

**Vermont Bar Association
Presents
I (Don't) Wanna Be Your Lawyer:
When Is Blogging (or Other Writing) Advertising?
February 26, 2015
0.5 MCLE Ethics Credit**

A monthly series of short ethics webinars examining difficult issues affecting you and your practice.

Let's say you write about the law or some other topic, perhaps (but not necessarily) in a blog. Do the advertising rules in the VRPC apply to your writing? What can you write – and what can't you write – if you don't want to run afoul of those rules? Does the fact that you are a lawyer mean that those rules apply to anything you write? Or do you have to explicitly market your services?

Join Mike Kennedy and Kevin Ryan for consideration of these important questions.

VT Bar Association Continuing Legal Education Registration Form

Please complete all of the requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100. Fax: (802) 223-1573 **PLEASE USE ONE REGISTRATION FORM PER PERSON.**

First Name _____ Middle Initial _____ Last Name _____

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**The Halftime Show: I (Don't) Wanna Be Your Lawyer:
When is Blogging (or Other Writing) Advertising?
Live Stream Event
February 26, 2015
12:00PM - 12:30PM
0.5 MCLE ETHICS CREDITS**

VBA Attorney Members: \$30
Emeritus (70/40) Members: \$15
Non-VBA Members: \$60

NO REFUNDS AFTER February 25, 2015

PAYMENT METHOD:

Check enclosed (made payable to Vermont Bar Association) Amount: _____

Credit Card (American Express, Discover, Visa or Mastercard)

Credit Card # _____ Exp. Date _____

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Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association

Date: February 26, 2015

Seminar Title: The Halftime Show: I (Don't) Wanna Be Your Lawyer: When is Blogging (or Other Writing) Advertising?

Location: Live Stream Event

Credits: 0.5 MCLE Ethics Credit

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.

I (Don't) Wanna Be Your Lawyer: When Is Blogging (or Other Writing) Advertising?

Under what circumstances is “blogging” (or other writing) by an attorney subject to the requirements and restrictions of the Rules of Professional Conduct regulating attorney advertising?

A recent ethics opinion by the State Bar of California Standing Committee on Professional Responsibility and Conduct says that, if the blog expresses the attorney’s availability for professional employment directly through words of invitation or offer to provide legal services, or implicitly through its description of the type and character of legal services offered by the attorney, detailed descriptions of case results, or both, the blog constitutes advertising.

Further, the California opinion goes on to say that a blog that is a part of an attorney’s or law firm’s professional website will be subject to the rules regulating attorney advertising to the same extent as the website of which it is a part.

Finally, the California committee held that a stand-alone blog by an attorney that does not relate to the practice of law or otherwise express the attorney’s availability for professional employment will not become subject to the rules regulating attorney advertising simply because the blog contains a link to the attorney or law firm’s professional website.

So what does this opinion tell us? First, and rather obviously, if you invite people to call you for legal advice, it’s an advertisement. But what if you only do it once out of 500 blog posts? The opinion says that, even then, it’s an advertisement.

Second, if you put your blog on your firm’s website, which is an advertisement in its entirety, then it’s an advertisement. Again, this makes sense. A law firm’s website is, in its entirety, an advertisement for the firm’s services.

Third, if you write a blog about brickmaking and don’t tell people to contact you if they need a lawyer, then it’s not advertising. Again, no surprise. But what if you slip up once on your blog and suggest to the reader that if she calls you she might receive help with her legal problem? According to the opinion, that makes the WHOLE blog and ALL of its entries an advertisement. Is that a bit of a stretch? Perhaps, but since the only consequence of designating the blog as an advertisement is that you have to abide by the advertising rules (e.g., you can’t deceive the public about the results they can expect from your services, you can’t promise victory in court, you can’t say you’re the best lawyer ever, etc.), it doesn’t seem too momentous a conclusion.

But what about the language that states that if the blog describes “the type and character of the legal services” you offer, then it’s an advertisement. Is this language too expansive? Let’s assume you write a blog on rock music. In the course of one post, you mention in passing that you do intellectual property lawyering—imagine, for example, that you are writing about “My Sweet Lord” or guitar riffs used by Jimmy Page—and you draw a legal conclusion. You say nothing about calling your office. You only say in passing what your job is, just as some other blogger might say she’s a short-order cook, and make a comment drawing on your expertise (as the cook might comment about the ingredients of a sauce). To say that this passing reference to your job makes not only that post but the entire blog an advertisement subject to the rules may seem too broad.

Additional but similar questions are raised by personal Facebook pages, Twitter feeds, and Tumblr accounts. We will discuss these issues during the presentation.

The California opinion can be found here:

http://www.calbar.ca.gov/Portals/0/documents/publicComment/2014/2014_12-0006 Blogging.pdf.

For another recent attempt to look at the ethical implications of blogging, and the application of the advertising rules to blogs, see *Hunter v. Virginia State Bar*, available at <http://www.courts.state.va.us/opinions/opnscvwp/1121472.pdf>.

Here is the ABA Journal’s summary of the *Hunter* decision:

http://www.abajournal.com/magazine/article/virginia_supreme_court_holds_that_advertising_rules_may_be_applied_to_a_law.

The Rules

The relevant rules on this topic include ...

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 contains a material misrepresentation of fact, or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

...

Comment [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of a lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

Rule 7.2 ADVERTISING

Rule 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Rule 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION