

Bond

ATTORNEY ADVERTISING AND SOCIAL MEDIA

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Attorney Advertising & Social Media

Don't be a Bezos... get a prenup! If you would like a confidential or joint consultation contact [Moore, Schulman, & Moore, APC](#)



 USA TODAY

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BUSINESS

Amazon CEO Bezos reportedly didn't have a prenup, dating L.A. TV anchor-helicopter pilot

Amazon CEO and founder Jeff Bezos and wife Mackenzie's divorce announcement was reportedly timed to the release of

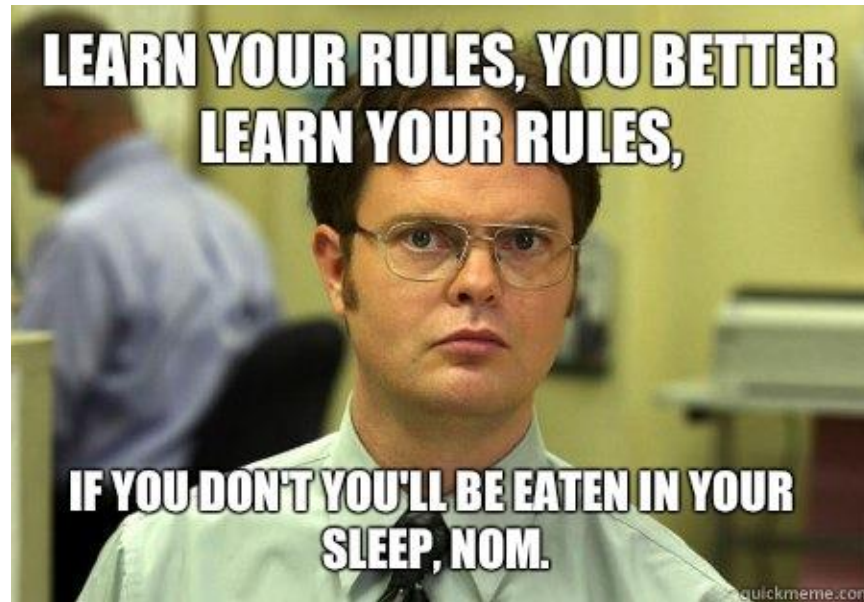
Materials:

- **NYSBA Commercial and Federal Litigation Section Social Media Ethics Guidelines**
- May 11, 2017

Attorney Advertising & Social Media



NEW YORK RULES OF PROFESSIONAL CONDUCT



22 NYCRR Part 1200

NYRPC 1.0: Terminology

- **“Advertisement”**
 - Public or private communication;
 - By or on behalf of a lawyer or law firm;
 - About the lawyer or law firm’s services;
 - the primary purpose of which is for the retention of the lawyer or law firm.
- **Does not include communications to existing clients or other lawyers.**

NYRPC 1.0: Terminology

- **“Computer-accessed communication**
 - Any communication;
 - By or on behalf of a lawyer or law firm;
 - Disseminated through a computer or related electronic device.
- **E.g. websites, blogs, search engines, email, banners, pop-ups, chat rooms, list serves, instant messaging, and attachments or links related thereto.**

NYRPC 1.1: Competence

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

NYRPC 7.1: Advertising

(a) A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that:

- 1. Contains statements or claims that are false, deceptive or misleading; or**
- 2. Violates a Rule.**

NYRPC 7.1: Advertising

Advertisements can include information regarding:

- An attorney's education, bar admissions, practice areas, public office or teaching positions held, publications, organizational membership, etc.

NYRPC 7.1: Advertising

Advertisements cannot include:

- Paid endorsements
 - unless it is disclosed that the endorser is paid
- Portray a fictitious law firm
- Use actors without disclosure
- Resemble legal documents

NYRPC 7.1: Advertising

Advertisements may contain:

- Statements reasonably likely to create an expectation about results the lawyer can achieve
- Statements comparing the lawyer's services to those of another lawyer
- Testimonials of current or former clients
- Statements describing the quality of the lawyer's services

If the following conditions are met...

NYRPC 7.1: Advertising

- The information is not false, deceptive, or in violation of a rule
- The information can be factually supported
- The information is accompanied by the following disclaimer:
 - *“Prior results do not guarantee a similar outcome”*
- Client consent is given with respect to a matter still pending

NYRPC 7.1: Advertising

Additional Requirements:

- Every advertisement must be labeled “Attorney Advertising”
 - Exceptions: radio, television, billboard, directory, newspaper, magazine, or other periodical
- Advertisements cannot use meta-tags or hidden codes that, if displayed, would violate a rule
- Advertisements must include the name, law office address and phone number of the lawyer or firm
- Lawyers must pre-approve advertisements and retain copies for three years

NYRPC 7.1: Advertising

Additional Requirements

- Required statements or words must be legible
- Advertisements for fixed fees must also have available a written statement describing the scope of each advertised service
- If a lawyer advertises a fee, he cannot charge a fee higher than advertised unless the client agrees in writing
- All advertisements containing fee information must comply with Judiciary Law § 488(3)

NYRPC 7.1: Advertising

Additional Requirements

- if a lawyer publishes fee information, she is bound by that representation for 30, 60, or 90 days—depending on frequency of publication—unless otherwise specified in the publication
- if a lawyer broadcasts fee information, she is bound by that representation for 30 days, unless otherwise specified in the broadcast
- a lawyer shall not compensate or give anything of value to representatives of the press in exchange for professional publicity

NYRPC 7.1: Advertising

Additional Requirements:

- A lawyer may accept employment that results from participation in activities designed to educate the public, make intelligent selection of counsel, or utilize available legal services
- Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give legal advice

NYSBA COMMERCIAL AND FEDERAL LITIGATION SECTION SOCIAL MEDIA ETHICS GUIDELINES



Guideline No. 1.A

- Attorneys' Social Media Competence

A lawyer has a duty to understand the benefits, risks and ethical implications associated with social media, including its use for communication, advertising and research and investigation.

