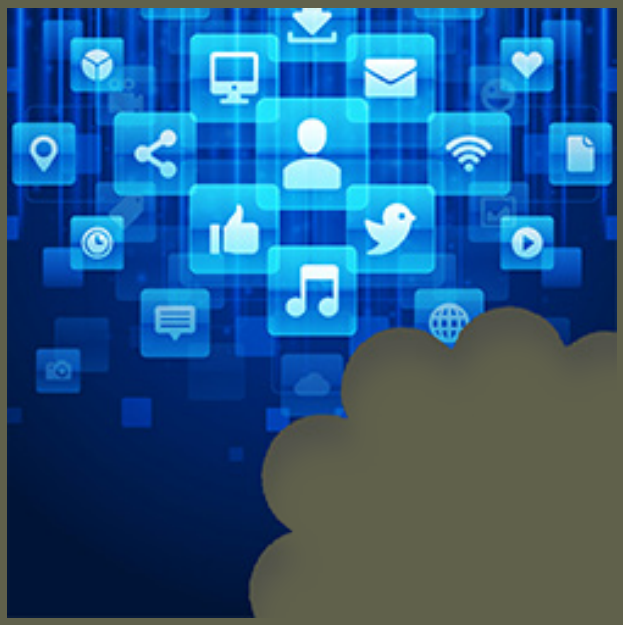
CLIFFORD LAW OFFICES

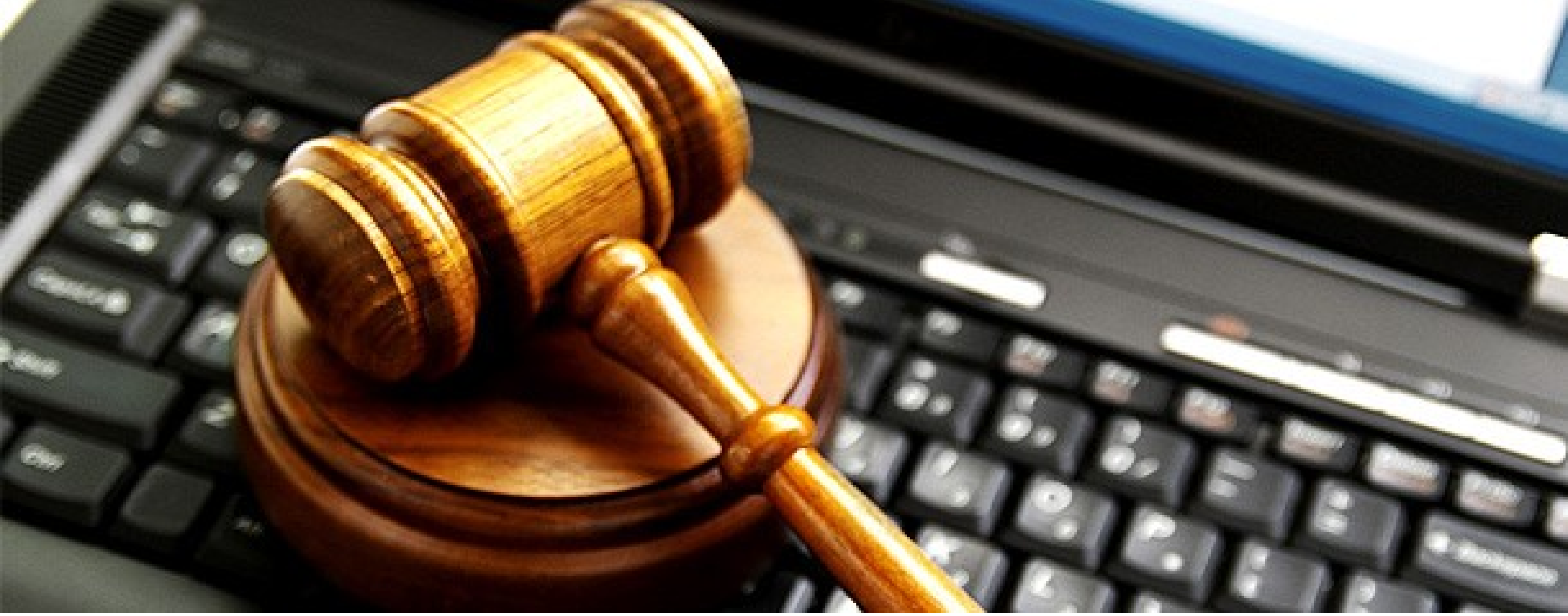
CONTINUING LEGAL EDUCATION PROGRAM

PRESENTS

"SOCIAL MEDIA ETHICS OUTSIDE AND IN THE COURTROOM"

FEBRUARY 16, 2017





Ethics of Social Media Outside and In the Courtroom

Facts

It is Monday morning. A high profile drug conspiracy trial is about to commence. Judge Michael Barker presides. Before coming to the bench 7 years earlier, the judge was the head of the DA's special prosecutions division. He is considered competent and the local bar associations gave him positive ratings when he was initially elected.

The two defendants are represented by two experienced trial lawyers, Tim Murphy & Harry Oliver, who are feeling fairly confident given that Judge Barker granted a motion to suppress a significant piece of evidence over the vigorous objection of the prosecutor, Nancy Miller.

