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## Ethical Issues for Lawyers on the Internet and World-Wide Web

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# Ethical Issues for Lawyers on the Internet and World Wide Web<sup>[1]</sup>

by J. T. Westermeier <sup>[2]</sup>

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### I. Introduction

{1} The Internet is experiencing explosive growth.<sup>[3]</sup> The global World Wide Web and Internet are being embraced by the legal community at a phenomenal pace.<sup>[4]</sup> More and more lawyers are using the Web to promote their practices, disseminate information, communicate with clients and prospective clients, conduct legal research, and carry on the practice of law. This growing use of the Web by lawyers, both nationally and internationally, is raising numerous complex ethical questions.<sup>[5]</sup>

{2} The global reach of the Internet has greatly complicated determining how ethical standards are applied. The Internet is a global network of interconnected computers.[6] Websites are "available to anyone, anywhere in the world, with access to the Internet." [7] As such, websites are in essence storefronts with worldwide exposure. There are no countries or state borders on the Internet. The Internet is not limited by geographic or jurisdictional boundaries.[8]

{3} Legal ethics, on the other hand, has become extraordinarily complex with substantial differences among countries and states.[9] To keep pace with the law of legal ethics in the United States, for example, one must have the *ABA/BNA Lawyers Manual on Professional Conduct*, the *Model Code of Professional Responsibility*, *Rules of Professional Conduct*, Hazard and Hodus' *The Law of Lawyering*, local statutes and opinions from applicable local ethics rules committees and local bar counsel.[10] Because of the worldwide scope and universal accessibility of the Internet, there are serious questions as to which ethics laws, rules and opinions apply, whether locally, nationally, or internationally.[11] These questions involve an appreciation of the technology that is constantly changing.[12] The complexity and uncertainty in the law of ethics vests local authorities with great power to enforce local legal ethics requirements.[13] Lawyers need to appreciate and to understand the ethics rules and issues applicable to the use of webpages and Internet technology, in general. In this article, many of these ethical issues will be identified and examined; however, in light of the complex and dynamic nature of the subject, we will just scratch the surface of this topic.

{4} There are many reasons why lawyers and law firms are constructing or have established websites. Some of the reasons include, providing two-way instant communication with existing clients, potential for new business, broad and cost-effective means of disseminating information, competitiveness and client relations. Law firms are including directory information, legal content and notices,[14] practice area specific information, biographical attorney information, recruiting information, press releases and other information. Many websites also have links to other sites.[15] With these links, "users are able to move seamlessly between documents, regardless of their location." [16]

## **II. Web-Based Advertising**

{5} Many jurisdictions have determined that the advertising rules adopted by local bar associations apply to websites.[17] With rare exception, webpages are viewed as, and are likely to be determined to be commercial speech that the Constitution permits the states to regulate.[18] States may place reasonable restrictions on the time, place, and manner of lawyer advertising.[19] While it is possible to implement a website that does not propose a commercial transaction,[20] nor contain any advertising content, the prudent course of action for lawyers is to comply with the ethical rules applicable to attorney advertising, publicity, and solicitation. Due to the wide variance in ethical rules, this is a lot easier to say, than to implement. For example, Iowa, Texas, Florida, North Carolina, Pennsylvania, Arizona, Connecticut, Illinois, Alabama, Kentucky, Michigan, Missouri, New York City, New York, Tennessee, Vermont and Virginia, for example, have each provided specific guidance on law firm websites.

### **Iowa**

{6} Iowa rendered an ethics ruling as to the propriety of an Iowa law firm or an out-of-state law firm with an office in Iowa having a website on the Internet. Iowa determined that such lawyer homepages and websites "are generally designed to promote the firm and to sell legal services of the firm and constitute advertising." [21] As such, in the Iowa ruling, Iowa determined that the websites of law firms and lawyers "must conform to the *Iowa Code of Professional Responsibility for Lawyers* provisions governing advertising and must comply with DR2-101, DR2-103 and DR2-105 (including publishing required disclosures) and with pertinent Ethical Considerations and related Formal Opinions . . . ." The Iowa ruling further states that [d]isclosures must be on the homepage or on the first screen of each page. The disclosures must be on the homepage of the website, as well as on any other page containing biographical information, other than the name, address,

telephone number and fax number. Furthermore, if the website is sponsored by an entity other than the lawyer, and contains references other than name, address, telephone number and fax number, the same disclosure requirements apply. Problematically, Iowa only permits electronic media ads in the geographic area in which the lawyer maintains offices, or in which a significant part of the lawyer's clients reside.[22]

## Texas

{7} Texas has also published guidelines on Internet advertising. In January 1996, the Texas State Bar's Advertising Review Committee determined that "certain publications on the Internet or similar services are public media advertisements" subject to the advertising rules in Part 7 of the *Texas Disciplinary Rules of Professional Conduct* ("*Texas Rules*"). These advertising rules require lawyers to submit copies of their advertisements before, or at the time they first appear, along with a fee, which is currently set at \$50.00. As of June 1, 1996, lawyers publishing a webpage must file a hard copy of the first screen, and any subsequent "material" changes in format with the Texas Advertising Review Committee.[23] Pre-approval for the first screen is available under the *Texas Rules*, although pre-approval is not required. Texas does not require that information linked to the first screen be filed with the Texas Advertising Review Committee unless the information is "primarily concerned with solicitation of prospective clients." [24] Texas, in its lawyer advertising rules, lists the following types of information as *not* being concerned primarily with solicitation and therefore, as *not* being subject to the filing requirement:

Newsletters; news articles; legal articles; editorial opinions; illustrations; questionnaires; fact or opinion survey forms; announcement of office openings and relocations; request for proposals or information from the public; legal product specifications; e-mail and e-mail response forms; attorney biographical information; announcement of personnel changes; attorney and support staff recruiting; job openings; legal development [sic] and events, including verdicts, judgments, court rulings, administrative rulings, and/or legislation; announcement of seminars and events; including online registration forms therefor; links to other Internet sites (legal or otherwise); and entertainment, amusement devices.[25]

{8} Even though Texas treats the foregoing information as not primarily concerned with solicitation of prospective clients, any such information must still comply with the requirements enumerated in the Texas advertising rules. For example, attorney biographical data and listing of accomplishments must be accompanied by the required disclaimers.[26] The Web homepage must also disclose the geographical location of the lawyer or law firm's principal office.[27] Any ad in violation, that is filed with the Texas Advertising Review Committee is automatically sent to the Grievance Committee.[28] The Texas Advertising Review Committee has been cracking down on attorneys who fail to file their webpage materials, [29] and anonymous sources have been sending questionable computer ads to the committee for review.[30] Furthermore, Texas has determined that a presence on the Internet is within the scope of its review.[31]

## Florida

{9} The Florida Bar Ethics Department determined that, "[i]nformation that a lawyer makes available to the public about the lawyer or the lawyer's services via the Internet, or similar computer-based technology, is considered a form of lawyer advertising." [32] Websites or homepages are considered "computer ads" in Florida, and as such are subject to the *Rules of Professional Conduct* ("*Rules*"). With respect to such "computer ads", Florida's Bar Ethics Department also indicated that such ads may not contain dramatizations or testimonials.[33] Like Texas, Florida requires that any computer ads, like other lawyer advertising, must be filed for review with the Florida Bar's Standing Committee on Advertising, unless the ad contains limited, basic information, as specified in Florida's *Rules*. [34] The filing requirements for computer ads provide that the lawyer must file a "hard copy print-out of the ad" and a "statement of when and where the ad will appear,"

along with payment of a \$50.00 filing fee.[35]

