

Social Media Ethics for Lawyers: 4 Things Attorneys Should Not Do Online

by Sarah Lavender Smith

Communications Director of [Cogent Legal](#)

(Originally published in November 2011 on [Cogent Legal's blog](#))



Recently I attended a panel discussion called “Legal Social Media Gone Wild: A Look at the Ethics Involved in Lawyer Participation Online,” sponsored by the [Bay Area Chapter of the Legal Marketing Association](#). The wide-ranging talk touched on sticky issues that have emerged as attorneys go online to network, to promote their expertise and to connect with potential clients.

Attorneys’ seemingly benign social media activity can and sometimes does collide with the rules of professional conduct. Trying to promote themselves online while mitigating this risk “is like skiing while leaning backwards—it’s very difficult to do,” said one panelist, [Adrian Lurssen](#), co-founder and VP of strategic development at JD Supra (which, by the way, is a terrific service for legal news syndication; you can [check out our profile](#) and articles there).

Here are a few take-away lessons for attorneys and legal marketers from the panel of experts, which in addition to Lurssen included: [Miles B. Cooper](#) of Rouda Feder Tietjen & McGuinn, [John Steele](#) of the blog [Legal Ethics Forum](#), and moderator [Lydia Bednerik](#), marketing director at Wendel Rosen Black & Dean.

Since the panel enhanced my appreciation for disclaimers, I’ll start with one: The points below only scratch the surface of these issues and should not be taken as legal advice. For more detailed information on the rules governing attorneys’ marketing and online activity, panelist John Steele recommends reading Chapter 7 of the Proposed Rules of Professional Conduct, [available in PDF](#) (Chapter 7 starts around page 87). He explained to me in a follow-up email that these are draft rules that haven’t been approved yet by the Supreme Court of California, but they cover “some areas of law that we think already govern us but aren’t spelled out in the rules, and also contain some proposed changes.” Additionally, [Publication 250](#) contains the current set of rules; the key advertising rules are at 1-400 and the “Standards” following that rule.

Don’t misrepresent or mislead online

This sounds obvious, but apparently it’s not: Don’t tweet, facebook, blog or otherwise post any information that is false or implies you’re doing something you’re not. One panelist, Miles Cooper, used as an example the activity of some attorneys immediately following the San Bruno gas line explosion and fire. They tweeted something along the lines of, “We’re investigating this situation,” which suggests they’re actively investigating the scene when they probably weren’t; or, “We represent victims of this disaster,” when in fact it was highly unlikely any attorney would have signed up a client so soon.

Don't create an attorney-client relationship online

Don't cross the line online from offering general legal information to offering specific legal counsel to an individual, which can trigger an implied attorney-client relationship and the duties that go with it. Many attorneys answer questions in Q&A sites such as Avvo or Linked In's Answers because participation not only establishes their expertise but also gets their name out to potential clients. If an attorney engages in back-and-forth communication online that renders advice and leads the person to reveal confidences, that can be interpreted as an attorney-client relationship. The attorney also can run afoul of jurisdictional limits by answering queries that come from another state.

Bottom line: Understand the difference between offering legal education and legal practice online; do the former, not the latter, by keeping information general rather than advising a person to take particular action. Add qualifiers to your answers such as, "I'm not your lawyer, but generally speaking ..." along with disclaimers that your answer does not create an attorney-client relationship and is based on the law of your state only.

Don't make quid pro quos for recommendations or allow inaccurate reviews of your services online

It's a no-no to agree to recommend a colleague or positively review his or her services on sites such as Linked In, Yelp and Avvo in exchange for having that person recommend you. Be tasteful and truthful in making recommendations of others' services. Also, if you stake out a profile page in an online directory, you can be held accountable for the truthfulness of what reviewers say about your services. If a consumer, for example, writes a review that exaggerates the amount of recovery an attorney obtained for a client, then the attorney should modify or remove that review.

Don't completely relinquish your role and responsibilities for producing content to a ghostwriter online

Finally, when it comes to blogging and social media, is it OK to enlist a ghostwriter and relinquish review of the content associated with your name? Panelist John Steele thinks not, and he sparked a lively exchange when one member of the audience argued that an attorney who has an associate or marketer write his or her content is making the best use of the firm's resources, and that it's no different from attorneys claiming credit for articles written by associates or clerks. For more detail and comments debating this ethical gray area, check out [Steele's Nov. 16 blog post](#).

Personally, I agree with Steele. Though Morgan Smith (the firm's attorney and owner) and I (his communications associate who also happens to be his wife) collaborate on everything, and he trusts me to write and tweet on his behalf, he reviews and retains control over anything we publish that's associated with him and the firm, and he stays actively engaged with all of Cogent Legal's social media activity. His blog posts are his, though I sometimes edit them pretty heavily, for which he (usually) thanks me.

Cogent Legal is a legal graphics and consulting firm that helps attorneys present their cases in the most clear, compelling and tactical way to achieve maximum results. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.

