

If It Looks Like a Duck...

by Paula Frederick

“Did you get that e-mail from **D**www.ineedalawyer.com?” your partner asks as he enters your office. “They say they can guarantee us dozens of new case referrals for a small monthly fee.”

“Never heard of them,” you respond. “How does it work?”

“People go to www.ineedalawyer.com to find a lawyer. They type in their zip code and the kind of case they have. We would get every potential client from our zip code who wants a domestic relations lawyer.”

“Sounds like a lawyer referral service,” you say. “They have to register with the State Bar. Have you called to check them out?”

“That’s the beauty of it,” Stan answers. “These folks claim that they *aren’t* a lawyer referral service. They say they are a ‘marketing organization.’”

“What’s the difference?” You ask.

Exactly.

Bar Rule 7.3(c)(1) generally prohibits lawyers from paying for business referrals. One exception to the rule is for “fees or dues charged by a bona fide lawyer referral service operated by an organization authorized by law and qualified to do business in this state....” The Rule requires that a lawyer referral service report to the Bar annually and disclose its terms, subscription charges, agreements with counsel, and roster of member lawyers.

Many online services that attempt to match lawyers with potential clients operate on a national basis and do not want to be burdened by Georgia’s lawyer referral requirements. By claiming that they are “marketing organizations” rather than lawyer referral services, these groups hope to fall within the language of Rule 7.3(c)(3), which allows a lawyer to pay fees “charged by a lay public relations or marketing organization.”

The term “marketing organization” is not defined. Given that this rule was written long before the existence of modern Internet “matching” services, the term



probably refers to an advertising agency that a lawyer or firm would pay to create a marketing campaign or advertisement.

The Bar’s Formal Advisory Opinion Board has entered the fray. The question for the Board’s consideration is “what is the difference between a ‘lawyer referral service’ as referenced in Bar Rule 7.3(c)(2) and a ‘lay public relations or marketing organization’ as referenced in Bar Rule 7.3(c)(4)?” Until the Board issues an opinion, the Bar encourages any entity that pairs lawyers with potential clients to take the safe route and comply with the requirements for lawyer referral services. 



Paula Frederick is the deputy general counsel for the State Bar of Georgia and can be reached at paula@gabar.org.

This Isn't Your Father's Legal Ad

by Paula Frederick

"I've beefed up the website," your new office administrator announces as he steps into your office. "Take a look!"

Warily you turn to the computer and pull up your site. "I'd be the first to admit that the site needed an overhaul," you admit. "But *Bankruptcy Specialists?*" you ask, reading the banner headline. "I've done as many bankruptcies as the next general practitioner, but I don't claim any expertise in the area."

"Bankruptcy is really hot right now," Joe replies. "I've gotten a couple of buddies to go to your profile on AVVO and rate your bankruptcy services," he confides. "They will rave about what a good job you did with their cases. Just wait! New clients will come rolling in!"

"Buddies?" you wonder. "AVVO profile?"

"Yeah, we reference it in your blog!" Joe explains, pointing to a link on the side of the webpage. "We also encourage current and former clients to join the FeinFirm family on Facebook. You've already got 242 friends! Yesterday I set up an account with Twitter so everyone can follow your daily..."

