

# AmeriCounsel: Guaranteed Legal Services At Flat Fees On The Internet

BY ROY SIMON

Suppose you are a potential client shopping for legal services over the Internet. You find [www.AmeriCounsel.com](http://www.AmeriCounsel.com), a company affiliated with Harvard Law School Professor Arthur Miller. Topping the AmeriCounsel web site is a flashing banner that says: "Now It's Easy and Affordable to Take Care of All Your Legal Needs. Click Here for \$50 Off Your First Purchase." (This alternates with a message saying, "What's next? World peace?") Another line says, "Select a flat fee service," and lists the legal services available from AmeriCounsel:

## PERSONAL

Bankruptcy Services from \$449  
Wills & Trusts from \$189  
Real Estate Services from \$99  
Criminal Defense from \$599  
Divorce Services from \$389  
Immigration from \$349  
Adoption Services from \$119  
Consultation Services from \$49

## BUSINESS

General Corporate from \$99  
Forming Your Business from \$165  
Trademark & Copyright from \$149  
Credit & Collections from \$49  
Real Estate Services from \$99  
Employment/ Labor from \$79  
Employer Immigration from \$499  
Consultation Services from \$49

Clicking on any category brings up several subcategories. For example, clicking on Real Estate Services produces four items: (1) Deed Services; (2) Purchase & Sale Agreement of Real Estate; (3) Promissory Note & Mortgage for Seller Financing; and (4) Home Closing Packages. If you click on the bread-and-butter item for small firms, Home Closing Packages, you get four options: Basic Seller Package (\$175); Total Seller Package (\$275); Total Package — Buyer (\$275); and a Home Closing Consultation (\$49). The "Basic Seller Package" does not include attendance at the closing; the Total Seller Package and the Total Buyer Package do. If you aren't sure which service you need, buy the Home Closing Consultation, and for \$49 you will be "connected via telephone to a local Network attorney to review [your] unique situation and receive advice about the best way to proceed."

AmeriCounsel also includes "more info" about every category. For example, if you click on Bankruptcy Services you get a brief description of bankruptcy followed by a list of FAQ's, such as: "Can I keep my house or car or anything else if I file for bankruptcy?" "Do I have to go to Court?" "How long does the bankruptcy process take?" and "How will filing for bankruptcy affect my credit?" The answers are clear and concise. In case the legal service you want isn't on the home page, you can click on an italicized line that says, "Don't see it listed? Click here," or you can click on a button labeled "Request a Lawyer." Clicking either place brings up an invitation to "Request an Attorney / Request Quote for \$99 / hour Services," and the following instructions for doing so:

AmeriCounsel will endeavor to locate and screen an attorney to respond to your need with an estimate. The estimate will be based on a fixed \$99 hourly rate and will include the number of hours the lawyer anticipates your case will require. Based on the lawyer's estimate, you will be contacted by an AmeriCounsel Customer Service representative to confirm your interest and make an initial payment for the first month's estimated hours. At the end of each month, the attorney lets you know where you stand and whether you need to pay an additional amount for the next month's expected work. If work is completed and there is a positive balance on your account, you will be refunded the unused portion. Network Attorneys bill for on-going engagements in 6-minute increments for all AmeriCounsel customers...

Beneath this introduction is a "standard user agreement" that explains AmeriCounsel's service. For example, it says: "We are neither a law firm nor in the business of dispensing legal advice in any manner. Rather, AmeriCounsel.com serves as a venue to facilitate the process of delivering legal services." In effect, AmeriCounsel is a combination referral service and support service — it connects lawyers with clients, takes care of the billing, and resolves billing disputes.

Services purchased from AmeriCounsel are performed by "Network Attorneys," defined as "independent legal practitioners and law firms that have agreed to utilize the marketing, billing, payment, and document processing services ancillary and the actual practice of law, which can only be performed by the attorney." Who are these Network Attorneys? The website's "About Us" section boasts a "nationwide, pre-screened network of high quality law firms dedicated to providing enhanced consumer value in the form of lower prices and superior service." It goes on to say:

Screening attorneys is one of our highest callings. It is also one of the many ways that AmeriCounsel differentiates itself from our "listing service" competitors, or a Yellow Pages directory. In addition to the rigorous minimum criteria for each firm ... AmeriCounsel's customers rate their attorneys each time a service is performed. These ratings help insure only the best attorneys maintain their membership status with us.

