives/2007/12/avvo_wins_big_i.htm.

¹²² John Cook, *Avvo Drops Ratings on Some Attorneys*, SEATTLE POST-INTELLIGENCER, (Jun. 26, 2007, 4:38 PM), <http://blog.seattlepi.com/venture/2007/06/26/avvo-drops-ratings-on-some-attorneys/?source=rss> [<https://perma.cc/MGJ5-7KGT>].

¹²³ Id.

¹²⁴ Id.

In 2010, a Florida practitioner, Larry Joe Davis, similarly sued Avvo for a low rating.¹²⁵ Like Browne, Davis had a low rating primarily because of a public reprimand by the bar. He had been found guilty of refusing to pay court-ordered child support, failing to appear for his court dates, and obstructing the Florida Bar's disciplinary process.¹²⁶ Avvo transferred the case to federal court in Washington, where the trial judge dismissed the complaint. The court also found that Davis had violated the Washington State anti-SLAPP statute and ordered Davis to pay Avvo's legal fees plus a \$10,000 fine.¹²⁷ That judgment sent the intended message and challenges to the legality of Avvo's core ratings have declined, though not vanished.¹²⁸

B. Avvo Legal Services

Avvo Legal Services, however, is now facing a wave of bar scrutiny. In January, 2016, Avvo announced the basic parameters of the program and started signing lawyers up.¹²⁹ The program launched roughly a month later on February 9, 2016.¹³⁰ Susan Cartier Liebel, who blogs at the site Solo Practice University, identified two potential ethical problems with Avvo Legal Services before the program even went live.¹³¹ Liebel noted that because Avvo's marketing

¹²⁵ Debra Cassens Weiss, *Another Lawyer Sues Avvo Rating Site, Claims Its Practices Are 'Beyond Unfair'*, A.B.A. J. (Sep. 2, 2010), http://www.abajournal.com/news/article/another_lawyer_sues_avvo_rating_site_claims_its_practices_are_beyond_unfair/ [https://perma.cc/TKD5-NWS7].

¹²⁶ Id.

¹²⁷ Eric Goldman, *Lawsuit Against Avvo for Lawyer's Profile Dismissed as SLAPP – Davis v. Avvo*, *Technology & Marketing Law Blog*, March 29, 2012, http://blog.ericgoldman.org/archives/2012/03/lawsuit_against_1.htm; *Davis v. Avvo*, No. C11-1571RSM, 2012 WL 1067640 (W.D. Wash. Mar. 28, 2012).

¹²⁸ For recent cases, see *Darsky v. Avvo*, Case No. 3:15-cv-05495-HSG (N.D. Calif. 2016), https://scholar.google.com/scholar_case?case=2123982817890048293&q=darsky+v+avvo&hl=en&as_sdt=6,48; *Vrdolyak v. Avvo*, 206 F. Supp. 3d 1384 (N.D. Ill. 2016); *Hollister & Brace v. Avvo*, Case No. 1440443 (Calif. Superior Ct, County of Santa Barbara, 2017).

¹²⁹ Robert Ambrogio, *Avvo Begins Fixed-Fee Legal Services in Certain Locations*, LAW SITES (Jan. 11, 2016), <https://www.lawsitesblog.com/2016/01/avvo-begins-offering-fixed-fee-legal-services.html> [https://perma.cc/D7PZ-ZCWU].

¹³⁰ Robert J. Ambrogio, *Is a Fixed-Cost Service a Fee-Sharing Violation?*, A.B.A. J., (May 2016), http://www.abajournal.com/magazine/article/is_avvos_fixed_cost_legal_service_a_fee_sharing_violation [https://perma.cc/7MHZ-U82Z].

¹³¹ Susan Cartier Liebel, *Is Avvo's New 'Marketing Fee' Really A 'Referral Fee' in Sheep's Clothing?*, SOLO PRACTICE UNIVERSITY (Jan. 12, 2016), <http://solopracticeuniversity.com/2016/01/12/is-avvos-new-marketing-fee-really-a-referral-fee-in-sheeps-clothing/> [https://perma.cc/3VYC-D86J].

charges are pegged to the amount of the legal fee, they look more like fee splitting than advertising. She also questioned whether Avvo's practice of holding client fees and paying lawyers once a month violated rules requiring placement of fees in IOLTA (lawyer trust) accounts.¹³²

Other critics piled on quickly. David Miranda, the President of the New York State Bar Association, condemned Avvo's various offerings as unethical fee splitting, the unauthorized practice of law, and a danger to the New York public.¹³³ Similar articles appeared in the state bar magazines in Arizona and Wisconsin.¹³⁴ Professor Alberto Bernabe wrote the fullest treatment of the issue for the online *Georgetown Law Journal*.¹³⁵ In his view, Avvo Legal Services violated the ABA's Model Rules of Professional conduct governing fee splitting, referral fees, and lawyer trust accounts.¹³⁶

By fall, 2017, bar ethics committees in five states had issued opinions that agreed and condemned programs structured along the lines of Avvo Legal Services.¹³⁷ It does not appear from these opinions that any of the committees had collected any evidence of customer injury or, except for the Virginia bar, even solicited comments from clients or consumer groups.¹³⁸ Although such committee opinions are advisory only, and are not binding precedent in a future

¹³² *Id.*

¹³³ David P. Miranda, *Lawyers Must Protect the Public We Serve*, N.Y. ST. B.J. (May 2016), <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=63187> [<https://perma.cc/YA22-LA8U>].

