

Social Media and Lawyers

Maintaining an Ethically-Sound Web Presence

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NC State Bar

Government agency responsible for regulation of attorneys in North Carolina.

Membership is mandatory for NC licensed attorneys and the organization regulates 29,000+ licensed attorneys.

Governance is by a 60+ member council whose members are elected by their local bar jurisdictions.

The public's interests are represented by 3 members of the council who are not lawyers and are appointed by the governor.

Council elects 4 officers to leadership.

Staff of 85 lawyers, paralegals, investigators and other employees carry out the daily operations.

Council members serve on various standing committees (including Ethics) and meet quarterly.

20 members serve on the Ethics Committee along with 12 advisory members who are appointed by NCSB President.

Recent NCSB Quarterly Results

- ▶ Audit Report - 2/3 of audited trust accounts have errors.
- ▶ Ethics counsel fielded 1000+ emails and phone calls with ethics inquiries. (most related to Conflicts)
- ▶ Grievance Committee considered 333 cases resulting in ...
 - ▶ 3 letters of caution
 - ▶ 14 letters of warning
 - ▶ 8 admonitions
 - ▶ 8 reprimands
 - ▶ 0 censures
 - ▶ 0 LAP referrals
 - ▶ 4 to Trust Account Compliance Program
 - ▶ 12 to Disciplinary Hearing Commission.





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Ethics Committee ≠ Old Fogey Society

Recent Ethics Decisions

2014 FEO 5 - Advising a Civil Litigation Client About Social Media

- ▶ Competent representation includes advising your client about the legal ramifications of the client's postings on social media if those postings could be relevant to the matter.

2014 FEO 8 - Accepting an invitation from Judge to connect on LinkedIn

- ▶ Opinion rules that a lawyer may accept an invitation from a judge on a professional networking website and may endorse a judge. However, a lawyers may not accept a legal skill or expertise endorsement or recommendation from a judge.



Ethics and Standard of Care

Recent Ethics Inquiry:

“Given the sensitivity and extent of non-public personal information (NPI) transmitted when closing a real estate transaction, do the RPC require a closing attorney to use encryption or some other security measure when transmitting NPI pertaining to a real estate transaction by email?”

Ethics Committee **declined to issue** an ethics opinion that would apply to just real estate attorneys.

AVVO

Subcommittee appointed.

7 meetings since December 2017.

Proposed opinion published for comment in July 2019 resulted in 30 comments.

Issues implicated in Proposed Opinion:

- ▶ Rule 5.4 (a) - prohibition on fee-splitting with non-lawyer
- ▶ Rule 7.2 (d) - conditions for participating in a lawyer referral service (including the requirement that the service not be operated for a profit)
- ▶ Rule 7.2(b) - prohibition on giving anything of value to a person for recommending the lawyer's services
- ▶ Rule 7.1(a) - Requirement that advertising be truthful and not misleading
- ▶ Rule 5.5 (f) - prohibition on assisting another person in the unauthorized practice of law (including the unauthorized practice of law by a corporation)



Technology: New in 2019

- ▶ NC Rules of Professional Conduct Rule 1.1, Comment [8]
- ▶ “[A] lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer’s practice.”
- ▶ One of twelve CLE hours every year must be devoted to technology training.

Accessing Social
Network
Presence of
Represented
or
Unrepresented
Party



New 2018 FEO 5

- ▶ Nothing in the Rules prohibits a lawyer from accessing publicly available information.
- ▶ Lawyers must never use deception, dishonesty, or pretext to gain access to a person's restricted social network presence.
- ▶ A lawyer, using his/her true identity, may request access to the restricted portions of an unrepresented person's social network presence.
- ▶ A lawyer, using his/her true identity, may NOT request access to the restricted portions of a represented person's social network presence.
- ▶ Lawyer may ask a 3rd party who already has access to restricted portions of a represented or unrepresented party's social network presence to provide helpful info from the site if not deceitful.
- ▶ Rare instance where the full Bar Council overrode a recommendation of the Ethics Committee.
- ▶ Criminal defense, domestic law, and personal injury plaintiff and defense lawyers all have different perspectives.



Social Media and Client Confidentiality

- ▶ Rule 1.6 Confidentiality of Information.
- ▶ California Formal Opinion Interim No. 13-0005.
- ▶ Hypotheticals.

Social Media and Attorney- Client Relationships



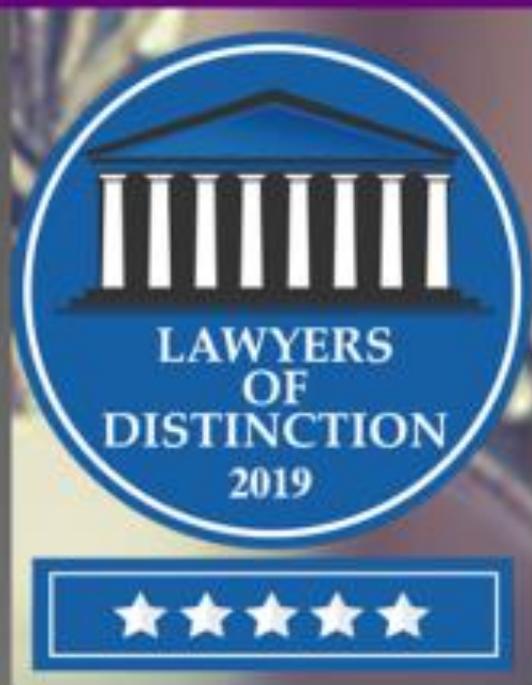
Unintended Attorney-
Client Relationships (at
least from your
standpoint)



Bottom line: Do not
give legal advice on
social media

Under consideration/In the pipeline...