{10} For websites only, the "homepage" must be filed with the Florida Bar's Standing Committee on Advertising.[36] Previously, Florida did not exempt any subsequent pages that were linked to the first page, and some lawyers even filed copies of materials linked electronically to their website. Websites must conform with Florida's lawyer advertising regulations. The advertising guidelines apply to the homepage and information beyond the homepage. These advertising rules apply to the content of the subsequent pages in the website, as well as linked information even though they are now exempt from filing. Only a hard copy of the homepage, the URL for the website, along with payment of \$100.00 filing fee, need be submitted to Florida Bar's Standing Committee on Advertising to comply with the filing requirement for lawyer websites.[37]

{11} The Florida Bar also requires that a "hiring disclosure" be included in the homepage of a website. This disclosure may be available online and states as follows: "the hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience." [38]

Another requirement that the Florida Bar has specified for websites is that the geographic location of the office of the lawyer who will actually perform the services advertised, must be disclosed on the homepage by city or town. Also, the Florida Bar requires that the homepage not include statements about the lawyer or law firm that are merely self-laudatory, or that describe or characterize the quality of the lawyer's services.[39]

### Arizona

{12} Generally, Arizona does not require that websites be submitted to the State Bar and Arizona Supreme Court for approval.[40] However, Arizona requires lawyers to retain a copy of their website in some "retrievable format", and to record when and where the website was used.[41] Arizona also requires that the cities where the lawyer has offices and/or will actually perform work must be disclosed.

{13} Furthermore, many law firms refer to clients in their websites. Arizona obligates lawyers to obtain client consent before providing a list of existing clients, and requires lawyers to explain whether firms to which the website provides links are affiliated.[42] While obtaining client consent is appropriate in any event, Arizona is one jurisdiction that requires such consent.

### New York City

{14} The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics has issued an opinion, finding that a law firm website that seeks to interest existing or potential clients in retaining the firm, constitutes "advertising" and "other publicity" within the advertising rules. This opinion does not require law firms to file a copy of their website, but it does require that law firms maintain a copy of their website for at least one year.[43] The determination to exempt websites from filing was based on the conclusion that lawyer websites should be treated like broadcast advertising for purposes of the filing requirement.[44] This opinion also notes that law firms establishing a discussion area on their websites should exercise caution and vigilance to avoid establishing an attorney-client relationship, as well as any impermissible solicitation or advertising.[45]

### New York State

{15} In discussing whether an attorney may operate and advertise a trademark law practice over the Internet, the New York State Bar Association Committee on Professional Ethics noted, among other matters, that "any Internet advertisement should inform a potential client of the jurisdiction in which the attorney is licensed, and should not mislead the potential client into believing that the attorney is licensed in a jurisdiction where the attorney is not licensed." [46] This basic requirement applies to all Web and Internet lawyer advertising.

## North Carolina

{16} North Carolina determined that a site on the World Wide Web is a public media advertisement subject to the lawyer advertising rules.<sup>[47]</sup> The website must indicate all jurisdictions in which the lawyers in a firm are to practice law, and to disclose the lawyer's principal office.<sup>[48]</sup> North Carolina also has a record-keeping requirement. Lawyers must retain a copy of the website and a record of when and where it was used for two years. Compliance with this record-keeping provision requires that all pages of the website must be maintained in hard copy, including any material changes in format or content.<sup>[49]</sup> This record-keeping requirement recognizes that websites are updated frequently, but still requires retaining a hard copy of the screens.

## Pennsylvania

{17} Pennsylvania has recognized explosive growth on the Internet, and that state's boundaries and territorial limits are largely irrelevant with respect to the Internet.<sup>[50]</sup> Pennsylvania has also determined that webpages by lawyers constitute lawyer advertising subject to the *Pennsylvania Rules of Professional Conduct*, if they contained communications about the lawyer or lawyer's services.<sup>[51]</sup> In the Pennsylvania Informal Ethics Opinion No. 98-85, Kevin M. French expressed a number of the ethical issues raised by the Internet and the Web, as follows:

- What ethics rules apply to a lawyer or law firm's website?
- How does a lawyer ensure that the lawyer's website complies with the rules governing lawyer advertising?
- Is a lawyer's website subject to the ethics requirements of some or all of the fifty states? (If all fifty states, why not all foreign country requirements as well?)
- If a lawyer's website runs afoul of the advertising requirements of another state, should the lawyer expect to be subject to some type of disciplinary enforcement proceeding by the state?
- Can a lawyer's website expose a lawyer to charges of unauthorized practice of law in another state?
- How are jurisdictional and choice of law issues to be resolved?<sup>[52]</sup>

## Other States

{18} Connecticut,<sup>[53]</sup> Illinois,<sup>[54]</sup> Kentucky,<sup>[55]</sup> Maryland,<sup>[56]</sup> Michigan,<sup>[57]</sup> Utah,<sup>[58]</sup> Vermont,<sup>[59]</sup> and Virginia<sup>[60]</sup> have determined that their respective lawyer advertising rules apply to websites. Illinois and Vermont, for example, have indicated that websites are equivalent to telephone directory Yellow Pages for purposes of the lawyer advertising rules.<sup>[61]</sup> Most states have determined that the general advertising rules, but not the direct solicitation rules, apply to websites. However, there seems to be some recognition that the direct solicitation rules could apply, especially with push-pull technology,<sup>[62]</sup> and other technology enhancements that may make communications subject to the direct solicitation rules.<sup>[63]</sup>

{19} New York recently proposed a small change to DR 2-101(F), concerning the obligation to retain copies of advertisements, and to file them with the Disciplinary Committees. This change would apply these requirements to any out-of-state firm "that practices" in New York.<sup>[64]</sup> While this proposed change was not adopted, this type of change with specific reference to the Internet could be of profound significance to attorneys using the Internet. Other states are also considering ethical rules for Internet advertising by attorneys.<sup>[65]</sup> More differences among the states promise more difficult compliance problems as the Internet becomes an increasingly more important part of law practice.

### III. Different Ethical Rules on Advertising

{20} Different ethical rules are applied by the states, and there can be no question that webpages of lawyers and law firms will be subject to varying requirements, depending on the jurisdiction. Different labeling, disclosure, record-keeping and filing requirements exist. For example, in Massachusetts, lawyers debated whether webpages that do not carry an "advertisement" disclaimer violate Massachusetts Disciplinary Rule 2-103(c). Rule 2-103(c) requires any communication, including electronic communication, directed to a prospective client to solicit professional employment for a fee, to be clearly labeled as advertising on its face. [66] In Florida, electronic media ads are expressly exempted from making a hiring disclosure, which requires lawyers to warn prospective clients not to choose counsel solely on the basis of an advertisement; however, websites must contain the hiring disclosure. [67] California does not have any specific rules regarding the Internet, [68] but does have ethical rules on lawyer advertising in electronic media, which are set forth in the *Business & Professions Code* Section 6157-6159.2. [69] These provisions significantly restrict electronic media advertising by California attorneys and law firms. [70] Electronic media is defined by California to include computer networks. [71] Pennsylvania has determined that websites referencing lawyers or lawyer services are legal advertising. [72] Pennsylvania requires that the attorney responsible for the website be identified, and that the geographic location of the law firm be disclosed. [73]

{21} The differences among the states are significant. Standards vary significantly from state to state. Some states require disclaimers or disclosures. Some require labeling copy as "advertising material," while others have record-keeping requirements for ads, content restrictions, and some require submissions for review. [74] Most states have record-keeping requirements requiring that ads be maintained from two to five years. The record-keeping requirements also vary greatly as to what materials and information need to be retained, and in what form. [75]

{22} While only a few states have adopted specific requirements regarding webpages, many other states are considering rules to deal with lawyer advertising over the Internet. There is already a major concern over compliance. Most concern deals with states like Florida and Texas, which require lawyers to submit their advertising for review, and pose other specific compliance requirements. [76] This concern is likely to increase as more states specifically regulate Internet advertising by attorneys, the competitive differences among the states become more significant, and the pressure of local bars to enforce restrictions increases. [77] Given the wide variance in the advertising rules applicable to lawyers, achieving any form of uniformity among the rules applicable to Internet will be quite difficult, if not impossible.