¹³⁴ David D. Dodge, *Fee-Splitting and Avvo*, ARIZ. ATT'Y (Feb. 2017), http://www.myazbar.org/AZAttorney/PDF_Articles/0217Ethics.pdf [<https://perma.cc/6WB3-W5HH>]; Aviva Meridian Kaiser, *The "Uberization" of Legal Services: Consistent With Ethics Rules?*, WIS. LAW. (Feb. 2017), <http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=90&Issue=2&ArticleID=25384>, [<https://perma.cc/V8ZG-U9X6>].

¹³⁵ Alberto Bernabe, *Avvo Joins the Legal Market; Should Attorneys Be Concerned?*, 104 GEO. L.J. ONLINE 184 (2016), <http://repository.jmls.edu/facpubs/638/>, [<https://perma.cc/TM6H-375G>].

¹³⁶ *Id.* at 191–205.

¹³⁷ See text at notes 135–55 *infra*.

¹³⁸ Avvo makes this point in its comments on the Virginia Bar's proposed opinion. See Letter from Avvo to the Virginia State Bar, *supra* note 65.

enforcement action, they can be considered by a regulatory authority in such an action.¹³⁹ As this article went to press, no bar regulatory body had filed charges against Avvo or any of the lawyers who participate in its programs. Nevertheless, the existence of these ethics opinions and the threat of disciplinary proceedings may discourage many practitioners from taking Avvo referrals.

The first opinion came from the Ohio Board of Professional Conduct around four months after the launch of Avvo Legal Services.¹⁴⁰ Its conclusion was that “[t]his business model presents multiple, potential ethical issues for lawyers. These include fee-splitting with nonlawyers, advertising and marketing, a lawyer’s responsibility for the actions of nonlawyer assistants, interference with the lawyer’s professional judgment, and facilitating the unauthorized practice of law.”¹⁴¹ In a lengthy opinion, the Ohio Board made clear that whatever Avvo called its marketing fees, the board considered them illegal referral fees. In addition, the board raised concerns about confidentiality, competence, and unauthorized practice. The opinion is a soup-to-nuts indictment of Avvo’s business model and the lawyers who staff it.

A few weeks later, the South Carolina bar ethics committee weighed in against the program.¹⁴² Although less comprehensive than Ohio’s indictment, the opinion is identical on the central point: Avvo Legal Services constitutes illegal fee sharing or an illegal referral service:

The arrangement described herein violates the prohibition of sharing fees with a non-lawyer as described in Rule 5.4(a). In the alternative, assuming, for the purposes of this question only, that the arrangement does not violate Rule 5.4(a), the arrangement would violate the Rule 7.2(c) prohibition of paying for a referral.¹⁴³

¹³⁹ Benjamin H. Barton, *The Lawyer-Judge Bias in the American Legal System* 125–26 (2011).

¹⁴⁰ Ohio Sup. Ct. Board of Prof. Conduct Op. 2016-3, http://www.supremecourt.ohio.gov/Boards/BOC/Advisory_Opinions/2016/Op_16-003.pdf [<https://perma.cc/E6ED-HDQ3>].

¹⁴¹ *Id.* at 2.

¹⁴² S.C. Ethics Op. 16-06 (2016), <https://www.scbare.org/lawyers/legal-resources-info/ethics-advisory-opinions/eao/ethics-advisory-opinion-16-06/> [<https://perma.cc/GKM9-RLK4>].

¹⁴³ *Id.*

The Pennsylvania bar's Legal Ethics and Professional Responsibility Committee followed suit in the fall of 2016 with the most comprehensive takedown yet.¹⁴⁴ Its 15-page opinion listed potential violations of *eleven* different rules of professional conduct [RPCs] by what it called a "Flat Fee Limited Scope" or "FFLS" program:

[Participating in Avvo Legal Services] would violate the following provisions of the Pennsylvania Rules of Professional Conduct ("RPCs"):

1. RPC 5.4(a), which generally prohibits sharing legal fees with non-lawyers; and
2. RPC 1.15(i), which requires legal fees paid in advance to be deposited in the lawyer's Trust Account.

Participation in such a program also poses a substantial risk that the lawyer could violate the following RPCs:

1. RPC 2.1, which requires a lawyer to exercise independent professional judgment;
2. RPC 5.4(c), which, in pertinent part, prohibits a lawyer from allowing a person who recommends a lawyer to direct or regulate the lawyer's professional judgment;
3. RPC 5.3(c)(1), which holds a lawyer responsible for conduct of a non-lawyer that would violate the RPCs if engaged in by the lawyer, if the lawyer has ordered or ratified such conduct;
4. RPC 8.4(a), which prohibits a lawyer from violating the RPCs through the acts of another;
5. RPC 1.16(d), which, in pertinent part, requires a lawyer to refund to a client any advance payment of fees that has not been earned upon termination of the representation;
6. RPC 1.2(c), which permits a lawyer to limit the scope of a representation, but only if the limitation is reasonable under the circumstances and the client has given informed consent;
7. RPC 1.6(a), which generally prohibits a lawyer from revealing information relating to the representation of a client; and

¹⁴⁴ Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Resp., Formal Op. 2016-200 (Sep. 2016), <http://www.pabar.org/members/catalogs/Ethics%20Opinions/formal/F2016-200.pdf> [<https://perma.cc/L3ZN-V4YL>].

