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**Cynthia Sharp, Esquire**  
Business Development Expert

# SOCIAL MEDIA MARKETING AND ETHICS

by Cynthia Sharp, Esq.

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Social Media Marketing and Ethics

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Cynthia Sharp

*Cynthia Sharp (cindy@thesharperlady.com) is Director of Attorney Development at The Sharper Lawyer located in Philadelphia, Pennsylvania. As a professional CLE instructor and attorney business coach, Cindy has established a national presence as an author and speaker on topics of ethics in the context of practice management, social media, and technology, lecturing extensively to law firms, bar associations, and other legal organizations.*

Is a blog considered advertising?

Should your website have any sort of disclaimer?

With the advent of social media, a law firm's message can be broadcast (or even podcast) widely with a minimal financial commitment. Those with a modest budget can exponentially expand their exposure to potential referral sources and clients by becoming involved in the social media conversation.

While reported increases in the number of attorneys using social media are impressive, the real attention grabber is the increase in business derived from social networking. According to a recent ABA Legal Tech survey, the percentage of attorneys whose social media efforts produced paying clients *doubled* from 2010 to 2012:

YEAR	PERCENTAGE/PAYING CLIENTS
2010	9.8%
2011	12.4%
2012	16.5%

Furthermore, legal topic blogs drove business to 38.1 percent of those surveyed.

Despite the compelling statistics, many remain reluctant to engage in a social media campaign, citing lack of time or concern about violating attorney ethics rules as reasons. A lawyer who has developed a guaranteed steady stream of quality clients may not need to rethink his or her game plan. However, the rest need to make the time to get up to speed. The learning curve can be overcome easily with the assistance of numerous programs (online and live), articles, and books available through the ABA and

other resources. The investment of time involves discipline but yields dividends in the form of increased business.

Although new ethical issues have emerged, reviewing pertinent rules, state advisory opinions, and ethics and judicial opinions will help you make sure your social media campaign is ethically compliant. Although attorney advertising rises to the level of a protected form of commercial speech, it is nonetheless subject to the provisions of the rules of professional conduct adopted in each jurisdiction. Because most states have adopted a version of the Model Rules of Professional Conduct (MRPC), reference can first be made to the MRPCs and the amendments adopted in August 2012. MRPC 7.1–7.5 set forth the rules governing information about legal services. However, the rules of an attorney’s own state must also be examined.

Major pitfalls to avoid with respect to design of website content are outlined in Formal Opinion 10-457, issued by the ABA Standing Committee on Ethics and Professional Responsibility. For example, attorneys are prohibited from posting misleading or false information. Ethics complaints have been filed against attorneys who unintentionally listed outdated or inaccurate credentials on their websites, which is a violation of MRPC 7.1 or the state equivalent. These cases demonstrate that many attorneys did not review the content developed by marketing companies they hired. An attorney’s defense that he or she was unaware of the content is ineffective, because ethical compliance cannot be delegated.

Another potential online pitfall is the problem of unintended representation. Attorney client relationships are still by and large developed in the traditional manner—in person and in an attorney’s office. However, prospective client relationships and the accompanying obligations set forth in MRPC 1.18 (such as confidentiality) also now arise via email, websites, and other electronic means. Revised Comment 2 of MRPC 1.18 notes that “[a] person becomes a prospective client by consulting with a lawyer about a client-lawyer relationship with respect to a matter.” The factors to consider in determining whether a communication (electronic, oral, written, in person or otherwise) constitutes a consultation are outlined in the comment. Posting the following disclaimer above or below the inquiry form on a website should help clarify this issue:

The use of the Internet or this form for communication with the firm or any individual member of the firm does not establish an attorney-client relationship. Confidential or time-sensitive information should not be sent through this form.

Whether a blog is subject to regulation under the attorney advertising rules has been the topic of great debate. So far, jurisdictions addressing the issue have categorized the blogs as attorney advertising and required compliance with applicable ethics rules. For example, the Virginia state bar required an attorney blogger to display a form of disclaimer and found him in violation of ethics rules upon his failure to comply with their demand to do so. (He unsuccessfully argued that his blog was not an advertisement.) [Click here to find a comprehensive discussion of this issue along with practical tips.](#)

Social media has opened up unparalleled marketing and networking opportunities. Although it is not a substitute for live interaction, it can enhance current relationships and help to form new ones. Most can steer clear of ethical infractions by using common sense and staying current with respect to new local developments.

In the next installment of this column, we will explore the use of social media as a research tool.