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(312) 988-5311

Marcia Kladder, Policy & Program Director  
(312) 988-5326

Natalia Vera, Senior Paralegal  
(312) 988-5328

Kimley Grant, Regulation Paralegal  
(312) 988-5319

**AMERICAN BAR ASSOCIATION**

**ABA Commission on Ethics 20/20**

321 N. Clark Street  
Chicago, IL 60654-7598  
Phone: (312) 988-5311  
Fax: (312) 988-5280  
Website: [www.abanet.org/ethics2020](http://www.abanet.org/ethics2020)

**To: ABA Entities, Courts, Bar Associations (state, local, specialty and international), Law Schools, Individuals, and Entities**

**From: ABA Commission on Ethics 20/20 Working Group on the Implications of New Technologies<sup>1</sup>**

**Re: For Comment: Issues Paper Concerning Lawyers' Use of Internet Based Client Development Tools**

**Date: September 20, 2010**

**I. Introduction**

The American Bar Association's Commission on Ethics 20/20 is examining a number of legal ethics issues arising from lawyers' use of technology, including issues arising from Internet-based client development tools. The goal of this paper is to describe several issues that the Commission has identified in this context and to elicit comments on possible approaches that the Commission is currently considering. Comments received may be posted to the Commission's website and should be sent to the Commission as requested below by **December 15, 2010**.

The Commission has taken no positions about the matters addressed in this paper. Rather, the Commission expects to use any comments that it receives to supplement the research that the Commission has completed and to facilitate the development of various reports and proposals that the Commission plans to draft during the next two years.

**II. Ethics Issues Arising from Lawyers' Use of Internet-Based Client Development Tools**

The Internet has played an increasingly important role in lawyers' efforts to attract new clients and disseminate information about the law and legal services. Typically, these efforts have had the salutary effect of educating the public about the existence of particular legal rights and options, the availability of legal services, and the selection of specific lawyers. The Commission recognizes that the public now relies on the Internet as a major source of information in many areas, including information about legal services.

In light of these public benefits and given the First Amendment rights at stake, the Commission is seeking to address those issues that create specific and identifiable risks to the public or to prospective, current, or former clients. Proceeding from these premises, the Commission's Technology Working Group has examined ethics issues arising out of four common online methods of client development: (1) social and professional networking services (such as Facebook, LinkedIn, and Twitter), (2) blogging, (3) "pay-per-click" advertising,

<sup>1</sup> Members of the Working Group are: Fred S. Ury and Carole Silver (Co-Chairs), Robert E. Lutz, Herman J. Russomanno, Judith A. Miller, Carl Pierce (ABA Standing Committee on Delivery of Legal Services), Michael P. Downey (ABA Law Practice Management Section), Paula Frederick (ABA Standing Committee on Ethics and Professional Responsibility), Stephen J. Curley (ABA Litigation Section), Youshea A. Berry (ABA Young Lawyers' Division). Andrew M. Perlman serves as Reporter, and Will Hornsby, Martin Whittaker, and Sue Michmerhuizen provide counsel.

and (4) lawyer websites.<sup>1</sup>

#### A. Online Social and Professional Networking Services

An increasingly common form of online client development involves the use of social and professional networking websites, such as Facebook and LinkedIn. These websites enable lawyers to create online profiles that contain personal and professional information, including information about their law practices. Depending on which website the lawyer uses, the profile (or some portion of it) can be made available either to anyone with an Internet connection, anyone who is a member of the networking site, or (if the lawyer prefers it) only some designated group of people, such as friends, family, professional colleagues, clients, or prospective clients.

Typically, lawyers can determine who has access to the profile or particular information in the profile by creating online “links” to specified individuals. (In the case of Facebook, this linking is called “friending.”) A lawyer can create these links (or “friends”) by inviting particular people to accept an electronic invitation to become connected or by accepting a similar invitation from other people. People who have linked to the lawyer’s profile (or who have become “friends” of the lawyer’s profile) can often access more information about the lawyer from the profile and receive electronic notifications when the lawyer posts new information on the profile. Lawyers can also contact specific people who have linked to their profiles, usually by generating an email through the networking site.

Another similar and popular service is offered by Twitter, which allows people to send brief information of up to 140 characters (called “tweets”) to numerous people at once. In essence, people can decide to follow particular Twitter users in order to receive their “tweets.” As is the case with other forms of social networking, lawyers can use this service to send out information about themselves to many people simultaneously.