8. RPC 7.7(a), which, in pertinent part, prohibits a lawyer from accepting referrals from a lawyer referral service if the service engaged in communications with the public in a manner that would violate the RPCs if the communication were made by the lawyer.

Participation in such a program could also raise potential concerns regarding assisting in the unauthorized practice of law, in violation of RPC 5.5(a).¹⁴⁵

The general tone was along the lines of “Apart from that, Mrs. Lincoln, how did you enjoy the play?”¹⁴⁶

The organized bars in New Jersey, Virginia, and New York came to similar conclusions for similar reasons.¹⁴⁷ The New Jersey opinion attracted particular attention because it seemed to condemn the advice programs of Rocket Lawyer and LegalZoom as well. However, those companies avoided difficulties by quickly registering their programs as legal services plans, leaving Avvo Legal Services as the only potentially affected internet offering.¹⁴⁸

The only organized bar that was not initially hostile to Avvo Legal Services was North Carolina’s.¹⁴⁹ Unlike other bar ethics committees, which categorically denounced Avvo’s business model as a violation of professional rules, North Carolina’s committee suggested ways that Avvo and its lawyers could comply. For example, “to preserve confidentiality of information learned during the professional relationship... Avvo may not be a party to client-lawyer communications about the substance of the representation.¹⁵⁰ To insure lawyers’ independent

¹⁴⁵ *Id.* at 2.

¹⁴⁶ This quote has been attributed to the satirist Tom Lehrer. *Apart From that Mrs. Lincoln, How Did You Enjoy the Play?*, BRAINY QUOTE, <https://www.brainyquote.com/quotes/quotes/t/tomlehrer128116.html> [https://perma.cc/C5CR-CAYN].

¹⁴⁷ For the New Jersey opinion, see N.J. St. Bar Joint Opinion 732/44/54, *supra* note 92. For Virginia’s draft opinion, see Va. St. Bar, Legal Ethics Opinion. 1885, http://www.vsb.org/site/regulation/leo_1885/ [https://perma.cc/QFB9-2D8H]. For New York’s opinion, see N.Y. St. Bar Association, Ethics Opinion 1132, <http://www.nysba.org/EthicsOpinion1132/>.

¹⁴⁸ Gabriel Orum Hernandez, *Rocket Lawyer, LegalZoom Register in NJ; Avvo Weighing Pullout*, THE LEGAL INTELLIGENCER (Jul. 11, 2017), <http://www.thelegalintelligencer.com/id=1202792760553/Rocket-Lawyer-LegalZoom-Register-in-NJ-Avvo-Weighing-Pullout?mcode=1202617075166&curindex=3&curpage=2> [https://perma.cc/58W9-CGYG]. For the ruling, see N.J. St. Bar Joint Opinion 732/44/54, *supra* note 92.

¹⁴⁹ N.C. Bar Ethics Committee, Proposed 2017 Formal Ethics Opinion 6, Participation in Online Platform for Finding and Employing a Lawyer, (Jul. 27, 2017), <https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/>.

¹⁵⁰ *Id.*

judgment, Avvo should confirm its non-interference in writing.¹⁵¹ To avoid concerns about the unauthorized practice of law, Avvo’s advertising and website “must make abundantly clear that Avvo does not provide legal services to others and that its only role is as a marketing agent or platform for the purchase of legal services from independent lawyers.”¹⁵² Most importantly, with respect to concerns about fee sharing, the opinion states:

Although Avvo has taken care to separate the transfer of the intact legal fee for a particular legal service to the lawyer from the payment of the marketing fee to Avvo from the lawyer’s operating account, the fact the marketing fee is a percentage of the legal fee implicates the fee sharing prohibition. Nevertheless, similar arrangements have been approved when the nonlawyer exercised no influence over the professional judgment of the lawyer and the fee was a reasonable charge for marketing or advertising legal services.¹⁵³

It is not entirely clear why the North Carolina bar has taken a more permissive view of Avvo Legal Services than other states. One possible explanation is its unsuccessful experience in attempting to curtail LegalZoom.¹⁵⁴ Another contributing factor may have been the equally unhappy experience of a similar state regulatory authority, the Board of Dental Examiners, when it attempted to protect dentists from competing providers of teeth whitening services. In *North Carolina Board of Dental Examiners v. Federal Trade Commission*, the United States Supreme Court found that state regulatory boards were “nonsovereign” actors and thus not automatically entitled to state action immunity from antitrust claims.¹⁵⁵ According to the majority, when “a controlling number of decisionmakers” on a board were “active market participants in the occupation the board regulates,” the board would not enjoy immunity unless it was subject to a clear articulation of state policy and active supervision by a non-market participant.¹⁵⁶ Because

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Deborah L. Rhode & Benjamin H. Barton, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance Activity*, 20 CHAPMAN L. REV. 267 (2017).

¹⁵⁵ N.C. Bd. of Dental Exam’rs. v. F.T.C., 135 S. Ct. 1101, 1108 (2015).