Ms. Miller is a career prosecutor who served in the DA's office under Judge Barker for a period of time. While together in the DA's office, Barker & Miller had a cordial relationship, but did not socialize outside of work. However, Judge Barker has recently become active on social media, frequently posting general comments about the legal system and his volunteer work, and he and Miller are "Facebook Friends."

Hypo #1

After ruling to suppress the evidence considered central to the prosecution case, Judge Barker posts the following comment on his Facebook page:

"Tough day in court today. I had to suppress certain evidence in a big drug conspiracy case and am scheduled to speak to our high school kids at this week's "Just Say No to Drugs" assembly; hope they still listen to our message." DA Miller responds by posting the following comment: "Don't worry Judge – we still luv ya!"

An associate at defense counsel's firm sees the posts and notifies attorney Tim Murphy.

Questions:

- Does the judge or prosecutor have a duty to disclose their "Facebook Friend" status?
- Does the defense attorney have an obligation to his client to ask Judge Barker to recuse himself?
- Does the defense attorney have an obligation to inquire during voir dire whether any of the potential jurors saw the posts?

Hypo #2

Prior to jury selection, Judge Barker provides counsel with copies of the jury questionnaires completed by all individuals who will be part of the venire. The questionnaires contain specific information about the individuals' names, ages, home addresses, phone numbers, and places of employment. Tim Murphy provides this information to his associate and tells him to conduct background checks on the members of the venire.

The following day, Murphy learns that the associate sent a "Facebook friend" request to one of the members of the venire during the course of his background check. This individual's uncle is an in-house lawyer for one of Murphy's other clients and Murphy previously worked with him on an internal investigation. When the uncle called Murphy to tell him about the associate's contact, Murphy explained that it was a mistake. The uncle assured Murphy the matter was closed and that the juror would not say a word.

Questions:

- How far can you go in checking on jurors?
- What if a lawyer fails to check the Facebook status of sitting jurors? Has he breached a duty of competence?
- What duties do Murphy and the in-house counsel have to report the "friend request" made to the potential juror?
- What happens if the lawyers decide not to report the contact, but the potential juror asks to speak with the judge?
- To what extent may one of your colleagues do social media research on every juror in the jury pool? What ethical issues, if any, do you see here?
- Suppose your colleague does not find out much on a particular juror. Is it permissible for your colleague to send an access request to a potential juror?
- During the course of a trial, you learn that a juror has posted information on a social media website saying the following, "Don't contact me for awhile. I am a juror in a trial in federal court. Seems like an interesting case. I will tell you about it after it is over." Having learned this, do you have any ethical obligations?

Hypo #3

Before evidence began, Judge Barker instructed the jury that they were duty-bound to avoid any outside communications or information about the case. Yet, two days after jury selection was finished, an alternate juror who works as a teacher at the local high school approached the bench and told Judge Barker and the attorneys that a fellow teacher sent her a text message about one of the defendants. Specifically, the teacher wrote that the defendant previously attended the school where they both teach, that he was "guilty as sin" and that if she didn't recuse herself from the case, the defendant – if convicted – would be freed on appeal.

The woman told Judge Barker that she was angry at her friend, but did not feel the text would affect her judgment. After the lawyers told Judge Barker that they had no objection to her remaining as an alternate, the judge asked the woman to text her friend and tell her to stop sending messages. The woman responded by asking, "Why don't you do it?" After she handed Judge Barker the phone, he typed and sent the following message, which he read into the record: "This is Judge Barker. Do not send any more text messages about this case or there will be consequences."

Questions:

- Was the original text message to the alternate juror a basis upon which to declare a mistrial?
- Would the analysis be different if the alternate juror responded to the co-worker's text message?
- Was there any reason for the lawyers to object to Judge Barker's text message to the alternate's co-worker? If so, what?

Hypo #4

After two weeks of trial, the prosecution rests its case after presenting its forensic expert, Dr. Snow, on a Friday afternoon. In preparing to commence the defense case the following Monday, Tim Murphy directs his associate to deliver exhibit binders to the courtroom. When the associate arrives early Monday morning, he finds the courtroom locked so he retreats to the coffee shop in the basement of the courthouse. As he is sitting and enjoying his coffee, the associate overhears two men at an adjacent table discussing what sounds like Murphy's case. He hears at least this much from the conversation:

Man A – "I didn't like that Snow guy so I Googled him over the weekend. You know what? This so-called PhD left one of his university teaching jobs after being accused of plagiarism. I just knew that guy was a phony."

Man B – "Judge Barker told us not to do that and that we should not be talking about the case."

Man A – "You're right. Forget we had this discussion."

Murphy directs the associate not to say a word about the jurors' conversation.

Questions:

- What is a lawyer's duty to report juror misconduct?
- What is the young associate's duty after the trial attorney tells him not to say anything about the jurors' conversation?
- Once the court learns of the juror conduct, what action should the lawyers request? (In camera examination of the two jurors? Removal of one or both of the jurors? Punishment of the juror?)

