The Paralegal’s Guide to Ethical Issues Related to Social Media Use and Advertising

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Important Foundations of Lawyer and Paralegal Ethics
Ethical Foundations

- NAIA Code of Ethics and Professional Responsibility
  - **Canon 1**: A paralegal must not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.
  - **Canon 10**: A paralegal's conduct is guided by bar associations' codes of professional responsibility and rules of professional conduct.

- The American Alliance of Paralegals, Inc.: Code of Ethics
  - 5. A paralegal shall follow all provisions of the rules of professional conduct for a paralegal or legal assistant of the state in which he or she is employed. If no such specific code for paralegals exists, then a paralegal shall follow the attorney's code of ethics as it applies to paralegals within that state.
Can/Should You “Friend” a Judge on Facebook?
“Friending”

- First, it is always helpful to review the relevant ABA Model Rules of Professional Conduct and the Comments as well as the rules in the particular state where the judge and lawyer are licensed to practice as well as the codes of ethics for paralegals.
  - ABA Model Rule 3.5 Impartiality And Decorum Of The Tribunal
  - NAIA Code of Ethics and Professional Responsibility – Canon 3
- It is also helpful to review recent articles and ethics opinions that address issues related to social media from the perspective of the state where the lawyer practices.
The American Bar Association recently issued Formal Opinion 462 related to a judge’s use of social media. (ABA Formal Opinion 462, Judge’s Use of Electronic Social Networking Media, Feb. 21, 2013).

- The Opinion discusses several factors for judges to consider when using social media, including publicly endorsing or opposing candidates for public office, not giving the impression that they can be influenced by certain people or groups, avoiding ex parte communications concerning pending matters, and not using social networking sites to obtain information about matters before them.

- Judges should also consider whether to disclose their social media relationships with lawyers or parties in pending matters, although the informal nature of these connections may not rise to the level that a personal, face-to-face relationship would.

- “[j]udges should also be aware that their comments, images and profile information may be transmitted without their knowledge to others. If the material proves embarrassing, it has the potential to undermine public confidence in the judiciary and to compromise the independence of the judge, the opinion says.”
According to Lewis, “[t]he states that have considered whether judges can use social networking sites generally have concluded that they may do so. They diverge, however, when considering whether judges must recuse themselves if they have friended a lawyer who appears before them.”

She discusses the variety of opinions issued in Florida, Kentucky, Ohio, Maryland, California and New York. Florida is an interesting situation, since the Florida Supreme Court is being asked to consider whether being Facebook friends with a prosecutor who then appears in the judge’s courtroom for a case constitutes a conflict of interest and should be grounds for recusal.
Nelson and Simek recently provided an article about the risks to judges when they participate in social media, noting that as of a 2012 report from the Conference of Court Public Information Officers, “46.1 percent of judges use social media, with 86.3 percent of that number using Facebook and 20.6 percent using LinkedIn.”

Obviously, judges are not going to cease using social media just because it may be risky; however, they and the lawyers, paralegals and other parties that they interact with in the delivery of legal services need to be mindful of the special role of judges in the community and avoid even the appearance of favoritism or impropriety. In terms of thinking about the larger picture of litigation, the ABA recently warned lawyers about “liking” potential jury members.
Other Social Media Activity

- *LinkedIn in One Hour for Lawyers* (ABA, 2013).
- *Twitter in One Hour for Lawyers* (ABA, 2012).
- Blogging –
- Privacy/Anonymity when searching the Internet – from *The Indiana Lawyer* (July 16, 2014).
- Researching jury or potential jury members: how far can you go in using the Internet and social media?
- Now seeing advice for potential jury members who don’t want to be researched through social media *(Grand Rapids Business Journal, July 14, 2014).*
- Jury misconduct – “Googling” during the trial results in jail time for jury members (England and Wales)
Can Your Law Firm Use Group Coupon or Daily Deal Marketing?
A newly published Formal Opinion from the American Bar Association provides guidance on whether attorneys are allowed to use these kinds of marketing approaches. (ABA Formal Opinion 465, Lawyers’ Use of Deal-of-the-Day Marketing Programs, Oct. 21, 2013).

