

'Flash sales' for legal services?

ETHICS BYTE

By Diane Karpman

These are tough times. Citizens are occupying Oakland, Los Angeles and other cities. Difficult economic conditions often result in new methods of making a living or in revisiting old ones.



The centuries-old concept of barter will never pay the rent or student loans. Legal fees are usually a lawyer's only source of income.

Abraham Lincoln once bartered his legal services for a U.S. Army pistol that had been used in the Mexican War (ABA Journal, April 1982). Remember that barter transactions are deemed to be reportable as part of a taxpayer's gross income. Lincoln was extremely aggressive about his fees. He often sued clients to collect, demanding and receiving cash (and these were not criminal cases).

The advent of the Internet presents new opportunities, including the "daily deal websites" like Groupon and Living Social, which offer coupons and discounts for products and services. Consumers only receive the deeply discounted bargain if a minimum number both sign up and prepay. The coupon company then splits the proceeds with the seller as compensation for making the offer available. You can imagine the dust-up this presents in the legal ethics community, remembering that ethics usually lags about 30 years behind the reality of our practices.

Lawyers have been allowed to advertise since 1977, and group coupons have tremendous market potential. But do you want to be "offered," alongside of the newest day spa with laser hair removal? Obviously, there are major issues involving professionalism always present in attorney advertising. Are coupons a fancy advertisement (remember all the restrictions and requirements), or is it more sinister in terms of our ethical obligations?

What about fee splitting in the group coupon scenario? Lawyers have been

prohibited from splitting fees with nonprofessionals for decades, because it is believed to impair a lawyer's exercise of the fiduciary obligation of independent judgment. [North Carolina](#) and [South Carolina](#) say that legal services can be offered as the "daily deal," but with lots of warnings. Missouri issued a preliminary ethics opinion for a specific lawyer who wanted to do basic wills and durable powers of attorney, indicating that it can be done – sometimes.

Groupon presents a Pandora's Box of ethics issues. Lawyers cannot charge excessive fees. What about the consumer who never uses the coupon because of an expiration date? Some maintain that accepting a fee for doing nothing is inherently excessive or unconscionable (Rule 4-200). Could this be construed as misleading or confusing advertising? Where is the list of disclaimers usually required? Is a coupon an advance fee? How do you do a conflict check? How do you competently represent clients when you never consulted with them to analyze their personal issues?

Note, in terms of new business models, nobody can "sell" you cases. It's flat-out capping and running, which is a crime (Business and Professions Code § 6151). In Dickens' Bleak House, the representation of one of the heirs, Jarndyce, was sold to an attorney for five pounds. This too is illegal.

Do you really want to be the "daily deal?" Last year, at an MCLE program for the Beverly Hills Bar, recordings of some of my prior programs were "ON SALE!" The practice of law is not for the faint hearted, but being on sale while doing a program was honestly creepy.

• *Legal ethics expert Diane Karpman can be reached at 310-887-3900 or at karpethics@aol.com.*