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Ethical Issues for Lawyers: Social Media, Privacy, and Public Information

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TITLE: Ethical Issues for Lawyers: Social Media, Privacy and Public Information

SUMMARY: Social media is changing expectations regarding client privacy and public information. As lawyers and clients increasingly rely on social media for communication, new ethical challenges arise, including attorney-client privilege concerns.

I. INTRODUCTION

Lawyers have been confronted with ethical issues on behalf of clients before lawyers used computers, let alone the Internet. The wide-spread introduction of computers in the practice of law since the 1980s has forever changed how lawyers and clients relate. Before email was the primary means of communications lawyers relied on sending letters or talking on the telephone, and then facsimiles. But in 2014 communications are sent electronically by email, in PDF, by SMS text messages, and postings on websites. As a result lawyers must deal with the complexities of these communications.

II. ABA COMMISSION ON ETHICS 20/20 WORKING GROUP

In 2009 the ABA established a Commission on Ethics 20/20 Working Group to examine “a number of legal ethics issues arising from lawyers’ use of technology, including issues arising from Internet-based client development tools” and in 2010 created an Issues Paper for comment.

<http://www.americanbar.org/content/dam/aba/migrated/ethics2020/clientdevelopmenttools.authcheckdam.pdf> The Commission’s Technology Working Group examined “ethics issues arising out of four common online methods of client development”:

- (1) social and professional networking services (such as Facebook, LinkedIn, and Twitter),
- (2) blogging,
- (3) “pay-per-click” advertising, and
- (4) lawyer websites.

As well the Issues Paper examined these topics:

- Identifying the Line Between Personal Communications and Lawyer Advertising

- Inadvertent Lawyer-Client Relationships
- Lawyers “Friending” Judges
- Gathering Information Through Networking Websites

III. ABA RESOLUTION 105A TO AMEND MODEL RULES

In August 2012 the Commission on Ethics 20/20 and the following groups reported to the House of Delegates a Resolution to amend the ABA Model Rules of Professional Conduct:

- Standing Committee On Client Protection
- Standing Committee On Ethics And Professional Responsibility
- Standing Committee On Professional Discipline
- Standing Committee On Professionalism
- Standing Committee On Specialization
- New York State Bar Association
- General Practice, Solo And Small Firm Division
- Section Of International Law
- Young Lawyers Division
- New York County Lawyers’ Association
- Section Of Business Law
- Law Practice Management Section

The Resolution addressed a number of Rules including the following:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

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Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

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