

## Influencing the Future

*Everyone here has the sense that right now is one of those moments when we are influencing the future. – Steve Jobs*



As part of our initiative to involve law students in our Association, I often have the honor of addressing students at law schools throughout our state, talking about the truly noble career path they have chosen and the importance of bar association involvement in their professional careers. The students I speak to will be entering a job market that is vastly different from the one I entered more than two decades ago. Recent law graduates, in New York and throughout the nation, are not just competing with each other for work; they are competing with those who have already graduated and who are still seeking work. New lawyers, burdened by student loans and trying to make their own way in a market that no longer promises high-paying jobs upon graduation, will face a tough road ahead of them.

The sentiment shared by Steve Jobs when he predicted the explosion of laptops and how the Internet would change how our nation does business is now equally applicable to how we practice law. Today we are faced with “legal services” companies that purport to enhance your exposure on their promoted attorney websites, where a lawyer’s performance and expertise is assigned a numerical value, the same as one might rate a pizza delivery guy;

and legal form services, where the law is reduced to a form that just needs to be completed. Change is coming to our profession from profiteering entrepreneurs unencumbered by rules of ethical conduct and responsibility. Even in the face of change, it remains incumbent upon us as attorneys to remain guided by the rules of professional responsibility as we use new technologies.

As a legal community, both at law schools and bar associations, we spread the word on the importance of resume building, networking, and giving back to our communities while gaining valuable experience at the same time. We must work to prepare all lawyers to adjust to – and to influence – the new legal marketplace. We must encourage a thoughtful focus on navigating the decisions that promise to make a major impact on the future of our profession, like participating in and lending credibility to online services that promise to find potential clients using questionable methodologies; or worse, standing by while websites that promise to do all the legal work for consumers, without sharing the credentials of their so-called legal practitioners, continue to flourish while skirting ethics rules or waiving responsibility altogether.

Our Association, long opposed to attorney rankings, is currently study-

ing the issue of ratings, and has found that the methodologies and results of attorney advertiser services can often be misunderstood by the general public. Search terms alone can pose a problem. If potential clients search for counsel with imprecise words describing the kind of legal bind they are concerned about, they could miss equally qualified practitioners listed under a more generic or commonly used term. That missed click would not just affect potential clients, it could have a disproportionately negative impact on a generalist lawyer with a broad practice. Worse are those services that purport to rank attorneys based on an algorithm that only the service is aware of, where attorneys can pay the service to help them “master” the system. These services proudly boast their rankings are not “pay to play” when, in reality, if you pay the services, they will “advise” you on how to “play” their system. Often, attorneys who pay for the most “advice” are ranked highest, which influences the decisions of an unknowing public. Bar associations, including ours, are increasingly receiving complaints from the public, and attorneys, about the methods used by such services.

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## PRESIDENT'S MESSAGE

While attorneys at larger firms benefit from the higher profiles of their workplaces and firm websites, which are often bolstered by greater public relations resources, lawyers at solo and smaller firms are easy prey for the promises of well-funded attorney advertisers. Solo and small firm lawyers, and lawyers who work outside of major metropolitan areas, may have a much harder time penetrating the online marketplace. They are promised easy access to high-profile marketing by legal services companies that can purchase expensive Internet and media advertising due to an influx of venture capital from investors seeking a return on their investment. Venture capital is going to these companies because investors intend to make money on the backs of lawyers desperate for work and a public starving for easy answers.

The New York Rules of Professional Conduct state that attorney ratings must be unbiased and nondiscriminatory. Rule 7.1, Comment 13 states that ratings “must evaluate lawyers based on objective criteria or legitimate peer review in a manner unbiased by the rating service’s economic interests (such as payment to the rating service by the rated lawyer) and not subject to improper influence by lawyers who are being evaluated.”

The burden of discovering which ratings are legitimate and which ones are inflated, or paid for, unfairly falls on the shoulders of unsuspecting consumers. While these services refer to themselves as innovators, they may end up subverting the very premise of the profession they claim to be promoting. If ratings are the result of a pay-to-play scheme, where more money means a higher ranking, the profession and the public will suffer.

Equally troubling is the proliferation of sites that promise to do all the work a lawyer can do, for a small fee. It’s true that some legal work may require filling out a relatively simple form and asking a competent person to review it. But if, for example, business partners find out they set up their small business the wrong way, with a

form for the wrong type of entity or with the wrong information, they may not know until it’s too late to recover from the damage. Knowing the right form to complete and the nuances of the information contained in it is crucial. Or if, for example, a power of attorney form used in a transaction is outdated or incorrect, the entire underlying transaction could be null and void. A consumer saving a few dollars by downloading a form could be out hundreds of thousands of dollars. Consumers have no recourse to hold accountable the company they paid for the legal service, as many of these online outfits claim to not provide legal advice.

Our Association is taking action to protect our profession and the public that we serve. Our Committee on Attorney Professionalism, and a new working group I recently appointed, are reviewing these issues to provide guidance to attorneys whose experience and expertise are independently recognized by third parties, or their peers, in accordance with the Rules of Professional Conduct. Meanwhile, we are embracing evolving technology and maximizing traditional communications, as we recognize just how crucial it is for our members to increase efficiency in both how they work and how they make meaningful connections with clients.

To enhance the work of our members, NYSBA offers tools such as Surrogate’s Forms online, powered by HotDocs.<sup>®</sup> The service offers a fully automated, and vetted, set of official probate forms, as promulgated by the Office of Court Administration (OCA) and used by various Surrogate’s Courts throughout the state. To connect licensed attorneys with potential clients in an efficient and accessible way, we offer the Lawyer Referral and Information Service (LRIS), which serves 44 counties in New York. Our non-attorney LRIS counselors do not offer legal advice but direct callers to real lawyers or the most appropriate community organizations or resources to address their situation.

The preamble to the New York Rules of Professional Conduct states that as lawyers we share a responsibility to “further the public’s understanding of and confidence in the rule of law and the justice system” because our “legal institutions depend on popular participation and support to maintain their authority.” For our system of law to maintain its integrity, and its authority, we must be a part of the solution, individually as practitioners and as an Association. We cannot leave the job of informing the public and addressing its legal problems to companies, staffed and funded by nonlawyers, that have only a financial stake in the transaction. The Rules of Professional Conduct tell us that we have a moral and ethical obligation toward the client in need and the future of our profession itself. When we reduce the law to nothing more than an easy download with no guidance, it is not just the profession that loses. It is the consuming public – people with real problems who need real help – that stands to lose the most of all. Our Bar Association, and our 74,000 members, must use the collective strength of our voices to influence the future of our profession. ■