Hypo #5

After two days of the defense case, a juror sends Judge Barker a note indicating that she needs to speak with him. With the attorneys present, Judge Barker brings the juror into chambers and learns that another juror mentioned he used the Internet to look up information about drug conspiracy trials and that another juror made the following post on an Internet blog: "Being a juror on a criminal trial is a REAL eye opener! Defendants' attorneys say it will last another 3 days, but all that's left now is deciding how much prison time!"

Questions:

- Does the judge have an obligation to question the two other jurors? Should the judge question all the jurors to determine whether they know of these activities and if so, whether it affected their ability to remain fair?

Hypo #6

Friending on Facebook

You are planning the deposition of a witness. The witness has a Facebook page. Your receptionist knows the witness. You ask the receptionist to friend the witness so you can gain access to the witness's Facebook entries which are not publicly available.

Any ethical problems?

Questions:

- Is this gumshoe detective work consistent with the duty to render competent and diligent representation?
- Or is it deception implicating Model Rule 8.4's prohibition on a lawyer's engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation?
- Is Model Rule 4.1 implicated?
- Since the receptionist knows the witness, where is the harm if the witness responds?
- If the lawyer's client successfully friends the witness without the lawyer's knowledge, does the analysis change?
- Be aware of *In Re Chancey*, 1994 WL 929289 (Ill. Att'y Reg. Disp. Comm'n Apr. 21, 1994)

Hypo #7

Testimonials on Websites Devoted to Lawyer Evaluations

A lawyer registers in Avvo, a website devoted to obtaining user evaluations of lawyers. The lawyer calls some of her client contacts who have also become friends and asks them to go on to Avvo to rate her. They do—with glowing testimonials about the lawyer's skills and tenacity. The state bar discovers the testimonials and directs the lawyers to unsubscribe from Avvo. The lawyer is willing to do so, but Avvo refuses to remove the lawyer's name or the resulting lawyer evaluations.

Do these facts create ethical jeopardy for the lawyer?

Questions:

- Do the rules governing lawyer advertising apply?
- Are there First Amendment concerns that supersede the advertising rules?
- Let's change the facts. A lawyer offers clients a $50 credit if the client writes an Avvo review of the lawyer's services. Any issues here?

Hypo #8

Responding to Negative Online Reviews

A former client posts a negative review of a lawyer's capabilities on LinkedIn after a court entered a defense verdict against the former client, in the former client's claim for personal injuries resulting from an automobile accident. The lawyer is quite upset by the review and wishes to write a response.

What ethical advice would you give the lawyer?

Questions:

- Does Model Rule 1.6, addressing a lawyer's obligation to maintain confidentiality, provide an avenue to respond?
- If the lawyer makes a response, are there any ground rules the lawyer should follow?
- Be aware of *In re Tsamis*, Joint Stipulation and Recommendation ¶¶ 4-10 & Reprimand ¶ 1, No. 2013PR00095 (Hearing Board, Ill. Att'y Reg. & Disc. Comm. 2014).
- What if the reviewer is another lawyer and not the client? Suppose the other lawyer writes a blog and criticizes another member of the Bar on the blog? May the other lawyer do so ethically?

Hypo #9

Tweeting for Clients

You prepare press releases on your recent successes as a lawyer. You send tweets to potential clients to alert them about the press releases.

What ethical issues, if any, to you see by this practice?

Questions:

- Are the tweets "advertising?"
- Are the tweets "solicitations?"
- What is the impact of Twitter's 140-character limit in the analysis?
- Let's change the facts. Does membership in LinkedIn constitute advertising?
- Let's change the facts again. Suppose the lawyer is in an Internet chat room and a legal question is asked of the lawyer? See ISBA Ethics Opinion 96-10.

Hypo #10

Blogging

You write a popular legal blog. It has been a great source of work for you in your trial practice. You have an upcoming jury trial and write a blog piece describing the allegations of the complaint and the answer and identifying the issues to be tried.

Are there any ethical issues?

Questions:

- Do the rules governing lawyer advertising apply?
- Can a blog post become a solicitation?
- Will the blog posting potentially impact a jury pool?

Hypo #11

Lawyer Interactions on Social Networking Site

You monitor LinkedIn regularly. A person you exchanged business cards with once, shoots you a message describing a set of facts without mentioning any names and asks whether you think there is a viable claim. You respond, "Yes."

Are there any ethics concerns here?

Questions:

- Has the lawyer forgotten about clearing conflicts of interest?
- What does it take to establish an attorney-client relationship?
- If the discussion continues with the questioner, beware of Model Rule 1.18. Are there limitations on your use of information learned from a prospective client?
- And Model Rule 4.3 must be considered, or should it?

Hypo #12

Crowdfunding of Legal Fees on a Claim

A lawyer solicits contributions on a crowdfunding site to pay the legal fees in an action the lawyer plans to bring on behalf of an indigent client against a governmental entity. The funds would be paid directly to the lawyer.

Is this ethically permissible?

Questions:

- Who holds the money and does it matter?
- When can funds be disbursed?
- Is there the potential for a nonrefundable retainer issue?
- Can the lawyer withdraw?
- May a lawyer be paid by someone other than the client?
- What must, or should, the client be told?

