# Modern Technology and Ethics

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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 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 · (Atthough this is likely changing) 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)

Permissible, but the client must initiate the contact.
 Otherwise ER 7.3 applies and creates problems
 Allowing submission or access to client data via

· Needs to be reasonably secure. Use SSL. (ER1.6)

· Using real-time chat:

the website:

# 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

# 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

# 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)

#### Posting on Social Media

- · Posting on these services
  - · Beware confidentiality issues:
    - ER 1.6 prohibits revealing any information related to the representation. Not just secret information!
      - . Even the client's name or the case result is covered
    - Illinois recently disciplined public defender for this:
      This stupid kid is taking the rap for his drug-dealing diribag of an older brother because "he's no snitch." I managed to talk the prosecutor into treatment and deferred prosecution, since we both know the older brother from prior dealings involving drugs and guns. My client is in college. Just goes to show you that higher education does

not imply that you have any sense.

#### Posting on Social Media

- · Posting on these services
  - · Beware solicitation issues:
    - ER 7.3 prohibits real-time electronic solicitation if you know someone needs legal assistance
      - Remember that if they contact or ask you first, it's okay
        - They need to contact you about a specific issue. Just having them as a "friend" on Facebook doesn't give carte blanche to solicit them on their specific cases
  - Beware advertising issues:
    - ER 7.1 and 7.2 requirements still apply
      - Not really feesible to put name and address on each tweet. Maybe put them on your profile?

# Lurking on Social Media

- · Using these services to investigate
  - ER 4.2 prohibits communicating with represented persons about the subject-matter of the case
    - However... NYSBA Opinion 843: You can view public pages of even represented persons
  - ER 8.4(c) prohibits dishonesty or pretext
    - No false or fake profiles
    - Philadelphia Bar Opinion 2009-02; You can't "friend" a person to see their otherwise private data
    - NO pretextually "friending" people for any reason

#### Electronic File Storage

· Storing client files electronically



- ER 1.15
- ER 1.16
- Rule 43

#### 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

# 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

#### **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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