#### 1. Identifying the Line Between Personal Communications and Lawyer Advertising

Because lawyers frequently use these websites and services for both personal and professional reasons, the legal ethics issues in this context are more complicated than they have been for more traditional client development tools. For example, a lawyer might create a Facebook profile that is accessible to family and prospective clients at the

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<sup>1</sup> The Commission is considering other advertising-related ethics issues that arise online but which are not addressed in this paper. For example, the Commission is examining whether Model Rule 8.5 (Choice of Law) offers an adequate means for determining which states’ ethics rules apply to Internet-based advertising. The Commission is also separately considering issues related to rankings and ratings of both lawyers and law firms as well as the emergence of third-party services that provide information about lawyers and solicits their participation in supplying that information.

same time.<sup>2</sup> The lawyer might then post professional announcements that are shared with all of those people, raising the question of whether such announcements are subject to the usual ethical restrictions on lawyer advertising and solicitation.

The Commission seeks to determine what guidance it should offer to lawyers regarding their use of social and professional networking sites, especially when lawyers use those sites for both personal and professional purposes. The Commission's guidance could take the form of a policy statement that could be submitted to the House of Delegates for its adoption or a white paper that explains the extent to which lawyers' use of networking sites should be considered a form of lawyer advertising. Alternatively, or in addition, the Commission could propose amendments to the Model Rules in Article 7 or their Comments in order to clarify when communications on networking sites are subject to the Rules of Professional Conduct as well as the difference between advertising and solicitations in this context. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.

## 2. Inadvertent Lawyer-Client Relationships

A second concern arising from networking websites is that they could produce an inadvertent lawyer-client relationship. The problem is more complicated than it is for typical lawyer websites (see [Part II.D](#) below), because lawyers who use networking sites may not be able to control the flow of information from prospective clients. For example, lawyers may not be able to include disclaimers and other protections against receiving the kind of information that could trigger ethical obligations under Model Rule 1.18 (duties to prospective clients).

The Commission is considering what, if any, guidance it should offer to lawyers about how to avoid inadvertent lawyer-client relationship when using social and professional networking sites. This guidance could take the form of a policy statement that could be submitted to the House of Delegates for its adoption or a white paper that sets out certain guidelines regarding lawyers' use of networking sites. Alternatively, or in addition, the Commission could propose amendments to Model Rule 1.18 or its Comments that would clarify when communications on networking sites might trigger the obligations under that Rule. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.

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<sup>2</sup> Lawyers also use Internet videos, such as videos uploaded to Youtube, to reach a larger audience. Some of this content is clearly advertising material and would be regulated under the Article 7 Rules. Other content, however, has many purposes, only some of which are advertising related. For example, a lawyer might post an informational video about the law that does not expressly seek clients. As in the case with social media services more generally, the key unresolved question is the extent to which these sorts of materials are subject to the Article 7 Rules.

### 3. Lawyers “Friending” Judges

An increasing number of judicial ethics opinions have addressed the propriety of judges linking to (or becoming “friends” with) lawyers who appear before them. Although this issue is primarily a matter of judicial ethics, lawyers do have to consider their own jurisdiction’s approach to the judicial ethics issue. For example, if the jurisdiction places limits on the extent to which lawyers and judges can link to each other (or become “friends”) on networking sites as a matter of judicial ethics, a lawyer might facilitate a judge’s violation of those restrictions by inviting the judge to link to the lawyer’s profile or by accepting an invitation from the judge to do the same. Arguably, this could result in the lawyer’s violation of Model Rule 8.4(f), which states that a lawyer cannot knowingly assist a judge in conduct that is a violation of the rules of judicial conduct.

The Commission is considering what, if any guidance it should offer to lawyers who might want to link to judges on a social or professional networking site. The Commission’s guidance could take the form of a policy statement that could be submitted to the House of Delegates for its adoption or a white paper that sets out certain guidelines on this subject, taking into account the disparate approaches to the issue as a matter of judicial ethics. Alternatively, or in addition, the Commission could propose amendments to Model Rule 8.4(f) or its Comments that would clarify when a lawyer’s conduct in this area might violate the Rule. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.

### 4. Gathering Information Through Networking Websites

Because networking websites often contain a vast amount of information about lawyers and non-lawyers, these websites are a potentially rich source of information for investigation purposes. For example, some lawyers now use networking websites to gather information about adverse parties and witnesses by asking those individuals for access to their profiles. The ethics issue arises when lawyers (or their investigators) make the request for access to the relevant profiles without clearly indicating the purpose for the request or by being deceptive about the request (i.e., pretexting).