NYRPC 1.1(a) and (b)

Guideline No. 2.A

- Applicability of Advertising Rules

A lawyer's social media profile that is used only for personal purposes is not subject to attorney advertising and solicitation rules.

NYRPC 1.0, 7.1, 7.3, 7.4, 7.5, 8.4(c)

Guideline No. 2.A

- Applicability of Advertising Rules

However, a social media profile, posting or blog a lawyer primarily uses for the purpose of the retention of the lawyer or his law firm is subject to such rules.

NYRPC 1.0, 7.1, 7.3, 7.4, 7.5, 8.4(c)

Guideline No. 2.A

- Applicability of Advertising Rules

Hybrid accounts may need to comply with attorney advertising and solicitation rules if used for the primary purpose of the retention of the lawyer or his law firm.

NYRPC 1.0, 7.1, 7.3, 7.4, 7.5, 8.4(c)

Guideline No. 2.B

- Prohibited Use of Term “Specialists” on Social Media

Lawyers shall not advertise areas of practice under headings in social media platforms that include the terms “specialist,” unless the lawyer is certified by the appropriate accrediting body in the particular area.

NYRPC 7.1, 7.4

Guideline No. 2.C

- Lawyer's Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer's Social Media Page

A lawyer is responsible for all content that the lawyer posts on her social media website or profile.

NYRPC 7.1, 7.2, 7.3, 7.4

Guideline No. 2.C

- Lawyer's Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer's Social Media Page

A lawyer who maintains a social media profile must be mindful of the ethical restrictions relating to solicitation by her and the recommendations of her by others, especially when inviting others to view her social media account, blog or profile.

NYRPC 7.1, 7.2, 7.3, 7.4

Guideline No. 2.C

- Lawyer's Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer's Social Media Page

A lawyer also has a duty to periodically monitor her social media profile(s) or blog(s) for comments, endorsements and recommendations to ensure that such third-party posts do not violate ethics rules.

NYRPC 7.1, 7.2, 7.3, 7.4

Guideline No. 2.C

- Lawyer's Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer's Social Media Page

If a person who is not an agent of the lawyer unilaterally posts content to the lawyer's social media, profile or blog that violates the ethics rules, the lawyer must remove or hide such content if such removal is within the lawyer's control and, if not within the lawyer's control, she may wish to ask that person to remove it.

NYRPC 7.1, 7.2, 7.3, 7.4

Guideline No. 2.D

- Attorney Endorsements

A lawyer must ensure the accuracy of third-party legal endorsements, recommendations, or online reviews posted to the lawyer's social media profile. To that end, a lawyer must periodically monitor and review such posts for accuracy and must correct misleading or incorrect information posted by clients or other third-parties.

NYRPC 7.1, 7.2, 7.3, 7.4

Guideline No. 2.E

- Positional Conflicts in Attorney Advertising

When communicating and stating positions on issues and legal developments, via social media or traditional media, a lawyer should attempt to avoid situations where her communicated positions on issues and legal developments are inconsistent with those advanced on behalf of her clients and the clients of her firm.

NYRPC 1.7, 1.8

Guideline No. 3.A

- Provision of General Information

A lawyer may provide general answers to legal questions asked on social media. A lawyer, however, cannot provide specific legal advice on a social media network because a lawyer's responsive communications may be found to have created an attorney-client relationship, and legal advice also may impermissibly disclose information protected by the attorney-client privilege.

NYRPC 1.0, 1.4, 1.6, 7.1, 7.3.

Guideline No. 3.B

- Public Solicitation is Prohibited through “Live” Communications

Due to the “live” nature of real-time or interactive computer-accessed communications, which includes, among other things, instant messaging and communications transmitted through a chat room, a lawyer may not “solicit” business from the public through such means.

NYRPC 1.0, 1.4, 1.6, 1.7, 1.8, 7.1, 7.3

Guideline No. 3.B

- Public Solicitation is Prohibited through “Live” Communications

If a potential client initiates a specific request seeking to retain a lawyer during real-time social media communications, a lawyer may respond to such request.

NYRPC 1.0, 1.4, 1.6, 1.7, 1.8, 7.1, 7.3

Guideline No. 3.B

- Public Solicitation is Prohibited through “Live” Communications

However, such response must be sent through non-public means and must be kept confidential, whether the communication is electronic or in some other format.

NYRPC 1.0, 1.4, 1.6, 1.7, 1.8, 7.1, 7.3

Guideline No. 3.B

- Public Solicitation is Prohibited through “Live” Communications

This Guideline does not apply if the recipient is a close friend, relative, former client, or existing client.

NYRPC 1.0, 1.4, 1.6, 1.7, 1.8, 7.1, 7.3

Guideline No. 3.C

- Retention of Social Media Communications with Clients

If an attorney utilizes social media to communicate with a client relating to legal representation, the attorney should retain records of those communications, just as she would if the communications were memorialized on paper.

NYRPC 1.1, 1.15

Hypothetical

https://www.youtube.com/watch?v=0Bt1S_8f0aQ

QUESTIONS?

The information in this presentation is intended as general background information. It is not intended as legal advice.

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