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Special Report When Online Critics Attack

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For a professional, a solid reputation among clients, peers and the online community is key to success. It only takes one person — an unhappy client, a disgruntled employee, an ex-business partner or significant other, or a desperate competitor — to start an online smear campaign.

Negative or unflattering postings on review sites such as Yelp.com, HealthGrades.com, Avvo.com and Angielist.com, or social networking sites, blogs or chat forums, can do serious damage to a professional's online reputation, even if they are irrelevant or false. Aggressive online threats and off-putting reviews also can create a nightmare of distractions, worry and expense for the professional.

Before calling a lawyer, the professional likely already has contacted the person who posted the negative comment, gotten nowhere and possibly escalated the situation. Here are some tips for attorneys who represent clients concerned about online critics who have crossed the line.

- *Educate the client.* Counsel should explain that there is no silver bullet legal answer to the problem, because absent extreme circumstances a court will not restrain the right of free speech. Furthermore, the Communications Decency Act effectively immu-



nizes the sites that publish negative or false information from liability, making it difficult to force removal of such online posts.

Counsel should tell the client that the answer lies in a combination of strategies to hold the out-of-control critic accountable and to take back control of the professional's online reputation. Counsel should also remind the professional that if a former or current client is the one conducting the online warfare, that person also may file a civil suit or a complaint with the licensing board. Counsel and the professional should be mindful, with any communications, that licensing regulations may make it a violation to intimidate a complainant.

- *Take action.* Counsel should advise the professional and his or her staff not to respond to email from or

negative postings by the offending person. Most of the time, engaging a critic online will only fuel the fire. If circumstances necessitate some kind of online response, it should be positive and general, and it should not reveal any confidential information the professional may have about the critic. But responding at all may put the link to that review site higher in the search engine result list.

Counsel should get copies of all links and postings at issue and of all direct communications with the person, assign someone to monitor regularly for any new negative postings and decide what type of notice to send directly to the critic. If the person is still one of the professional's clients or if the relationship status is unclear, counsel should decide whether to send a formal termination letter that complies with any applicable regulations.

Counsel also should consider sending the critic a cease-and-desist notice, which may have the desired impact and is critical for any subsequent criminal harassment charges. Counsel may also send "take-down" requests to the review sites and cite to the sites' own policies. But keep expectations low.

Importantly, if the person engaging in the harassment has made even veiled threats of violence, counsel

should advise the authorities, those who work with the professional and anyone else who could be impacted.

- *Hold the overboard critic accountable.* Counsel should evaluate potential civil claims, including defamation, business disparagement, public disclosure of personal information, intentional infliction of emotional distress, tortious interference with an existing contract and tortious interference with prospective business relations. Each of these claims has its challenges, and the professional needs to understand that the time and fees associated with pursuing civil claims likely will not be recouped. However, pursuing civil claims is one way to hold the person accountable on some level.

If the attorney needs additional information to investigate a potential civil suit, including the identity of an anonymous reviewer, he or she should consider filing a Rule 202 petition. If the professional strongly suspects a perpetrator but cannot yet prove who it is, counsel can consider filing the Rule 202 petition and serving that person as a potentially interested person. Service alone may dissuade the person from further postings.

If the person continues the conduct after the cease and desist has been sent, counsel should consider filing harassment charges. Under Texas Penal Code §42.07, a person commits a harassment offense if he repeatedly makes calls or sends repeated electronic communications (texts and emails and arguably online postings) in a manner reasonably likely to harass, annoy, alarm, abuse, torment,

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embarrass or offend another. Harassment is a Class B misdemeanor and carries up to a \$2,000 fine and up to 180 days in prison.

Police typically can take reports by phone, but ultimately the professional will need to give a written statement. Counsel should arm the detective with proof of the cease and desist and copies of all communications at issue, including any IP address information available. Counsel also should be persistent with the detective and make clear the intent to press charges.

- *Take control of the online reputation.* Counsel should strongly encourage the client to initiate a proactive online reputation management plan, either directly or by hiring an online reputation management service. Such services offer valuable tips free of charge on their websites.

The goal of online reputation management is to create and promote a positive online reputation and thereby at least move any negative content off of page one of a search engine result. Even simple steps such as populating professional review website profiles and creating other social media pro-

files on sites can go a long way toward toning down negative postings. Starting a Twitter account and filling out a Google profile can also help the professional control his or her online content.

Monitoring search results is an important part of online reputation management. The time and money spent creating and managing an online reputation is something every professional victimized by an out-of-control online attack will wish he or she had done long ago. But with the right approach an Internet-savvy attorney can help deflect future attacks or mitigate current ones. 



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