- As stated in the Conclusion, “[t]he committee believes that coupon deals can be structured to comply with the Model Rules. The committee has identified numerous difficult issues associated with prepaid deals, especially how to properly manage payment of advance legal fees, and is less certain that prepaid deals can be structured to comply with all ethical and professional obligations under the Model Rules.”
- Several other ethical issues are identified in the Formal Opinion, including “the need to make sure the marketing statements are accurate. The scope of services offered must be clearly defined and the circumstances for refunds described, the opinion says. And the ad should explain that no client–lawyer relationship exists until a consultation takes place.”
- However, the opinion “does not say that lawyers are forbidden to use sites like Groupon to promote themselves, but that deals need to be carefully structured to avoid problems and that it might not be possible to overcome those obstacles.”
Group Coupons/Daily Deals

- Commentary indicates that some people are concerned that the opinion has resulted in more ambiguity about what is permissible rather than clear guidance that helps attorneys comply with the ethical rules as well as the differences between coupon deals and prepaid deals.

- On the other hand, a New York Ethics Opinion allows lawyers to offer Groupon deals, with some cautions. (Ethics Opinion 897, New York State Bar Association, 12/31/11).

- Among the specific issues covered in the opinion are whether the money retained by the website is an improper payment for a referral, whether this constitutes an excessive fee, compliance with rules regulating advertising and premature and improper formation of a lawyer–client relationship.
North Carolina and South Carolina have also issued recent opinions on ethics of using daily deal coupons.

As stated in South Carolina Ethics Advisory Opinion 11–05, “[t]he use of daily deal websites to sell vouchers to be redeemed for discounted legal services does not violate the Rule 5.4(a) prohibition on sharing of legal fees, but the attorney is cautioned that the use of such websites must be in compliance with Rules 7.1 and 7.2 and could lead to violations of several other rules if logistical issues are not appropriately addressed.”

See the chart in the webinar manual comparing the rules in North Carolina with the ABA Model Rules, especially Rules 7.2 and 7.3.
Example of Legal Services Offered through Groupon
Example of Legal Services Offered through Groupon

The Fine Print
Expires Jul 10th, 2013. Limit 1 per person; spouses require individual Groupons for individual wills. Not valid until 7/13/12. See terms and conditions of service. Merchant is solely responsible for the care and quality of the advertised goods and services. See the rules that apply to all deals.

Wills help people pass on prized possessions to trusted confidantes, so that their motorcycle doesn’t end up in the junkyard and their diary doesn’t end up projected onto the moon. Ensure your belongings end up where they should with this Groupon.

$24 for a Create-Your-Own Custom Will ($109.61 Value)

The Will-O-Matic Wizard is an online platform that guides users through the process of customizing their last will and testament, aided by a video tutorial and two written guides. After looking at the downsides of other available will kits, lawyer Michael Carabash specifically designed the Will-O-Matic software to adapt to the nuances of provincial laws and leverage precise language. As clients click through the program, it offers helpful information on each option, giving them the chance to name legal representatives for any minor children, add their own clauses, and otherwise custom-tailor the document.

Once finished, the will is available in PDF format on Dynamic Lawyers’ website, and users can go back and edit it for free during the following year. Users don’t have to finish in one sitting. Wills are often recommended for anyone with financial assets, but can be especially useful for newlyweds, new families, those traveling abroad, and those who have experienced changes in their financial or family situation.

Dynamic Lawyers
Company Website

Reviews
• CTV News feature
• Globe and Mail feature
• Yahoo! News feature
• CFRB1010 Radio feature
• CJAD800 Radio feature
• Financial Post feature
Example of Legal Services Offered through Groupon

Dynamic Lawyers

According to the *Globe and Mail*, lawyer Michael Carabash was doing his taxes with online software when his cousin gave him an innovative idea: to develop a program that would guide users through creating their own will. Carabash seized on the concept and ran with it. Drawing on his experience in estate planning for his dentist clients, he soon created the Will-O-Matic Wizard, an online program that helps users complete their wills quickly on the computer rather than spending years chiseling them into granite tablets. The new concept of software that helps clients create their own legal documents generated a blitz of media attention.

Following close on the Will-O-Matic software's heels, Dynamic Lawyers' Lease-O-Matic software and other online platforms began enabling Canadians to generate legal documents including residential agreements, family law agreements, and employment agreements. Each software package comes with helpful information—though not legal advice—in the form of e-books, videos, and prompts. Although Dynamic Lawyers is not itself a law firm, it can connect clients with affordable lawyers.