### IV. Which Ethical Rules Apply?

{23} Websites may be visited by residents of any state or country. This raises obvious questions as to with which ethical rules the attorney or law firm with a website must comply. Model Rule 8.5(b)(2)(ii) provides a choice-of-law rule for disciplinary purposes when lawyers are licensed in more than one jurisdiction. [78] Under this choice-of-law rule, the website would be subject to the rules of the jurisdiction "in which the lawyer principally practices," unless the "particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed." This choice-of-law rule is likely to prove very difficult for lawyers and law firms to apply, especially in determining with any kind of certainty which jurisdiction a website will have its predominant effect. In view of these difficulties, it is desirable for lawyers to comply with the ethics rules on advertising for all states in which they are licensed to practice. It is desirable for law firms to comply with the ethics rules in all states in which members of the law firm are licensed. [79] William Hornsby, staff counsel to the American Bar Association Commission on Advertising, believes that determining which state rules apply to a law firm marketing its services on the Internet, requires consideration of the states in which members of the firm are admitted to practice, the states in which the firm seeks clients, and the states in which the firm practices. [80] All of this is easy to say, but compliance would be a nightmare, and for large law firms, compliance is likely to be virtually impossible.

{24} There is also concern with jurisdictions where lawyers or members of the firm are not licensed, since the website can be viewed by residents of states where they are not licensed. Some state ethical codes specifically limit legal advertising to a specified jurisdiction.<sup>[81]</sup> Such limitations are inappropriate on the World Wide Web; but nevertheless, they exist. Yet another concern is that the state where the lawyer is licensed might apply the state's prohibition against misleading advertising, and claim that a lawyer or law firm's website is misleading because it suggests that the lawyer or firm can practice in other jurisdictions.<sup>[82]</sup> The website should clearly indicate the jurisdictional limitations of lawyers in the law firm. The minimum standards of avoiding deception or confusion can probably be satisfied by indicating the state or states in which each lawyer is admitted to practice.<sup>[83]</sup>

{25} There is also the issue of the unauthorized practice of law. If the lawyers or members of a law firm maintain a website that either, does not comply with a state's ethics rules on advertising, or that implies that a lawyer or law firm is authorized to practice in such states, then it is possible that in either case, the state could seek to sanction such out-of-state lawyers,<sup>[84]</sup> or find that such lawyers are practicing law without a license.<sup>[85]</sup> Some states have taken action against lawyers licensed elsewhere when they have advertised their legal services in the state.<sup>[86]</sup> In *Birbrower, Montalbano, Condon & Frank P.C. v. Superior Court*,<sup>[87]</sup> the California Supreme Court voided part of a law firm's fees from a California client because the law firm engaged in unauthorized practice of law in the State of California. In its opinion, the *Birbrower* Court stated:

Our definition [of unauthorized practice of law] does not necessarily depend on or require the unlicensed lawyer's physical presence in the state. Physical presence here is one factor we may consider . . . but it is by no means exclusive. For example, one may practice law in the state in violation of Section 5125 although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer or other modern technological means.<sup>[88]</sup>

The *Birbrower* court's holding shows, as the Pennsylvania Bar Ethics Committee recognizes,<sup>[89]</sup> that courts are beginning to consider computer-based access and contacts in the context of unauthorized practice claims.

{26} In the *ABA/BNA Lawyers' Manual*, John Breweton, Chairman of the Florida Bar's Standing Committee on Advertising, discusses an aspect of unauthorized practice. Breweton said that, although his Committee has not yet addressed the issue of websites maintained by lawyers licensed in other jurisdictions, he believes the issue could arise, for example, if a Florida lawyer loses a major client to an out-of-state firm that obtained the client through a website, but did not comply with Florida's advertising rules.<sup>[90]</sup>

{27} The law, generally, with respect to jurisdictional issues involving the Internet is just evolving and is far from certain.<sup>[91]</sup> Courts in the United States have divided these jurisdictional cases involving websites and Internet activities into three categories.<sup>[92]</sup> The first category concerns parties who merely establish a passive website.<sup>[93]</sup> This category is usually not subject to personal jurisdiction in those jurisdictions based solely on the party's ability to access the website from such jurisdiction.<sup>[94]</sup> The second category requires an analysis of the nature and extent of activities beyond a passive website to determine whether the exercise of personal jurisdiction is appropriate.<sup>[95]</sup> The third category is at the opposite end of the continuum from passive websites. This category concerns the conduct of commercial activities.<sup>[96]</sup> Although there have been no cases dealing directly with the assertion of personal jurisdiction over a non-resident attorney based upon Internet activities, there is no reason why this substantial body of law pertaining to personal jurisdiction based on Internet activities should, as one member of the Pennsylvania State Bar Ethics Committee has observed,<sup>[97]</sup> not apply to a lawyer's activities on the Internet and World Wide Web. This rapidly-growing body of law suggests that jurisdictional exposure is expanding by virtue of activities on the Internet.

## V. Which Model Ethical Advertising Rules Apply?



{28} The *Model Rules of Professional Conduct* contain several advertising provisions that should be considered in connection with websites. Many states still following the *Model Rules* have patterned their ethics rules on the *Model Rules of Professional Conduct*. Rules 7.1, 7.2, 7.3 and 7.4 are likely to be found applicable to one extent or another.[\[98\]](#)

### False and Misleading Communications

{29} Rule 7.1 prohibits lawyers from making false and misleading communications concerning themselves or their services.[\[99\]](#) Particular care should be taken to make sure that the content of the website is accurate and not misleading. Puffery is barred.[\[100\]](#) Lawyers with websites need to be particularly careful about making misleading statements or promising more than they can deliver.[\[101\]](#) Lawyers are prohibited from communicating in ways that create unjustified expectations.

{30} The maintenance and upkeep of the content needed in order to keep material current becomes more important because of ethical concerns. Published material should be dated and possibly accompanied by a disclaimer that the law may have changed since the publication date of the material.[\[102\]](#) Updating the site is important for other reasons too, like attracting repeat visitors to the website.

{31} The security risks also need to be considered in light of the ethical requirement against false and misleading communications. Hackers infiltrated the Justice Department's website, altering the content to include swastikas, obscene pictures, and lots of criticism of the Communications Decency Act ("CDA").[\[103\]](#) Hackers also altered the Central Intelligence Agency's ("CIA") website. The CIA website was apparently altered in a very obscene way by Swedish hackers.[\[104\]](#) The ability to alter the content of websites should be a special concern to lawyers maintaining websites. There are times when lawyers represent unpopular clients or causes, or even disgruntled clients. It is not inconceivable that a lawyer or law firm's website would be attacked by a hacker, and blatant or subtle changes would be made to the website. The site needs to be checked regularly to make sure the content is accurate and not misleading. There are concerns over the failure to remove, update, or disclaim the accuracy of outdated legal information.[\[105\]](#)

### Permitted Advertising

{32} Rule 7.2 of the *Model Rules of Professional Conduct* ("*Model Rules*") permits lawyers to advertise through public media and through written communication not involving direct solicitation under Rule 7.3.[\[106\]](#) As such, the *Model Rules* appear to permit advertising through a website or other computer ads as long as the content is not false or misleading, and does not contravene the specific prohibitions concerning specialization claims;[\[107\]](#) provided, of course, that the local bar requirements with respect to advertising are met.

