

# Modern Technology and Ethics

October 2011

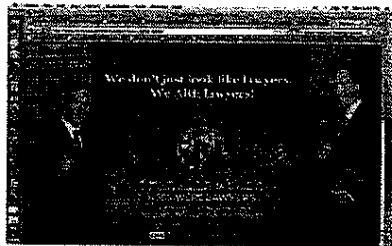
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## Topics To Review:

- Websites & Web Advertising
- Blogging & Social Media
- Electronic Document Storage

## The Web

- Websites & Web Advertising



- ER 1.6
- ER 7.1
- ER 7.2
- ER 7.3
- ER 7.5

**Your Website**

- **Specific requirements for your website:**
  - Must have name and address of at least one lawyer responsible for the ad (ER 7.2(c))
    - This is usually at the bottom of the page
  - Sites that advertise specific fees must include many disclaimers
    - Depends on the type of fee being advertised. See ER 7.2 (d) for details

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**Your Website**

- **No trade names! (ER 7.5(a) & EO 97-04)**
  - Need to use the name of at least one of the owners of the firm
- **What about the URL?**
  - It's okay for the URL, as long as it's not dishonest (EO 01-05)
    - Can't use .org if it's a for-profit firm
      - (Although this is likely changing)

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**Your Website**

- **Some tricky issues to watch for:**
  - **Listing clients or case results:**
    - Must have client permission, must not create unjustified expectations (ERs 1.6 & 7.1)
  - **Using real-time chat:**
    - Permissible, but the client must initiate the contact. Otherwise ER 7.3 applies and creates problems
  - **Allowing submission or access to client data via the website:**
    - Needs to be reasonably secure. Use SSL. (ER1.6)

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### Advertising Online

- Referral Services
  - Can't use. Services that match by zip code and/or make representations about the lawyer are prohibited referral services (EOs 95-13 & 06-06)
    - This may be changing
- Google AdWords
  - Clearly fine, but must be honest (ER 7.1)
    - Can you bid on other attorney names???
    - Unknown. *Habush v Cannon* 09-CV-18149 Milwaukee case found invasion of privacy

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### Advertising Online

- Groupon?
  - Seems to be prohibited by text of ER 5.4
  - But the reason behind the rule wouldn't seem to prohibit it...
    - Proposed North Carolina EO prohibits it
    - South Carolina EO 11-05 permits it, but urges caution
  - Arizona is likely to take this issue up in the near future

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### Blogging And Social Media

- Putting your firm on social media networks



- ER 1.6
- ER 7.1
- ER 7.2
- ER 7.3
- ER 8.4(c)

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### Electronic File Storage

- Storing client files electronically



- ER 1.15
- ER 1.16
- Rule 43

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### Electronic File Storage

- You can store files electronically!
  - Can you destroy originals sent to you?
    - Yes, IF you get client consent (EO 07-02)
  - Can you destroy copies sent to you?
    - Yes, unless you have reason to believe the client doesn't want you to (EO 07-02)
  - While you can usually destroy copies without asking first, we recommend client permission for any destruction
    - Develop a file retention policy and put it in your fee agreement

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### Electronic File Storage

- Beware security/confidentiality issues
  - Your network needs to be properly secured
    - WEP encryption or MAC ID is good for Wi-Fi networks
    - Firewalls are necessary (EO 05-04)
    - Remember to use SSL for online access
  - Your employees & subcontractors need to be properly trained on confidentiality
    - Have policies and training in place to cover yourself

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### Electronic File Storage

- More security/confidentiality issues
  - Remember to destroy old hard drives, phones, etc.
    - Data, even after deleted, remains
    - Experts recommend drilling hard drives or using software that re-writes the drive
  - Cloud computing?
    - New, emerging issue that hasn't been fully addressed
      - Probably okay with proper safeguards

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### Getting Help

- Where can you go for help?
  - Ethics Hotline – 602-340-7284
  - Trust Accounting Hotline – 602-340-7305
  - Unauthorized Practice of Law Hotline – 602-340-7292
  - Fee Arbitration – 602-340-7288
  - Members' Assistance Program – 602-340-7334
    - MAP 24hr Crisis Hotline – 1-800-681-3057
  - Law Office Management Assistance – 602-340-7313
  - Membership Records – 602-340-7239
  - Report Attorney Misconduct – 602-340-7280

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