Questions (cont'd):

- If there is a fee-shifting statute involved and the lawyer prevails, who keeps the money?
- Is there an "unreasonable" fee issue under Model Rule 1.5(a)?
- Are there any Model Rule 1.6 issues lurking here?
- What about Model Rules 4.1, 7.1 and 8.4(c)? Do they have any application?
- Is there division of fee concern under Model Rule 5.4?
- Instead of crowdfunding, suppose the lawyer was on "Uber for lawyers" (Avvo); is there a division of fee issue?

Hypo #13
Text Messages

A new personal injury client for a lawyer asks for the lawyer's mobile telephone number so that the client can communicate with the lawyer by text message. The new client is an avid user of texts for all of the new client's communications with friends.

What ethical issues are lurking here?

Questions:

- Competence: what are the preservation rules for text messages?
- What is the impact of new Rule 37(e) of the Federal Rules of Civil Procedure on your answer?
- Are there any privilege waiver concerns?
- What if the text messaging software, by design, automatically deletes messages after a fixed period of time (imagine if the DNC had used Signal for email which does this)—does this affect the analysis?

Hypo #14

Text Messages Continued

Company A is in a business dispute with Company B in federal court. At the meet-and confer session, counsel for Company B tells counsel for Company A that all text messages of Company A's employees will be sought in discovery. Counsel for Company A advises in-house counsel of the expected demand. In-house counsel says, "Nothing to worry about that there. We do not capture and have never captured text messages on any of our servers." Counsel for Company A so advises counsel for Company B.

Is there any ethical discomfort here for Counsel for Company A?

Question:

- What are the lawyer's duties to the corporation?

Hypo #15

Safeguarding Client's Property in the Cloud

You have moved from paper storage to electronic storage for all of your law firm documents and client documents. The electronic storage is not local either. You have signed up with "CloudStorage for Lawyers.com," a website that offers you unlimited storage and access to electronic documents. You have transferred all of your electronically stored information to Cloud Storage for Lawyers' servers and continue to do so routinely. You also scan all paper documents and store them on Cloud Storage for Lawyers' servers.

What ethical issues, if any, are presented by these facts?

Questions:

- Competence: What are the lawyer's obligations under Model Rule 1.1?
- What are the lawyer's duties under Model Rule 1.6?
- Do Model Rules 1.15 and 1.16 have any role in the analysis?
- What are the lawyer's supervisory obligations under Model Rule 5.3?
- Does Model Rule 2.1 come into play here?

Hypo # 16

Communications with Clients in the Workplace

You have just been retained by an individual client to handle litigation against her employer. The client gives you her work email address and telephone number because she does not want to be bothered at home with any calls from her lawyer.

Do you see any ethical pitfalls?

Questions:

- A lawyer must render competent representation. Is there any risk of a privilege waiver?
- If so, under what circumstances?
- *DeGeer v. Gillis*, 2010 WL 3732132 (N.D. Ill. Sept. 17, 2010)
- *Stengart v. Loving Care Agency, Inc.*, 990 A.2d 650 (N.J. 2010)
- Is there a Model Rule 4.4(b) issue? ABA Formal Op. 11-460.

Hypo # 17

Posting an Excerpt of a Videotaped Deposition Online

In a commercial action, a lawyer is representing the plaintiff against the largest local bank in the community. There is a jury demand. Plaintiff has just completed a video deposition of the defendant corporation's president. Plaintiff's counsel feels that his client was particularly aggrieved by defendant's conduct and was offended by press releases issued by the bank after suit was filed in which the bank said that the case was "meritless." Plaintiff's counsel believes that the deposition vindicates the client's position on the merits and posts key excerpts from the deposition on YouTube to counter the public-relations machine of the local bank.

Are there any ethical issues associated with this conduct?

Questions:

- Is this an extrajudicial statement prohibited under Model Rule 3.6?
- When does a deposition become a public record?
- Is the lawyer engaged in advertising? Or solicitation?
- Does Model Rule 4.4(a) apply?

ABA Formal Opinion 11-460 - Duty when Lawyer Receives Copies of a Third Party's E-mail Communications with Counsel

When an employer's lawyer receives copies of an employee's private communications with counsel, which the employer located in the employee's business e-mail file or on the employee's workplace computer or other device, neither Rule 4.4(b) nor any other Rule requires the employer's lawyer to notify opposing counsel of the receipt of the communications. However, court decisions, civil procedure rules, or other law may impose such a notification duty, which a lawyer may then be subject to discipline for violating. If the law governing potential disclosure is unclear, Rule 1.6(b)(6) allows the employer's lawyer to disclose that the employer has retrieved the employee's attorney-client e-mail communications to the extent the lawyer reasonably believes it is necessary to do so to comply with the relevant law. If no law can reasonably be read as establishing a notification obligation, however, then the decision whether to give notice must be made by the employer-client, and the employer's lawyer must explain the implications of disclosure, and the available alternatives, as necessary to enable the employer to make an informed decision.

ABA Formal Opinion No. 466 – Lawyer Reviewing Juror's Internet Presence

Unless limited by law or court order, a lawyer may review a juror's or potential juror's Internet presence, which may include postings by the juror or potential juror in advance of and during a trial, but a lawyer may not communicate directly or through another with a juror or potential juror. A lawyer may not, either personally or through another, send an access request to a juror's electronic social media. An access request is a communication to a juror asking the juror for information that the juror has not made public and that would be the type of ex-parte communication prohibited by Model Rule 3.5(b).