¹⁵⁶ *Id.*

the North Carolina Board had not received “active supervision” of its efforts to preempt non-dentist provision of teeth whitening services, state-action immunity was not available.¹⁵⁷ As we have argued elsewhere, because many bar regulatory authorities fail to meet the criteria set forth in *North Carolina Board of Dental Examiners*, they may be equally vulnerable to challenge for anticompetitive activities.¹⁵⁸ And on line legal service providers have become increasingly willing to challenge bar regulatory activity on antitrust grounds, as a recent Florida lawsuit makes clear.¹⁵⁹ Given this historical context, the North Carolina bar may have been wary of adopting an overly hostile stance toward Avvo’s competitive efforts. That history also may have prompted them to be more thoughtful and open to evidence. According to Avvo counsel Josh King, the committee “was initially opposed to Avvo Legal Services but reversed course as they learned more. It was a far, far more open and detailed process than we’ve seen with other states.”¹⁶⁰

As this article went to press, Avvo Legal Services was still operating in Ohio, New Jersey, New York, Virginia, and Pennsylvania, and had suspended its program only in South Carolina.¹⁶¹ Some lawyers in these states may still be willing to participate because ethics

¹⁵⁷ *Id.* at 1117.

¹⁵⁸ Rhode & Barton, *supra* note 149.

¹⁵⁹ *TIKD Services LLC v. Florida Bar*, 1:17-cv-24103, (S.D. Fla.), *filed on* Nov. 8, 2017, is a federal antitrust claim by a company that matches drivers who receive traffic tickets with lawyers willing to represent them for a flat fee less than the cost of paying the ticket. After the bar launched an investigation concerning unauthorized practice of law and issued a non-public staff opinion raising ethical concerns, the Ticket Clinic, a local law firm specializing in speeding ticket defense began filing bar complaints and publicizing the bar’s opinion. This allegedly discouraged lawyers from participating in TIKD defense work, and sparked the company to bring a federal lawsuit against the bar and the Ticket Clinic. *See Tech Start-Up TIKD Sues the Florida Bar and The Ticket Clinic Law Firm for Violating Federal and State Antitrust Laws*, PR NEWSWIRE (Nov. 9, 2017), <https://www.prnewswire.com/news-releases/tech-start-up-tikd-sues-the-florida-bar-and-the-ticket-clinic-law-firm-for-violating-federal-and-state-antitrust-laws-300553062.html> [<https://perma.cc/6YWT-GJAY>].

¹⁶⁰ King, email correspondence, *supra* note 65.

¹⁶¹ When we went to <https://www.avvo.com/legal-services> to purchase services and entered a zip code in New York, Virginia, Ohio, Pennsylvania, or New Jersey, lawyers came up for all five states. *See, e.g., Form an S Corp or C Corp in Ohio*, AVVO, https://www.avvo.com/business/legal-services/form-an-s-corp-or-c-corp/lawyers?utf8=✓&%5Bzip_code%5D=44101&%5Bforce_choose_a_lawyer%5D=&button= [<https://perma.cc/7LFF-Q4XP>]. For the suspension of activity in South Carolina, see Hernandez, *supra* note 143.

opinions are advisory only and no actual complaints have yet to be filed. These lawyers may believe that Avvo will zealously defend the program and are taking their chances with Avvo's legal team and financial might.

Internet companies are known for working around, over, or through regulatory issues. Uber's decision to just open and offer rides in some jurisdictions without first getting taxi medallions or licenses is the most famous example, but LegalZoom and Rocket Lawyer's decisions to offer online legal services first and fight bar challenges later are close parallels. Avvo's initial decision to post lawyer ratings without lawyer approval was a similar online leap of faith. The remaining question is whether its Legal Services Program will, and should, prevail against mounting challenges.

IV. Bar Ethical Challenges Evaluated

A. Concerns Regarding Professional Independence, Confidential Information, Trust Fund Accounts, Assisting Non-Lawyer Misconduct and the Unauthorized Practice of Law

Not all of the bar challenges to Avvo Legal Services merit extended discussion. Some of what the Pennsylvania's Ethics Committee labeled "substantial risks" seem highly speculative or can be readily addressed. For example, there is no evidence that Avvo has sought to interfere with a lawyer's exercise of professional judgment or has any interest in doing so. Many organizations that employ attorneys, such as accounting firms or prepaid legal service plans, have dealt with such concerns through explicit commitments to respect lawyer's professional independence, and there is no indication that such protections have been inadequate.¹⁶² As the North Carolina bar ethics opinion suggested, Avvo could make similar assurances.

¹⁶²The issue has arisen with respect to multidisciplinary practice, in which critics worried about lay owners interference with professional decision making. See RHODE, *supra* note 19, at 97; *Report to the ABA House of Delegates*, A.B.A. Commission on Multidisciplinary Practice, *reprinted in* 10 PROF. LAW. (1999).