### Solicitation Prohibitions

{33} Under the *Model Rules of Professional Responsibility*, the most troubling form of communications are those directed to "prospective clients", constituting solicitation under Rule 7.3. This rule requires a lawyer not to use "in-person or live telephone contact" to solicit prospective clients for which the lawyer has no prior professional relationship.[\[108\]](#) Websites are most likely to be viewed as not constituting an "uninvited", prohibited, solicited communication because website information is not indiscriminately distributed to Internet users.[\[109\]](#) A Tennessee Advisory Ethics Opinion has adopted this rationale, noting that website readers must elect to read the posting before it can appear on their screen.[\[110\]](#) State rules on solicitation vary widely,[\[111\]](#) and are likely to present potential problems. Advances in technology present more concerns over whether the direct solicitation rules apply.[\[112\]](#)

{34} Lawyer advertising on the Internet through the use of unsolicited communications has been an ethical

concern at least since the notorious "green card" incident. This incident occurred when two immigration lawyers from a Phoenix firm posted an advertisement to thousands of Internet newsgroups in April 1993. [113] More than 30,000 irate recipients "flamed" the law firm for breaking the unwritten rules of "netiquette" that prohibit unsolicited advertising. In this matter, an attorney responsible for posting the solicitation, Canter, was found to have violated Tennessee DR1-102(A)(1), (5), (6), and DR2-103. [114] The bulletin board posting failed to include the "This Is an Advertisement" disclaimer, presented the attorneys as immigration law specialists without the requisite disclaimer, and failed to send a copy of the advertisement to the Board three days before publication. [115] While the *Canter* case received significant notoriety and may be an anomaly, it nevertheless illustrates what can happen in cases of web abuse, and in some respects, how easy it is to violate the disciplinary rules. Tennessee took further action to prevent "Canter-type solicitations" in the future. Unsolicited messages seeking professional employment and sent to newsgroups and list servers were determined by Tennessee to constitute an improper solicitation. [116] In so ruling, Tennessee concluded that a promotional posting to newsgroups is more like a phone contact than a letter, because a posting to a newsgroup imposes extra access charges on users, intrudes on their privacy, and cannot be easily disregarded. [117] Other states, such as Utah have also expressed concern about postings to newsgroups. [118]

{35} There is also a good chance that unsolicited messages seeking professional employment sent directly or indirectly by e-mail may be prohibited. [119] Attorneys need to consider whether a court or disciplinary board might construe e-mail solicitations as overreaching or exerting undue influence. [120] For example, Vermont suggests that while only the general advertising rules apply to websites, this opinion may change with push technology, i.e., technology that allows lawyers to direct information to subscribers, thereby raising solicitation and direct mail issues. [121]

{36} Similarly, unsolicited messages seeking professional employment and sent during "real time" electronic forums or chat groups might be prohibited. [122] On the other hand, responses to postings that pose legal questions are likely not to be viewed as advertising or publicity, but raise other issues concerning establishing attorney-client relationships. [123]

{37} As websites become more sophisticated, the ethical prohibition against live personal solicitations may need to be reconsidered. As developments take place in virtual reality, artificial intelligence and other technologies may make it difficult to distinguish "virtual" from live solicitations. [124] In such situations, it is possible that the virtual contact will be deemed to be an in-person contact. [125]

### Fields of Practice

{38} Rule 7.4 of the *Model Rules of Professional Responsibility* permits communication as field of practice, but prohibits a statement of specialty with certain exceptions. [126] This specialty prohibition applies to websites. The specialty information must comply with the applicable ethical rules pertaining to recognized or certified specialists. [127] Most states have adopted ethical rules pertaining to specialties.

## VI. Other Advertising Requirements

{39} Various state rules also prohibit to one extent or another testimonials, endorsements, illustrations, animations, track records, comparative subjective advertising and appeals designed to elicit an emotional response. [128] Because of the nature of Internet advertising, it is advisable to avoid using such content in your website or other computer ads. [129]

### Online Directories

{40} Generally, attorneys can allow their names to be included in online directories. However, such directory information must comply with the general lawyer advertising rules. Attorneys are advised to include the

jurisdictions in which the attorney is authorized to practice law, so that such directory listings are not misleading.[130]

### Online Referral Services

{41} The propriety of participating in online referral services is a related question.[131] For example, could a lawyer allow an online referral service for a fee to provide a link to the lawyer's website? The Nebraska State Association Advisory Committee ("Advisory Committee") recently reviewed a related question.[132] The Advisory Committee decided a lawyer may not participate in a for-profit referral service that provides lawyers' names to Internet users at "on-line shopping malls." [133] Links need to be considered in light of the ethical rules.

### Communicating with Website Visitors

{42} There is concern over establishing an attorney-client relationship, potential conflicts, maintaining confidentiality of attorney-client communications, waiver of attorney-client privilege, disqualification, unauthorized practice of law, and malpractice claims. The concern is compounded by the global reach of the Internet and the possible anonymous identity of website visitors. Care needs to be taken as to what is being asked and how questions are answered. The content of the communications is critical.

### Attorney-Client Relationship

{43} Many lawyers have expressed concern that undesired and conflict-causing attorney-client relationships may be unwittingly established over the Internet.[134] It is important to guard against establishing an unwanted attorney-client relationship. Disclaimers can be used, as discussed below, to minimize the risk. However, the most important rule to follow concerns the content of any communications. Attorneys should be especially careful to provide only information, and not to supply any advice.

### Confidentiality

{44} A lawyer may not disclose any information learned as a result of the attorney-client relationship that the client wishes to remain secret.[135] The attorney-client privilege applies to communications made pursuant to an attorney-client relationship. The communications must have been made in confidence, with the subjective intent that they be maintained in confidence, and that there be reasonable expectation of confidentiality.[136] Concern increasingly arises over whether the communications over the Internet are sufficiently secure to protect the attorney-client privilege. Under what circumstances do you risk waiving the privilege? Again, there appears to be a variance among the states, in terms of the ethical standards applicable to attorney-client communications via the Internet. Most states have determined that lawyers can communicate with their clients by e-mail over the Internet in the same manner lawyers communicate with their clients by telephone.[137] One factor in reaching this conclusion is that the Electronic Communications Privacy Act [138] makes interception of such communications a criminal offense. However, many states have expressed the view that cellular and cordless telephones are not sufficiently secure for attorney-client communications. Some states, however, require attorneys to advise their clients of the risks of communicating by e-mail, and Virginia has dealt with the ethical issues concerning e-mail that is inadvertently sent to the wrong party.[139]

{45} Iowa regulatory authorities determined that sensitive material must be encrypted to avoid violation of the *Iowa Code of Professional Responsibility*. [140] Then, on August 29, 1996, these regulators reconsidered the opinion and deleted the encryption requirement. Now, Iowa requires an express waiver by the client to send confidential information by electronic media. South Carolina has expressed the opinion that communications with clients via electronic media may violate the attorney's duty to maintain the

confidentiality in privileged attorney-client communications, absent an express waiver by the client.<sup>[141]</sup> In July 1996, North Carolina Bar's Ethics Committee rendered an ethics opinion ("Ethics Opinion") indicating that lawyers are not required to use only infallibly secure methods of communications to meet their obligation to maintain client confidences.<sup>[142]</sup> However, the attorney responsible for the communication must ascertain that the procedures are in place, which effectively minimizes the risks that confidential information might be disclosed.<sup>[143]</sup> In particular, the North Carolina Ethics Opinion provided the following guidance respecting an attorney's ethical obligation:

First, the lawyer must use reasonable care to select a mode of communication that, in light of the exigencies of the existing circumstances, will best maintain any confidential information that might be conveyed in the communication. Second, if the lawyer knows or has reason to believe that the communication is over a telecommunication device that is susceptible to interception, the lawyer must advise the other parties to the communication of the risk of interception and the potential for confidentiality to be lost...In using E-mail, or any other technological means of communication that is not secure, the same precautions must be taken to protect client confidentiality as are set forth above.<sup>[144]</sup>

{46} Attorneys also need to guard against receiving confidential information that could result in subsequent disqualification. One approach is to post warnings to clients not to provide confidential information.<sup>[145]</sup> Many websites are maintained on separate servers, so that visitors do not have access, either directly or indirectly, to any online client files.

