



Untangling Ethical Webs

Internet Lawyering Needs Careful Clicking

As more of us are now using the Internet and e-mail in our practices, we need to keep in mind that all communications with clients and prospective clients, including those in cyberspace, are subject to Arizona's Rules of Professional Conduct.¹ Our Committee on the Rules of Professional Conduct has published several formal opinions concerning how the Internet and e-mail communications are

affected by the Rules.² Here are some of the areas of concern you should keep in mind when using the Internet in your practice.

First, be aware that if you have a Web site describing your firm, the lawyers in it and the services you provide, this is a "communication" about lawyers that is subject to ERs 7.1 through 7.5 (found in the Information About Legal Services section in the Rules of Professional Conduct, pp. 503-511, in your 2001 West's *Arizona Rules of Court*).

The site should:

- be predominantly informational

- not be false or misleading
- comply with ER 7.1(e) concerning fee information
- list representative clients only after you have received the clients' consent

Copies of Web sites probably do not have to be submitted to the State Bar and the Arizona Supreme Court pursuant to ER 7.3 because they are not direct-mail solicitation letters.³

Second, keep in mind that communications received and acted on by potential clients in other states are subject to those states' ethics rules, some of which may be more strict than Arizona's. This situation can be dealt with by having conservative and strictly informational Web sites.

The sending of e-mail communications to prospective clients, however, could cause more of a problem. It is a criminal offense in many states to practice law if you don't have a license. Your communications to

Ethics Opinions are available at www.azbar.org/EthicsOpinions/. For more on the ethics of law firm Web sites, see p. 38

potential and existing clients in other states may be considered as "practicing law" within those jurisdictions.

Third, many of us are frequently contacted over the Internet by firms seeking to put your name on an Internet list of "specialists" to whom they will send clients in return for a fee. But ER 7.1(r)(3) requires that any referral service be "operated, sponsored, or approved by a bar association." This means the State Bar of Arizona, which presently has not approved of any online referral services.

Last, but certainly not least, you need to be aware that ER 7.3 will control e-mail communications with prospective clients under certain circumstances. That Rule prohibits telephone and in-person solicitation and further requires certain disclosures in all written communications, initiated by the lawyer to persons "known to need legal services of the kind provided by the lawyer

in a particular matter."

Thus, if you are initiating a contact with a potential client with a known legal need for services in a particular matter, you must comply with ER 7.3(e). That includes a disclosure that the communication is advertising material and a commercial solicitation. In "non e-mail" communications, this warning must appear in capital letters and in red ink, something that would be difficult to comply with when using some software applications in the e-mail context. It has been suggested that the warning language appear in all capital letters, black or red, in the e-mail subject line and in the body of any e-mail communication falling within the ER 7.3 proscriptions.⁴

As time goes on, more specific situations involving the Rules of Professional Conduct and the electronic age will be considered and answered. In the meantime, be aware of the basic principles involved and

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regulate your conduct accordingly. ▲

endnotes

1. Rule 42, ARIZ. R.S.CT.
2. Formal Opinion No. 97-04 (April 7, 1997) (outlining general rules); Formal Opinion No. 99-06 (June 1999) (participation in Internet lawyer reference service); Formal Opinion No. 99-10 (Sept. 1999) (Internet directory of members of a lawyers' association).
3. ER 7.3 prohibits direct solicitation of clients except under certain circumstances.
4. Formal Opinion No. 97-04, *supra* note 2, at p. 4.