The Commission is considering what, if any, guidance it should offer to lawyers who might want to gather information of this sort in various circumstances. One possibility is to encourage the ABA Standing Committee on Ethics and Professional Responsibility to produce a formal opinion concerning the implications of these investigations under Model Rules 4.2 (communications with persons represented by counsel) and 4.3 (dealing with unrepresented persons), as a Philadelphia Bar ethics opinion recently did. Phil. Bar Assoc. Prof. Guidance Comm. Opinion 2009-02.

Alternatively, the Commission’s guidance could take the form of a policy statement that could be submitted to the House of Delegates for its adoption or a white paper that sets out certain guidelines on this subject. The Commission could also propose amendments to Model Rules 4.2 and 4.3 or the Comments to those Model Rules to clarify when lawyers can take advantage of the information stored on networking websites. The

Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.

### Summary of Questions Concerning Online Social and Professional Networking Services

1. Under what circumstances should the Model Rules of Professional Conduct govern a lawyer's participation in professional and social networking sites, given that such activities often have both a personal and advertising purpose? (See [Part II.A](#) above.)
2. Should the Commission draft a policy statement for the House of Delegates to consider or a white paper that sets out certain guidelines regarding lawyers' use of networking sites? Alternatively, or in addition, should the Commission propose amendments to Model Rules 7.2 (See [Part II.A.1](#)), 1.18 (See [Part II.A.2](#)), 8.4(f) (See [Part II.A.3](#)), 4.2, or 4.3 (See [Part II.A.4](#)), or the Comments to those Model Rules in order to explain when communications or other activities on networking sites might trigger ethical obligations under the Model Rules? If so, what amendments should the Commission propose?

#### B. Blogging and Discussion Forums

A blog is an Internet-based forum (a "web log") that offers opinions or information, sometimes on a particular issue, such as intellectual property law. The material on the blog may include the blogger's opinions about the topic, links to matters that relate to the blog's subject matter, and comments from the blog's readers. The material is usually freely available to anyone with an Internet connection. Lawyers frequently use blogs to develop or enhance a reputation as an expert in a specific area through blog posts that relate to a particular legal topic or about the law generally.

One central question concerns the extent to which lawyer-operated blogs are subject to the same ethical considerations as other forms of lawyer advertising. At one extreme are blogs that reside on a lawyer's or law firm's website and that are clearly designed to serve an advertising and marketing function. Such blogs would almost certainly have to comply with the relevant state rules of professional conduct to the same extent as the lawyer websites on which those blogs appear. ([See II.D below.](#)) At the other extreme are purely personal blogs that may contain a lawyer's thoughts about issues that have nothing to do with the lawyer's practice or about the law and contain no information about the lawyer's professional background. Such blogs do not serve any advertising or marketing function, so they typically would not trigger the Article 7 Rules.

There are many blogs, however, that fall somewhere between these two extremes. For example, some blogs are designed to create a forum for discussing particular types of legal issues with other lawyers who are knowledgeable about the same subject, but these blogs are not specifically designed for advertising purposes or to attract prospective clients. The content on these blogs would likely receive stronger First Amendment protection than blogs that are used primarily for advertising or marketing a lawyer's practice, so some of the Rules of Professional Conduct may not be applicable or may

apply to only some portion of the blog's content, such as descriptions about the lawyer's professional background. Moreover, to the extent that prospective clients use the blog, the lawyer might need to take into account how to avoid the creation of inadvertent lawyer-client relationships, such as whether to include the kinds of disclaimers that are often required when setting up a law firm's website. ([See II.D below.](#))

Closely related issues arise out of lawyer-operated discussion forums and discussion boards. For example, a lawyer might create a forum where the public can discuss a particular legal issue, a medication, or the effects of a specific medication. The lawyer might then respond to comments on the forum or encourage visitors to visit the lawyer's website to learn more information. The question is whether lawyers can create such discussion boards without clearly disclosing that the discussion boards were created by lawyers who provide services related to the subject of discussion or without disclosing the marketing-related function that the discussion boards serve. Similarly, lawyers (either the lawyers who created the forum or other lawyers who are not affiliated with the site) might post comments to legal questions and provide a link to their own websites. These comments might trigger a variety of ethics rules, including Model Rules 1.18 (duties to prospective clients), 5.5 (limitations on multijurisdictional practice) and several Article 7 Rules.