### Chat Rooms

{47} One lawyer goes so far as to say that, to talk about legal matters in public chat rooms is to invite disaster.<sup>[146]</sup> Participating in online chat room discussions definitely has some ethical risks. In online chat groups or conference areas, the participants are not necessarily known to each other. You do not know who you are really "chatting" with, or who is "listening" to your communication. Lawyers have to be particularly sensitive in chat rooms attended by non-lawyers. Attorneys do not want to create attorney-client relationships unknowingly. Furthermore, direct solicitation in chat rooms is likely to be covered by direct solicitation rules.<sup>[147]</sup>

### Linked Sites

{48} Providing links to other websites also raises ethical considerations. The lawyer or law firm providing the link from its website does not control the completeness, accuracy, or timeliness of the content in the linked Internet sites. How do the linked sites affect compliance with the ethical rules on lawyer advertising? What, if any, of the content in the linked materials is false, misleading, deceptive, or otherwise contravening of the advertising rules? One ethics committee advises that law firms with links to outside sites should "of course" clearly indicate to the Web browser that the outside sites are not maintained by the law firm.<sup>[148]</sup>

{49} There is also concern over the possibility of the lawyer or law firm being viewed as an endorser, or being liable for negligent referral.<sup>[149]</sup> The same issues may arise in connection with allowing other Internet sites to provide linkage to a lawyer's or law firm's website, as well as the ethical rules pertaining to referrals.<sup>[150]</sup>

## VII. Potential for Abuse

{50} Internet technology has the potential for abuse if it is used in an unethical manner. The technology permits very personal and swift communications with potential "targeted" clients.<sup>[151]</sup> It may be used to conduct "ambulance chasing" in cyberspace.<sup>[152]</sup> The highly-publicized Canter and Siegel advertisement

intended to solicit immigration clients was sent to 30,000 addresses, and appeared in approximately 140 countries, including some countries that restrict lawyer solicitation.[\[153\]](#)

### VIII. Disclaimers

{51} There is inconsistent advice concerning disclaimers. Some believe very strongly in using disclaimers and warnings on websites, and in connection with their electronic communications to guard against risks.[\[154\]](#) Others do not believe disclaimers are necessary, or that they are very helpful from a risk-avoidance perspective.[\[155\]](#)

{52} Disclaimers on websites are being used primarily to inform visitors that the information provided by the website is not legal advice, and that an attorney-client relationship is not created by the visit.[\[156\]](#) Disclaimers should comply with the ethical rules applicable to advertising and promotion.[\[157\]](#) William Hornsby believes an appropriate disclaimer on a webpage would provide an adequate liability buffer for lawyers, in the event the information on the website is not consistent with the rules governing the communications of legal services, and if the law firm is unwilling to accept the representation of clients who are generated as result of the website.[\[158\]](#)

{53} Jeffrey Kuester, who chairs the NetEthics Committee of the State Bar of Georgia's Computer Law Section, offered the following sample disclaimer:

This Web page is a public resource of general information which is intended, but not promised or guaranteed, to be correct, complete and up-to-date. However, this Web page is not intended to be a source of advertising, solicitation, or legal advice; thus the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein and should always seek the advice of competent counsel in the reader's state. The owner does not intend links on the Web page to be referrals or endorsements of the linked entities, and the owner of this Web page will not accept referrals for employment from unregistered referral services. Furthermore, the owner of this Web page does not wish to represent anyone desiring representation based upon viewing this Web page in a state where this Web page fails to comply with all laws and ethical rules of that state. Finally, the use of Internet E-mail for confidential or sensitive information is discouraged.[\[159\]](#)

It is generally believed that lawyers using the Internet or e-mail to answer questions should, at a minimum, include a disclaimer that legal advice is not being given, the information exchanged is not confidential, and no attorney-client relationship exists.[\[160\]](#) One argument for the disclaimer is that there is a chance a lawyer could answer a question that would subject the lawyer to a lawsuit in some distant forum, which just happened to be where the questioner resides.[\[161\]](#)

{54} Some lawyers believe that any electronic communication should be prefaced with a disclaimer providing the communication is not advice, and the recipient of the information should not act on it without first conferring with an attorney.[\[162\]](#)

{55} There are many issues that complicate the use of disclaimers. It is more difficult to affix a disclaimer to a changing, interactive website than it is to apply disclaimers to a fixed document.[\[163\]](#) Furthermore, merely placing a disclaimer on the homepage of a multi-page site may not be sufficient, since visitors can access various parts of the site directly, and different parts of a website may need different disclaimers based on the content and jurisdiction.[\[164\]](#)

{56} Different disclaimers may be adopted to comply with the ethical rules in different states and countries.[\[165\]](#) Also, it is very possible that the disclaimers will have to be posted in different foreign languages to

comply with country regulations. It has been noted that it is very possible with all of the disclaimers that websites will "start looking like one of those car commercials where a foot of small print describing lease terms scrolls down the television set." [166]

### Legal Ethics Webpage

{57} There is a website dealing with legal ethics on the Internet. The site contains links to each state's ethical rules and other information. It includes links to academic and bar journal articles about Internet ethics. The address of this site is <<http://www.legalethics.com>>. [167]

## IX. Conclusion

{58} There are numerous ethical issues for lawyers to consider with respect to websites and electronic communication over the Internet. The variances among states and countries in ethical rules applicable to websites and electronic communications greatly complicates any analysis of ethical considerations. Changes in technology are likely to affect the analysis underlying ethical rules. The current situation is rife with uncertainty and risks; indeed, it cries out for uniformity. But, there is little likelihood that uniformity on a global basis could be achieved. As such, resolving the ethical issues will require substantial work, and is certain to be a major issue facing attorneys in the years ahead.

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**[\*\*] NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

J. T. Westermeier, *Ethical Issues for Lawyers on the Internet and World Wide Web*, 6 RICH. J.L. & TECH. 5, (Symposium 1999), at <http://www.richmond.edu/jolt/v6i1/westermeier.html>.

[1] This paper has been adapted from J. T. Westermeier and Leonard T. Nuara, *Ethical Issues for Lawyers on the Internet and World Wide Web*, 14 COMP. LAW. 8 (1997).

[2] \*Partner, Venture Capital and Emerging Companies Group and Telecommunications, Electronic Commerce and Intellectual Property Group in the Washington, D.C. office of Piper & Marbury, L.L.P., Past President of Computer Law Association and member of the advisory boards for The Computer Law Reporter, Computer Law Strategist, BNA's Year 2000 Report, GIS Law, Commercial Law Advisor, Intellectual Property Counselor, and Information Strategy: The Executive's Journal.

[3] Internet usage is growing at a phenomenal rate. By the end of 2002, more than 320 million people are expected to be accessing and using the World Wide Web. See Larry Lange, *Technology 1999 Analysis & Forecast: The Internet*, IEEE Spectrum, at 35 (Jan. 1999). See also The Comm. on Professional Ethics of the Ass'n of the Bar of New York, Op. 98-2 (1998).

