

What's the Deal with Daily Deals? An Ethical Dilemma

Social media has become an indispensable part of the daily lives of people all around the world. It helps people stay in contact with friends and family, make new connections, showcase talents, share knowledge and inform decisions about products and services. Social media poses special challenges for attorneys. The benefits of using social media include job recruiting; professional networking; showcasing practice areas, skills and knowledge; publishing; and active participation in the legal field. However, attorneys must balance these benefits against the weight of multiple ethical rules. They must understand how social media works within the law as to utilize social media as an effective tool for their clients and also to protect their clients' interests.¹ When attorneys are using social media for activities such as blogging and professional networking, they must carefully obey the ethical rules regarding advertising,² soliciting clients,³ and providing accurate information about themselves and their firm.⁴

When attorneys use social media to increase their client base through deal-of-the-day websites, they must also comply with multiple rules for fee earning and collection,⁵ fee sharing,⁶ and fees for referral services.⁷ Deal-of-the-day websites offer discounts to those who sign up for the service for a limited amount of time, usually a day. This essay will explain how an attorney can best use a daily deal website while complying with the American Bar Association (ABA)

¹ MODEL RULES OF PROF'L CONDUCT R. 1.1 (2013) (to provide competent legal representation); MODEL RULES OF PROF'L CONDUCT R. 1.3 (2013) (to provide diligent representation).

² MODEL RULES OF PROF'L CONDUCT R. 7.1 (2013) (advertising cannot be misleading); MODEL RULES OF PROF'L CONDUCT R. 7.2 (2013) (advertising costs must be reasonable).

³ MODEL RULES OF PROF'L CONDUCT R. 7.3 (2013) (solicitation for monetary gain is generally prohibited with few exceptions).

⁴ MODEL RULES OF PROF'L CONDUCT R. 7.1 (2013); MODEL RULES OF PROF'L CONDUCT R. 5.5 (2013) (an attorney cannot represent to the public that he or she is licensed to practice in any jurisdiction other than where he or she is licensed); MODEL RULES OF PROF'L CONDUCT R. 5.1 (2013) (partners and supervisory attorneys have an additional responsibility to ensure that their subordinates are following the ethics rules).

⁵ MODEL RULES OF PROF'L CONDUCT R. 1.5 (2013); MODEL RULES OF PROF'L CONDUCT R. 1.15(c) (2013) (fees paid in advance must be held in a trust account for the individual client).

⁶ MODEL RULES OF PROF'L CONDUCT R. 5.4 (2013).

⁷ MODEL RULES OF PROF'L CONDUCT R. 7.2(b)(1) (2013); see Michael J. Conroy, Note, *Clash of Titans: Groupon v. The Model Rules of Professional Conduct*, 99 IOWA L. REV. 1329, 1137-38 (2014).

Model Rules of Professional Conduct and the recent ABA Committee on Professional Responsibility Formal Opinion 465: Lawyers' Use of Deal-of-the-Day Marketing Programs. In this context, several current daily deals are examined to determine whether they meet the criteria outlined by the ABA and the respective state bar associations where guidance has been issued. Even in states where attorneys may use daily deal marketing, attorneys must exercise caution as professional responsibility rules and the law surrounding social media evolves.

Daily deal marketing companies such as Groupon, Amazon Local and Living Social have been matching businesses providing discounts for goods and services with potential customers in their service areas since 2008.⁸ Individuals wishing to partake in these deals subscribe to the daily deal company's website for daily emails or visit the website.⁹ These companies generally follow one of two business models: the coupon is purchased for a set fee which gives the purchaser a percentage off of future fees for a certain amount of hours; or a purchaser prepays discounted fees for a set amount of hours.¹⁰ It is an effective marketing tool, as one in six Americans over the age of twelve is a registered user of these websites.¹¹ The benefit of daily deals for an attorney is an increased client base, some of whom may return in the future for additional, full-priced legal services. These new clients may also refer potential clients to the attorney if they had a favorable experience.

⁸ Conroy, at 1331.

⁹ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_465.13bbd35ef28/Presentation/PublicationAttachment/a108c16a-a121-4570-8324-1c043e718f7c/harris_reprint.pdf. The opinion only addresses deal purchasers or potential purchasers actively pursuing these deals and not unsolicited emails. See ABA Comm. on Prof'l Responsibility, Formal Op. 465 n.2 (2013). See also Derek Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012), available at www.fcjblaw.com/files/Publication/9640bd3d-7ac9-46e6-91-fe-13bbd35ef28/Presentation/PublicationAttachment/a108c16a-a121-4570-8324-1c043e718f7c/harris_reprint.pdf.