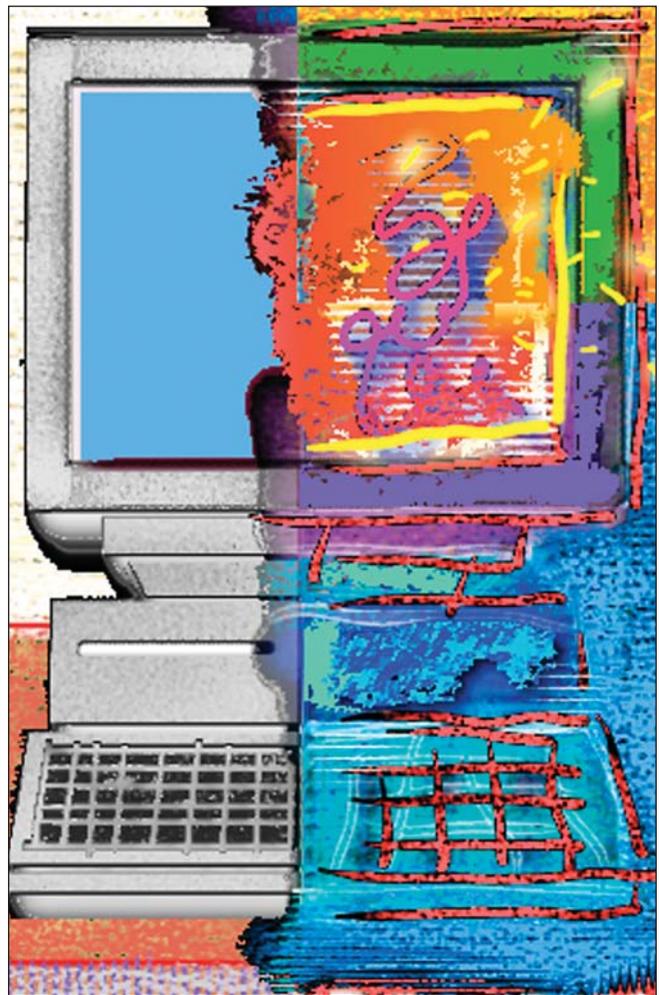
"Your pocket is chirping," you interrupt.

"Another tweet!" Joe announces proudly as he checks his BlackBerry. "This guy is looking for a bankruptcy lawyer—he wants to know if a Chapter 13 filing will eliminate his child support obligation."

"Turn that thing off," you sigh wearily, "and let's call the Bar before you get me into trouble."

For many lawyers, new technology has blurred the lines between personal and professional communication. As a result, at times it is unclear when and how the Rules of Professional Conduct apply.

Georgia's rules on lawyer advertising purport to "govern the content of all communications about a lawyer's services."¹ A communication might involve a myriad of ethics issues, but the first is whether it actually constitutes advertising.



In making that determination, the Office of the General Counsel considers whether the communication is made for the purpose of obtaining business. If it is sent directly to a potential client, it is likely an advertisement. It is less likely to be an ad if a potential client has to seek out the information on the web.

So you may tweet about office politics, blog about the latest blockbuster trial or use your professional sta-

tus to attract a love interest on a dating site without being accused of advertising.

You probably *are* advertising if your Facebook contacts are potential clients and not just friends or family. If your firm website has a link to your MySpace page, where you brag about your latest courtroom victory, if you post a copy of your latest TV ad on YouTube or if you let the folks on Craig's List know that you are available to handle their DUIs, your communication must comply with the rules regulating lawyer advertising.²

Finally, don't forget about Joe. Be sure he understands that your obligations under the Rules of Professional Conduct apply to his actions on your behalf. As the lawyer, you are responsible for all promotional communications about your firm. At a minimum you should review those communications before they are disseminated. 



Paula Frederick is the deputy general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

Endnotes

1. Rule 7.1, Comment (1), Georgia Rules of Professional Conduct.
2. The advertising rules are at Part VII of the State Bar of Georgia Bar Rules. Generally, they require that lawyer advertisements be true and not misleading (Rule 7.1). An ad must contain the name of a lawyer responsible for its content (Rule 7.1(a)(4)). It is misleading to call yourself a specialist unless you have the experience, training or professional certification to back it up (Rule 7.4). If you use "testimonials," they should be from actual clients who have given you permission to reveal any confidential or secret information contained in the communication. Knowingly submitting a fraudulent "testimonial" to a reputable website would violate Bar rules as well as the rules of the host site.

