

Networking, Marketing, and Ethics: What You Need to Know

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It's a myth that the *NYS Rules of Professional Conduct* curtail ethical business development activities. They actually encourage truthful, transparent, knowledge-focused marketing initiatives. As the Preamble to the Rules states:

A lawyer should further the public's understanding of and confidence in the rule of law and the justice system because, in a constitutional democracy, legal institutions depend on popular participation and support to maintain their authority.

Lawyers are tasked with the responsibility to educate the public to recognize legal problems, and select lawyers intelligently. Advertising can be used to educate and attract business. [Rule 7.1, Comments 2,3]

Networking is the primary marketing technique lawyers use to build personal relationships that help them achieve their economic, social and emotional goals. Networking provides an opportunity for potential clients to see, talk to and get a sense of a lawyer before they engage the person to handle personal or business issues of major importance.

When we meet new people in a networking environment, the "halo effect" takes over and we assume that their networking behavior is analogous to their work behavior. The halo effect refers to the brain's tendency to subsume all they learn about a person under their initial impression of the person. First impressions color all subsequent impressions.

So, if you ask interesting questions while networking, we assume you will ask insightful questions about our legal issues.

If you are late for a networking meeting or fail to follow-up on promises made, we assume you will be late for meetings if we hire you and lax about sending out work documents in a timely fashion.

It behooves lawyers to adhere to their code of ethics in order to ensure that they are always seen as professional. This means that lawyers need to be cognizant of the Rules related to their conduct in the following areas:

Fees and Division of Fees: Rule 1.5(a)(b)(c)(d)(g);

Confidentiality of Information: Rule 1.6(a);

Professional Independence of a Lawyer: Rule 5.4(c);

Advertising: Rule 7.1(a);

Payment for Referrals: Rule 7.2;

Solicitation and Recommendation of Professional Employment: Rule 7.3;

Identification of Practice and Specialty: Rule 7.4;

Professional Notices, Letterheads, and Signs: Rule 7.5.

In this article the focus is on the requirements in Rule 7 of the NYS Rules of Professional Conduct as they pertain to networking for the purpose of building your business.

THE LOGIC OF RULE 7

Rule 7 sets parameters for lawyer communications with clients, prospects, colleagues, friends, family, referral sources and the general public. Let's begin with the most important and most basic of the Rules – Rule 7.1(a):

Rule 7.1(a): "A lawyer or law firm shall not use or disseminate or participate in the use or dissemination of any advertisement that: (1) contains statements or claims that are false, deceptive or misleading;"

The definition of advertising (Rule 1.0(a) Terminology): "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, *the primary purpose of which is for the retention of the lawyer or law firm*. It does not include communications to current clients or other lawyers."



This requirement covers any activities related to growing a practice through referrals or meetings with prospects. It covers in person and online activities. Online activities are detailed in the broad definition of “computer-accessed communication” (Rule 1.0(c)) which defines these as:

any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

The need to be truthful sounds obvious. Most lawyers wouldn’t think of lying on purpose to clients or prospects. But it is easy to cross the line into misleading or deceptive. A statement is false or misleading if it:

- Contains a material misrepresentation of fact or law,
- Omits a necessary fact, or
- Leads to an unjustified expectation.

It is fairly easy to slip into the gray area of misleading just in normal conversation. As explained in Rule 7.1, Comment [12]: “Descriptions of characteristics of the law firm that compare its services with those of other law firms and that are not susceptible of being factually sup-

ported could be misleading to potential clients. Accordingly, a lawyer may not advertise that the lawyer is ‘Best,’ ‘Most Experienced,’ or ‘Hardest Working.’ Similarly, some claims that involve results obtained are not susceptible of being factually supported and could be misleading to potential clients. Accordingly, a law firm may not advertise that it will obtain ‘Big \$\$\$,’ ‘Most Money,’ or ‘We Win Big.’”

CONVERSATIONAL FAUX PAS

At the same time, the Rules assume you need to say something about your work so they permit general statements about likely results and service quality comparisons as long as they are true and can be supported by data. (Rule 7.1(d)(e)) When comparisons such as better, best, more than, cheaper than, larger than, most, hardest



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working often come up in conversation they can mislead. If, in fact, you can show data that factually back up your assertions that your fees are the cheapest or you work longer hours than anyone else, you can use the claim.

Lawyers often want to use cases as the basis for stories that will communicate what they do in a way that listeners will remember. Marketers applaud the use of stories because they usually evoke an emotional response which may be more relevant to their audience. But Rule 7.1(b) (2) says you need a client's written consent to the use of their name or the facts of their specific case.