Other concerns raised by the Pennsylvania ethics committee are equally speculative and unsubstantiated. For example, the committee cited prohibitions on lawyers' revealing confidential information, and claimed that the "client's description of his or her perceived legal issues and needs is disclosed to... [Avvo]" as is the legal fee, both of which would normally be considered confidential information protected under Rule 1.6 of the Model Rules of Professional Conduct.¹⁶³ But as the Committee also notes, that Rule only applies to *lawyers'* disclosure of confidential information, so clients' disclosures prior to the formation of a lawyer client relationship "does not directly violate the rule."¹⁶⁴

Nonetheless, the Committee expresses concern that the information would be "at risk of disclosure in future litigation, since the communications between the client and the Business would not be protected by the lawyer client privilege."¹⁶⁵ The committee does not, however, indicate what litigation might be likely that would conceivably compromise a client's interest. Presumably the client has consented to any disclosure of its request for services on a particular legal issue by using the site in the first instance. If any serious concerns materialize, the site could provide an explicit disclosure concerning confidentiality.

Another concern raised by some committees and commentators involves the handling of client fees. As noted earlier, Avvo collects these fees and sends them to the lawyers, which in 99 percent of cases occurs after the services have been delivered. In the other one percent of cases, most attorneys' retainer agreements provide that they will earn their fees up front, before the matter is fully completed.¹⁶⁶ Some committees, however, have raised questions about violations

¹⁶³ Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Resp., *supra* note 139, at 1, (citing Model Rule 1.6(a)).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ King, email correspondence, *supra* note 65. As King explains, this is because 99 percent of Avvo Legal Services are advisor sessions or contract reviews; in those cases "the consumer's card is not even charged until after the legal services have been fully delivered." *Id.*

of the Rule 1.15, which requires lawyers to deposit fees that have been paid in advance in a client trust account.¹⁶⁷ The Pennsylvania Committee proposed that a solution to this concern would be to have Avvo immediately pay the advance fees to the client for deposit in the lawyer's trust account. It is not self-evident that the client would be better protected by such a process, given the financial resources, stability, and self-interest of Avvo in maximizing client satisfaction, and the Committee gives no reason why they would be. Nor is it clear that the Committees' members fully understood the small percentage of cases that presented possible ethical violations. But adjusting the Avvo process for those cases may not pose insurmountable obstacles if the concern seems well founded.

The Pennsylvania Committee raised further concerns that seem equally speculative and unsubstantiated. One such concern is that Avvo lawyers might not have time to discuss the limited scope of their representation with clients. However, as Avvo notes, consumers of its services, unlike many other clients of modest means, get a "crystal clear" description of what they are buying "up front and in plain English," which should help allay confusion about whether the potential service will be adequate to their needs.¹⁶⁸ As Avvo also noted, in cases where clients had unrealistic expectations, its affiliated lawyers would have an interest as well as ethical obligation to make that clear, and Pennsylvania's bar committee cited no evidence that lawyers had failed to do so.¹⁶⁹

Nor did the Committee offer factual support for other concerns that Avvo lawyers would be assisting non-lawyers to violate professional rules or engage in the unauthorized practice of

¹⁶⁷ Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Resp., *supra* note 139, at 11.

¹⁶⁸ Josh King, *Avvo Legal Services and the Rules of Professional Conduct*, LAWYERNOMICS (Feb. 9, 2016), <http://lawyernomics.avvo.com/avvo-news/avvo-legal-services-and-the-rules-of-professional-conduct.html> [<https://perma.cc/PXC4-HPF8>].

¹⁶⁹ *Id.*

law, or fail to check for conflicts of interest.¹⁷⁰ Presumably any such violations could be dealt with through disciplinary actions against individual attorneys; they are not inherent to Avvo's business model, which seeks to prevent client dissatisfaction and injuries from arising.

B. Referral Services and Fee Sharing Between Lawyers and Nonlawyers

The most substantial objection to Avvo Legal Services involves fee sharing. All of the bar ethics opinions have addressed this issue and all but North Carolina concluded that Avvo's program violated their ethical rules. The vast majority of states have a version of Model Rule 7.2 b (2) of the ABA Model Rules of Professional Conduct. It prohibits lawyers from giving "anything of value to a person for recommending the lawyer's services."¹⁷¹ The Rule provides exceptions, of which two are relevant here. A lawyer may:

(1) pay the reasonable cost of advertisements or written communications permitted by this Rule; or

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority.¹⁷²

Avvo has not sought approval for its Legal Services program and maintains that the program constitutes a marketing platform and not a lawyer referral service. In support of that view, it quotes from an ABA Overview of LRS Regulation, which views the "defining characteristic of a lawyer referral service is... the use of an intermediary to connect a potential client to a lawyer based on an exercise of discretion within stated guidelines."¹⁷³

Avvo notes that it does not exercise discretion to match a client with a particular lawyer. Rather it allows clients to choose from multiple profiles, or if clients opt to have Avvo connect

¹⁷⁰ See text accompanying notes 135-55 *supra*.

¹⁷¹ Model Rules of Prof'l Conduct, Rule 7.2(c) (Am. Bar Ass'n 2016).