[4] See, e.g., Kurt Matzmeier and Shaun Esposito, *How to Avoid Losing Your License on the Information Superhighway: Ethical Issues Raised by the Use of the Internet in the Practice of Law*, THE KY. BAR ASS'N BENCH & BAR at 14-23 (Spring 1998); William Hornsby, *Ethics Rules For Ads May Cover Web Sites*, NAT'L. L. J., Jan. 29, 1996 at C1. In this *National Law Journal* article William Hornsby, staff counsel to the American Bar Association Commission on Advertising, states: "As law firms go from the Yellow Pages to home pages, they are embracing the Internet at a phenomenal pace. Five law firms had home pages on the World Wide Web as of November 1994. Seven months later, that figure was estimated at 500." Furthermore, *The National Law Journal* reported in 1996 that more than 85 percent of the largest 250 law firms in the

United States either have or are constructing a home page. *See also* M. Strassberg, *For Research, Marketing Lawyers Spinning the Web; Firms, Bars Find There's No Place Like a Home Page*, THE LEGAL INTELLIGENCER, July 3, 1996, at 51 (stating now very few law firms do not have their own webpage).

[5] *See, e.g.*, Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 UNIV. FLA. J. TECH. L. & POL'Y 3 (1996); William Hornsby, *Ethics Rules for Ads May Cover Web Sites*, NAT'L L.J., Jan. 29, 1996, at C1; *The Internet Is Virgin Territory for Lawyers*, PA. L. WKLY., Apr. 1, 1996, at 7; C. Sanders, *Rush To Marketing Via Internet Could Snare Law Firms In Web of Advertising Rules*, CHI. D. L. BULL., Nov. 17, 1995, at 1; T. Woody, *An Internet Free-for-All*, CONN. L. TRIB., June 10, 1996, at 26 (stating some lawyers have refrained from implementing websites because of the ethical concerns).

[6] *See* *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 297 (S.D.N.Y. Sep. 9, 1996) (The website is "a general access site, which means that it requires no authentication or access code for entry, and is accessible to anyone around the world who has access to the Internet." ), *aff'g*, 126 F.3d 25 (2d Cir. 1997) *See also id.* at 297 n.1 (quoting *MTV Networks v. Curry*, 867 F. Supp. 202, 203 nn.12 (S.D.N.Y. Oct. 28, 1994)).

Judge McKenna of this court described the Internet as follows:

The Internet is the world's largest computer network (a network consisting of two or more computers linked together to share electronic mail and files). The Internet is actually a network of thousands of independent networks, containing several million "host" computers that provide information services. An estimated 25 million individuals have some form of Internet access, and this audience is doubling each year. The Internet is a cooperative venture, owned by no one, but regulated by several volunteer agencies.

*Id.* at 203 n.1 (citations omitted). A " 'site' is an Internet address which permits users to exchange digital information, with a particular host, *see id.*, at 203 n.2, and the World Wide Web refers to the collection of sites available on the Internet").

[7] *Reno v. American Civil Liberties Union*, 521 U.S. 844, 851 (1997). *See also* Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. No. 98-85 (1998) (Discussing Kevin French remark: "any one, anywhere in the world with a computer, modem, and Internet connection can access World Wide Web pages through the medium of the Internet.").

[8] *See, e.g.* Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. No. 98-85 (1998) at 1.

[9] *See id.*

[10] *See* Jacob Stein, *An Embarrassment of Ethics*, THE WASH. LAW., May-June 1996, at 68.

[11] *See* Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. No. 98-85 (1998).

[12] *See* Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 UNIV. FLA. LAW. J. TECH. L. & POL'Y 3 (1996).

[13] *See* Jacob Stein, *An Embarrassment of Ethics*, THE WASH. LAW., May-June 1996, at 68. ("Complexity in the law of ethics inexorably developing uncertainty, places great power in the enforcer. In the case of legal ethics, the enforcer is whoever happens to be the local bar counsel.").

[14] For example, law firms use their websites to post class action legal notices to complement other forms of legal notice, copies of complaints filed, copies of sample contract forms, copies of legal articles, copies of

legal rulings, schedules of firm seminars and other activities.

[15] See Russ Bleemer, *Law Firms Staking Out Home Turf in Cyberspace*, NAT'L. L.J., June 5, 1995, at 1.

[16] See *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 298 n.2 (S.D.N.Y. Sep. 9, 1996) (quoting *Shea v. Reno*, 930 F. Supp. 916, 929 (S.D.N.Y. July 29, 1996)), *aff'd.*, 126 F.3d 25 (2d Cir. 1997).

[17] See, e.g. Todd Woody, *Net Gain: Navigating the Web for Lawyers*, THE RECORDER, Apr. 25, 1996, at 4 ("California treats webpages as advertising, applying the same prohibitions against false and misleading statements long used to regulate print and broadcast statements"); see also Board of Professional Responsibility of the Tenn. Sup. Ct., Op. 95-A-570 (1995) (posting on the World Wide Web is permitted by Tennessee Ethics rules but must comply with advertising and publicity rules).

[18] See *Bates v. St. Bar of Ariz.*, 433 U.S. 350, 355 (1977) (striking down broad based ban on lawyer advertising which was found to constitute protected commercial speech). In commercial speech cases, a four-part analysis has developed. First, it must be determined whether the expression is protected by the First Amendment. For commercial speech to come within the First Amendment it must concern lawful activity and not be misleading. Second, it must be determined whether the governmental interest asserted is substantial. If both of the first two questions are answered positively then it must be determined whether the regulation directly advances the governmental interest asserted and whether the regulation is more extensive than is necessary to serve that interest. See also *Forty-one Liquormart, Inc. v. R.I.*, 517 U.S. 484, 485 (1996), *citing* *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566, n.9 (1980).

[19] See Keith Forkin, *Web Pages as Lawyer Advertising*, VILL. INFO. L. CLINIC (1996).

[20] See William Hornsby, *Ethical Rules for Ads May Cover Websites*, NAT'L. L.J., Jan. 29, 1996, at C1.

[21] Joan Rogers, *How Do Advertising & Rules Apply to Lawyers on the Net?*, 12 ABA/BNA LAW. MANUAL ON PROFESSIONAL CONDUCT 37 (hereinafter "ABA/BNA Analysis").

[22] Iowa Code of Professional Responsibility, DR 2-101(B)(5); see also ABA/BNA Analysis, at 42.

[23] ABA/BNA Analysis, at 39. See generally Alicia Philley, *The Bar as Cybercop; Despite Criticism, The Ad Review Panel Prepares to Patrol the Internet*, TEX. LAW., Oct. 16, 1995, at 1; Carol Sanders, *Rush To Marketing Via Internet Could Snare Law Firms in Web of Advertising Rules*, CHI. DAILY L. BULL., Nov. 17, 1995, at 1.

[24] See Alicia Philley, *The Bar as Cybercop; Despite Criticism, The Ad Review Panel Prepares to Patrol the Internet*, TEX. LAW., Oct. 16, 1995, at 1.

[25] See *id.*

[26] See *id.*

[27] See *id.*

[28] See *id.*

[29] See *id.*

[30] See *id.* The "anonymous" tipsters are apparently other lawyers squealing on their competitors. There is a definite fear that the ethical rules will be used to minimize competition by local law firms and attorneys.



Unfair competition is a major concern.

[31] See Carol Sanders, *Rush to Marketing Via Internet Could Snare Law Firms in Web of Advertising Rules*, CHI. D. L. BULL., Nov. 17, 1995, at 1.

[32] See ABA/BNA Analysis, at 39.

[33] See *id.*

[34] See *id.*

[35] See *id.*

[36] See *id.*

[37] See Fla. Bar Standing Comm. on Adver. Internet Guidelines, at 2. If the homepage contains no audio, photographs, illustrations or other information other than as outlined in Rule 4-7, 2(n)(1)-(10) the homepage need not be filed for review.