Another related issue concerns websites, such as JD Supra, which allow lawyers to upload client-related documents, such as complaints or briefs. The documents are searchable, so the public (or other lawyers) can find documents on particular subjects and identify the lawyers who either authored the documents or uploaded the documents. One issue is whether uploading documents that were not written by the uploading lawyer might mislead clients into thinking that the lawyer is an expert in a particular area when that is not, in fact, the case. Because clients can find lawyers through the site based on documents that lawyers have uploaded, there are also concerns regarding the formation of an attorney-client relationship similar to those described above in the context of social networking sites. There are also confidentiality related concerns if lawyers post documents (even publicly available documents) without getting client consent.

The Commission is considering what, if any, guidance it should offer to lawyers who operate or participate in blogs, discussion boards, and other sites (like JD Supra) when their intent is, at least in part, to develop clients. The Commission's guidance in this area could take the form of a policy statement or white paper that sets out certain guidelines regarding these Internet-based media. Alternatively, or in addition, the Commission could propose amendments to Model Rules 1.6 (duty of confidentiality), 1.18 (duties to prospective clients), 5.5 (multijurisdictional practice), 8.4 (misconduct generally), or the Article 7 Rules and their Comments that would clarify when the Model Rules of Professional Conduct cover these forms of online activities. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.<sup>3</sup>

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<sup>3</sup> There are other ethics rules that blogging might trigger, such as Model Rules 1.6 (duty of confidentiality) and 3.6 (restrictions on trial publicity), when the blogging involves a pending matter. It does not appear

## Summary of Questions for Blogging and Discussion Forums

1. Under what circumstances should the Model Rules of Professional Conduct govern a lawyer's participation in blogs, given that such activities often have both an advertising and non-advertising function?
2. Should the Commission draft a policy statement for the House of Delegates to consider or a white paper that sets out certain guidelines regarding lawyers' use of blogging? Alternatively, or in addition, should the Commission propose amendments to Model Rules 1.18 or 7.2 or the Comments to those Model Rules in order to explain when these activities might trigger ethical obligations under the Model Rules? If so, what amendments should the Commission offer?
3. Can lawyers create online discussion boards without disclosing that the discussion boards serve a client development function? If lawyers leave comments on such discussion boards or on blogs, are those comments subject to the Model Rules of Professional Conduct? Should the Commission offer a policy statement or white paper that sets out certain guidelines regarding lawyers' use of such sites? Alternatively, or in addition, should the Commission propose amendments to Model Rules 1.18 or 7.2 or the Comments to those Model Rules in order to explain when these activities might trigger ethical obligations under the Model Rules? If so, what amendments should the Commission offer?
4. When a lawyer uploads documents to websites, such as JD Supra, are those materials and the surrounding information regarding those materials governed by the Article 7 Rules? Should the Commission offer a policy statement or white paper that sets out certain guidelines regarding lawyers' use of such sites? Alternatively, or in addition, should the Commission propose amendments to Model Rules 1.6, 1.18 or 7.2 or the Comments to those Model Rules in order to explain when these activities might trigger ethical obligations under the Model Rules? If so, what amendments should the Commission offer?

### C. Paying for Online Advertising, Referrals, and Leads

Pay-per-click advertising is a service whereby a lawyer pays a fee to a third-party each time an Internet user clicks on an advertisement that directs the user to the lawyer's

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that any guidance is needed in these areas, because the Model Rules already offer clear guidance on such matters.

Similarly, some lawyers hire third-parties to ghostwrite content for a blog. If these ghostwritten blog entries suggest that a lawyer has an expertise that the lawyer does not have, the question is whether the ghostwritten entries violate Model Rule 7.1's prohibition against false or misleading advertising. This issue has arisen in the past regarding more traditional marketing, so it is not clear that this issue requires the Commission's guidance. The Commission invites comments, however, on whether any guidance is, in fact, needed in these or other blogging-related contexts not mentioned in this paper.

website. Google's AdWords program is one of the most well-known versions of this service, but some companies provide a more sophisticated service that is specifically designed to generate leads for lawyers. These more sophisticated (and sometimes more expensive) arrangements require the lawyer to pay a fee for each "lead" that the third-party generates (often called "pay-per-lead" advertising). Because the fee is paid regardless of whether a lawyer-client relationship is formed, these fees do not constitute an impermissible sharing of fees with non-lawyers. It is not clear whether these fees constitute an impermissible payment for "recommending" the lawyer's services under Model Rule 7.2(b).