¹⁷² *Id.*

¹⁷³ King, *supra* note 163.

them directly with an attorney, “that connection is made to the first available lawyer in the client’s practice area—not on the basis of Avvo’s discretion” or a lawyer’s purchase of “marketing exclusivity.”¹⁷⁴ Because Avvo has no financial stake in selecting a particular lawyer, it plausibly claims that it is not subject to the potential conflicts of interest that the Rule was meant to prevent.¹⁷⁵

As to fee sharing arrangements, Avvo has said this on its website:

Should I be concerned about fee-splitting? No. Avvo always sends you 100% of the client’s payment. As a completely separate transaction, you will pay a per-service marketing fee.... Here’s what ethics expert and Avvo General Counsel Josh King says on the matter, “fee splits are not inherently unethical. They only become a problem if the split creates a situation that may compromise a lawyer’s professional independence of judgment....”¹⁷⁶

In its fact sheet on professional rules, Avvo similarly claims that “fee splits are not inherently unethical. They only become a problem if the fee is split with a party that may pressure the attorney’s decision-making in a given case.”¹⁷⁷

The difficulty is that this is not what the Model Rules says. As Professor Alberto Bernabe points out, “[a]ccording to the Model Rules, splitting fees with non-lawyers is inherently unethical” unless the arrangement falls under one of the exceptions.¹⁷⁸ “What is really happening here is that Avvo is collecting a percentage of the fee the client pays the attorney. The fact that it does it separately, in a second transaction, does not change that fact.”¹⁷⁹

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* MODEL RULES OF PROF’L CONDUCT, *supra* note 166, Rule 7.2(b)(2).

¹⁷⁶ Alberto Bernabe, *Avvo Joins the Legal Market; Now Offers Legal Services Through Network of Attorneys; Should Attorneys be Concerned?*, PROFESSIONAL RESPONSIBILITY BLOG (Jan. 26, 2016), <http://bernabepr.blogspot.com/2016/01/avvo-joins-legal-market-now-offers.html> [<https://perma.cc/PQ6X-SRMM>] (quoting Avvo website).

¹⁷⁷ King, *supra* note 163, at 5.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

Avvo's second line of defense is that its marketing charges are permissible because they fall under the exception for fees reflecting the reasonable cost of advertisements. However, as the Pennsylvania Legal Ethics and Professional Responsibility Committee pointed out, the "cost of advertising does not vary depending on...the amount of revenue generated by a matter."¹⁸⁰ Yet Avvo's marketing fees varied from \$10 for an "Advice Session" costing \$39, to \$400 for a Green Card Application, costing \$2995. "Clearly," the Pennsylvania Committee concludes, "there cannot be a 4000% variance in the operator's advertising and administrative costs for these two services.... The variation in the amount of the marketing fees based upon the amount of the fees earned by the lawyer establishes that the non-lawyer business is participating directly in and sharing in, the fee income derived by the lawyer. This is impermissible fee sharing...."¹⁸¹

Avvo's response is that the marketing fee reflects "a variety of factors, including the type of service purchased, the overall cost of the service, promotional considerations, competition, market testing and a variety of other factors."¹⁸² But the Model Rules don't list those factors in its exception for advertising. A bar ethics committee that reads Rule 7.2 literally is likely to end up where the Pennsylvania Committee did.

There are four ways around this problem. One is for Avvo to change its marketing fee to reflect a flat rate, based on a pro rata share of its costs, not a rate that varies with the amount of the client's charges. But this makes no sense from a business standpoint. A lawyer who is already making minimal amounts for advice and other low-cost services will not want to pay such a substantial marketing fee. And Avvo's leadership believes that this and other proposed

¹⁸⁰ Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Resp., *supra* note 139, at 5.

¹⁸¹ *Id.*, at 6

¹⁸² King, *supra* note 163.

changes by bar ethics committees would “make the product worse for both consumers and lawyers.”¹⁸³

A second possibility is for bar ethics committees to do what North Carolina did, and view “reasonable advertising costs” as an umbrella term to cover all marketing expenses. As Avvo pointed out to the Virginia Bar in comments regarding its proposed opinion, some of its marketing costs scale directly to the costs of services provided: credit card processing fees, risks of refund; and customer service assistance (“purchasers of more expensive services typically have more questions and concerns”).¹⁸⁴ A third possibility is for bar ethics committees to note that advertising on the internet, unlike on television or in a magazine, allows for fluctuating ad pricing depending on sales. For example, the Amazon affiliate program pays websites based upon Amazon sales that come through a website’s links, rather than through a flat fee.¹⁸⁵ This solution requires bar regulators to recognize that advertising on the internet (and thus advertising expenses for lawyers on the internet) is different because it is so easy to track the exact sales amount from any particular advertisement. So instead of fee splitting, Avvo’s program offers a more modern type of advertising – variable fees tied directly to sales achieved. A fourth possibility is to follow Bernabe’s suggestion: if it is a good idea for potential clients to have access to legal services through platforms like Avvo... then we need to work to change the current rules.”¹⁸⁶

In our view, the best work around would be for bar regulatory bodies to consider both the ethical concerns underlying their professional conduct rules and the public’s interest in cost-

¹⁸³ King, email correspondence, *supra* note 65.

¹⁸⁴ Letter from Avvo to the Virginia State Bar, *supra* note 65.

¹⁸⁵ *20 Tips I Used to Make \$90,336.65 With Amazon*, UP FUEL, (May 21, 2017), <http://upfuel.com/make-money-with-amazon/> [<https://perma.cc/25KU-5HZA>].