Dynamic Lawyers

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Can You Use Text Messages to Solicit Prospective Clients?
Solicitation through Texting

- Again, it is always helpful to review the relevant ABA Model Rules of Professional Conduct and the Comments as well as the rules in the particular state where the judge and lawyer are licensed to practice as well as the codes of ethics for paralegals.
  - Rule 7.3 Solicitation of Clients

- Note that some specific state rules may have additional provisions that are even more restrictive, such as Indiana.
  - Rule 7.3. Direct Contact with Prospective Clients
What Are the Ethical Duties When Using an Internet Directory or Client–Lawyer Matching Site?
Internet Directory or Matching Service

According to Wikipedia,

- Attorney-client matching (ACM), which has sometimes been referred to as online legal matching, is a subset of legal advertising that allows participating attorneys to be matched with potential clients seeking legal representation. ACM websites allow users to submit their legal needs online by practice area and location. Law firms or lawyers that opt to use these services are then matched with clients by need and location.

- Wikipedia notes that one concern with these matching services is client confidentiality. (Id.)

- A number of these ACM services now exist.
Example of Attorney–Client Matching (ACM) Service

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Quality Cases
Only interact with clients you have responded to — if the case isn’t right for your practice, just delete it — no tedious calls or unnecessary office visits.

Quality Cases

LegalMatch Member Attorneys see a continuous flow of cases stream across their virtual desktops — every day, every week, every month. When we become your marketing partner, we do all the “heavy lifting.” That means we combine economies of scale with leading-edge Internet marketing strategies and techniques. These include geographic targeting, paid search marketing, search engine optimization, affiliate marketing, affinity partnerships, and tried-and-true traditional marketing in print and outdoor displays. We are the premier marketing partner providing Law Practice Marketing Services for the solo and small firm attorney.

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- John in Alameda, CA

“The LegalMatch system has proven itself and I’m still an active member after all of these years.”
- Mazyar in Chicago, IL

“I increased my number of clients, raised my revenue, and got an Internet presence.”
- Alan in Kansas
According to its website, a number of states have reviewed LegalMatch favorably from an ethical perspective and the FTC has provided an opinion endorsing online legal matching.

Its Ethics FAQ page addresses a number of ethical issues, including whether the service is a pre-paid legal plan, whether the service violates the rules of attorneys giving something of value for recommending an attorney’s services, whether LegalMatch violates the rule against solicitation, whether LegalMatch prevents running a conflicts check and whether LegalMatch is a bid or auction system.

This page also discusses the ethics opinions from six states (South Carolina, Texas, Rhode Island, Ohio, North Carolina and Utah).
LegalMatch is deeply involved in building awareness and acceptance for Online Legal Matching in all fifty states. We are confident that our policies are within the guidelines and the ethical standards of all State Bar Associations across the United States. To date, the State Bars of North Carolina, South Carolina, and Texas as well as the Rhode Island Supreme Court Ethics Advisory Panel and the Supreme Court of Ohio have each announced favorable opinions on the use of LegalMatch within their jurisdictions. Numerous other State Bars have given informal approval to LegalMatch’s model. And the Utah State Bar replaced its traditional lawyer referral process with the LegalMatch online matching service for Utah citizens. Even the FTC has released an opinion endorsing Online Legal Matching. To read each of these opinions, please refer to the following links:

- [Colorado Opinion](#) (PDF)
- [North Carolina Opinion](#)
- [South Carolina Opinion](#)
- [Rhode Island Opinion](#) (PDF)
- [Ohio Opinion](#) (DOC)
- [Texas Opinion](#) (PDF)
- [Utah Opinion](#) (PDF)
- [FTC Opinion](#) (PDF)

To read more on the legal ethics and an attorney’s use of LegalMatch, see our [Ethics FAQ](#) about Online Legal Matching.