[38] See *id.* at 1

[39] See *id.*

[40] See Comm. on Rules of Professional Conduct of Ariz., Op. No. 97-04 dated April 7, 1997.

[41] See *id.*

[42] See *id.*

[43] See Comm. on Professional Ethics of the Ass'n of N.Y., Op. No. 1998-2 (1998).

[44] See *id.* at 3.

[45] See *id.* at 3-4.

[46] See Comm. on Professional Ethics of the N.Y. St. Bar Ass'n, Op. No. 709 (1998).

[47] See Ethics Comm. of the N.C. St. Bar, Op. 239 (1996).

[48] See *id.*

[49] See *id.*

[50] See Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Inquiry No. 98-85 (1998).

[51] See *id.* at 1-2.

[52] See *id.* at 3-4.

[53] See *id.* Comm. on Professional Ethics of the Conn. St. Bar Ass'n, Informal Op. No. 97-29 (1997) (Advertising rules apply to website advertising).

- [54] Comm. on Professional Ethics of the Ill. St. Bar Ass'n, Advisory Op. No. 96-10 (1997).
- [55] Ethics Comm. of the Ky. St. Bar Ass'n, Op. No. E-403 (1998).
- [56] Comm. on Ethics of the Md. St. Bar Ass'n, Op. 97-26 (1997).
- [57] Comm. of Professional and Judicial Ethics of the St. Bar of Mich., Op. RI-276 (1996).
- [58] Ethics Comm. of the Utah St. Bar Ass'n, Op. No. 97-10 (1997).
- [59] Comm. on Professional Responsibility of the Vt. Bar Ass'n, Op. 97-5.
- [60] Va. St. Bar Law. Adver., Op. A-0110 (1998).
- [61] Comm. on Professional Ethics of the Ill. St. Bar Ass'n, Op. 96-10 (1997) and Ethics Comm. of the Utah St. Bar Ass'n, Op. No. 97-10 (1997).
- [62] *See e.g.* Ethics Comm. of the Utah St. Bar Ass'n, Op. No. 87-10 (1997).
- [63] *See generally* Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 UNIV. FLA. LAW. J. TECH. L. & POL'Y 3 (1996).
- [64] Anthony Davis, *Proposed Changes to the New York Lawyers' Code - Part II*, N.Y.L.J., July 1, 1996, at 3.
- [65] ABA/BNA Analysis at 47-48. *See* Jeffrey Kuester, *Attorney Sites Can Avoid Violations of Ethics Rules*, NAT'L L.J., Aug. 12, 1996, at B11.
- [66] David Yas, *Do Web Pages Violate Disciplinary Rules?; Many Sites Aren't Labeled 'Advertisement'*. MASS. LAW.'S WKLY., Apr. 22, 1996, at 1. Reportedly, Hale and Dorr has a line on its webpage that reads: "this material may be considered advertising under the rules of the Supreme Court of Massachusetts." *Id.*
- [67] ABA/BNA Analysis at 40. *See also* Fla. Bar Internet Guidelines Presented by the Standing Comm. on Adver.
- [68] *See* Todd Woody, *An Internet Free-For-All*, CONN. L. TRIB., June 10, 1996, at 26.
- [69] Susan Dunn, *Negotiating Web Site Agreements*, Sixteenth Annual Institute on Computer Law, PLI 469, 470 (1996).
- [70] ABA/BNA Analysis at 41.
- [71] CAL. BUS. & PROF. CODE Section 6157(d).
- [72] Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. No. 96-17.
- [73] *Id.*
- [74] William Hornsby, *Ethics Rules for Ads May Cover Websites*, NAT'L. L.J., Jan. 29, 1996, at C1.
- [75] Some states recognize the ephemeral quality of webpages and that they are constantly changing. Some require hardcopy, others videotape or on computer media.
- [76] *See* William Hornsby, *Ethics Rules for Ads May Cover Websites*, NAT'L. L.J., Jan. 29, 1996, at C1.

Kentucky and New Mexico also have filing requirements for lawyer ads; however, they have not yet extended those requirements to the Internet.

[77] See Carol Sanders, *Rush to Marketing Via Internet Could Snare Law Firms in Web of Advertising Rules*, CHI. DAILY L. BULL., Nov. 17, 1995, at 1. William Hornsby noted the most likely source of a disciplinary agency's prosecution is a complaint about a violation from a competing law firm.

[78] ABA/BNA Analysis at 45.

[79] *Id.* at 46. See Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 98-85.

[80] William Hornsby, *Ethics Rules For Ads May Cover Websites*, NAT'L. L. J., Jan. 29, 1996, at C1.

[81] Iowa, for example, provides that electronic ads are permitted only in the geographic area in which a significant part of the lawyer's clients reside, and the lawyer has offices. IOWA CODE OF PROF. RESP. DR 2-101(B)(5). See ABA/BNA Analysis at 42. In the Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 98-85 concern is expressed about the Florida Bar taking the unique position that lawyers, whether or not admitted to practice law in Florida and who disseminate advertisements within Florida, including computer-accessed communications (defined to include World Wide Websites) are subject to the lawyer advertising rules and procedures promulgated by the Supreme Court of Florida.

[82] ABA/BNA Analysis at 46.

[83] See *id.*

[84] See *id.*

[85] See *id.* citing Florida Bar v. Kaiser, 397 So.2d 1132 (Fla. 1981). See also California St. Bar, Rule 1-300. One aspect of the unauthorized practice of law is that some jurisdictions do not allow law firms to practice under trade names while others do.

[86] See *id.*

[87] 70 Cal. Rptr. 2d 304, 306 (Cal. 1998)

[88] *Id.*

[89] Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 98-85.

[90] See ABA/BNA Analysis at 46. Lawyers who are considering the ethical rules are concerned that their local bar will be at a competitive disadvantage if the rules are too onerous or restrictive.

[91] See, e.g., *Bensusan Restaurant Corp. v. King*, 126 F.3d 25 (2d Cir. 1997); *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997); *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998) (discussing that there have been numerous court rulings dealing with the extent and nature of activities on the Internet that are sufficient for personal jurisdiction.)

[92] See, e.g., *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d at 414 (9th Cir. 1997); *Transcript Corp. v. Doonan Trailer Corp.*, No. 97 C 4943, 1997 U.S. Dist. LEXIS 18687 (N.D. Ill. 1997).

[93] See, e.g., *Cybersell, Inc.*, 130 F.3d at 414.

[94] *See id.*

[95] *See e.g.*, Zippo Mfg. Co. v. Zippo Dot Com, Inc. 952 F. Supp. 1119 (W.D. Pa. 1997); Maritz, Inc. v. Cybergold, Inc., 947 F. Supp. 1328 (E.D. Mo. 1996).

[96] *See e.g.* Compuserve, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996); Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998).

[97] Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 98-85.

[98] *See* ABA/BNA Analysis at 40-43. *See also* William Hornsby, *Ethics Rules For Ads May Cover Websites*, NAT'L. L.J., Jan. 29, 1996, at C1.

[99] *See id.*

[100] William Hornsby, *Ethics Rules For Ads May Cover Websites*, NAT'L. L.J., Jan. 29, 1996, at C1.

[101] ABA/BNA Analysis at 40-43.

[102] Jeffrey Kuester, *Attorney Sites Can Avoid Violations of Ethics*, NAT'L. L.J., Aug. 12, 1996, at B11.

[103] *Hackers Penetrate Justice Dept. Home Page*, WASH. POST, Sept. 20, 1996 at A1.

[104] *See Hackers Do a Number on the CIA*, WASH. POST, Sept. 20, 1996, at A41.

