

Cutting-Edge Ethical Issues for the Sole Practitioner

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Social Media Listings

- ▶ Can a NY lawyer fill in a “specialties” section on LinkedIn?



- ▶ NYSBA Ethics opinion 872 (6/26/13)

When is a Communication NOT an Advertisement?

- ▶ Advertisement Definition: “communication. . . the *primary purpose* of which is for the retention of the lawyer or law firm?”
- ▶ Is it attorney advertising if you:
 - ▶ Put your name on pencils or legal pads and give them away?
 - ▶ Sponsor sporting or cultural events?
 - ▶ Offer a prize to join a lawyer’s social network?
 - ▶ Join the chamber of commerce (ultimately) for business development purposes?
 - ▶ Give clients a \$50 credit on their legal bill if they rate the lawyer on a website like AVVO



When Is a Blog Not an Attorney Advertisement?

- ▶ A columnist, also a licensed attorney, writes a blog on work-life balance. The blog's name is _____, Esq.
 - ▶ Does this constitute attorney advertising under Rule 7.1?
- ▶ May a lawyer participate in a blog established as a forum for lawyers to recount their experiences in dealing with an adversary whose past professional conduct is considered by them to have been unethical, harassing or abusive?



Publishing Venues

- ▶ Is an ad improper if it is in proximity to “prostitution related” advertisements?



“Attorney Advertising” Required on

- ▶ In person advertising – on 1st page
 - ▶ E.g. self-mailing brochure, postcard
- ▶ Website – on home page
- ▶ Email – in subject line
- ▶ *Required information:*
 - ▶ *Name, principal law office address, telephone number of lawyer/law firm offering the services*
- ▶ not necessary: radio, television, billboard advertisement
- ▶ What about an “Internet meme”?



Can You Bid for Work through an Internet Website?

- ▶ Rule 7.2(a) – cannot pay nonlawyers for recommendation or referral
- ▶ Situation: lawyers respond to an invitation to bid to perform legal services on a business' website.
 - ▶ Invitation is not initiated by the lawyer
 - ▶ Client, not lawyer is charged a fee
 - ▶ No shared fees with the service provider
 - ▶ No pre-screening, approval etc. prior to participation



Recent decisions regarding Web advertising for legal services

- ▶ Rule 7.2(a) – cannot pay nonlawyers for recommendation or referral
- ▶ A “deal of the day” arrangement (such as Groupon or Living Social) did not violate Rule 7.2(a) because “the website has no individual contact with the coupon buyers other than collecting the cost of the coupon, and has not taken any action to refer a potential client to a particular lawyer – instead it has carried a particular lawyer's advertising message to interested consumers and has charged a fee for that service.”



Recent decisions regarding Web advertising for legal services

- ▶ A lawyer may pay a for-profit service for leads to potential clients obtained via a website on which potential clients provide contact information and agree to be contacted by a participating lawyer, as long as (i) the lawyer who contacts the potential client has been selected by transparent and mechanical methods that do not purport to be based on an analysis of the potential client's legal problem or the qualifications of the selected lawyer to handle that problem; (ii) the service does not explicitly or implicitly recommend any lawyer, and (iii) the website of the service complies with the requirements of Rule 7.1, BUT
- ▶ A lawyer may not pay the current marketing fee to participate in Avvo Legal Services, because the fee includes an improper payment for a recommendation in violation of Rule 7.2(a) -- Avvo's advertising of its ratings, in combination with its statements about the high qualifications of lawyers who participate in Avvo Legal Services, constitutes a recommendation of all of the participating lawyers.



Online webinars and YouTube videos

- ▶ Lawyer may (i) organize and participate in online webinars and live seminars for non-lawyers on topics within lawyer's fields of competence, (ii) publicize the same by individual invitation, social media or other lawful means, and, (iii) following a webinar/seminar, discuss representation with participants, all subject to compliance with applicable rules on advertising and solicitation, BUT
- ▶ Hypothetical examples must be carefully scrubbed so that there is no "reasonable likelihood" that a third person can ascertain the identity or the situation of the client from the facts set forth in the hypothetical.
- ▶ **THANK YOU!**
 - ▶ (www.youtube.com, search for "Cliff Ennico")
 - ▶ (www.youtube.com, search for "Carol Schiro Greenwald")



Q&A



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