**The LegalMatch Bar Association Program**

In 2004, the Utah State Bar signed an agreement to replace its traditional lawyer referral
1. Is LegalMatch a referral service?
2. Is LegalMatch a directory or "Yellow Pages" listing service?
3. Is LegalMatch a pre-paid legal plan?
4. Is LegalMatch registered or licensed with the various state bars or disciplinary boards?
5. Does LegalMatch violate the rule against attorneys giving something of value for recommending the attorney's services?
6. Does LegalMatch violate the rule against solicitation?
7. Does LegalMatch prevent running a conflicts check?
8. Is LegalMatch a bidding or auctioning system?
9. What are the state Bar Associations Formal Ethical Opinions Regarding an attorney's use of LegalMatch?

*As always, attorney members of LegalMatch should keep in mind that LegalMatch is not a law firm and cannot give legal advice. Attorney members may use the above information to confirm for themselves that their activities, including their use of LegalMatch, are lawful. The laws governing attorneys vary by state, and the above description of the prevailing national view could vary in some particulars in certain states. LegalMatch is constantly at work to comply with new ethical rules in all states. However, attorney members, not LegalMatch, are responsible for ensuring their own compliance with applicable rules and regulations.
The ethics of participating in an online attorney-client matching service are discussed from the perspective of California’s Rules of Professional Conduct by Borodkin and Gagnier.

Among the ethical issues covered in this article are that users are bound by the terms of service agreement, thus the burden is on the attorney to be sure that the terms are in compliance with a number of rules, including ABA Model Rule 5.5 regarding multijurisdictional practice, Rule 7.1 on false and misleading communications, Rule 7.4 on promotion of practice area specialization and Rule 1.18 on duties to prospective clients (confidentiality).
What the Public Sees When Searching for an Attorney

LegalMatch Helps You Find the Right Lawyer

Present your case in minutes using LegalMatch and licensed lawyers in your local area will review it. When a lawyer is interested in taking your case, we provide you a full attorney profile that includes their background information, fees, and ratings by other LegalMatch users so you can decide if they're the right lawyer for you. Over three million people and businesses have posted cases on LegalMatch so why not present your case now?

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- Unmarried Fathers Child Support
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- Child Custody Between Unmarried Parents
- Top Ten Child Custody Questions
- Child Custody Order Violation
- Employment Discrimination Lawyers
- Wrongful Termination Lawyers
- Child Name Change Lawyers
- Small Business Start Up
- Failing a Drug Test
- Slip and Fall Settlements
- Credit lawyers
- Assault and Battery Lawyers
- Assault and Battery Victim
- Filing for Divorce in Different States
Ethical Issues

- Carolyn Elefant has been a leader in the development of solo/virtual law practice and her blog, myShingle.com, is one of the highest rated blogs (blawgs) in the legal profession.
- Her recent blog addressed some important considerations with respect to using attorney-client matching services.
- Not only is Ms. Elefant skeptical of the power of algorithms, data mining and data aggregators to construct a good match and concerned about confidentiality, but she also notes that “lawyers often get the clients they market for.”
- A blogpost that is generally favorable to the concept of lawyer matching services notes that such sites would be even more effective if they went beyond matching to actually screen the good lawyers from the bad.
- Unfortunately, the blog ends with some disturbing commentary on the quality of legal services available.
Attorneys who are interested in participating in attorney-client matching services should first review the applicable rules in the state where they are licensed and then compare these rules with the terms of service of the vendor to be sure that they are in compliance.

Reviewing the ethical opinions from other states provided through the LegalMatch website may also be helpful.

ABA Model Rule 7.2 on Advertising and its Comment are especially relevant.
Internet Directory/Client–Lawyer Matching

- See article from Res Gestae on “Law Tigers” (June 2014).
What Are the Ethical Rules of Linking the Law Firm Site to a Non-Legal Entity and Vice Versa?

The opinion discusses website content (information about lawyers, their law firms or their clients), information about the law, inquiries from visitors to the website and warnings or cautionary statements that are intended to limit, condition or disclaim a lawyer’s obligations to website visitors. (Id.)

Of course, the world of the web has changed significantly since 2010, with law firms and every other kind of company, non-profit organization or government agency now relying nearly exclusively on websites and other technology-enabled venues for communication with current and future clients, colleagues and the public as a whole.
One of the major considerations with website development is search engine optimization (SEO), which is intended to boost the position of a website to the top of a list when a user searches Google or another search engine.

It is unlikely that a user, unless very motivated or clear about what he/she is looking for, will go beyond the first list of websites delivered through a search engine.