AmeriCounsel's "rigorous minimum criteria" require that: (a) each Network Attorney firm must have good client and peer references; (b) each firm must be an established law firm with at least five consecutive years in practice; (c) each firm must adhere to the highest professional standards and conduct, in compliance with both AmeriCounsel's policies, as set forth in the AmeriCounsel Handbook, and applicable bar rules; (d) each attorney in the firm must be an active member in good standing with the state bar in the jurisdiction for which legal matters are accepted; (e) each firm must maintain malpractice insurance at the minimum sum of \$100,000/\$300,000 aggregate per claim; and (f) each firm must agree to AmeriCounsel's unique Satisfaction Guarantee Policy, which states that customers who are not satisfied with the quality of their attorney's services are entitled to a refund.

The guarantee is one of the most interesting parts of AmeriCounsel's service. A click on "Guarantee" on a menu near the top of the screen explains the guarantee:

If you are unsatisfied with the quality of the service provided by your AmeriCounsel Network Attorney, you are entitled to a refund. This guarantee does not apply to filing fees, taxes or other costs incurred servicing your legal need.

Please be advised that this policy in no way guarantees the outcome of the matter will be favorable to you. Furthermore, an unfavorable outcome is not necessarily a meritorious ground for requesting a refund.

### **Confidentiality, Conflicts, And Compensation**

What about confidentiality? The user agreement warns:

...User understands that AmeriCounsel.com and its employees are not covered by the attorney-client privilege. Only Network Attorneys are covered by the attorney client privilege relative to your communications with that attorney. It is the responsibility of the User and Network Attorney to establish the attorney-client relationship.

...User is advised to use discretion and not disclose any information that may be privileged or confidential until such time User enters into an attorney client relationship with a Network Attorney. Protecting potentially privileged information is the sole responsibility of the User. [sic]

Because AmeriCounsel.com is, by definition, a public website, User should avoid disclosure of sensitive or potentially privileged information relating to the underlying legal issue for which the services of an independent attorney are engaged. Accordingly, facts pertaining to legal issues should be described in general terms... How about conflicts of interest? Under DR 5-105(E), a lawyer must check every proposed new engagement for conflicts. The user agreement explains that AmeriCounsel does not share the intake form with Network Attorneys until the attorneys have “confirmed that representation of User does not represent a conflict of interest.”

As for compensation, clients pay legal fees directly to AmeriCounsel Trust, which holds the funds in the Trust until both the User and the Network Attorney “notify AmeriCounsel that the matter or appropriate portion thereof has been completed, or in the case of non-flat fee engagements, until such time as periodic disbursements are agreed to by the parties ...”

If the client is *satisfied* with the legal services, then AmeriCounsel directs the Trust to “release the appropriate funds to the Network Attorney, upon completion of a Customer Satisfaction Form” — but “[f]ailure to complete the Customer Satisfaction Survey within three business days will result in the release of funds from the Trust to the Network Attorney.”

If the client is *dissatisfied* with the quality of legal work performed, he must either “notify Customer Service” or “request a refund in their response to a Customer Satisfaction Survey.” At that point, an AmeriCounsel “Ombudsman” reviews the matter, and “if the Ombudsman determines that the User’s dissatisfaction is attributable to the lack of quality legal service delivered by Network Attorney, the User will receive a refund” (excluding filing fees, taxes or other costs).

Does New York law permit AmeriCounsel to operate in this fashion, or permit attorneys to cooperate with it? Apparently not. Judiciary Law § 495 provides that no corporation (except a P.C.) shall “furnish attorneys or counsel.” In the Code of Professional Responsibility, DR 2-103(D) generally prohibits lawyers from cooperating with or being recommended by a for-profit organization other than a “lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule.” AmeriCounsel is not operated, sponsored or approved by a bar association, and no New York law or court rule authorizes other for-profit referral services.

Even if AmeriCounsel is instead viewed as “group advertising,” which is permissible, it does not comply with N.Y. State Bar Op. 597 (1989), which requires group advertisements to state the names of all participating attorneys and prohibits advertising services from recommending any particular attorney. Moreover, the boastful claims that Network Attorneys are the “best attorneys” and have the “highest professional standards” may violate DR 2-101(A)’s prohibition against “misleading” statements. And though DR 2-101(K) requires that all advertisements for legal services “shall include the name office address and telephone number of the attorney or law firm whose services are being offered,” AmeriCounsel does not list the names of any New York lawyers.

Either I’m missing something that permits AmeriCounsel to operate in New York, or else AmeriCounsel will eventually have to mount a First Amendment challenge to the statutes and rules that stand in its way. Meanwhile, until AmeriCounsel is either vindicated or shut down, it will make legal services more accessible and affordable for New Yorkers, and will pose formidable competition for small law firms everywhere.

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