The fact that a juror or a potential juror may become aware that a lawyer is reviewing his Internet presence when a network setting notifies the juror of such does not constitute a communication from the lawyer in violation of Rule 3.5(b).

In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct that is criminal or fraudulent, the lawyer must take reasonable remedial measures including, if necessary, disclosure to the tribunal. (Applying M.R. 3.3(b)).

ABA Formal Opinion No. 466 – Lawyer Reviewing Juror's Internet Presence

The ABA Standing Committee on Ethics and Professional Responsibility expressly disagreed with the City of New York Committee on Professional Ethics Formal Opinion 2012-2 and New York County Lawyers' Association Committee on Professional Ethics Formal Opinion 743 both of which refused to say that passive access is *per se* permissible:

See, e.g., New York City LEO 2012-2: "[T]he Committee takes no position on whether such an inadvertent communication would in fact be a violation of the Rules. Rather, the Committee believes it is incumbent upon the attorney to understand the functionality of any social media service she intends to use for juror research. If an attorney cannot ascertain the functionality of a website, the attorney must proceed with great caution in conducting research on that particular site, and should keep in mind the possibility that even an accidental, automated notice to the juror could be considered a violation of Rule 3.5."

But see D. C. Bar Ethics Opinion 371 (November 2016): "[S]ome social media networks automatically provide information to registered users or members about persons who access their information. In the Committee's view, such notification **does not constitute a communication** between the lawyer and the juror or prospective juror.

ABA Formal Opinion No. 462 – Judge's Use of Electronic Social Networking Media

A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create an appearance of impropriety.

ISBA Advisory Opinion on Professional Conduct 96-10

The Committee does not believe that merely posting general comments on a bulletin board or chat room should be considered solicitation. However, if a lawyer seeks to initiate an unrequested contact with a specific person or group as a result of participation in a bulletin board or chat group, then the lawyer would be subject to the requirements of Rule 4-7.3. For example, if the lawyer sends unrequested electronic messages (including messages in response to inquiries posted in chat groups) to a targeted person or group, the messages should be plainly identified as advertising material.

Note: Opinions differ. Michigan, West Virginia, Utah, and Virginia opinions say chat room solicitations are prohibited direct solicitations. The City of Philadelphia Bar and Florida Bar are consistent with the Illinois Bar's position that they are not prohibited direct solicitations but instead are permissible and must comply with advertising rules.

"Friending" Ethics Opinions

City of Philadelphia Legal Ethics Opinion (LEO) 2009-02: It is a deceptive practice in violation of RPC 8.4(c) and 4.1.

San Diego County Bar LEO 2011-2: in accord

New Hampshire Bar LEO 2012-13/5: in accord

City of New York Bar LEO 2010-2: Friend request is permissible as long as truthful information is used in making the friend request. If false pretenses are used, the conduct is unethical.

Oregon Bar LEO 2013-189: Agreed with City of New York.

Massachusetts Bar LEO 2014-5: Disagreed with City of New York and Oregon Bars that any contact is permissible without disclosing the lawyer's purpose. D.C. Bar in LEO 371 (Nov. 2016) is in accord.

"Friending" Ethics Opinions (cont'd)

Lawyers may not use another lawyer or a third party to "friend" a witness if the lawyer may not do so. City of Philadelphia LEO) 2009-02; City of New York Bar LEO 2010-2 (See M.R. 5.1 and 5.3 and 8.4(a))

If the witness is represented, Rule 4.2 bars the contact. Oregon Bar LEO 2013-189 (See M.R. 4.2)

But clients can obtain the information as long as the lawyer had no involvement. New Hampshire Bar LEO 2012-13/5 (*The witness chose to reveal information to someone who was not acting on behalf of the lawyer. The witness took the risk that the third party might repeat the information to others. Of course, lawyers must be scrupulous and honest, and refrain from expressly directing or impliedly sanctioning someone to act improperly on their behalf.)*

Pennsylvania Bar Formal Opinion 2014-200

Rule 1.6 is the same as Illinois and the Model Rule (**"to respond to allegations in any proceeding concerning the lawyer's representation of the client")**

The opinion limits the lawyer's response to a negative online review and suggests this reply:

"A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events."

New York State Bar Opinion 1032 (2014) is in accord. D.C. Bar Opinion 370 (November 2016) relying on the different text in D.C. RPC 1.6 allows lawyers to respond to specific allegations but not to reveal client confidences or secrets in doing so.

Florida Bar Advertising Standing Committee on Advertising Guidelines for Networking Sites – Third Party Testimonials

The Guidelines insulate the lawyer from responsibility for information about the lawyer posted by a third party as long as the lawyer did not prompt the posting and for information on a page not controlled by the lawyer:

- A lawyer "is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules."
- "If a third party posts information on the lawyer's page about the lawyer's services that does not comply with the lawyer advertising rules, the lawyer must remove the information from the lawyer's page."
- "If the lawyer becomes aware that a third party has posted information about the lawyer's services on a page not controlled by the lawyer that does not comply with the lawyer advertising rules, the lawyer should ask the third party to remove the non-complying information. In such a situation, however, the lawyer is not responsible if the third party does not comply with the lawyer's request."

