

PROGRAM MATERIALS
Program #30232
October 1, 2020

Ethically Building and Protecting your Online Reputation During and After COVID-19

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Ethically Building and Managing Your On-line Reputation During Covid-19 and Beyond

- Haley Geftman-Gold
 - Senior Counsel, VP for CBS
 - Fired for a 36 Word Facebook Post



On October 1, 2017 following the largest mass shooting by a crazed gunman at a Country Music Festival in Las Vegas she posted the following to her friend on Facebook:



Hayley Geftman-Gold

If they wouldn't do anything when children were murdered I have no hope that the Repugs will ever do the right thing. I'm actually not even sympathetic bc country music fans often are republican gun toters.

54m Like Reply





Frank Aquila

Partner with Sullivan Cromwell

Very Well Known For His Use Of Social Media



 During the Kavanaugh Supreme Court confirmation hearings, he posted a response to then Press Secretary Sarah Sanders which led to his deleting his Twitter Account

 And while his account has been deleted, I was able to obtain this screen shot more than two years later.



- Aaron Schlossberg
 - Attorney in New York City
 - Video of Him Berating People for Speaking Spanish at a Restaurant Went Viral
 - His Yelp Page Inundated by People Posting Fake One (1) Star Reviews
 - A Mariachi Band Played Outside His Apartment in Protest

How to Become Famous in One Post

Juli Briskman

- On October 31, 2017 this picture was taken of her flipping off the presidential motorcade
- She was fired from her job but became a social media star
- A Go-Fund Me Account reached \$142,000



Why Create An Online Presence



Your Brand

YOU ARE THE COMPANY MEINC

THE MOST IMPORTANT JOB

IS TO BE
HEAD MARKETER
FOR THE BRAND CALLED

OF THE BRAND CALLED

TOM PETERS

Why Create A Personal Brand?



 People Do Not Hire Law Firms – They Hire Lawyers

 You Insulate Yourself From Negative Issues That May Effect The Firm

You Control Your Own Future

Your Brand

"Personal brand is what people say about you when you leave the room."

Jeff Bezos, Founder, Amazon.com



Ethics

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



Ethics

Rule 1.1 Competence

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.



Benefits of Creating Your Brand

- "Top of Mind" Status
- Authority & Credence
- Leadership
- Prestige



Benefits of Creating Your Brand

- Attract Clients & Referral Sources
- Adds Perceived Value
- Recognition
- Increase Earning Potential



Creating Your Brand



Determine Who You Are



Determine What You Do



Determine Who You Do It For



Create Your Brand



8 "Laws" for Building Your Brand

- The Law of Specialization
- The Law of Leadership
- The Law of Personality
- The Law of Distinctiveness



8 "Laws" for Building Your Brand

- The Law of Visibility
- The Law of Unity
- The Law of Persistence
- The Law of Goodwill



Your Brand



- GOOD NEWS!
 You Can Build and Rebuild Your Brand at Any Time
- BAD NEWS!
 You Can Destroy Your
 Brand In an Instant

Ethics



Social Marketing v. Social Networking

Social Media Marketing is the content that you upload.

Consider social media as a one-to-many communication method. Much like television, advertising, the medium (the location in which you post) is social media. You are trying to cultivate fans of your work.





Social networking is all about engagement — creating relationships, communicating with your readers, building your following and connecting with your online audience.

Social Marketing v. Social Networking

On social media, you're doing all of the talking. You are trying to generate engagement with your fans and followers, and ultimately hoping that they interact with your brand or take an action.

Social Media Marketing has a goal to create authority status

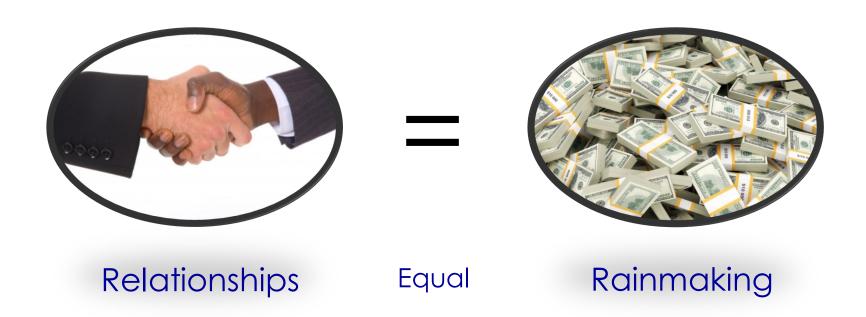




With social networking, your ultimate goal is to build your network of fans/followers and foster those relationships. Asking questions, "listening" to others, and creating conversations.