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 State Bar of Georgia

But *That's* Not a Secret!

by Paula Frederick

Thanks for letting the whole world know that I'm now a millionaire," your former client says sarcastically. "I bet I'll have everyone from my long-lost cousins to my ex-husband asking for a handout!"

"What are you talking about?" you ask, taken aback. "I haven't told anybody anything about you! I can't; the ethics rules forbid it!"

"Do you ever look at your own website, Jimmy? I just googled myself and the first thing that pops up is you bragging about how much money you recovered from BigPockets in my lawsuit!"

"But . . . the trial was public! The outcome is public information!" you sputter.

"That may be, but no one knew about it until you put it on your website," your former client grumbles.

You head to your partner's office for a reality check. "Any 12-year-old with an internet connection could find out about that lawsuit," you whine. "And I'm proud of winning that case! What's wrong with featuring it on the firm website?"

"Nothing!" your partner agrees. "I just wish you'd gotten the client's permission first. . . ."

Must a lawyer treat *all* information about a client as confidential, even when it is publicly available?

Pretty much.

Lawyers know that they have to keep client secrets — particularly information that would be detrimental if disclosed, or information that the client has asked the lawyer not to reveal. But Georgia's Rule 1.6, "Confidentiality of Information," covers far more than just secrets. The rule requires a lawyer to "maintain in confidence *all information gained in the professional relationship with a client.*"



The rule covers information that is technically within the public realm but is not generally known, such as the content of public documents or court pleadings. It covers both information the client has given the lawyer and information that the lawyer has learned from other sources. Even posting case citations with the amount recovered for each client can violate the rule.

Around the country lawyers are testing the limits of Rule 1.6. The Virginia Bar is involved in litigation over the ability of a lawyer to blog about his own cases using actual client's names and truthful descriptions of their cases; that case is ongoing. In the meantime, the safest course of action is to get the client's permission before publishing any information about current or former client matters. 



Paula Frederick is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

To Friend or Not to Friend?

by Paula Frederick

You sure lucked out with your dog bite case,” your partner announces as he walks into your office. “Judge Jimmy is scared of dogs! And you can stop with the trial preparation,” he adds. “I happen to know that the judge is going to be out of town next week.”

“If I thought that was true I could play golf this weekend,” you respond. “What makes you think the judge won’t be in court calling my case for trial on Monday morning?”

“We’re Facebook friends,” your partner declares. “Judge Jimmy’s mother-in-law died last night and he’s been lamenting the fact that he has to go to Outer Mongolia next week for the funeral.”

“So what did he say about dogs?” you ask.

“Hates ‘em!” your partner replies cheerfully. “Apparently he was bitten when he was a child and he never got over it!”

“That’s good to know,” you respond. “Maybe I’ll drop my jury demand and go with a bench trial.”

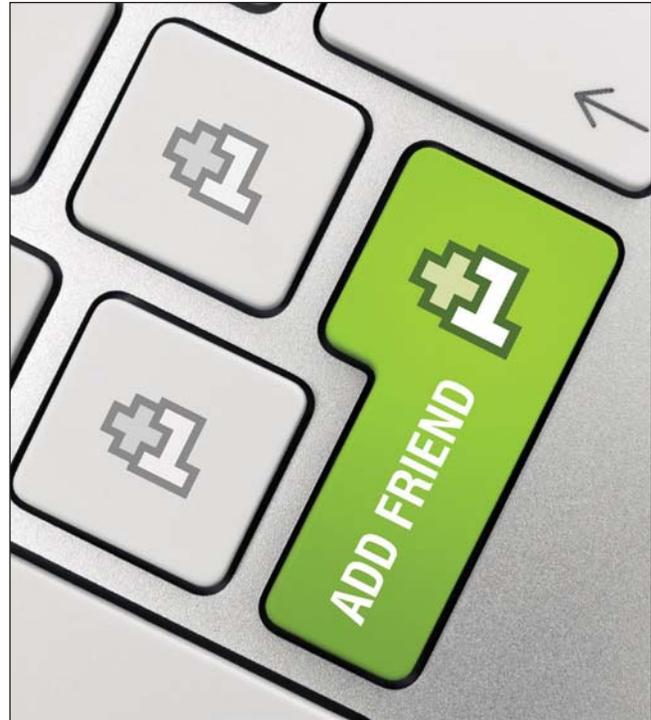
“Hmmm . . . I wonder if opposing counsel knows about this?” you add. “Did you happen to notice whether he’s Facebook friends with the judge too?”