New York State Bar LEO 1052 (2015)

Approved a lawyer's plan to give a $50 credit to a client for rating the lawyer on a site like Avvo:

A lawyer may give clients a $50 credit on their legal bills if they rate the lawyer on an Internet website such as Avvo that allows clients to evaluate their lawyers, provided the credit against the lawyer's bill is not contingent on the content of the rating, the client is not coerced or compelled to rate the lawyer, and the ratings and reviews are done by the clients and not by the lawyer.

Safeguarding Client Property – The Virtual Law Firm

There are a number of ethics opinions. Illinois does not yet have one. But **New Hampshire Bar's LEO 2012-13/4** is representative. A check list:

1. Reputation.
2. Security.
3. Storage Format.
4. Return of Files.
5. No Commingling
6. Ownership of the Data
7. Enforcing Confidentiality
8. Location of Servers/Privacy Laws
9. Consequences of Termination
10. Third Party Subpoenas
11. Disaster Recovery Plan

Tweeting for Clients – Ethics Opinions/Guidelines

New York State Bar LEO 1009 (2014): Tweets are advertising but not solicitations.

Missouri Bar Informal Opinion 2009-0040 (only summaries of these opinions are provided): Tweeting for clients is solicitation and Twitter's 140 character limit does not allow for Missouri disclaimer language.

Florida Bar Standing Committee on Advertising's "Guidelines for Networking Sites" (May 9, 2016): Tweets are advertising and lawyers can abbreviate advertising requirements to fit within 140-character limit.

LinkedIn Ethics Opinions/Guidelines

New York City Bar LEO 2015-7 (2015): Mere membership on LinkedIn is not advertising or solicitation because the primary purpose of membership may not be to attract clients. Subjective intent controls (but the opinion does not say how this intent is to be shown). If the primary purpose is to gain clients, the advertising rules apply to the lawyer's LinkedIn page.

NOTE: Unlike the Model Rules which are silent, NY's RPC define advertisement "*as any public or private communication made by or on behalf of a lawyer or law firm about the lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm.*"

Florida Bar Standing Committee on Advertising's "Guidelines for Networking Sites" (May 9, 2016): "Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules." (**Does this beg the question?**)

Blogging Ethics Opinions/Guidelines

New York State Bar LEO 967 (2013): Lawyer blog on work-life balance issues is not advertising.

New York State Bar LEO 1039 (2014): Blog that enlisted subscribers by offering a written report on copyrights was not advertising or a solicitation, but when lawyer later contacted subscribers to solicit business, the advertising and solicitation rules apply.

D.C. Bar LEO 370 (Nov. 2016): Requires compliance with 1.6, suggests that informed consent of clients may be required depending upon the blog post, requires a disclaimer about future results in posts about a lawyer's own cases, reminders lawyers that the supervision rules are applicable; and concludes that all social media postings for law firms or lawyers, including blogs, "should contain disclaimers and privacy statements sufficient to convey to prospective clients and visitors that the social media posts are not intended to convey legal advice and do not create an attorney-client relationship."

California's State Bar LEO 2016-96: Blogging by an attorney may be a communication subject to the advertising requirements" if the blog expresses the attorney's availability for professional employment directly through words of invitation or offer to provide legal services, or implicitly through its description of the type and character of legal services offered by the attorney, detailed descriptions of case results, or both."

"A blog that is an integrated part of an attorney's or law firm's professional website will be a communication subject to the rules and statutes regulating attorney advertising to the same extent as the website of which it is a part."

Chat Room Conversation

Florida Bar's Standing Committee on Advertising's Advisory Opinion A-00-1 (January 29, 2016):

The Board cautions lawyers that they may inadvertently form a lawyer-client relationship with a person by responding to specific legal inquiries, which will require that a lawyer comply with all Rules of Professional Conduct, including rules regarding conflicts of interest, confidentiality, competence, diligence, and avoiding engaging in the unlicensed practice of law. See, e.g., Florida Ethics Opinion 00-4.

New York State Bar LEO 899 (2011):

A lawyer "may provide general answers to legal questions from laymen on real-time or interactive Internet sites such as chat rooms, but the lawyer may not engage in 'solicitation' in violation of Rule 7.3. If a person initiates a request on the site to retain the lawyer, the lawyer may respond with a private written proposal outside the site so that those who did not request it cannot see it."

Chat Room Conversation (cont'd)

D. C. Bar LEO 370 (Nov. 2016):

As we opined in Opinion 316, it is permissible for lawyers to participate in online chat rooms and similar arrangements through which attorneys could engage in real time, or nearly real time communications with internet users. However, that permission was caveated with the caution to avoid the provision of specific legal advice in order to prevent the formation of an attorney-client relationship.

Disclaimers are advisable on social media sites, especially if the lawyer is posting legal content or if the lawyer may be engaged in sending or receiving messages from "friends," whether those friends are other attorneys, family or unknown visitors to the lawyer's social media page, when those messages relate, or may relate, to legal issues.

