

State Bars Still Struggling to Come Out of the Legal Advertising Stone Age

June 7, 2011 By Jeramie Fortenberry

The June 1, 2011, edition of the Florida Bar news has a pair of articles reflecting the Bar's ongoing struggle to apply an outdated paradigm to the changing legal marketplace.

The [first article](#) reports that a "special Florida Bar committee studying private, for-profit lawyer referral services" will have a public hearing at the Bar Annual Convention on June 22. The article comes complete with the usual paternalistic propaganda about preserving the integrity of the legal profession and hints at the mass chaos that would ensue if the Bar associations weren't here to hold the center together:

- "We want to hear from lawyers who participate in the services and what impact their participating is having on compliance with Bar rules and maintaining the integrity of the profession." (Grier Wells, Jacksonville Board of Governors Member)
- "This is not a witch hunt. But by the same token, we are aware of what appears to be some horror stories of consumers, and we need to make sure that attorneys are mindful of the Rules Regulating the Bar, and their obligation to the profession and the public." (Wells, again)
- "Lawyer advertising is heavily regulated to retain the integrity and honor of the profession. In my opinion, those rules should not go out the window if lawyers enlist a third-party agent to do the dirty work." (Jonathan Neuman, Miami attorney)

The meeting will also discuss recent, failed legislation to further restrict advertisements by medical or lawyer referral services related to automobile accidents.

The [second article](#) opens with the (true) statement: "These ain't your grandmother's lawyer referral services." (I would add: "This ain't your grandfather's law practice, either.") It reports on three proposals to the Bar's Standing Committee on Advertising from companies that are bringing innovative technology to the legal marketplace:

- [TheLaw.TV](#) allows attorneys to record FAQ videos about their areas of practice. The videos are then posted for viewing by consumers, with advertising referring the viewers back to the attorneys' websites. Committee members "weren't sure" whether this was a lawyer referral service or not. They decided to table the review until June 23.
- [LawButler.com](#) allows consumers to input all the information necessary to file for divorce from the privacy of their own home. The consumers are then matched with attorneys interested in handling their case. Law firms are charged \$300 for each case they accept. The Bar has questions about whether this arrangement is impermissible fee-splitting with non-lawyers and whether the company is engaging in the unlicensed practice of law. One member of the committee thought that the intake role was "acting like a public adjuster" and

raised UPL concerns; another felt like the company's role was little more than collecting information. The committee decided to punt the proposal to UPL department and the ethics committee.

- The third site, which is unnamed in the article, would “offer networking services for lawyers, law students, expert witnesses, and the public,” including allowing the public to post law-related questions. Attorneys would pay to be listed in the legal directory or to advertise on the site. How this differs from the [proliferation of other sites](#) that are offering similar services is unclear from the article. The committee “agreed that although somewhat different from a traditional LRS, the website did appear to be a lawyer referral services but added there doesn't appear to be any problem because it will be complying with Bar LRS rules.”

Articles like these reflect the state bar associations' collective failure to grasp how radically technology has disrupted (and will disrupt) the way in which legal services are advertised and delivered. Many bar associations have been drinking the “law-as-a-noble-profession-not-a-business” Kool-aid for so long that they cannot let go of ~~sentimental nostalgia with no basis in reality~~ outmoded, paternalistic paradigms. These paradigms rest on the dubious assumptions that (a) legal services have been or will ever be motivated by *noblesse oblige* instead of profit and (b) the public can't be expected to recognize this profit motive and exercise the same common sense that they do when purchasing other services.

So far, the Florida Bar's predominant approach has been a hopeless attempt to contort the old paradigm to fit the new reality. I don't envy them in this struggle because it is destined to fail. The time has come to rethink the regulation of legal advertising from the ground up. Thankfully, [the ABA has already taken the lead](#). Hopefully state bar associations will soon follow suit.

What do you think? Is the traditional legal advertising paradigm still relevant?