The Commission invites comments on what, if any, guidance it should offer to the increasing number of lawyers who want to take advantage of pay-per-click or pay-per-lead advertising arrangements. The Commission's guidance could take the form of a policy statement that could be submitted to the House of Delegates for its approval or a white paper that sets out certain guidelines on this subject. Alternatively, or in addition, the Commission could propose amendments to Model Rule 7.2(b) or its Comments that would clarify when a lawyer's conduct in this area might violate the Rule. The Commission invites comments on whether it should, in fact, offer guidance in this area, and if so, what type of guidance the Commission should offer.

#### Summary of Questions Concerning Paying for Online Advertising, Referrals, and Leads

1. Should the Commission offer guidance on whether pay-per-click and pay-per-lead arrangements comply with Model Rule 7.2(b)? If so, should the Commission draft a policy statement for the House of Delegates to consider or a white paper that sets out certain guidelines on this subject? Alternatively, or in addition, should the Commission propose amendments to Model Rule 7.2(b) or its Comments that would clarify when a lawyer's payment for online advertising or other new forms of referrals might violate the Rule? Or should the Commission propose more fundamental amendments to Model Rule 7.2(b) that would reconceptualize the purpose of the Rule in light of these new forms of advertising?

#### D. Lawyer Websites

Lawyer websites can be as simple as a single webpage that contains a lawyer's contact information, or they can be as complicated as a secure portal (commonly called a virtual law office or VLO) through which lawyers conduct their entire law practice, including interacting with clients, sharing documents, and offering legal services.<sup>4</sup> Typically, however, lawyers use websites to disseminate information about their practices and to educate prospective clients about their legal options.

Although websites can serve a valuable informational function, they can also give rise to several ethical concerns, including the possibility that they might:

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<sup>4</sup> The Commission is studying a variety of ethics issues associated with VLOs and plans to produce a separate paper about those issues.

- contain information that is either false or misleading
- produce an inadvertent attorney-client relationship
- give legal advice (as opposed to provide generalized legal information)
- reveal confidential information about current or former clients or about current or past legal matters

The American Bar Association's Committee on Ethics and Professional Responsibility is issuing a formal opinion that addresses each of these issues. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 10-457 (2010). The URL for that Formal Opinion will be available on September 24, 2010 and will be posted to the Commission's website.

#### 1. False or Misleading Statements on Websites

Formal Opinion 10-457 reaches the conclusion that lawyer websites have to comply with Model Rule 7.1, which prohibits false or misleading statements. This conclusion makes sense as long as a website is, in fact, being used for advertising purposes. As explained in the context of blogging above, however, it is not always clear whether a lawyer's website is being used in such a way. In some cases, for example, only a portion of a website may be serving such a purpose.

To offer more clarity, the Commission could recommend an amendment to Comment 2 of Model Rule 7.2 that would define which types of websites are subject to Article 7 of the Model Rules of Professional Conduct. The Commission invites comments on whether such an amendment is necessary or desirable and whether the Commission should propose any other changes or offer any other form of guidance regarding the applicability of the Article 7 Rules to lawyer websites.

#### 2. Inadvertent Lawyer-Client Relationships

ABA Formal Opinion 10-457 also addresses the possibility that, by enabling communications between prospective clients and lawyers, websites could produce inadvertent lawyer-client relationships. The opinion also speaks to the related concern that website-based communications could trigger a lawyer's duties to prospective clients under Model Rule 1.18. According to the opinion, a number of factors determine whether these obligations arise, such as whether the website invites prospective clients to submit information through the website and whether the website contains properly placed and appropriately worded disclaimers regarding the effect of sending information through the website.

The Commission is considering whether it should offer additional guidance in this area, including whether it should propose amendments to Model Rule 1.18 or its

Comments to clarify when communications through a website might trigger a lawyer's ethical duties under that Rule. The Commission welcomes input into whether such amendments are necessary or desirable and whether the Commission should propose any other changes or offer any other form of guidance regarding the applicability of Model Rule 1.18 to lawyer websites.

### 3. Giving Legal Advice

The ABA Formal Opinion concludes that, when lawyers post information about the law on their websites, they must ensure that the information does not mislead the public about the meaning of the law or leave the public with the impression that the information can substitute for legal advice. For example, if lawyers post information about a particular legal doctrine, they must ensure that the information remains current and includes appropriate disclaimers, such as the extent to which the information applies to particular jurisdictions and that it should not be understood to substitute for legal advice from a lawyer after considering the facts of a particular legal matter.

