



Alerts

ABA Issues Guidance on Ethical Issues Related to Lawyer Websites

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Lawyers for the Profession® Alert

ABA Standing Committee on Ethics and Professional Responsibility, Formal Op. 10-457 (August 2010)

Brief Summary

In an opinion acknowledging the pervasiveness and usefulness of lawyer websites, the ABA addressed some of the ethical risks inherent in such sites. Namely, information on lawyer websites should be kept current in order to avoid misleading website visitors. To the extent that information about clients is published online, lawyers must seek clients' informed consent. And lawyers should be aware that inviting the submission of visitor information might lead to a prospective client relationship.

Complete Summary

The ABA Standing Committee on Ethics and Professional Responsibility addressed the ethical obligations that lawyers should consider in relation to the content and features of their websites. In doing so, the Committee referred to a number of individual states' ethics opinions.

The Committee first noted that website content should be updated on a regular basis in order to avoid violating the prohibitions against false, fraudulent or misleading information contained in Model Rules 7.1, 8.4(c) and 4.1(a). For example, firms should remove lawyers' biographical information within a reasonable time after they leave the firm.

Those rules also apply to general descriptions of the law. In order to avoid misleading readers, the Committee noted that any such information should be kept current. Moreover, such information should be accompanied by the author's contact information, the dates on which substantive information was last reviewed, and a statement that the information is general in nature and does not constitute legal advice.

Drawing the line between legal information and legal advice, the Committee noted, requires examining context in addition to content. For example, if legal information is conveyed to a group, it is likely not legal advice; but if the legal information is conveyed in relation to a non-hypothetical set of facts, it may be considered legal advice.

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Websites may also raise confidentiality issues. Lawyers may list current and former clients, and describe client matters, the Committee noted. But this information is protected by Rules 1.6 and 1.9, and requires informed consent from the client before being published.

Further, website visitor inquiries may raise issues under Rule 1.18, which protects the confidentiality of prospective client communications. In order to become a prospective client, an individual must “discuss” the possibility of forming a client-lawyer relationship with the attorney. The Committee noted that the discussion requirement is met if a website invites the submission of information related to the possibility of forming a client-lawyer relationship and an individual responds to that invitation. The Committee advised that, in order to avoid conveying a willingness to engage in such discussions, lawyer websites should include appropriate warnings.

On a more general level, the Committee noted that warnings or cautionary statements can be used to avoid a misunderstanding by a website visitor that “(1) a client-lawyer relationship has been created, (2) the visitor’s information will be kept confidential, (3) legal advice has been given, or (4) the lawyer will be prevented from representing an adverse party.”

Finally, the Committee noted that this opinion does not pertain to government lawyers or nonprofit law advocacy firms or groups.

Significance of Opinion

This opinion demonstrates that websites are commonly used and can be an effective means of communicating with the public. There are, however, numerous risks that must be kept in mind and monitored, such as the importance of keeping website content up to date, as well as obtaining a client’s informed consent where appropriate and utilizing appropriate warnings and disclaimers.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.