Links are an important factor in search engine optimization and there are many resources for using links strategically in website development.

- Links are the "money" of the Internet; you want lots of links. Inbound links show that your site is reputable -- something which Google likes. The more inbound links you have, the higher your site will be ranked in search. Getting your website listed on business directories and in media coverage (blogs, online magazines, and news sources) are great ways to build up inbound links.
Likewise, Tsakalaskis offers a number of suggestions for selecting links for a law firm’s website, including a top-down approach for prospecting for links, competitive intelligence, local linking opportunities and developing content that other sites will want to link to.

A recent study indicates that LinkedIn may be the biggest way to generate traffic to law firm websites, although Twitter is gaining in influence.
Giroux notes that to be successful, a law firm should integrate its offline relationships with its online presence.

Among the suggestions he makes for developing links are the firm’s individual, professional and community relationships, its involvement with charities and non-profit organizations and its brand authority, which he defines as the collective knowledge, skills expertise, and image that the lawyer, the firm and the firm’s employees possess and display.

While striving to be at the top of a search list is an important goal, the attorney may still want to be mindful of the saying that “you are judged by the company that you keep.”
While there is little control over websites that choose to link to the law firm’s website, an attorney will want to make sure that listings of – or links to – its website in any marketing, matching or directory-type sites are not only worth the financial investment required (and be able to measure the ROI), but that they are in compliance with the whatever rules of professional conduct regarding advertising apply to the lawyer and the law firm.

In terms of links on the law firm’s own website, these should be chosen with care, not only for search engine optimization (SEO), but also so that they are consistent with the image that the law firm wants to portray and that these sites contain high-quality information that will be helpful to clients and potential clients.

It is also important to avoid linking to websites that appear to be violating copyright law.
In terms of using social media as a marketing tool for the law firm, Meinke provides some excellent recommendations.

- Create a Facebook page – since Facebook has more than 1.25 billion active users and more than 128 million daily users in the United States.
- Make your page look professional.
- Provide complete information.
- Build an online community.
- Likes for options – with suggestions for how to increase “likes” that the law firm’s page receives, which provides more options, features and tools.
- Use analytics to improve.
Social Media Marketing

- Given that a variety of bar associations and commentators are examining some of the ethical issues with social media, including some of its specialized features and tools, the lawyer may want to review his or her profile on LinkedIn.

- Some of the particular issues being raised are endorsements (which could appear to be testimonials) and skills/expertise (which could appear to be implying fields of practice or a specialty. (See ABA Model Rule Rule 7.4 Communication of Fields of Practice and Specialization).

- Fortunately, *LinkedIn in One Hour for Lawyers*, now in a second edition, provides lots of helpful guidance in designing the most comprehensive profile possible while avoiding running afoul of ethical issues.

- There is a similar book for lawyers who are interested in using Twitter.
What Must You Include in Testimonials to Make Them Ethically Compliant Advertising?
Testimonials

- Attorneys must be especially careful when using testimonials as part of an advertising plan.
- One of the risks of testimonials is that they can create expectations in the client’s or other party’s mind about the results that can be achieved by using the attorney’s or law firm’s services.
- There are so many nuances to cases that may appear similar or situations that may be comparable, which attorneys appreciate, but which may be difficult for those without legal training to comprehend.
- ABA Model Rule 7.1 and Comment does not address testimonials.
- However, the Comment certainly cautions lawyers about the risks of even truthful communications
Individual states may take a more conservative and restrictive view about the use of testimonials.

The risks with testimonials as well as other popular advertising methods, such as endorsements and dramatizations, are illuminated in the Comments to Rule 7.1 in the Indiana Rules of Professional Conduct.

Although the focus is on California, King provides a brief history of attorney advertising and provides a discussion of how this impacts social media, including online testimonials, requirements for disclaimers, blogging, communication about prior results and the interplay between the First Amendment and the regulation of attorney speech.

His conclusion is that “[p]rovided that California attorneys aren't engaging in deception, they should have few concerns that a technicality will trip up their constitutionally protected right to express themselves via social media.”

But see disciplinary action taken against Indianapolis attorney and blogger Paul Ogden.
Any Questions?

Thank you for participating in today’s IPE audio webinar!