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## **Law Firm Web Sites: Windows on the World**

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From solos to megafirms, most lawyers today have web sites. They vary greatly in sophistication, style and content. But, many share two common characteristics with a window. First, they project their firm's image outward to potential clients. Second, many also channel inbound communications from prospective clients to firm lawyers. In this column, we'll look at both sides of these electronic windows on the world.

### ***Looking Out***

The "outbound" side of law firm web sites is regulated primarily by the lawyer marketing rules. Although Oregon moved to professional rules based on the ABA Model Rules in 2005, our marketing regulations differ from their ABA counterparts in two important respects.

First, for a variety of "Oregon-centric" anomalies, the general numbering and subject of our marketing rules are similar to the ABA Model Rules, but the text remains closer to the former Oregon "DRs" than the current ABA Model Rules now used in most other states. Because the text of Oregon's advertising rule, RPC 7.2, largely comes from a 1993 revision to former DR 2-103, it doesn't use the word "electronic"—let alone "web." However, because the word "electronic" was added in 1998 to a companion provision governing marketing

communications—former DR 2-101(A) and present RPC 7.1(a)—it is safe to assume that web sites are included. Lawyers and firms who market across state lines, however, should carefully review the regulations in the states concerned, however, because this is an area where Oregon’s rules differ from the national norm.

Second, again for a variety of “Oregon-centric” anomalies, Oregon’s rules don’t incorporate the ABA comments as most other states now do. Nonetheless, ABA resources in this area, particularly its comprehensive ethics opinion issued last year on lawyer web sites, Formal Ethics Opinion 10-457, and the comments to the ABA Model Rules, remain excellent guidelines in this evolving facet of “electronic ethics.” They are available on the ABA Center for Professional Responsibility’s web site at [www.americanbar.org/groups/professional\\_responsibility](http://www.americanbar.org/groups/professional_responsibility).

Although Oregon’s rules remain decidedly “low tech” when applied to “high tech” media, the touchstone for all lawyer marketing remains the same today as when yellow pages ads were cutting edge: information on web sites must be truthful. Accuracy applies to both what is stated, and, if material, what is not included. For example, RPC 7.1(a)(4) allows Oregon lawyers to describe themselves as “specialists” without any particular certification as long as that is true. With some marketing material, disclaimers are important to ensure that even truthful information is put in its proper context. For example, RPC 7.1(a)(6)

permits Oregon lawyers to use testimonials as long they are accompanied by a disclaimer that “clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients[.]”

***Looking In***

Some law firm web sites allow direct inbound communication with firm lawyers concerning prospective clients’ legal needs. Before including this feature, firms need to carefully think through the risks and construct appropriate disclaimers to avoid creating unintended attorney-client relationships or disqualifying conflicts that may arise even if prospective clients do not become firm clients but have communicated confidential information to firm lawyers.

On the former, the Supreme Court in *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990), outlined the controlling test for whether an attorney-client relationship exists: (1) does the client subjectively believe that the lawyer is representing the client? and (2) is that subjective belief objectively reasonable under the circumstances? Neither a written agreement nor payment of a fee is necessarily a prerequisite. A prudent disclaimer, therefore, should include a warning that no attorney-client relationship will be formed unless and until the firm runs conflict checks, appropriate financial terms are discussed and both sides have formally agreed to the relationship.

On the latter, RPC 1.18, which became effective in 2005, creates limited duties of loyalty and confidentiality to prospective clients who may not actually become firm clients. Therefore, unless effectively disclaimed or otherwise screened as permitted under the rule, a prospective client who communicates confidential information to a firm may create a disqualifying conflict if the firm ends up on the other side of the same matter later. A prudent disclaimer, therefore, includes a warning to prospective clients not to communicate information that the prospective client regards as confidential until the firm can run a conflict check and determines that further talks about the possibility of representation are warranted.

On a final note, unilateral communications forwarded by a prospective client to a lawyer who simply listed contact information on a web site should not ordinarily trigger either an attorney-client relationship under the *Weidner* test or the duties to prospective clients under RPC 1.18.

#### **ABOUT THE AUTHOR**

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar's Legal Ethics Committee, is a past chair of the Washington State Bar

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