

Barristers to Blogs: Softening Ethical Restrictions in the Digital Age

By Michael S. Lubofsky

Throughout its history, the legal profession has frowned upon attorney advertising and marketing. From early British barristers to the first ethical canons issued by the American Bar Association in 1908, the dominant attitude has held that attorneys should refrain from any type of self-promotion. Though the ABA's Model Code, issued in 1969, and the 1977 Supreme Court decision in *Bates v. State of Arizona*, somewhat eased proscriptions on attorney advertising, this anti-advertising sentiment persists among legal professionals and the general public, despite the fact that the social milieu giving rise to this sentiment has radically changed.



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Three fundamental changes in the contemporary marketplace prompt reconsideration of this ethical dogma. First, intensified competition among lawyers for a limited pool of business in the contemporary marketplace has now made advertising a means of survival for a great many attorneys. Second, unlike in old England where barristers forged their reputations in tight-knit local communities, contemporary consumers routinely do business with people with whom they have no personal connection. Third, and most salient, the dizzying pace of technological advancement that shapes contemporary society presents constant challenges to long-held ethical rules. Rapidly expanding "social media" such as Facebook, Twitter and LinkedIn, participation in which is quickly becoming a necessity in today's law practice, blur the distinction between social participation and "solicitation" in ways that firmly entrenched ethical guidelines simply were not drawn up to accommodate. Modern technology now allows for educational outreach by attorneys

through cost-effective media that attorneys could not have envisioned 50 years ago. Assuming access to a computer, webcam, microphone, and the Internet, an attorney today can record an educational video on a timely legal issue and upload to YouTube within minutes at absolutely no cost. A legal blog can be launched for free within minutes, providing an interactive forum for educational and informational exchange. These new media, and tools now readily accessible to solo and small-firm practitioners, allow production of advertising material far more dignified and informative than yesterday's Yellow Pages tombstone listing. Most pre-Digital Age media did not allow for publication of interactive content. The static nature of historical print advertising by attorneys made it very easy to identify material deemed "solicitation" under ethical rules. Unfortunately, the lack of substantial content in this advertising also cemented the popular image of attorneys who advertise as "ambulance chasers."

While firmly entrenched ethical guidelines may have adequately addressed static print advertising by attorneys, these rules are often inapposite with regard to today's social media. Staunch adherence to ethical guidelines that fail to accommodate modern technology and new media does a disservice not only to the practicing bar, but more importantly to the general public. The need has never been greater, nor facilitative tools more readily available, for attorneys to more fully educate the public about their legal rights and responsibilities.

It is this type of interactive and educational outreach that the legal profession and consuming public should begin to more affirmatively embrace and encourage. That savvy attorneys might financially profit

from producing effective educational advertising should not be problematic. These financial rewards will spawn development and publication of educational material by attorneys in diverse locations and practice areas, the end result of which will be informed and empowered consumers who better understand their rights in our complex society.



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