What are the ethics implications of maintaining a social media relationship with a judge?

The judge typically has more to worry about than the lawyer.

The Rules of Professional Conduct have little to say on the subject beyond prohibiting *ex parte* communication or improper attempts to influence the court. Judges, on the other hand, should “avoid any conduct that would undermine the judge’s independence, integrity or impartiality, or create an appearance of impropriety.” *American Bar Association Formal Opinion 462, Judge’s Use of Electronic Social Networking Media, Feb. 21, 2013.*

Some judges deal with the perils of social networking by avoiding it altogether, but those who must run for re-election usually find an online presence neces-



sary for campaigning and fundraising. Even maintaining a social media presence that is strictly personal with no hint of one’s status as judge is not foolproof.

While it would certainly be inappropriate for a judge to share information about a case or other matter pending before him, even innocent social chitchat could potentially be useful to parties appearing before a judge. That’s why the ABA opinion cautions judges that they may need to disclose Facebook relationships to the other side in a case. It might be advisable to “unfriend” a lawyer who is appearing before the judge.

In most cases a Facebook relationship without more indicia of real life friendship would not require disqualification of a judge—a relief for judges who want “friends.” ^{CBJ}



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They Like Me! They Really Like Me!

by Paula Frederick

Take a look at this closing letter from Joe Doaks," your partner demands as he enters your office. "Down here at the bottom":

Thank you for entrusting the Law Firm of Joe Doaks and Associates with your legal matter. If you are happy with the service that we have provided, please go to www.rateyourlawyer.com and leave a positive review about your experience.

"Can he do that?" your partner wonders. "Seems like it's soliciting, or misleading or something unethical."

"I guess he's soliciting in the sense that he wants positive feedback, but that's not the kind of soliciting prohibited by the Bar Rules. He's not trying to attract clients; it goes to clients at the end of the case," you point out. "And I don't think it's misleading. He is absolutely clear about what he wants."

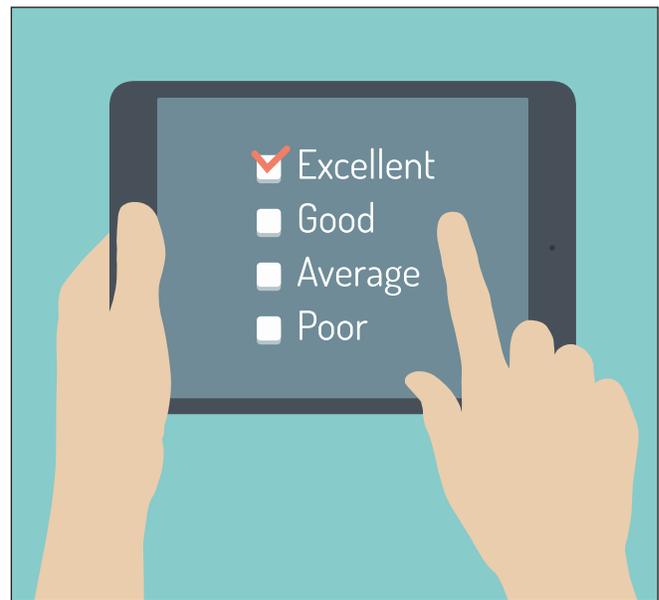
"It just seems so self-serving. Maybe it violates the rules on personal conflicts . . ." your partner says doubtfully.

