



## Attorney Websites Ethics

# Non-Traditional Attorney Advertising on the Internet

By Ian A. Stewart and Kathleen Bragg-Pebley

**W**bsites have become essential, valuable elements of marketing for law firms of all sizes. They can attract clients, recruit new attorneys, and develop a recognizable name. Websites have progressed significantly from the days when they were static destinations, having more similarities to advertisements in the yellow pages than to the complex entities mixing promotion and services that they now represent. With their increasing interactivity, complexity, and functionality, it is more important than ever to understand and satisfy the myriad conditions imposed on websites by state, federal, and even foreign law.

Websites now interact with their visitors, permitting users to leave materials behind and engage website operators. Many law firms use their websites in once-unconventional ways to advertise, to promote accomplishments, or as educational vehicles—through videos, blogs, and alumni websites. While the ethical issues regarding attorney advertising have been publicized and commented on, these newest interactive advertising campaigns raise issues that law firms may not have considered before. These are issues that all businesses operating websites—including law firms—should know about.

Law firms that operate websites must avoid copyright and trademark infringement, insulate themselves from copyright infringement caused by visitors, and comply with state, federal, and perhaps, foreign privacy laws. These issues may arise from the use of official and unofficial law firm blogs, the use of names and images of individuals, and through the website's "Terms of Use" policy.

Although many of the proposed and enacted rules regarding Internet advertising were overturned by the well-publicized case, *Alexander v. Cahill*, No. 5:07-CV-117 (FJS/GHL), 2007 WL 2120024 (N.D.N.Y. July 20, 2007), some of the regulations survived review. The sur-

ving regulations relate to the selection of a domain name and the retention of electronic advertising. These rules are relatively simple to follow, but they create some questions about the circumstances and material to which they apply. As a result, erring on the side of caution may make sense by strictly complying with the regulations in certain undecided areas. An overview of California Rules of Professional Conduct and related regulations is instructive.

Rule 1-400 of the California Rules of Professional Conduct and California Business & Professions Code section 6158 provides the guidelines for electronic attorney advertising in California. Although a website is not considered a solicitation, it is considered advertising. Section 6158 does not specifically refer to use of domain names for attorneys; however, it requires that the message as a whole—which means the "effect in combination of the spoken word, sound, background, action, symbols, visual image, or any other technique employed to create the message"—must not be misleading and must be verifiable from a credible source. Unless such a relationship exists, Rule 1-400 identifies as a presumptive violation of that rule any communication in the form of a firm name, trade name, fictitious name, or other professional designation that states or implies that a member has a relationship to any other lawyer or law firm as a partner or associate. Because the domain name is part of the communication message, it would follow that the domain name used by a lawyer cannot mislead, cannot imply the ability to obtain results, and cannot violate any disciplinary rule. Thus, for example, someone probably could not use the domain name *bigsettlementlawfirm.com* unless the attorney's name happens to be Bigsettlement. Similarly, a firm probably could not use the domain name *LincolnBrandeisandMarshall.com* unless that firm coincidentally had members whose names matched those famous attorneys.

The other Internet-related regulations are California Business & Professions Codes sections 6158.1-3. These regulations require electronic "advertisements" to include the phrase "attorney advertising." This can take the form of placement on a website's home page or in the subject line of an e-mail advertisement. Addi-

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tionally, electronic advertisements must be archived for at least two years. *See* Rule 1-400 Standards (7).

A point of contention arising from the marking and retention policy is what may be considered as an “advertisement.” Section 6157 of the California Business & Professions Code defines “advertisement” as any communication, “disseminated” by any means, including computer networks, “directed generally to the public and not to a specific person, that solicits employment of legal services provided by a member, and is paid for by or on behalf of an attorney.” This definition does not clearly specify whether the section applies to multi-purpose attorney websites—particularly those containing innovative ele-

ments, such as blogs or alumni networking areas—inasmuch as the term “disseminate” implies a scattering or sending out of information rather than merely posting information that members of the general public may visit on their own initiative. No specific statute, regulation, or case law clarifies this issue at this time.

Arguably, a website could be analogized to a billboard posting along a highway that passersby can read, rather than more intrusive communications, such as a direct mailing to someone’s home. Billboards are still considered “advertisements” under this definition and must meet these regulations. Therefore, a website would likely have to meet the standards. Whether a website’s primary purpose is for pecuniary gain is likely of no consequence. The real debate is

whether a website “concerns” the offering of legal services; indeed, almost all attorney communications to the public can be characterized as motivated in part by a desire to attract new clients, directly or indirectly. The newest, innovative elements, such as blogs, may arguably have as their primary purpose scholarly discussion.

In conclusion, technology and the power of the Internet are having a significant impact on attorney promotion and marketing. Although the benefits of attorney websites that incorporate innovative features can be great, an attorney should approach those features with the same care and consideration that an attorney would devote to any other legal issue that would arise during practice. 