



Watch Your Website!

Some years ago, we looked at the ethical considerations lawyers needed to keep in mind when using the Internet to communicate information about their practices to the public.¹ In the years that have passed since then, not only have lawyer websites become a primary means of communication with the public, but the ethical rules affecting them have been amended as well. These facts, as well as a new ethics opinion on the subject, have prompted this update on where we are with the World Wide Web.

A recent ethics opinion from the American Bar Association serves as a timely reminder that the time and expense we took to create that website for ourselves is not to be considered the end of the project.² We have ethical obligations to manage the information contained on our websites to make sure it is current and accurate, and that inquiries concerning professional services that are invited through the website are managed appropriately.

As pointed out in the ABA opinion, websites are now a common means by which lawyers communicate with the public. What we as lawyers must keep in mind is that the information provided on our websites is “communication about the lawyer or the lawyer’s services” and is therefore subject to the provisions of ER 7.1 (communications concerning a lawyer’s services) and 8.4(c) (prohibiting conduct involving dishonestly, misrepresentation etc.).³ Accordingly, no website information may be false or misleading, and managerial lawyers in law firms are obligated to make reasonable efforts to ensure that firm lawyers have provided accurate and current information for the firm website.⁴

The folks on Arizona’s Committee on the Rules of Professional Conduct saw lawyer Internet issues early on and gave us an excellent ethics opinion on the subject that any lawyer who has responsibility for a website should read.⁵ Although the opinion was published before the current version of ERs 7.1 through 7.5 became effective, it points out a number of problem areas, including some not covered in this column, and considers the ethical rules involved. Among the high points:

- A website is “advertising” and, in Arizona, that means there can be no misleading statements about the firm or any lawyer in it, the website should provide the lawyer’s name and address responsible for its content, the website should not lead a potential client to have unjustified expectations about the results the firm can obtain for her case, and any representative client listed on the website must have given its consent prior to the listing.
- It’s not enough to create, design and pay for a website. It must be kept up to date. So, if you were a certified specialist last year but not this year, your website should not reflect that you are still certified.⁶
- A website does not normally constitute a direct contact with prospective clients. Accordingly, copies of the website do not have to be forwarded to the Clerk of the Supreme Court or the State Bar of Arizona. Nor does a website have to include the words “advertising material” in conspicuous letters, as is required of direct solicitations under ER 7.3(c).

A later Arizona ethics opinion⁷ points out another problem area in lawyer websites: Most have a link permitting a potential client to communicate by e-mail with the lawyer. The opinion, as well as the ABA opinion, advises that lawyers take care that their responses to inquires on the Internet do not unintentionally become “discussion” that might result in the inquiring parties becoming “prospective clients” and thus entitled to the protections of ER 1.18 (Duties to Prospective Client).

Both opinions advise disclaimers on the website stating that none of the statements on the website should be considered legal advice and advising website visitors that any initial information sent to the lawyer by e-mail should not be considered confidential. With proper cautionary statements, the lawyer may avoid any misunderstandings by the website visitor that (1) a professional relationship has been created, (2) the visitor’s information will be held in confidence, (3) the statements on the website constitute legal advice, and (4) the lawyer or his firm will be prevented from representing an adverse party. 

Ethics Opinions and the Rules of Professional Conduct are available at www.myazbar.org/Ethics



David D. Dodge is Of Counsel with the Phoenix law firm Lorona Steiner Ducar Ltd. He is a former Chair of the Disciplinary Commission of the Arizona Supreme Court.

endnotes

1. *Untangling Ethical Webs*, ARIZ. ATT’Y (Dec. 2001), at 14.
2. ABA Formal Op. No. 10-457 (lawyer websites) (Aug. 5, 2010).
3. Rule 42, ARIZ.R.S.Ct.
4. ERs 5.1 (Responsibilities of Partners, Managers and Supervisory Lawyers) and 5.3 (Responsibilities Regarding Non-Lawyer Assistants); see *In re Foster*, No. 10-B-2118 (Supreme Court of Louisiana, Oct. 15, 2010) (lawyer member of firm’s management committee disciplined for failure to supervise non-lawyer employee’s making false representations on firm’s website)
5. Arizona Ethics Op. No. 97-04(1997).
6. See, e.g., Arizona Ethics Opinion No. 05-03 (2005) (unethical for lawyer to list herself as being in Best Lawyers in America listing without disclosing year and legal category).
7. Arizona Ethics Op. No. 02-04 (2002).