Crowdfunding

City of Philadelphia Bar LEO 2015-6: Suggested terms:

The fee arrangement "should include terms which describe the lawyer's obligations including the lawyer's obligation to remain in the case, assuming the client wishes him to do so, until its conclusion or until some other point at which retention of the total fees paid would not constitute an excessive fee.

The arrangement "should require that the amount raised be placed in a trust account established under Rule 1.15 until those amounts are earned in accordance with the terms of the final fee agreement. Until such time that it is determined that the fee is actually earned, the monies raised constitute Rule 1.15 funds and should be held separate from the lawyer's own property."

Consistent with M.R. 4.1 (truthfulness to others), "it is important to make sure that those who contribute to the crowdfunding not feel that they have been misled in any way."

Crowdfunding (cont'd)

Pennsylvania State Bar LEO 2016-003: Addressing in part raising capital to start a firm:

The lawyer must be mindful of Pennsylvania RPC 5.4(a) which prohibits a lawyer from sharing fees with a nonlawyer;

The lawyer must also be aware of Rule 5.4(d)(1), which prohibits a lawyer from practicing with or in the form of a professional corporation or association authorized to practice law if a nonlawyer has any ownership interest in the business. "The opinion stated that any arrangement that offers donor equity or a specific dollar return on the donor's investment would not comport with Rule 5.4; however, a campaign that exchanges donations for gratitude or discounted legal fees would not run afoul of the rules."

Crowdfunding (cont'd)

New York State LEO 1062 (June 29, 2015): The opinion addressed two law school graduates who wanted to use crowdfunding to raise capital to start a new law firm:

"If the law firm provided royalties to donors or equity in the firm, there would be Rule 5.4 violations: The royalty model contemplates the investor receiving a percentage of revenues, and would therefore violate Rule 5.4(a) ('A lawyer shall not share legal fees with a nonlawyer'). Similarly, the equity model violates Rule 5.4(d) (lawyer shall not practice law in a for-profit entity if a non-lawyer owns any interest therein.)."

Opinion 1062 does state that the lawyer may be able to offer "rewards" to donors in the form of informational pamphlets or reports on the progress of the firm but they had to abide by advertising rules. Another "reward"—offering pro bono services to a non-profit organization—prompted the ethics committee to note that a lawyer has to be competent to handle a matter (Model Rule 1.1 and New York RPC 1.1(b) and a lawyer may not accept a matter that creates a conflict of interest under New York RPC 1.7 or 1.9 (Model Rules 1.7 and 1.9)

In Re Tsamis, Joint Stipulation and Recommendation ¶¶4-10 & Reprimand ¶ 1, No. 2013PR00095 (ARDC 2014)

The matter involved retention of the lawyer to obtain unemployment benefits. The Illinois Department of Employment Security rejected the claim presented by the lawyer. Her client then terminated her. Her former client then posted a review on Avvo expressing his dissatisfaction with her legal services. The lawyer contacted her former client and asked him to remove the posting. He refused to do so unless he received a copy of his files and a refund of the $1,500 fee he had paid the lawyer. Instead, apparently acting on its own, Avvo removed the online review. But then the former client posted a second negative review on Avvo. The lawyer responded to the post and revealed confidential information about the case. The joint stipulation concluding the matter stated that the lawyer's reply "exceeded what was necessary to respond" to the former client's accusations.

In Re Chancey, 1994 WL 929289 (Ill. Att'y Disp. Comm'n Apr. 21, 1994)

Applying the precursor to Rule 8.4(c) to an assistant state attorney who created a mock appellate order to try to secure the return of a child taken to Mexico by a father despondent over the lack of visitation privileges:

Public officials such as assistant State's attorneys have a clear obligation to obey the law and to confer with their superiors when confronted with extraordinary and unusual circumstances. Further, public officials do not have the authority to publish a document which falsely purports to be a court order. Therefore, the Review Board determines that the Hearing Board's findings, which are to the effect that respondent's conduct did not violate Rule 1-102(a)(4), are rejected as contrary to the manifest weight of the evidence. The Review Board makes the finding that respondent's conduct in this case has been shown by clear and convincing evidence to have been in violation of Rule 1-102(a)(4).

In re Kristine Anne Peshek, M.R. 23794, 2009 PR 00089 (Ill. May 18, 2010)

The Illinois Supreme Court allowed a petition on consent to suspend Ms. Peshek for 60 days for violating IRPC 1.6 by writing a blog that contained information about conversations with clients in her role as a public defender in Winnebago County for 19 years. She did not have informed consent to make the disclosures. More specifically, the ABA Journal reported in an online posting dated Sept. 10, 2009, the following: "Kristine Anne Peshek has been accused of revealing client confidences, allegedly for describing her clients in a way that made it possible to identify them. Peshek referred to her clients by either their first names, a derivative of their first names, or by their jail identification numbers, according to the disciplinary complaint filed on Aug. 25."

Note: *Rule 1.6's protection of client-confidential information goes beyond privileged information and includes even information otherwise in the public domain.*

People v. Harris, 123 Ill.2d 113, 132 (1988)

It is well settled in Illinois that any communication with a juror during trial about a matter pending before the jury is deemed presumptively prejudicial to a defendant's right to a fair trial. Although this presumption of prejudice is not conclusive, the burden rests upon the State to establish that such contact with the jurors was harmless to the defendant.

