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LawBiz® TIPS – Week of August 7, 2012

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Swimming and gymnastics continue to be the focus for me, with other sports now coming into the center stage by the time you read this note. I'm excited to watch our athletes and the incredible focus that all Olympic athletes are displaying. It is motivation for me focus on my training efforts to do a major (for me) climb in September on my bike.

What focus do you have for your practice? I know you work hard and it seems difficult to do anything more in the practice. But, if you're stressed or don't have the clients (number or kind) you want, a renewed and more focused energy might be the ticket to succeed. Contact me when you are ready for more success and less stress.

I will be in Chicago on August 23rd. If you would like to join me for a complimentary breakfast on Thursday, August 23rd, please contact me.

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A Social Media Victory for Lawyers

Lawyers' Use of Social Media

We have previously expressed concern about regulating lawyers' use of social media. It is one thing to regulate for truth and fairness in promotional statements, and to restrict hyperbole so as not to create false expectations. It is another thing to say how the communication can be framed. Bar associations seek to regulate lawyers in ways that other governing bodies do not attempt for such professionals as doctors and accountants. The losers are small firms and sole practitioners - and those clients who would benefit from learning about them through social media.

Regulation of Lawyers' Blogs

One of the most troubling aspects of over-regulation is one we've written about previously. The Virginia State Bar in 2011 charged a lawyer with professional misconduct for talking about his own completed cases on his blog without adding an advertising disclaimer that results depend upon factors unique to each case and that results in one case do not predict

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What Clients Are Saying:

similar results in others. The lawyer argued his blog consisted of news and commentary, that the information he posted was disclosed during public trials, was accurate, did not violate any confidences - and was not advertising. The State Bar disagreed, and the lawyer reluctantly posted the disclaimer.

One Lawyer's Blog

However, the lawyer, Horace Hunter, was so convinced that he had a right to blog about what was on the public record that he appealed his case - and won at least a partial victory. It has been reported^[1] that in June of this year a three-judge panel of the Portsmouth Circuit Court in Virginia, while upholding the determination that the blog posts needed a disclaimer, overturned the finding that Hunter violated the confidentiality of client information with his blog posts. The panel found he had a First Amendment right to blog on the basis that the Virginia version of Rule 1.6 on client confidentiality prohibits the disclosure of "secrets and confidences." A court decision on the public record can hardly be called a secret, so Hunter was free to write about it.

Commentary On The Win

Some commentators have pointed out that this decision may have limited consequences because the ABA version of Rule 1.6, and that adopted by most states, says that a lawyer shall not reveal "information relating to the representation of a client" without the client's informed consent - a broader standard. Still, it seems clear that the ruling reaffirms a basic principle that lawyers can make informed comment about cases that are on the record. The need for a disclaimer may be onerous, but it still beats having to maintain silence when silence affords no benefit.

[1] [Law Blogger's First Amendment Win](#), *ABA Journal* 6/15/12

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**John F. Rapp, Director,
CLE
University of Washington**

"Ed Poll's efforts resulted in the success of our Mid Year CLE Program event. During the planning stages of this Mid Year Program, the Section's leadership indicated that if 75 lawyers attended the program, it would be considered a success. With our program attendance at over 100 attendees, the leadership clearly is very pleased with our efforts and want to continue bringing



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**Lee S. Kolczun, Chair
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American Bar Association**

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