

# ABA Pleads Guilty to Wanting to Regulate Online Lawyer Marketing

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Larry Bodine

The ABA Commission on Ethics 20/20 just released a 10-minute podcast at <http://bit.ly/huyCR8> in response to the furor over its steps to impose ethics rules on online lawyer marketing.

In its podcast, the ABA pleads guilty as charged. The ABA podcast features Suffolk University Law School professor Andrew M. Perlman, who is also a reporter on the ABA Commission on Ethics 20/20. He's the primary author of the ABA's white paper "Concerning Lawyer's' Use of Internet Based Client Development Tools."

He says the Commission on Ethics is indeed reviewing the ABA Model Rules, and that the commission will be making recommendations to the House of Delegates, including revisions to the Model Rules, policy positions and white papers.



Andrew Perlman

The Commission wants to define what counts as lawyer advertising. "If I make representations on my Facebook page, it might be subject to advertising rules," Pearlman says. I think it's clear where he's going: more regulation.

Professing that they've reached no solution or position yet, the ABA Commission wants to determine when lawyer use of a blog, LinkedIn, Facebook, Twitter or a podcast is advertising -- which of course is heavily regulated with ethics rules.

The Supreme Court already gave us the answer in 1977 -- lawyer advertising is allowed. It doesn't matter if it's a billboard, TV ad or Tweet -- it's permitted. But ever since then, bar associations have been trying to regulate lawyer advertising out of existence - especially Florida and Iowa. If the ABA were to propose a Model Rule, with all credibility that goes with it, defining online marketing to be advertising -- it will be lights out on online lawyer marketing.

New ethics burdens on marketing will unfairly hurt solos, GPs and lawyers in small and mid-sized firms, which heavily use online marketing.

The public will suffer because there will be less information to find about attorneys, FAQs and articles about the law, and how lawyers can help them.

The ABA's proposed actions will cause a chilling effect on a lawyer's right to commercial

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free speech, first established in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

There is a template for a letter to the ABA in Google docs at <http://bit.ly/id77JA>. Many people are using this template. Send in your letter right away.