Best Practices

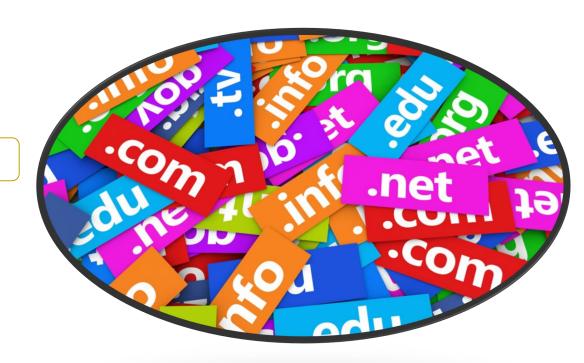






NameChk.com

Purchase your personal URL









LinkedIn



Faceboo k



Pinterest



Instagra m



Twitter



YouTube



Snapcha



Medium

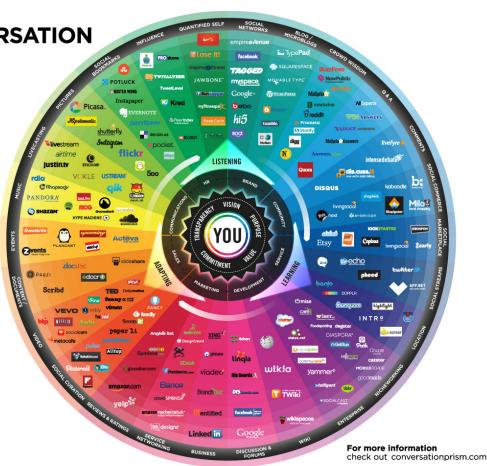


Reddit

What is Social Media?

THE **CONVERSATION PRISM** Brought to you by Brian Solis & JESS3

Social Media is the 1000's of websites and applications that allow you to create, curate and post content, and interact with other users.



Listen



Listening or "Lurking" on social media is truly one of your best practices.

What are people saying about your industry or about your practice?

What do they need?

What keeps them up at night?

Who are the influencers in your industry?

Create a Strategy

Social Media requires a strategy. You cannot just post things willy-nilly and expect results.

Instead write down the answers to the following questions:

- Why Does Your Blog and Your Social Media Exist?
- Who is Your Ideal Client?
- What keeps them up at night?
- What are your goals for your Social Media and Blog?
- Who are your competitors?
- How often will you blog/post on social media?
- What topics are you going to write about?



Use the Same Name/Handle



- You are trying to create a brand for yourself.
- Choose the same name/handle/avatar for every social media site
- Even if your firm has a brand, you begin to dovetail off of it by creating your own personal brand as well.
- Use Namechk.com to see if your desired name/handle is available.

Use Photos/Gifs/Video/Infographics to Create Interest

- Tweets with images receive 150% more retweets than tweets without images
- Facebook posts with images see 2.3X more engagement than those without images.
- Infographics can increase web traffic by up to 12%.
- Blog articles with images get 94% more views.



Write for Your Audience



- Use the language that your target audience/ideal client would use.
- Write in plain English and avoid "Legalese".
- Determine the "keywords" that your ideal clients would be using when they search for answers.