Proposed 2018 FEO 8, Advertising Membership in Marketing Company with Misleading Title



Lawyers of Distinction Members have been selected based upon a review and vetting process by our Selection Committee utilizing U.S. Provisional Patent # 62/743,254. The platform generates a numerical score of 1 to 5 for each of the 12 enumerated factors which are meant to recognize the applicant's achievements and peer recognition. Members are then subject to a final review for ethical violations within the past ten years before confirmation of Membership. Nomination does not guarantee membership and attorneys may not pay a fee to be nominated. Attorneys may nominate their peers whom they feel warrant consideration. The determination of whether an attorney qualifies for Membership is based upon the aforementioned proprietary analysis discussed above. Membership is not meant to infer any endorsement of Lawyers of Distinction by any of the 50 United States Bar Associations or The District of Columbia Bar Association. Any references to "excellent," "excellence," or "distinguished" are meant to refer to the Lawyers of Distinction organization only and not to any named member individually.

2018 FEO 7

Online Review Solicitation Service

Proposed opinion rules that, subject to certain conditions, a lawyer may participate in an online service for soliciting client reviews that collects and posts positive reviews to increase the lawyer's ranking on internet search engines.

Repsight.com -- online service offers to help lawyers accumulate more positive client reviews on Google.

Repsight will contact clients via text or email to solicit reviews. If 4 or 5 stars, the client will be directed to lawyer's Google review page.

If review is 3 stars or less, the client will be redirected to a private feedback form for the lawyer to review.

Ethics Committee equated Repsight to a customer service survey.

Must get client's informed consent to provide contact info to Repsight. Rule 1.6(a).

Proposed 2020 FEO 1

Responding to Negative Online Reviews

- ▶ Lawyer may post a proportional and restrained response to a negative online review as long it does not disclose confidential client information.
- ▶ Pennsylvania Proposed Generic Response: *“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.”*
- ▶ Texas State Bar and San Francisco Bar adopted similar responses.

Beware -- Wire Fraud and Scams

- ▶ Beware of wire fraud scams and other evolving scams. While we see this most often in real estate cases, frauds often move from one practice area to another.
- ▶ Use Lawyers Mutual resources: newsletter, alerts, Lending Library (see website).
- ▶ Staff education is critical - invite LM for a Lunch & Learn.
- ▶ See cyber / crime insurance products from Lawyers Insurance.



Beware --Wire Fraud and Scams



Secured Email.



Always use a secure domain. Email services such as AOL, Gmail and Yahoo are easy targets for hackers.



Check email addresses for accuracy. In many cases, a fraudulent email is close, but not the correct address. Hover over email address and links to ensure accuracy before clicking.



Do not accept changes in wire instructions sent via email. ALWAYS assume the request is fraudulent.



All wiring instructions should be verified, preferably in person or by a telephone call that you initiate using contact information from your file (not from an email or fax that maybe fraudulent).

Beware --Wire Fraud and Scams

Sample Disclaimers

#1 - If you receive **NEW** wiring instructions on this transaction, please contact (name) immediately via phone. The Smith Jones Law Firm **DOES NOT** alter its wire instructions.

#2 - Before sending any wire, call our office at 555-555-5555 to verify the instructions as previously agreed upon. We will not change wiring instructions. If you receive new wiring instructions via email or fax for a different bank, branch location, account name or account number, please presume it is fraudulent. Do not send funds and call our office immediately.



Outgoing Wires

- ▶ Receipt of wiring instructions.
 - ▶ Original signed, notarized directive
 - ▶ No email delivery -- assume fraudulent
 - ▶ Faxed instructions no safer than email
- ▶ EVERY wire request needs to be verified and make it personal.
- ▶ Do not accept changes to wire instructions.
- ▶ Be very suspicious of wires going to account that is not in the exact name of the client or party to the transaction.
- ▶ Be suspicious of any account with an address listed in a geographic location different from the intended recipient.
- ▶ Do not send wires overseas.
- ▶ After initiating wire transfer, telephone the recipient and provide the details and request confirmation of receipt.
- ▶ Educate clients on wire fraud concerns early in the process.



Beware - - Scams and Schemes

- ▶ NC State Bar now reprimanding attorneys for failure to keep client's property safe.
- ▶ Most E&O policies do not cover wire fraud.
- ▶ Criminals are staying one step ahead of efforts to prevent wire fraud.
- ▶ Be aware of other financial fraud - fraudulent cashier's check schemes are making a comeback.

STOP. CALL. VERIFY.



Lawyers Mutual Resources

More than 50 Practice Guides and Tool Kits
on our website: www.lawyersmutualinc.com

- Opening a Law Firm
- Attorney - Client Relationships
- Attorney - Client Agreements
- Unbundled services, confirm scope of work
- Planning Ahead: Protecting Your Clients in Event of Your Disability or Death
- I Made a Mistake, Now What?
- Records Retention (electronic and paper)
- Planning Ahead for Closing a Law Practice
- Buying or Selling a Law Practice
- Data Security Policy

Connect

+

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