

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 97-10

Approved October 24, 1997

Issue: May a Utah attorney advertise services on a web page or engage in other electronic advertising on the Internet?

Opinion: Attorneys may operate and maintain a web site and post advertisements to newsgroups, provided they comply with Rule 7. Advertising through e-mail messages, which are directed to specific recipients, is generally permissible unless it violates Rule 7.3(b). Attorneys' participation in "chat groups" is considered to be an "in person" communication and subject to the restrictions of rule 7.3(a).

Analysis: Advertising legal services over the Internet is becoming common. The Ethics Advisory Opinion Committee has been asked to render an opinion about the ethical considerations of such practices under the Utah Rules of Professional Conduct. Web sites (fn1) and Internet communications are not specifically mentioned in Rule 7.2 (fn2) on advertising, although reference to advertisements through "public media" in that rule (telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication) makes the rule applicable to Web sites and other forms of Internet communication.

The several different forms of electronic communication over the Internet require separate scrutiny as to the applicability of the Rules of Professional Conduct. (fn3)

Attorneys' Web Sites

An attorney may operate a web site accessible by the general public. We believe a potential client's access to information through a web site is analogous to telephoning the firm or visiting the lawyer's office to request information. This type of advertising must therefore comply with: Rule 7.1 regarding false or misleading communication, Rule 7.2(b) regarding retention of a copy of any advertisement for two years, Rule 7.2(d) regarding inclusion of the name of a responsible lawyer on any

advertisement, and Rule 7.4 regarding fields of practice.

Attorneys should be particularly aware of Rule 7.2(b)'s requirement to keep a copy of any advertisement for two years. In the context of web-page advertising, an attorney must retain a copy of each page of a web site, not just the "home page." (fn4) Effective web sites are updated and changed regularly, perhaps even daily, and retaining a hard copy of each update may not be efficient or practical. To satisfy Rule 7.2(b), attorneys may elect to keep an electronic copy of each page for the requisite two years; this would be deemed to be a "recording" under Rule 7.2(b). (fn5)

We note that the requirement of Rule 7.2(b) to keep a record of advertisements for two years allows the Bar to review advertisements for compliance with the Rules of Professional Conduct. However, we believe that simple line listings in the yellow pages of a telephone book, which list only the lawyer's individual name, telephone and facsimile numbers, and street or electronic addresses, would not violate any of the advertising proscriptions or limitations in the Rules. Accordingly, we find that such postings (fn6) do not reach the level of "advertising" under Rule 7.2. Similarly, a severely limited Internet posting of information consisting of nothing more than name, addresses and phone numbers on electronic "yellow pages" is equally benign and would not invoke the requirement of Rule 7.2(b).

Newsgroup Postings

Attorneys can post messages to "newsgroups," which are narrowly focused interest groups. These postings are analogous to placing an advertisement for legal services in a narrow-interest magazine or newspaper. The general guidelines noted above for web sites are, therefore, applicable to newsgroup postings.

Chat Rooms

"Chat rooms" have become a popular medium of communication on Internet sites. The typical format involves simultaneous participation of several users in a real-time exchange of written messages at a common site that are displayed at each participant's computer terminal. Although these communications can often be reduced to written form, a chat-group communication is more analogous to an in-person conversation due to its direct, confrontational nature and the difficulty of monitoring and regulating it. We, therefore, find that an attorney's advertising and solicitation through a chat group are "in person" communications under Rule 7.3(a) and are accordingly restricted by the provisions of that rule. (fn7)

Direct Electronic Mail Solicitation

The applicability of the Rules of Professional Conduct to e-mail is more difficult to analyze. Because (a) e-mail is in writing (similar to a facsimile transmission), (b) it does not represent a "live" communication (unlike the chat-room discussions), and (c) the recipient can ignore the message or respond at leisure and after due reflection, we find that e-mail is not an "in person" communication under Rule 7.3(a).

However, because e-mail is different from a written advertisement that is delivered through the U.S. Postal Service or other similar services, it may have a different impact due to the speed and mode of transmission and the difficulty of regulation. In addition to the rules discussed above, the lawyer should be aware that the instantaneous nature of e-mail could raise issues regarding Rules 7.3(b)(1) and (b)(3), (fn8) which prohibit direct solicitation to those who are in such a state that they cannot exercise reasonable judgment in employing a lawyer and solicitations which involve coercion, duress, or harassment.

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Advertising and communication over the Internet may raise other issues under the Rules. For example, the lawyer may be unable to screen for potential conflicts as required by Rules 1.7, 1.8, 1.9, and 1.10. In addition, it may be difficult to protect confidential communications under Rules 1.6 and 1.9. Lawyers should take precautions to avoid violating these rules, just as they do with facsimile communications and conversations by cellular telephone.

The issue of advertising legal services over the Internet also raises a question regarding the unauthorized practice of law in another state. Internet advertisements are not limited by geographic jurisdiction; they can be accessed from anywhere. Should a lawyer who advertises over the Internet be concerned with the unauthorized practice of law?

This question is not limited to Internet and web-site communications; it is raised by all forms of advertising through public media that may reach those in jurisdictions other than that in which the lawyer is authorized to practice. For example, telephone book advertising in Utah will likely be read in neighboring states. Similarly, advertisements placed in Utah newspapers will be read in neighboring states, and broadcasts on local radio and television stations will be heard in other states. Internet advertising should not be treated differently.

In these examples, it is incumbent upon the lawyer responding to a request for advice from someone outside of the lawyer's geographic practice jurisdiction to be aware of the prohibition against the unauthorized practice of law.

Particular factual circumstances require an analysis of the legal work performed, the jurisdiction of the parties, and the subject matter of the representation, which are beyond the scope of this Opinion.

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APPENDIX A

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Rule 7.2 Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

Rule 7.3 Direct Contact with Prospective Clients.

(a) A lawyer may not solicit, in-person, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship,

when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "in-person" includes in-person and telephonic communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.

(b) A lawyer may not solicit, by mail or other written communication directed to a specific recipient concerning a specific cause of action, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship under the following circumstances:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) The person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) The communication involves coercion, duress, or harassment.

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**Footnotes**

1. Reference to "web sites" in this opinion is meant to include all forms of computer-based information systems that can be directly accessed by individuals through computer modems and similar communication devices.

2. See Appendix A for the text of portions of Rule 7 of the Utah Rules of Professional Conduct.

3. For discussion and references, see *Brian G. Gilpin, Attorney Advertising and Solicitation on the Internet: Complying with Ethics Regulations and Netiquette*, 13 J. Marshall J. Computer & Info. L. \_\_\_\_ (Summer 1995); Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 J. Tech. L. & Policy 3 (1996) [journal.law.ufl.edu/ntechlaw/1/hankins.html](http://journal.law.ufl.edu/ntechlaw/1/hankins.html).

4. A web site typically comprises a home page (analogous to the front page of an advertising brochure), which gives limited basic information about the firm or lawyer and "links" to other "pages" of the site that contain additional, more detailed information about the firm, its areas of practice and its lawyers.

5. Information on external sites to which links are provided from the lawyer's web site are not considered part of the lawyer's web site unless the external site is also controlled

by the lawyer.

6. As well as similar information-only signs placed on, in or near the firm's place of business.

7. See Ariz. State Bar Op. 97-04 (April 7, 1997); see also Ill. State Bar Adv. Op. 96-10 (May 16, 1997).

8. See Appendix A.

**Rule Cited:**

**7.17.27.3**