¹⁸⁶ Bernabe, *supra* note 130.

effective services. Such an inquiry should include input from clients and consumer organizations. Rather than speculate about possible harms, the bar should look for evidence of purchasers' experience. And if significant harms are occurring or can be reasonably be expected to occur, bar regulators should look for ways to address them without compromising the public's access to affordable services. Indeed, this is consistent with the bar's approach in the context of "deal of the day" websites and credit card transactions that might be considered technical violations of the rules.¹⁸⁷

On the basis of evidence available to date, we believe that bar oversight bodies should either interpret ethical rules to permit programs like Avvo's, or modify their rules to do so. As we argue below, such a result would be in the interest of the profession as well as the public. It is ironic that a growing number of states allow programs by LegalZoom and Rocket Lawyer, which pay lawyers very little for their work, but prohibit the Avvo program, which pays them a more generous but still modest and transparent fixed fee. That result speaks volumes about whether current bar decisions serve the interests even of the profession, let alone the public at large.

V. Policy Implications of Avvo Legal Services

A. The Benefits of Avvo Legal Services for Lawyers

To understand the benefits of Avvo Legal Services for many struggling lawyers, it helps to consider the financial realities of small firm or solo practice. Clio, a leading legal practice management software program provides that economic context.¹⁸⁸ It helps lawyers, mostly small

¹⁸⁷ Josh King made this point, King, *supra* note 163, at 5, citing *e.g.*, ABA Formal Opinion 465 - Lawyers' Use of Deal-of-the-Day Marketing Programs (2013); Nebraska Ethics Advisory Opinion for Lawyers No. 12-03 (2012); North Carolina Formal Ethics Opinion 10: Lawyer Advertising on Deal of the Day or Group Coupon Website (2011); South Carolina Ethics Opinion 11-05 (2011); Arizona Ethics Opinion 89-10 (1989); Colorado Formal Opinion 99 - Use of Credit Cards to Pay for Legal Services (1997).

¹⁸⁸ *Legal Practice Management Made Easy*, CLIO, <https://www.clio.com/about/> [https://perma.cc/D8U5-KPMU].

firms and solo practitioners, to track their time, send out bills, and collect the fees due.¹⁸⁹ Given its focus, Clio is in a good position to report on the state of the market for these practitioners. In 2016, Clio presented its first Legal Trends Report.¹⁹⁰ It aggregated and anonymized data from approximately 40,000 users to analyze the consumer/small business (as distinguished from BigLaw) market for legal services.¹⁹¹ The Report finds that the average hourly rate for solo practitioners/small firm lawyers is \$232 an hour.¹⁹² These rates run from a high of an average of \$281 an hour in Washington, D.C., to a low of \$155 an hour in Maine.¹⁹³ Bankruptcy rates averaged the most, at \$275 an hour, and criminal charges were the lowest at \$148.¹⁹⁴

The average rates are the good news. Some simple math suggests that small firm and solo lawyers charging these rates and working reasonably hard could do pretty well. Assume that a lawyer works 40 hours a week, 48 weeks a year, or 1920 hours a year, which some estimates suggest is on the low side.¹⁹⁵ If they billed half (20) of those hours at an average rate of \$232, they would make \$222,720 a year in gross earnings. Even if they charged a bargain rate of \$100 an hour, they would still gross \$96,000 for that amount of billed work.

Regrettably, the Clio report suggests that these lawyers do not bill 20 hours a week. The report separates out the “utilization rate,” which is the number of hours the lawyers billed internally, the “realization rate,” which is the amount of that billed time the lawyers actually sent out to clients, and the “collection rate,” which is the amount they were actually paid.¹⁹⁶ Of

¹⁸⁹ *Id.*

¹⁹⁰ *Legal Trends Report*, CLIO (2016), <https://files.goclio.com/marketo/ebooks/2016-Legal-Trends-Report.pdf> [<https://perma.cc/6USZ-ECZJ>].

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* at 4.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Randall Ryder, *Three Myths About Solo Attorneys (Part 1 of 3)*, LAWYERIST.COM (May 13, 2013), <https://lawyerist.com/myth-solo-attorney/> [<https://perma.cc/REX2-6Q55>].

¹⁹⁶ *Legal Trends Report*, *supra* note 185, at 24–36.

course, every lawyer experiences some slippage between their utilization rate and their collection rate. That slippage is just a cost of doing business.

What is startling about the Clio finding is just how little time lawyers for individual consumers spend on billable matters:

- **Utilization rate:** Lawyers logged 2.2 hours of billable time per day (28 percent of an eight-hour day).
- **Realization rate:** Lawyers billed 1.8 hours per day (81 percent of actual hours worked).
- **Collection rate:** Lawyers collected payment on 1.5 hours per day (86 percent of actual hours billed).¹⁹⁷

This helps explain why solo practitioner and small firm lawyers have had such a hard time making a decent living; they are spending too little of their time practicing law and too much of it doing everything else.¹⁹⁸

The report also shows what, exactly, lawyers are doing with the rest of their time.¹⁹⁹ They are not eating bon bons and watching soaps. They spend a third of their time on business development, aka finding clients.²⁰⁰ They spend about half of their time on administrative matters: keeping their license current, managing an office, generating and collecting on bills, and related tasks.²⁰¹ That leaves roughly 20 percent of their time for substantive legal work. These findings should be an urgent concern for the legal profession and those who regulate it. A very large cohort of lawyers is struggling to find enough billable work to make ends meet.