¹⁰ See ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013). See also Aaron J. Russ, Note, *Is Groupon for Lawyers Fraught with Ethical Danger? Why the Legal Community should Embrace Innovative Internet Marketing for Lawyers*, 2013 U. ILL. J.L. TECH. & POL'Y 393, 399-400 (2013); Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012).

¹¹ Conroy, at 1334.

There are costs of participating in daily deal marketing websites. The attorney providing the discounted services splits the fee paid by the purchaser with the company.¹² Generally, the attorney receives a small percentage of what he or she would normally charge. For example, an attorney who experimented with Groupon in 2011 offered the preparation of a will and power of attorney for \$99, when he usually charged \$750 for the package.¹³ The attorney later reported that while he was able to make money on the deal, it was not as profitable as other work.¹⁴ There can be costs to the firm's reputation.¹⁵ Firms that do not limit the number of deals available for purchase run the risk of a workload that is too large to manage.¹⁶ There can be additional costs to the attorney, including 1) defending an ethics inquiry from the state bar association, 2) paying fines or restitution, and 3) additional reputation concerns.¹⁷

The ABA and state bar associations have come to different conclusions about whether, and if so, how, attorneys may provide discounts for legal services to potential clients through daily deal marketing. In October 2013, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 465 about attorneys using deal of the day marketing programs.¹⁸ The opinion addresses daily deals where purchasers have voluntarily sought deals

¹² ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

¹³ See Groupon, www.groupon.com/deals/law-offices-of-craig-s-redler-associates (last visited July 31, 2014). See also Debra Bruce, SOLO PRACTICE UNIVERSITY, <http://solopracticeuniversity.com/2012/01/19/did-a-groupon-really-work-for-a-solo-lawyer> (last visited July 31, 2014).

¹⁴ See Bruce, SOLO PRACTICE UNIVERSITY, (also stating that attorney received additional benefits from the deal, as some clients generated through the deal have returned for full-priced legal services and referred other potential clients to him). See also Groupon, www.groupon.com/deals/law-offices-of-craig-s-redler-associates (over 40 of these deals were purchased to "help keep[] your brain from being inserted into any future Frankensteins" by this enterprising attorney).

¹⁵ Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012).

¹⁶ See ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013); Conroy, at 1359-60.

¹⁷ Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012). Aside from the ethical dilemma posed, there is also a fear among some that daily deals will cheapen legal services and give rise to "McLawyers." See generally, Krista Umanos, *Ethics, Groupon's Deal-of-the-Day, and the "McLawyer"*, 81 U. CIN. L. REV. 1169 (2013).

¹⁸ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

from the company.¹⁹ ABA Formal Opinion 465 allows deal-of-the-day type advertising, and outlines some potential pitfalls that attorneys who want to utilize daily deals wish to avoid and favors coupons for future discounts.²⁰ State bar association opinions are split. Some states align with the ABA and allow attorneys to use daily deal websites, so long as ABA and respective state rules are followed. These states include New York, North Carolina, South Carolina, Nebraska and Maryland. However, Indiana, Alabama, and Arizona have taken a hard line against advertising; they do not believe that attorneys can use daily deal marketing and still abide by the professional responsibility rules of the state. Pennsylvania has issued non-binding guidance that disfavors advertising on daily deal websites.²¹ This split in state guidance creates an unequal playing field which is in conflict with the purpose of the Model Rules.²²

Attorneys may advertise their services subject to certain conditions.²³ Communications about an attorney's services must be honest, cannot mislead, and must accurately portray the attorney's field(s) of practice and applicable specializations.²⁴ An attorney who advertises may not solicit members of the public for his or her financial benefit.²⁵ Advertising material must include the words "Advertising Material," unless an exception applies.²⁶ The ABA and some state bar associations consider daily deals advertising. Thus, attorneys engaging in daily deals

¹⁹ *Id.*

²⁰ See *id.* See also YOUR ABA: E-NEWS FOR MEMBERS, *Ethics of Groupon Marketing and other Implications of Opinion 465*, <http://www.americanbar.org/publications/youraba/2014/july-2014/ethics-of-groupon-marketing-and-other-implications-of-opinion-46.html> (last visited July 31, 2014).

²¹ See Conroy at 1332-33 nn. 15-23.