"You know, it could backfire," you speculate. "Joe has absolutely no control over what folks actually say in their review! Admit it—you just don't like the idea of lawyers being rated on those online sites."

"Just like the neighborhood pizza joint," your partner grumbles.

Actually, there is no problem with asking a current or former client to give you a positive online review, as long as you abide by the Rules of Professional Conduct in doing so. That means a lawyer may not pay for a positive referral or attempt to influence the reviewer to lie.

It all goes back to the rules on advertising and soliciting. Rule 7.1 requires that communications regarding a lawyer's services must be true and not misleading. Subpart (c) makes the lawyer responsible for ensuring that all communications concerning his services comply with the Rules of Professional Conduct. Rule



7.3(c) provides that a lawyer may not give "anything of value" to a person in exchange for a recommendation resulting in the lawyer's employment.

But to ask a current or former client—a person with whom the lawyer already has a professional relationship—to post a truthful review of the lawyer's services does not violate either rule.

These days every potential client is likely to search for online reviews of a lawyer before deciding who to hire. Ensuring that your happy clients have let the cyberworld know about your quality of service is just good business sense.

Stay tuned! In April, I'll address the lawyer's dilemma when hit with an untruthful review! 



Paula Frederick is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

That's Not Fair!

by Paula Frederick

“Look what popped up when I did a web search on the firm name!” your assistant groans as she enters your office. “Somebody has blasted your work on their criminal case!”

You literally feel the hair on the back of your neck stand up as you read. “Mr. Smith did not return my phone calls and he lost my case. Now I’m in prison for something I didn’t do. —angry@reidsville.com”

“That almost *has* to be Joe Doakes! He’s the only criminal case I’ve had for months,” you realize.

“And *you* didn’t lose his case,” your assistant points out. “You gave that trial everything you had, but the evidence against him was overwhelming!”

“*Didn’t return phone calls,*” you grouse. “How was I supposed to call him back—he was in prison!”

“There goes our online marketing,” your assistant laments. “This is the first thing that pops up when you do a search on the firm name.”

Most people don’t hire a lawyer without doing an internet search, so your online reputation is more important than ever. What’s a lawyer to do when hit with a negative online review?

Before you do anything, think about doing nothing. Decide whether the negative review is really going to harm your business. Does the reviewer come across as malicious, unreasonable or unstable? People are accustomed to online venting by sore losers, so potential clients may ignore an isolated negative review. You might even call more attention to it by responding to it.

If you feel the need to respond you might think it best to post a detailed denial of the review. The ethics rules make that tricky, but there is an exception to the confidentiality rule¹ which allows a lawyer to reveal otherwise confidential information “to establish a . . . defense on behalf of the lawyer in a controversy between the lawyer and the client . . .” based upon the lawyer’s reasonable belief that the revelation is necessary.

Unfortunately, reasonable minds can differ on how much information a lawyer may reveal under the exception. Lawyers can get themselves into disciplinary trouble when they fight back against a negative review with information that identifies the client and reveals embarrassing details about the case.



On the other hand, you do not violate the rules by posting a response that provides a general denial with language like “We are unable to respond to *angry@reidsville* without revealing confidential information about his case. We at Smith & Smith return client telephone calls within 24 hours.” Review the tone of your response carefully to be sure you do not sound angry or defensive.

If a post contains information that you can prove is untrue, you may be able to persuade the host site to remove it.

Some experts suggest fighting a negative review by creating your own positive content on websites that will supersede a negative review when a potential client does an internet search. The theory is that with more and newer content the negative review gets bumped lower and lower in the search results so that it is less likely anyone will see it.

If all else fails seek professional help. There are companies that can help “fix” your online reputation for a fee if the problem becomes serious. 



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Endnote

1. Please remember that Georgia’s Rule 1.6 is different from the ABA Model Rule, so the advice could be different in other jurisdictions.