



The Ethics of Online Client Development

A FindLaw White Paper

Executive Summary

“The ABA has set forward its Model Rules for consideration and adoption by the states.”

1. Most of the ethical standards governing traditional marketing tools such as print ads, brochures and radio spots also apply to online marketing activities.
2. In addition to avoiding potential discipline, a law firm that operates its Web site ethically can take full advantage of the Internet’s capacity to generate new-business prospects and develop client relationships.
3. Improper use of testimonials, case results, comparisons with other attorneys and other information on your Web site may violate the American Bar Association (ABA) ban on “false and misleading” communications.
4. The ABA has set forward its Model Rules for consideration and adoption by the states.
5. States have jurisdiction to determine their own ethics rules. As a result, rules vary by state and are regularly updated to address new and emerging online marketing practices. One good source for updated information is the ABA Web site, which provides links to lawyer marketing regulations in all 50 states at **www.abanet.org/legalservices/clientdevelopment/adrules**.

“The three elements of successful online client development are visibility, design, and content.”

Introduction: Why Ethical Online Marketing Matters

Today, as more consumers go online to select legal counsel, a growing number of law firms are seeking to expand their clientele through online marketing. The Web has become one of the most important tools attorneys have to generate leads and develop client relationships.

To get the most value from Web-based marketing, it's important that law firms address the three elements of successful online client development: Visibility (attracting prospects to a Web site via search engine optimization or a presence in legal directories), design and relevant, well-written content.

It's even more important, however, that lawyers who are entering the online realm understand the ethical guidelines that govern how a law firm markets itself online, including the elements that can (and cannot) be included in a Web site.

Much of this regulation is state-specific. In almost all instances, however, the ethical standards governing print ads, brochures and radio spots also apply to online marketing activities.

By meeting the ethical guidelines that apply to the online information you disseminate, you can protect your law firm's reputation, prevent it from running afoul of the state ethics committee — and make the most of the client-development opportunities that are available to law firms online.

Determining Which Ethics Rules Apply

In every state, professional responsibility rules govern the conduct of attorneys. Each state has rules that govern the interactions that the legal profession has with clients, adversaries, courts, potential clients and the public.

All states also have rules specific to attorney advertising. Many states, although not all, follow the American Bar Association (ABA) Model Rules of Professional Responsibility or a variation thereof. An additional source of regulation are federal laws that attempt to limit spam and other online abuses.

The ABA Model Rules prohibit the dissemination of “false and misleading” communications. Because there are state-by-state differences, however, in how that prohibition is interpreted — and since a Web site or online ad can be

accessed by virtually anyone, anywhere — a key issue for attorneys is to determine which jurisdictions apply to their online marketing activities.

A general guideline is that most state rules apply to lawyers whose communications **originate within that state** or to **outside communications targeted at potential clients within the state**. If the intent of the advertising is to provide services in states where the attorney is not licensed, then the attorney could be subject to regulator claims of unauthorized practice of law.

There are a number of steps you can take to focus your Web site on those states where your firm is licensed to practice and is seeking clients. One is to target your marketing message. Utilize keywords and key phrases specific to your state or local area in site content, and in title tags and HTML coding. Select photography and other images for the site with that target audience in mind.

Another good idea: adding a disclaimer to your Web site that specifies the states where your law firm does business. A firm that offers “representation nationwide” on its site has 50 state ethics codes to consider. By focusing instead on a geographic niche you can limit your exposure to multiple sets of ethics rules (and, as an added benefit, typically improve your search-engine rankings as well).

Resources. The most important step you can take, however, is to stay informed. Even if your firm outsources its Web site to a consultant, it’s ultimately your responsibility to ensure that you comply with ABA regulations and state ethics rules. There are several online resources you can refer to for updated information, including:

- The ABA Model Rules of Professional Responsibility:
www.abanet.org/cpr/mrpc/mrpc_toc.html
- A 50-state comparison to the ABA Model Rules that describes the content, design and disclaimer requirements unique to each state:
www.abanet.org/cpr/professionalism/State_Advertising.pdf
- Links to the rules governing lawyer advertising, solicitation and marketing in all 50 states: **www.abanet.org/legalservices/clientdevelopment/adrules**
- A page that tracks new developments in state advertising laws:
www.abanet.org/cpr/professionalism/lawyerAd.html

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Why does it matter? The cost of unethical online client development can include exposure to discipline, malpractice implications, fee forfeiture — even the expense of changing your brand. If your law firm is forced to take its Web site down for changes, for example, the lack of an online presence can adversely affect your search engine rankings while a new domain name is established.

Plus, given the rising importance of the Internet in the market for legal services, observing the ethical guidelines that apply to your firm is simply a smart investment in the long-term growth of your client base.

What information falls under ethics guidelines? With a few exceptions, most states regulate as “attorney advertising” any communication designed to attract clients. This should not be confused with “solicitation.” Solicitation is direct communication with a person (not a close friend, former client or relative) known to be in need, or thought to be in need, of legal services. While the rules and definitions vary by state, solicitation is generally much more closely regulated than legal advertising.

It’s important to note that the definition of attorney advertising may not apply to all communications made in order to generate business. In some states, ethics rules only come into play when the speech you deliver or the article you post to your Web site includes a marketing message stating that you’re available for hire. A communication that both offers your services for hire and discusses non-commercial issues will most likely be regulated.

The Bottom Line on Ethics Rules: Ethics rules are state-specific, though most states follow some variation of the ABA Model Rules of Professional Responsibility. Most state rules apply to communications that originate within that state, or to outside communications targeted at potential clients within the state.