²² See *id.* at 1347.

²³ See MODEL RULES OF PROF'L CONDUCT R. 7.2 (2013) ("A lawyer may advertise services through... public media"). See also Krista Umanos, *Ethics, Groupon's Deal-of-the-Day, and the "McLawyer"*, 81 U. CIN. L. REV. 1169, 1171-72 (2013) (referencing *Bates v. State Bar of Arizona*, 433 U.S. 350 (1997), which held that attorneys were allowed to engage in truthful advertising because it is a first amendment right).

²⁴ MODEL RULES OF PROF'L CONDUCT R. 7.1 (2013) ("A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading"); MODEL RULES OF PROF'L CONDUCT R. 7.4 (2013).

²⁵ MODEL RULES OF PROF'L CONDUCT R. 7.3 (2013).

²⁶ MODEL RULES OF PROF'L CONDUCT R. 7.3(c) (2013).

must be truthful, must contain certain disclaimers, must accurately describe services that are offered in a way that is clear to consumers, and accurately describe the attorney's practice area(s).²⁷

Several attorneys are currently pursuing daily deal marketing for legal services using Groupon. Deals are available in Arlington, Virginia,²⁸ Atlanta, Georgia,²⁹ Philadelphia, Pennsylvania,³⁰ Durham, North Carolina,³¹ and New York, New York.³² The majority of these deals are for estate planning services, and one is for student loan services. As explained below, some of these deals are more compliant with ethical rules than others.³³

These current Groupon deals are not always clear on the distinction between the creation and execution of documents. This brings into question whether the lack of distinction is "a fact necessary to make the statement considered as a whole not materially misleading" because those not familiar with the legal system may not discern the difference between creation and execution and therefore not know what they are actually purchasing.³⁴ The Groupon for services at The

²⁷ See ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013) (referencing state opinions). See also YOUR ABA: E-NEWS FOR MEMBERS, *Ethics of Groupon Marketing and other Implications of Opinion 465*, <http://www.americanbar.org/publications/youraba/2014/july-2014/ethics-of-groupon-marketing-and-other-implications-of-opinion-46.html> (last visited July 31, 2014); Megan Zavieh, GPSOLO EREPORT, *To Groupon or Not to Groupon: For Lawyers, It's Best Not*, http://www.americanbar.org/publications/gpsolo_ereport/2014/may_2014/to_groupon_or_not_for_lawyers_its_best_not.html (last visited July 31, 2014).

²⁸ GROUPON, <http://www.groupon.com/deals/law-office-of-j-andrew-baxter> (last visited July 31, 2014).

²⁹ GROUPON, <http://www.groupon.com/deals/the-galler-law-firm> (last visited July 31, 2014).

³⁰ GROUPON, <http://www.groupon.com/deals/watson-duncan-attorneys-and-counselors> (last visited July 31, 2014); GROUPON, <http://www.groupon.com/deals/zipwill> (last visited July 31, 2014); GROUPON, <http://www.groupon.com/deals/richardson-law-firm> (last visited July 31, 2014); GROUPON, <http://www.groupon.com/deals/snyder-daly-clementine-p-c> (last visited July 31, 2014).

³¹ GROUPON, <http://www.groupon.com/deals/r-w-bobholz-law-pllcc> (last visited July 31, 2014).

³² GROUPON, <http://www.groupon.com/deals/the-law-office-of-jason-gang> (last visited July 31, 2014).

³³ The Groupon deals in this essay will be examined under the Model ABA Rules of Professional Conduct and ABA Formal Opinion 465 to avoid nuances among the different state rules and instead provide a general overview of the emerging issues in this area.

³⁴ MODEL RULES OF PROF'L CONDUCT R. 7.1 (2013). See ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

Law Office of Jason Gang states the distinction to inform potential purchasers.³⁵ It states that the deal is for “drafting of documents only; execution of documents is required and available for an additional fee.”³⁶ However, none of the other advertisements for estate planning services make such a distinction, and instead use the language “creation of power of attorney or legal living will,”³⁷ “preparation of one simple will for one person”³⁸ and “for one will and one financial power of attorney.”³⁹ One Groupon for “one couple’s legal-and-living will and power of attorney” defines each instrument, but states “any extra services are subject to the merchant’s standard pricing” without definition of extra services.⁴⁰ In the fine print, each deal provides a link to the attorney or firm’s website, but there are no additional details to be found regarding the distinction of services, definitions of services or what services may be needed for different legal instruments.⁴¹ The language in these deals could create confusion among purchasers and potential purchasers about what services are include in the deal and what additional services may become necessary to ensure that the services that they are purchasing are valid legal documents, and be contrary to the intent of the ABA Model Rules.