People v. Runge, 234 Ill.2d 68, 103-104 (2009)

Not every allegation of jury misconduct is sufficiently substantial or sufficiently well substantiated to warrant putting the jurors on the spot by questioning them.

Saragosa v. County of Cook, 407 Ill.App.3d 1189 (1st Dist. 2011)

Trial court's failure to conduct an evidentiary hearing regarding the juror misconduct was error and new trial warranted – Illinois case law indulges a presumption of prejudice, if the extraneous information bears on a crucial issue in the case and may have improperly influenced the verdict.

McGee v. City of Chicago, 2012 IL App (1st) 111084

Footnote 29: "trial court abused its discretion in failing to voir dire a juror who performed Internet research on an issue directly relevant to the case"

Eskew v. Burlington Northern &Santa Fe Railway Company, 2011 IL App 1st 093450

Trial court refusal to voir dire the jury after learning that a juror was blogging about the case affirmed – Even where a jury has been exposed to improper extraneous information, the verdict is not subject to automatic reversal. The party challenging the verdict must establish prejudice by showing that the information relates directly to something at issue in the case and that it may have influenced the verdict.

In re Horace Frazier Hunter, VSB Docket No. 11-032-084907 (Aug. 30, 2013)

The Virginia Supreme Court determined that a lawyer had a First Amendment right to publish in a blog information not protected by the attorney-client privilege without obtaining consent of the client. Where the information did not relate to a pending proceeding and was public information (and would have been protected by the First Amendment if a media outlet had published the information), Rule 1.6 could not overcome the protection provided to the lawyer by the First Amendment.

"To the extent that the information is aired in a public forum, privacy considerations must yield to First Amendment protections. In that respect, a lawyer is no more prohibited than any other citizen from reporting what transpired in the courtroom."

Meyer v. Kalanick, 2016 U.S. Dist. LEXIS 96583 (S.D.N.Y. July 25, 2016)

Preventing use of information obtained by Uber using an investigator, Ergo who engaged in false pretenses. Defendants Uber and Kalanick were enjoined

"from using any of the information obtained through Ergo's investigation in any manner, including by presenting arguments or seeking discovery concerning the same; enjoins both defendants and Ergo from undertaking any further personal background investigations of individuals involved in this litigation through the use of false pretenses, unlicensed investigators, illegal secret recordings, or other unlawful, fraudulent, or unethical means; and retains jurisdiction to enforce Uber's agreement to reimburse plaintiff in the sum agreed to by the parties."

Because Uber agreed to reimburse plaintiffs for his attorneys' fees and expenses the court said it was not going to sanction Uber's attorneys for violating their supervisory obligations under M.R. 5.3.

ABA Model Rule 1.0 - Terminology

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

ABA Model Rule 1.1 - Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment [8]

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

ABA Model Rule 1.2 - Scope of Representation & Allocation of Authority Between Client & Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

IRPC 1.2 – Scope of Representation and Allocation of Authority Between Lawyer and Client

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client,

(2) counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and

(3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

ABA Model Rule 1.3 - Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

ABA Model Rule 1.4 – Communication

(a) A lawyer shall:

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

ABA Model Rule 1.5 - Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

ABA Model Rule 1.6 – Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

> (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comment [10] to ABA Model Rule 1.6

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

A Comparison of RPC 1.6: Confidentiality of Information

A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

Illinois and Model Rule: **"to respond to allegations in any proceeding concerning the lawyer's representation of the client."**

District of Columbia: **"to the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer's representation of the client."**

New York: "**to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct."**

ABA Model Rule 1.7 – Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1) the representation of one client will be directly adverse to another client

Comment [13]: A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

ABA Model Rule 1.8 – Conflict of Interest – Current Clients: Specific Rules

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

ABA Model Rule 1.9 – Duties to Former Clients

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

ABA Model Rule 1.13 – Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law

ABA Model Rule 1.15 – Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

IRPC 1.15 – Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph (j)(2), or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

ABA Model Rule 1.16 – Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

ABA Model Rule 1.18 – Duties to Prospective Client

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

IRPC 1.18 – Duties to Prospective Client

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and that lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

ABA Model Rule 2.1 - Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

ABA Model Rule 3.3 – Candor toward the Tribunal

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

ABA Model Rule 3.5 – Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

ABA Model Rule 3.6 – Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(2) information contained in a public record;

ABA Model Rule 4.1 – Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

ABA Model Rule 4.2 – Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

ABA Model Rule 4.3 – Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

ABA Model Rule 4.4 – Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

ABA Model Rule 5.1 – Responsibilities of a Partner or Supervisory Lawyer

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved

ABA Model Rule 5.3 – Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses the comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment [4] to ABA Model Rule 5.3

Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

ABA Model Rule 5.4 – Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer

ABA Model Rule 7.1 – Communication Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

ABA Model Rule 7.2 - Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule

ABA Model Rule 7.3 – Solicitation of Client

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

ABA Model Rule 7.4 – Communication of Fields of Practice & Specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

IRPC 7.4 – Communication of Fields of Practice and Specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(c) Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:

(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;

(2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.

ABA Model Rule 8.3 – Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

IRPC 8.3 – Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

ABA Model Rule 8.4 - Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice