



LinkedIn and Arizona's Lawyer Advertising Rules

In a previous column,¹ we looked at the concern about whether our current lawyer advertising rules² are keeping up with the Internet-based marketing options now available to lawyers.

LinkedIn is a good example of a marketing tool widely used by lawyers. According to the American Bar Association's 2014 Legal Technology Survey Report,³ of the lawyers and law firms that responded, 99 percent of large firms, 97 percent of mid-sized firms, 94 percent of small firms, and 93 percent of solos had LinkedIn profiles. As you likely know, LinkedIn is an online professional networking platform where lawyers and others can register for a free account, upload a photograph and post a professional profile. In this respect, the process is similar to creating lawyer websites, determined some years ago to constitute "communications" about a lawyer and a lawyer's services that are subject to our ethics rules.⁴ Like a website, LinkedIn lets us write about our practice areas in a "Summary" section, as well as using other sections such as "Experience," "Education," "Honors," and "Recommendations." It also allows for "Connections" with other LinkedIn users (much like Facebook) and with people the lawyer invites to join the group. There is also an ability to join "Groups" of subscribers with common interests.⁵

It's fair to assume that as long as we don't convey false or misleading communications about ourselves and our services on LinkedIn, we won't be in violation of ER 7.1 (Communications Concerning a Lawyer's Services), and as long as our page does not attempt to solicit "professional employment from anyone known or believed likely to be in need of legal services for a particular matter," we will not be subject to that part of ER 7.3 (Solicitation of Clients) that would otherwise require us to put the words "Advertising Material" in large letters at the beginning and end of the LinkedIn message and to forward a copy of the page to the State Bar. While acquiring legal business might be "a" reason for those of us who use LinkedIn, it probably is not considered "the only" reason for using it. It's a networking tool, a casual informational website, and something we shouldn't have to worry about as ER 7.2-regulated "advertising." Right?

Not so fast. Recent dueling ethics opinions from New York demonstrate that the country's jurisdictions don't sing from the same page. In early 2015, the New York County Lawyers Association Professional Ethics Committee issued Formal Opinion 748.⁶ New York's ethics rules are somewhat different from Arizona's, although the lawyer advertising rules generally attempt to regulate the same kind of communications. What got many New York lawyers exercised was the committee's conclusion that if a lawyer on LinkedIn chooses to include information such as practice areas, skills, endorsements and recommendations, the lawyer must treat the profile as a "communication" and as lawyer "advertising"—which in New York requires a disclaimer and other administrative responsibilities.

The reaction to Opinion 748 was quick and not complimentary,⁷ arguing that it was deceptive to call something "advertising" when it isn't, and that it would put lawyers who use LinkedIn in violation of LinkedIn's User Agreement, which

prohibits "unsolicited or unauthorized advertising."⁸ This was followed by Formal Opinion 2015-7 from the Committee on Professional Ethics of the Association of the Bar of the City of New York.⁹ It begins with the assumption that an online "communication" is not presumptively an "advertisement" and concludes that as long as a lawyer's LinkedIn page is general marketing or branding—the purpose of which is to raise awareness about the lawyer's services rather than retention of the lawyer for a particular matter—it doesn't fall within the definition of an "advertisement" as contemplated by the ethics rules and is not subject to them as such.

In any case, lawyers should ensure information on their LinkedIn page, including the "Skills and Endorsements" and "Summary" sections, are accurate and up to date, and are not false or misleading as defined in Arizona's ER 7.1. [AZ AT](#)

A new ethics opinion is on page 70. All ethics opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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endnotes

1. *Do Our Advertising Rules Need an Upgrade?* ARIZ. ATT'Y (Feb. 2016) at 8.
2. ERs 7.1, 7.2, 7.3 and 7.4, ARIZ.R.PROF. CONDUCT; Rule 42, ARIZ.R.S.Ct.
3. www.americanbar.org/publications/tech-report/2014/blogging-and-social-media.html
4. Ariz. Ethics Op. 97-04 (Computer Technology: Advertising and Solicitation; Confidentiality) (April 1997).
5. Examples are the Personal Injury Attorney Network (10,535 members) and White Collar Criminal Defense Attorneys (7,532 members).
6. www.nycla.org/siteFiles/Publications/Publications1748_0.pdf.
7. See, e.g., Carolyn Elefant, *Stop the Madness: How the NYCLA's Ethics Opinion on LinkedIn Forces Lawyers To Act Deceptively and Violate LinkedIn User Agreement*, <http://Myshingle.com/2015/03/articles/social-media/stop-the-madness>; and Joe Patrice, *Maybe Your LinkedIn Profile Won't Get You Disbarred!* <http://abovethelaw.com/2016/01/maybe-your-linkedin-profile-wont-get-you-disbarred/>.
8. www.linkedin.com/legal/user-agreement.
9. www.nybar.org/ethics/ethics-opinions-local/2015opinions/2350-formal-opinion-2015-7.