The deals cannot be illusory.⁴² The Galler Law Firm, LLC in Atlanta, Georgia offers a Groupon for Student-Loan Analysis and a 30-minute consultation, structured as a pre-paid deal.⁴³

³⁵ Groupon, <http://www.groupon.com/deals/the-law-office-of-jason-gang> (last visited July 31, 2014).

³⁶ *Id.*

³⁷ Groupon, <http://www.groupon.com/deals/zipwill> (last visited July 31, 2014).

³⁸ Groupon, <http://www.groupon.com/deals/richardson-law-firm> (last visited July 31, 2014).

³⁹ Groupon, <http://www.groupon.com/deals/law-office-of-j-andrew-baxter> (last visited July 31, 2014).

⁴⁰ Groupon, <http://www.groupon.com/deals/watson-duncan-attorneys-and-counselors> (last visited July 31, 2014).

⁴¹ See e.g., <http://www.jasongang.com> (last visited July 31, 2014); <http://baxterlegal.ning.com> (last visited July 31, 2014); <http://www.richardson-lawfirm.com> (last visited July 31, 2014); <http://watsonduncan.com> (last visited July 31, 2014); <http://zipwill.com> (last visited July 31, 2014).

⁴² See Derek Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012), available at www.fcjblaw.com/files/Publication/9640bd3d-7ac9-46e6-91-fe-13bbd35ef28/Presentation/PublicationAttachment/a108c16a-a121-4570-8324-1c043e718f7c/harris_reprint.pdf.

⁴³ Groupon, <http://www.groupon.com/deals/the-galler-law-firm> (last visited July 31, 2014).

The firm website advertises a free student loan consultation, but does not state the length of the consultation.⁴⁴ This begs the question of whether the deal is misleading because it would lead one to believe that the 30-minute consultation is discounted, when in fact it may be free. This deal may violate the ABA Model Rules regarding advertising and be an impermissible instance of daily deal marketing.

The deal must address the nature of the relationship that is established when the purchaser buys the deal.⁴⁵ ABA Formal Opinion 465 states that there is no attorney-client relationship established merely by purchasing a deal, and that fact should be directly stated in the deal disclaimer.⁴⁶ Only one deal directly addresses the attorney-client relationship and states that none “is established until purchaser meets with attorney. No attorney-client relationship is established until confirmed there are no conflicts of interest.”⁴⁷ Other current deals do not mention the relationship formed by purchasing the deal, but there is information on websites about what constitutes an attorney client relationship.⁴⁸ This is likely inadequate because the ABA guidance states that the advertisement should directly address the relationship and most deals only do so indirectly.

The biggest hurdles that attorneys face with compliance of ethics rules when using daily deals have to do with handling fees and refunds. There are different implications depending on whether the deal is structured as a coupon for discounted future fees or prepaid fees. The ABA preference is to structure the deal as a coupon for discounted fees to be paid in the future so that no legal fees are involved until an attorney-client relationship is formed and the discounted fees

⁴⁴ See <http://www.gallerlaw.com> (last visited July 31, 2014).

⁴⁵ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

⁴⁶ *Id.*

⁴⁷ GROUPON, <http://www.groupon.com/deals/law-office-of-j-andrew-baxter> (last visited July 31, 2014).

⁴⁸ See, e.g., GROUPON <http://www.groupon.com/deals/r-w-bobholz-law-llc> (last visited July 31, 2014); <http://bobholzlaw.com/> (last visited July 31, 2014).

are paid by the client.⁴⁹ That makes the accounting easier, as the payments from the service can be directly paid into the attorney's account and no trust accounting is necessary.⁵⁰ If the deal is structured as a coupon and it is never redeemed, there is no question of non-earned fees, and the attorney can retain the income generated from the coupon so long as the advertisement clearly states that there will be no refunds.⁵¹ If there is a conflict of interest, the attorney may need to refund the entire amount, including the amount that was paid to the daily deal marketing company.⁵²