Someone who had not read the preceding sections of this article might wonder why technology could not help more in directing clients to lawyers and collecting their fees. This

¹⁹⁷ *Id.* at 5.

¹⁹⁸ On the earnings of small firm and solo practitioners, see BARTON, *supra* note 31, at 5–6.

¹⁹⁹ *Legal Trends Report*, CLIO (2017), <https://files.goclio.com/market/ebooks/2017-Legal-Trends-Report.pdf> [<https://perma.cc/S2A2-6AQZ>].

²⁰⁰ *Id.* at 11–13.

²⁰¹ *Id.*

would eliminate much of the wasted effort on trying to generate business and dunning them for payment. That would, in turn, enable lawyers to spend more of their day doing the thing they went to law school for in the first place: practicing law. Someone who had read the earlier part of this article might wonder instead why bar regulators aren't recognizing that Avvo Legal Services is precisely the kind of technological advance that lawyers should embrace not resist.

What then accounts for the resistance? We believe that for the rank and file, it has more to do with price than ethics. Avvo Legal Services replaces billable hours with flat fees for a wide range of services. And those flat fees are relatively low. Many practitioners may justifiably worry that they will need to match those prices or lose business. For lawyers who serve individual clients and are active in bar associations, moving to lower, fixed prices may seem like a disaster.

But Rocket Lawyer and LegalZoom are *already* radically lowering the prices for many routine services. That horse is out of the barn. Avvo Legal Services attempts to compete with these online form preparation services by connecting the clients who would rather hire a lawyer with the lawyers who are willing to do the work at an affordable price. Lawyers and bar regulators who hope that prohibiting participation in Avvo Legal Services will hold the line against technology-driven competition have it exactly backwards. Programs like Avvo Legal Services are the profession's best hope at growing the number of clients willing to pay a lawyer to do work and competing with online forms.

B. Benefits for Clients and Access to Justice

We have both written at length about the breadth and seriousness of America's access to justice problems, and we will not belabor the point here.²⁰² Part of the access to justice problem

²⁰² BARTON, REBOOTING JUSTICE, *supra* note 22; RHODE, THE TROUBLE WITH LAWYERS, *supra* note 19, at 30–59; Rhode, *Access to Justice*, *supra* note 3.

is cost. Given prevailing average fees, most Americans can at best afford little more than a few hours of legal work on any given issue.

But price is only part of the problem, as is clear from Rebecca Sandefur's recent American Bar Foundation study.²⁰³ Her random sample found that two-thirds of those surveyed reported at least one civil justice situation in the previous eighteen months, almost half of which resulted in significant negative consequences.²⁰⁴ However, people described only nine percent of these situations as "legal" and took only eight percent to lawyers.²⁰⁵ Cost was not the major barrier to seeking legal help; it was critical in only seventeen percent of cases.²⁰⁶ Rather, the most common reason for failing to obtain legal assistance was some variant of "I don't need any."²⁰⁷ Even those who recognize that they have a significant legal problem are often loath to see a lawyer on the assumption that it will be expensive, time-consuming, unpleasant, and/ or unnecessary.²⁰⁸ In countries that have fewer restrictions on the delivery of legal services, such as the United Kingdom and the Netherlands, a much larger percentage of individuals (roughly 25 percent to 35 percent) take their problems to a lawyer.²⁰⁹

American attorneys have contributed to consumer wariness by using hourly rates that seem to reward them for maximizing their time rather their efficiency. The bar's traditional resistance to flat fees and routinized services may lead to the highest quality assistance. But it is

²⁰³ REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY, 3–4, 7 (2014).

²⁰⁴ *Id.* at 5.

²⁰⁵ *Id.* at 14.

²⁰⁶ *Id.* at 13.

²⁰⁷ Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 450 (2016).

²⁰⁸ SANDEFUR, *supra* note 198, at 11–14.

²⁰⁹ 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 21–53 (Samuel Estreicher & Joy Radice eds, 2015).

rarely the cheapest. To address America's pervasive and persistent problems of access to justice, more lawyers must seek ways of serving more clients at more affordable rates. Technology can serve that end. LegalZoom and Rocket Lawyer have done exactly this. The sooner lawyers can follow suit, the better off they, and all the rest of us, will be.

Avvo Legal Services is a step in the right direction. It lowers the price of legal services, and gives consumers a readily accessible way of identifying a lawyer and determining whether they can afford one. It also encourages lawyers to work more efficiently. The only way to make a decent living through Avvo Legal Services is to handle a large volume of cases quickly and effectively.

The stated concern of bar ethics committee opposed to Avvo's approach is that it may force participating lawyers to provide substandard work. Yet the effect of those rulings will be to push more price-conscious consumers in the direction of online form processing services that offer less assurance of quality assistance. In our view, innovative technologies like Avvo legal services deserve a chance. Bar regulators should wait and see if problems materialize, and then look for the least restrictive means of dealing with them. Their regulatory process should be more evidence-based, and open to comments from affected parties. Snuffing out innovation before it even launches seems more calculated to protect the profession than the public. And, in the long run, even the profession is ill served by such regulatory repression.