Web Content Considered “False and Misleading”

Even more than print, radio and TV, the Internet has given rise to the information marketplace for legal services envisioned in **Bates v. State Bar of Arizona**, the 1977 U.S. Supreme Court decision that lifted the ban on attorney advertising. Attorneys can go beyond sound bites to provide substantive information about their law firms and areas of practice. For consumers, meanwhile, the Web makes it much easier to research issues and find legal representation.

From case studies to core practice area content to e-mail newsletters, law firms have a variety of Internet-based content tools they can use to inform potential clients of who they are and what they do. Some online marketing tactics, however, fall outside of the ethical guidelines set down by the ABA and state ethics rules.

While the ABA's prohibition against posting "false and misleading" information on a legal Web site is interpreted differently in various states, the following types of communications are frequently regulated and merit your firm's consideration:

Illegal communications. If the Internet is anything it's information-rich — and the unauthorized "borrowing" of content is a recurring problem. Utilizing plagiarized materials, stolen testimonials or copyrighted images from other Web sites is not only unethical, but illegal.

Omissions. Statements such as "No Recovery — No Fee" can be misleading if the client is exempt from legal fees only and is still liable for court costs or administrative fees. Many states require disclaimers when contingent fee arrangements are publicized. Another common omission on legal Web sites is the posting of positive awards and settlements without a prominently displayed disclaimer on all relevant pages of the site stating that results may vary, or that the facts and circumstances of each case dictate the results.

Unjustified expectations. The creation of unjustified expectations is an important consideration that is relevant in all states. Some of the key areas of concern are:

- **Domain names.** Many of the same rules that apply to law firm names also apply to Web site domain names. A firm may not, for example, adopt a domain name that creates undue expectations of success or that implies a connection with a government agency or charitable legal services organization.
- **Awards and honors.** Some states restrict the use of awards, honors and commendations, on the grounds that they can create unjustified expectations of success. New Jersey recently reviewed the use of the "Super Lawyers" designation due, in part, to a concern that the designation creates an unjustified expectation that the "Super Lawyer" is better than other lawyers.

- **Results.** The inclusion of “verdicts and settlements” pages or other descriptions of success can be a powerful marketing tool, but may create unjustified expectations without the inclusion of appropriate disclaimers or factual descriptions. Most states regulate the use of this type of information. Some require that results must be from past clients of a law firm, not its current clients.
- **Client statements.** Testimonials, endorsements or representative-client lists are also prohibited in certain states because they can create expectations of success. This is particularly true when the testimonial speaks to the outcome of a case (e.g., “My lawyer settled my case for more than I could imagine”).

Unsubstantiated comparisons to other attorneys. Statements that compare one lawyer’s services with another’s run afoul of the ethics rules in many states if they cannot be factually substantiated or objectively verified. In some states, self-laudatory statements are also against the rules. Any comparisons to other lawyers — even implied comparisons, such as a law firm that bills itself as “the most experienced in the state” or “the most qualified” — should be avoided or clearly documented, if possible, on your site.

Claims of specialization. A Web site that positions a firm as “experts” or “specialists” may violate ethics rules. In most states it is allowable, however, to state that you “limit your practice to” or “concentrate in” a particular area of expertise.

Failure to include necessary disclaimers. Many states require special disclaimers that govern contingency fees or legal services in general. It’s important that an attorney understands all the disclaimers required, as well as any size, position, type and color requirements that may exist in certain states. In some states, failure to include necessary disclaimers results in a per se violation of the rules.

Design elements. Several states have established guidelines governing Web site design. These rules specify the type and size of pictures that may be used, or the size of print required for disclaimers or other required information. For instance, some states restrict the use of a picture of an attorney unless the person pictured is in fact an attorney member of the firm or office being advertised. In other states, pictures of clients must be actual clients. The depiction of simulated events — such as car crashes, dog bites or construction accidents — may be similarly regulated.

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Spamming. Spamming is another key ethics concern. If your firm uses mass e-mail communication, give recipients a prominently displayed option to be removed from your mailing list. In some states, such communications may only be sent to those with whom the sender has had a prior business relationship. Other states require that advertisements for legal services must be clearly labeled as such in the subject line of the e-mail.

For a good source for information on federal and state spam laws, plus a list of recent cases, go to www.spamlaws.com.

The ethics guidelines covering spam and relatively new areas of Internet-based legal marketing such as blogging and pay-per-clicks are still in development. To stay on top of the rules, you may find it helpful to bookmark the ABA Web page that tracks changes in state advertising laws (www.abanet.org/cpr/professionalism/lawyerAd.html) and refer to it frequently for updates.

The Bottom Line on False and Misleading Web Content: A well-conceived Web site is a terrific way to deliver information about your law firm — provided the content you’re presenting meets your state’s ethics standards. Unsupported claims, selective use of results and missing disclaimers are a few examples of content issues that can lead to inquiries by state regulatory authorities. Rules (and online marketing tactics) change, so stay informed via the ABA Web site and other resources.

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Next Steps

While the ethical considerations involved in online marketing may be complex, there are a few relatively simple steps that your law firm can take to help minimize its exposure to discipline for an ethics violation. Be clear, on your Web site and in other online marketing materials, about the jurisdictional limits of your firm. Avoid subjective, difficult-to-document claims and statements on your site, and remember that, generally speaking, the same rules apply on the Web as offline.

Above all, stay educated on ethics rules. There are a number of resources, from state hotlines to ABA Web sites to online marketing and client development services such as FindLaw, that you can refer to for information. As an attorney working to develop client relationships online, however, you are ultimately responsible for staying informed about the laws that apply in the states where you do business.

The Internet is one of the most powerful options that attorneys have to generate leads and develop client relationships. Its importance will only continue to increase. Operating your Web site within the rules can help you avoid ethics repercussions and make the most of this dynamic marketing tool for your law firm.

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