If the deal is structured as a pre-paid fee, then the attorney will need to create a separate trust account for each client who purchases the deal.⁵³ Pre-paid legal fees need to be placed in a trust account until the fees earned, but problems arise because the attorney may not know the identity of the purchaser, the purchaser may not be the ultimate client and fees may never be earned if the coupon is never redeemed or if the attorney is unable to represent the purchaser as a client.⁵⁴ As in the case of a coupon, a refund of the full amount paid by the purchaser would be due if the purchaser attempted to redeem the coupon, but the attorney could not represent them because of a conflict of interest of other issue.⁵⁵

⁴⁹ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* See also Aaron J. Russ, Note, *Is Groupon for Lawyers Fraught with Ethical Danger? Why the Legal Community should Embrace Innovative Internet Marketing for Lawyers*, 2013 U. ILL. J.L. TECH. & POL'Y 393, 412-13 (2013) (describing the Nebraska Bar Association recommendation for the attorney to refund the entire amount paid by the daily deal purchaser).

⁵³ MODEL RULES OF PROF'L CONDUCT R. 1.15(c) (2013) ("A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expense incurred."). See also ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

⁵⁴ See Derek Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS (Winter 2012), available at www.fcjblaw.com/files/Publication/9640bd3d-7ac9-46e6-91-fe-13bbd35ef28/Presentation/PublicationAttachment/a108c16a-a121-4570-8324-1c043e718f7c/harris_reprint.pdf (noting New York and South Carolina differ on how that is handled and whether the fee can be kept); Debra Cassens Weiss, ABA JOURNAL, *Can lawyers use Groupon-type marketing? ABA ethics opinion sees problems with prepaid deals*, http://www.abajournal.com/news/article/can_lawyers_use_groupon-type_marketing_aba_ethics_opinion_sees_problems (last visited July 31, 2014).

⁵⁵ See *id.*

The ABA believes that arrangements can be made with daily deal marketing companies to ensure deals for legal services comply with the rules, but some states have determined that no compliance is possible.⁵⁶ The ABA opinion warns that the business models are not static and attorneys need to keep up in order to make sure ethical rules are followed.⁵⁷ Daily deals websites are best suited for legal services where flat fees can be, or have already been, established for the type of legal service advertised, such as basic wills.⁵⁸

Attorneys must address in the advertisement what happens if the attorney or firm needs more time than the pre-paid hours to competently perform the services.⁵⁹ The attorney previously mentioned who sold a coupon for a will and power of attorney for \$99 at a \$651 discount ultimately gave a \$750 credit to clients who purchased the coupon and ended up needing more complex instruments.⁶⁰ Only two deals address additional fees, one for defined services for execution of a legal instrument related to the deal⁶¹ and one for “any extra services.”⁶² No other deals address what will happen if more time is needed.⁶³

⁵⁶ See Michael J. Conroy, Note, *Clash of Titans: Groupon v. The Model Rules of Professional Conduct*, 99 IOWA L. REV. 1329, 1139-41 (2014). See also Megan Zavieh, GPSOLO EREPORT, *To Groupon or Not to Groupon: For Lawyers, It's Best Not*, http://www.americanbar.org/publications/gpsolo_ereport/2014/may_2014/to_groupon_or_not_for_lawyers_its_best_not.html (last visited July 31, 2014).

⁵⁷ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013)

⁵⁸ See Aaron J. Russ, Note, *Is Groupon for Lawyers Fraught with Ethical Danger? Why the Legal Community should Embrace Innovative Internet Marketing for Lawyers*, 2013 U. ILL. J.L. TECH. & POL'Y 393, 399-400 (2013); Thomas A. Gilligan, *They're Not Just for [Name Your Commoditized Service or Product Here] Anymore: Ethics Opinions Say Goupons for Legal Services OK*, 54 No. 3 DRI FOR DEF. 63 (2012). One firm that is offering a daily deal for estate planning offers several estate planning services at flat fees on their website, at undisclosed fees. See GROUPON, <http://www.groupon.com/deals/r-w-bobholz-law-llc> (last visited July 31, 2014); <http://bobholzlaw.com/easyfee/> (last visited July 31, 2014).

⁵⁹ See Zavieh, GPSOLO EREPORT.

⁶⁰ See Debra Bruce, SOLO PRACTICE UNIVERSITY, <http://solopracticeuniversity.com/2012/01/19/did-a-groupon-really-work-for-a-solo-lawyer> (last visited July 31, 2014).

⁶¹ GROUPON, <http://www.groupon.com/deals/the-law-office-of-jason-gang> (last visited July 31, 2014).

⁶² GROUPON, <http://www.groupon.com/deals/watson-duncan-attorneys-and-counselors> (last visited July 31, 2014).

⁶³ See e.g., GROUPON, <http://www.groupon.com/deals/law-office-of-j-andrew-baxter> (last visited July 31, 2014).

Attorneys may not share legal fees with non-attorneys.⁶⁴ This is to prevent third parties from influencing how attorneys serve their clients.⁶⁵ Some states (i.e., South Carolina, North Carolina, Maryland) and the ABA have determined that percentage of the deal purchase price retained by the deal website is an advertising fee, and is not impermissible fee-sharing because there are no interactions between the website and the attorney once the deal company transfers the purchase funds due to the attorney.⁶⁶ ABA and North Carolina say the arrangement is permissible so long as the percentage kept by the company is reasonable.⁶⁷ Alabama, Arizona, Indiana and Pennsylvania opine that the arrangement is fee-splitting and therefore prohibited.⁶⁸

ABA Model Rule 7.2(b)(1) and state rules restrict ability of attorneys to participate in attorney referral services where an attorney pays a third party to recommend him or her to potential clients.⁶⁹ The purpose of this rule is to not deceive potential clients, and so as long as the advertisement for the deal is not misleading, attorneys can use daily deal websites, per the ABA and some states.⁷⁰ New York rules do not now allow fees for referral services, but the state bar concluded that the fees for participating in daily deals were not a referral, but reasonable advertisement costs because the “website has not taken any action to refer a potential client to a particular lawyer.”⁷¹

⁶⁴ MODEL RULES OF PROF'L CONDUCT R. 5.4 (2013). See Josh King, *Selling Packaged Legal Services Online*, 31 No. 17 WESTLAW JOURNAL COMPUTER AND INTERNET at *2 (2014); Zavieh, GPSOLO EREPORT.

⁶⁵ Thomas A. Gilligan, *They're Not Just for [Name Your Commoditized Service or Product Here] Anymore: Ethics Opinions Say Goupons for Legal Services OK*, 54 No. 3 DRI FOR DEF. 63 (2012); King, at *3 (noting that fee splitting has been deemed appropriate for credit card companies or marketing to take part of the fee for business purposes because it is incidental to the nature of the business, as is daily deal marketing).

⁶⁶ See ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

⁶⁷ *Id.*

⁶⁸ *Id.* n. 7.

⁶⁹ MODEL RULES OF PROF'L CONDUCT R. 7.2(b)(1) (2013).

⁷⁰ ABA Comm. on Prof'l Responsibility, Formal Op. 465 (2013).

⁷¹ See Thomas A. Gilligan, *They're Not Just for [Name Your Commoditized Service or Product Here] Anymore: Ethics Opinions Say Goupons for Legal Services OK*, 54 No. 3 DRI FOR DEF. 63 (2012); Derek Harris, *Coupons for Lawyers: Three Ethics Opinions Approve Daily Deal Advertising for Lawyers*, 37 No. 2 LITIG. NEWS

Whether an attorney should use a daily deal to market his or her services to potential clients is a multi-factor decision. Each attorney or firm should carefully consider the benefits, financial costs, ethical and professional responsibility code of his or her state bar association, and the image that they want to portray of their practice and the legal profession. If the state bar association has not provided specific guidance on daily deal websites, then attorneys should look to their state bar association's rules of professional conduct, the ABA Model Rules, and ABA Formal Opinion 465 to ensure that they are complying with the most recent guidance for advertising, fee sharing, fee referral services, and trust accounting and to ensure that the deal structure and deal advertisement is in compliance. If an attorney decides to move ahead with a daily deal, it is best to take an active role in developing the deal structure and advertisement with the company.⁷² As with all issues regarding social media and the law, an attorney should keep up to date with ABA and state bar association ethics guidance in this constantly evolving field.

(Winter 2012), available at www.fcjblaw.com/files/Publication/9640bd3d-7ac9-46e6-91-fe-13bbd35ef28/Presentation/PublicationAttachment/a108c16a-a121-4570-8324-1c043e718f7c/harris_reprint.pdf.

⁷² As one ethics attorney stated, "Social media sites don't know our ethical rules, and they don't care either." YOUR ABA: E-NEWS FOR MEMBERS, *Ethics of Groupon Marketing and other Implications of Opinion 465*, <http://www.americanbar.org/publications/youraba/2014/july-2014/ethics-of-groupon-marketing-and-other-implications-of-opinion-46.html> (last visited July 31, 2014).