To still use stories that are interesting and relevant to your listeners, change facts such as location and gender, combine legal details from several matters and specify the result in general terms. For example:

Situation: The client was injured on a construction work site when a piece of siding came loose and hit him.

Legal action: We were able to show that it was the contractor's fault that the siding fell.

Result: The settlement took into account not only the pain and suffering but also the accident's impact on our client's future ability to continue in his occupation. He received four times the amount initially offered by the insurance company.

Often while networking people want to ask about their specific problem. It is the duty of the lawyer to answer in generalities to avoid inadvertent establishment of an attorney-client relationship. Matter-specific advice to an individual is prohibited unless an attorney-client relationship has been established. (Rule 7.1(q)(r)) Instead, lawyers are encouraged to publish and speak publicly in general terms on legal topics.

It is important to note that the advertising rule limitations do not apply when talking to clients or other lawyers even if the purpose is retention. The language limitations are there to protect uninformed people from being unduly influenced by a lawyer's eloquence or confused by their superior reasoning. (Rule 7.1 Comment [6],[7],[9])

ENDORSEMENTS OR TESTIMONIALS

Many online sites, including LinkedIn and Avvo, offer opportunities to endorse or rate lawyers. Rule 7.1(c)(1) forbids paid testimonials unless the fact that the person is paid is disclosed. However, NYSBA Ethics Opinion 1052 (3/25/15) said it is permissible for a lawyer to offer to take \$50 off his fee if a client writes an online endorsement or testimonial for his services as long as he has no input into its content.

The Rules (Rule 7.1(k)) also require lawyers to approve any advertising content in handouts at networking

events, online content, newsletters, blogs, etc. This provides a way for the lawyer to ensure that third party ratings or endorsements are factually correct. For example, if a divorce lawyer on LinkedIn is endorsed for M&A expertise, they need to remove the inaccurate endorsement.

REFERRALS

Rule 7.2(a) says "A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client." This statement is then qualified by saying a lawyer may pay for referrals from a qualified legal aid or public defender office or a bar association lawyer referral service. (Rule 7.2(a)(b)).

Lawyers can establish reciprocal referral relationships with others provided they are not exclusive, do not interfere with the lawyer's professional judgment and the client knows about the arrangement. (Rule 7.2 Comment [4]) These kinds of relationships are established through both in person and online networking activities.

In person it is relatively easy to stay within the guidelines. Most successful networkers go along with the mantra, "It is better to give than receive." They want to help others in their network meet people they think can help them attain their goals. There may be an expectation of reciprocity but there is no exchange of money.

Yet, by its very nature, a referral contains a recommendation. "A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities." (Rule 7.2 Comment [1]) Good referrals contain recommendations when the introductions specify the reasons for suggesting a relationship between the two people.

Problems rarely arise when lawyers make or receive in person referrals. Problems may arise when their online activities engender paid work. The question was considered and decided in NYSBA Ethics Opinion 1132 (8/8/17) which held that it was unethical to use Avvo's referral service because it implied a recommendation and selection of a specific lawyer to meet a specific prospect's needs.

A companion NYSBA Ethics Opinion 1131 (8/8/17) said lawyers can pay an online for-profit company for leads as long as four conditions ensuring impartiality and transparency are met. "A lawyer may pay a for-profit service for leads to potential clients obtained via a website on which potential clients provide contact information and agree to be contacted by a participating lawyer, as long as:

the lawyer who contacts the potential client has been selected by transparent and mechanical methods that do not purport to be based on an analysis of the potential client's legal problem or the qualifications of the selected lawyer to handle that problem;

the service does not explicitly or implicitly recommend any lawyer; and

the website of the service complies with the requirements of Rule 7.1.

SUMMARY

In person networking, complemented by online activities, is the most effective business development technique for individual lawyers. It allows people to create

trust relationships that lead to referrals, new work and resources in various other fields.

Keeping within the ethical rules is a key aspect of professionalism. Adherence to your own system of ethics is what makes the practice of law a profession instead of a trade. Lawyers need to always conform to the professionalism tenets expressed in the *N.Y. Rules of Professional Conduct*. You need to make sure that you communicate within the principles established in Rule 7.1 and seek referrals within the guidelines established by Rule 7.2.

The rules emphasize straightforward communication that doesn't overpromise. By adhering to them, the networking lawyer can establish an effective personal brand centered around professional honesty and public education.

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