[105] *See* Jeffrey Kuester, *Attorney Sites Can Avoid Violations of Ethics*, NAT'L. L. J., Aug. 12, 1996, at B11.

[106] *See* ABA/BNA Analysis at 40-43.

[107] *See id.* This conclusion is applicable to the United States. The result would probably be different on a global basis as advertising by lawyers is tightly controlled by many countries.

[108] *See id* at 42.

[109] *See id.*

[110] *See* Board of Professional Responsibility of the Tenn. Sup. Ct., Op. 95-A-570 (1995) (unpublished).

[111] *See, e.g.*, ABA/BNA Analysis at 42 (noting that "the technology permits very personal and swift contact with potential clients which may create a sense of urgency and invasion of privacy" similar to type of problems found with prohibited forms of direct communication).

[112] *See* Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 FLA. U. LAW. J. TECH L. & POL'Y 3 (1996) (Push technology, Common Gateway Interface scripts, spiders, crawlers, bots, links, metatags, etc.).

[113] *See* Elizabeth Wasserman, *Lawyers Market Their Wares Via World Wide Web*, SAN JOSE MERCURY NEWS, July 17, 1995, at 1A.

[114] *See* In re Laurence A. Canter, No. 95-831-0-H (Disciplinary Dist. of Bd. of Prof. Resp. of Tenn. Sup. Ct.).

[115] *See id.*

[116] Board of Prof. Resp. of Tenn. Sup. Ct., Op. 95-A-570 (1995) (unpublished).

[117] *See id.*

[118] ABA/BNA Analysis at 43. The Utah State Bar permits attorneys to post to newsgroups "which are narrowly focused interest groups" provided such postings comply with the advertising and direct solicitation ethical rules. Utah St. Bar Op. No. 97-10 (1997). The Tenn. Bar, on the other hand, prohibits postings to newsgroups on the ground that such postings are a form of improper solicitation similar to unsolicited phone calls. *See* Board of Prof. Resp. Tenn. Sup. Ct. Op. No. 95/A/570 (1995) (unpublished).

[119] *See id.*

[120] *See* Comm. on Professional Responsibility of Vt. Bar Ass'n, Op. 97-5 (1997); *see also* Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 J. TECH. L. & POL'Y 3 <<http://journal.law.ufl.edu/~techlaw/1/hamkins.html>> (1996).

[121] *See id.*; *see also* Virginia St. Bar Law. Adver. Op. A-0110 (1998) (prohibiting attorneys from soliciting employment in a "real time" chat room from the victim or immediate family in personal injury or wrongful death cases).

[122] *See id.*

[123] *See id.*

[124] *See id.*

[125] *See id.*

[126] *See id.*

[127] *See* William Hornsby, *Ethics Rules For Ads May Cover Websites*, NAT'L. L. J., Jan. 29, 1996, at C1.

[128] *See id.*

[129] *See* N.Y. Co. Law.'s Ass'n Comm. on Professional Ethics, Op. 721 (May 14, 1997); N.C. Bar Ethics Op. RPC 241 (Oct.16, 1996).

[130] *See* ABA/BNA Analysis at 45.

[131] *See* Advisory Comm. of the Neb. St. Bar Ass'n, Op. 95-3, 11 Law.'s Manual of Prof. Conduct 331 (1995).

[132] *See* ABA/BNA Analysis at 45.

[133] *See* Elizabeth Wasserman, *Lawyers Market Their Wares Via World Wide Web*, SAN JOSE MERCURY NEWS, July 17, 1995, at 1A.

[134] *See* MODEL CODE OF PROF. RESP. DR 4-101; MODEL RULES OF PROF. CONDUCT, Rule 1.6.

[135] *See id.*

[136] *See* Ethics Comm. of the Alaska St. Bar, Op. 98-2 (instructing that clients should be cautioned); Mo. Informal Ethics Op. 970161 (detailing a duty to advise clients of risk).

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[138] *See* 18 U.S.C. Section 2510 et seq.

[139] *See* Standing Comm. on Legal Ethics of the Va. St. Bar, Op. 1702 (1997).

[140] *See* Iowa Sup. Ct. Bd. of Prof. Ethics & Conduct, Op. 95-30 (1995), *recons. and modified*, (1996).

[141] *See* Ethics Advisory Comm. of the S.C. St. Bar, Op. 94-27 (1994).

[142] *See* Ethics Comm. of the N.C. St. Bar Ass'n, RPC Op. 215.

[143] *See id.*

[144] *See id.*

[145] *See* David Johnson, *Professional Responsibility*, COUNS. CONNECT, July 22, 1996.

[146] *See* Maureen Castellano, *Policing Cyberspace*, N.J. L.J., Apr. 8, 1996, at 1. (discussing a comment attributed to William Voorhees, Vice Chair of the N.J. St. Bar Ass'n's Special Comm. on malpractice insurance).

[147] *See* Va. Bar Ethics Law. Adver. Op. A-0110 (soliciting employment in chat rooms from victims or their immediate family in personal injury or wrongful deaths cases is prohibited).

[148] *See* Comm. on Professional Ethics Ass'n of the Bar of N.Y., Op. No. 1998-2 (1998).

[149] *See* Todd Woody, *An Internet Free-For-All*, CONN. L. TRIB., June 10, 1996, at 26.

[150] *See id.*; *see also* ABA/BNA Analysis at 45.

[151] *See id.* at 42.

[152] *See* Scott Brede, *Spanning the Globe*, CONN. L. TRIB., Aug. 19, 1996, at 3.

[153] *See* David Loundy, *Lawyers Electronic Ads Leave Bad Taste*, CHI. DAILY L. BULL., Mar. 9, 1995, at 6.

[154] *See* Todd Woody, *An Internet Free-For-All*, CONN. L. TRIB., June 10, 1996, at 26; Jeffrey Kuester, *Attorney Sites Can Avoid Violations of Ethics Rules*, NAT'L. L.J., Aug. 12, 1996, at B11.

[155] *See* Todd Woody, *An Internet Free-For-All*, CONN. L. TRIB., June 10, 1996, at 26. (discussing that some attorneys believe that disclaimers really are meaningless except to give comfort for attorneys). The comment is attributed to Jonathan Rosenoer, Vice President of Internet Services for North Communications and formerly Executive Editor of California Counsel Connect.

[156] *See* Todd Woody, *An Internet Free-For-All*, CONN. L. TRIB., June 10, 1996, at 26.

[157] *See* Alicia Philley, *The Bar as Cybercop; Despite Criticism; The Ad Review Panel Prepares to Patrol the Internet*, TEX. LAW., Oct. 16, 1995, at 1. (webpages should include the same disclaimers and information as other ads).

[158] *See* Carol Sanders, *Rush to Marketing Via Internet Could Snare Law Firms in Web of Advertising Rules*, CHI. DAILY L. BULL., Nov. 17, 1995, at 1.

- [159] See Jeffrey Kuester, *Attorney Sites Can Avoid Violations of Ethics Rules*, NAT'L L.J., Aug. 12, 1996, at B11.
- [160] See *The Internet is Virgin Territory*, PA. L. WKLY, Apr. 1, 1996, at 7.
- [161] See *id.*
- [162] See Maureen Castellano, *Policing Cyberspace*, N.J. L.J., Apr. 8, 1996, at 1.
- [163] See Todd Woody, *An Internet Free For All*, CONN. L. TRIB., June 10, 1996, at 26.
- [164] See *id.*
- [165] See *id.*
- [166] See *id.* The comment is attributed to Peter Krakaur, head of Internet Legal Services, a San Francisco, CA based consulting firm.
- [167] Peter Krakaur maintains the "legalethics" website. The author made extensive use of this website in updating this article.