The Commission is considering whether it should offer additional guidance in this area, including whether it should propose amendments to Model Rules 4.1(a) (prohibiting false statements of material facts or law to third parties), 7.1 (prohibiting a material misrepresentation of law in advertisements), 8.4(c) (prohibiting misrepresentations), or the Comments to those rules. The Commission welcomes input into whether such amendments are necessary or desirable and whether the Commission should propose any other changes or offer any other form of guidance regarding the applicability of those Model Rules to the information contained on lawyer websites.

### 4. Confidential Information on Websites

A fourth issue concerns information that appears on websites about current or past legal matters or the identity of current or past clients. ABA Formal Opinion 10-457 explains that, ordinarily, lawyers must obtain client consent before posting such information on their websites:

Specific information that identifies current or former clients or the scope of their matters also may be disclosed, as long as the client or former clients give informed consent, as required by Rules 1.6 (current clients) and 1.9 (former clients). Website disclosure of client identifying information is not normally impliedly authorized because the disclosure is not being made to carry out the representation of a client, but to promote the lawyer or the law firm.

Not all states have adopted this approach. For example, Minnesota's version of Rule 1.6 ordinarily permits a lawyer to disclose this type of information on a website. Minn. R. Prof. C. 1.6(b)(2) (permitting disclosure of information if it is "not protected by the attorney-client privilege under applicable law, the client has not requested that the information be held inviolate, and the lawyer reasonably believes the disclosure would not be embarrassing or likely detrimental to the client"). The Commission welcomes

input into whether the current approach to this issue as reflected in Model Rule 1.6 and the ABA Formal Opinion is appropriate or whether a limited exception (such as the exception reflected in the Minnesota rule) should be proposed.

### Summary of Questions Concerning Lawyer Websites

1. Should the Commission recommend amendments to Comment 2 of Model Rule 7.2 to clarify which types of websites are, in fact, subject to the restrictions contained in the Article 7 Rules of the Model Rules of Professional Conduct? In addition or as an alternative, should the Commission offer any other form of guidance regarding the applicability of the Article 7 rules to lawyer websites? (See [Part II.D.1](#))
2. Should the Commission propose amendments to Model Rule 1.18 or its Comments to clarify when communications through a website might trigger a lawyer's ethical duties under that Rule? In addition or as an alternative, should the Commission offer any other form of guidance regarding the applicability of the Article 7 rules to lawyer websites? (See [Part II.D.2](#))
3. An ABA Formal Opinion addresses issues arising from websites that contain information about the law. Should the Commission offer additional guidance in this area, such as amendments to Model Rules 4.1(a) (prohibiting false statements of material facts or law to third parties), 7.1 (prohibiting a material misrepresentation of law in advertisements), 8.4(c) (prohibiting misrepresentations), or the Comments to those rules? In addition or as an alternative, should the Commission offer any other form of guidance on this issue? (See [Part II.D.3](#))
4. Should the Commission clarify the extent to which lawyers can post descriptions on their websites about current or past legal matters or the identity of current or past clients? If so, what guidance should the Commission offer? Should guidance take the form of a proposed amendment to Model Rule 1.6 or its Comments? (See [Part II.D.4](#))
5. With regard to all of the above questions, to what extent does the First Amendment limit the application of the Model Rules to these areas of lawyer conduct?

### III. Conclusion

The Internet has raised fundamental questions about the extent to which the Model Rules of Professional Conduct can and should apply to lawyers' use of online client development tools. One of the Commission's goals has been to identify these areas of uncertainty and to offer proposals to clarify lawyers' ethical obligations consistent with lawyers' freedom of expression under the First Amendment. To that end, the Commission invites comments on the questions and issues posed in this paper.

Responses to these questions or comments on any related issues should be directed by **December 15, 2010**, to:

Natalia Vera  
Senior Research Paralegal, Commission on Ethics 20/20  
ABA Center for Professional Responsibility  
321 North Clark Street  
15th Floor  
Chicago, IL 60654-7598  
Phone: 312/988-5328  
Fax: 312/988-5280  
<mailto:veran@staff.abanet.org>

Comments received may be posted to the Commission's website.

#### Select Bibliography

The Commission has had the benefit of reviewing numerous materials, a select number of which are included in this sample bibliography. The Commission welcomes recommendations for additional resources that address the issues in this paper.

#### **Relevant Cases:**

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