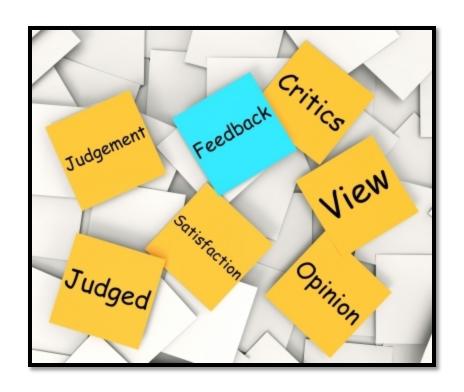
Use Great Titles



- Write catchy titles when blogging
- Don't use "click-bait", it will decrease your audience's trust in you.
- Use shorter titles to show up on searches

Respond to Comments and Feedback

- Social Media is about networking too.
- When someone comments on your posts or blog, respond to them
- Ask questions
- Solicit feedback
- Even if the feedback is negative, respond in an appropriate (and ethical) way



Be Authentic/Inject Your Personality



- There may be hundreds of posts and blogs on the same subject you are writing, which is why you need to inject your personality into the topic.
- Don't create a persona because if you are found out, you will have broken trust with your audience.

Repurpose Your Content

- Repurpose your content.
- Post the same content in other locations as long as it makes sense for the demographics
- A blog post can become a podcast, a YouTube video can be transcribed into a blog post, etc.
- Taking individual thoughts from various posts and turn them into something new.



Share Other People's Content



- Allows you to build trust with your audience/target market and with other content providers
- Creates goodwill think about the "Law of Reciprocity".
- Don't just repost or hit the share buttons, but make salient points on the article which fit in with your branding/marketing strategy
- Also fills in gaps when you haven't written anything yourself.

Review the Numbers/Analytics



- Use data to determine which posts, which ideas, are working.
- Each site has analytics you can tap into.
- Don't worry about number of likes, shares, etc. Be more concerned with interaction.

THINK BEFORE YOU POST!!



- People have lost jobs because they did not think before they post.
- Brands have been destroyed by one bad post.
- There are ethical considerations that come along with posting and responding. Don't let a stupid post ruin your legal career.

Creating Your Online Presence









Rule 1.18 Duties to Prospective Clients

- (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.
- c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).



Rule 1.18 Duties to Prospective Clients

ABA RPC Comment # 2

A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response.



Rule 1.18 Duties to Prospective Clients

- At it's most basic, it begins with the a person relying on the professional skills of a lawyer. This means that a relationship can be created in the absence of any express agreement
- If you answer questions on social media and the person who asked relies on those answers, a prospective client – attorney relationship could be inferred
- You must perform conflict of interest checks in order to ensure that there is no conflict with other clients (both current and past)
- You have a duty to ensure confidentiality of information for prospective clients.



Rule 1.18 Duties to Prospective Clients

Rule 1.18 discusses when a person becomes a prospective client and when the duty to maintain confidence attaches:

- Social Media allows for quick communications back and forth. It allows for questions to be answered and discussions to be started.
- Websites that allow potential clients to contact or pose questions to lawyers can create confusion about when a lawyer-client relationship has been formed.
- Providing general information about the law and legal developments generally doesn't qualify as rendering legal advice, lawyers who answer fact-specific legal questions may be characterized as offering personal legal advice



1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



1.6 Confidentiality of Information

- One of the most important obligations of an attorney is the duty to maintain confidentiality of information, and for some attorneys who use social media, this seems a bit difficult to them.
- We have become a world of TMI.
- IN RE: DISCIPLINARY PROCEEDINGS
 AGAINST Kristine A. PESHEK No.
 2011AP909-D. Decided: June 24,
 2011 attorney suspended for 60
 days for violating confidentiality
 rules on her blog.



1.6 Confidentiality of Information

- The difference between attorney-client privilege and confidentiality:
 - Attorney-client privilege is an evidentiary concept and a privilege with respect to testimony and compelled production of communications in connection with litigation.
 - Client confidentiality is an ethical duty that imposes absolute handcuffs on a lawyers ability to voluntary disclose information about clients or information about the representation of clients.



1.7 Conflict of Interest: Current Client



- a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by **a personal interest** of the lawyer.

1.7 Conflict of Interest: Current Client



- A lawyer may unintentionally develop a relationship with a someone who they don't really know, but who has a directly adverse conflict with a client.
- Positional conflicts can arise when a lawyer takes one position online and then takes an inconsistent position on behalf of a client.

1.7 Conflict of Interest: Current Client



- One issue implicated by the use of social media is the possibility that the attorney's social media posts will create a "positional" conflict.
- You must avoid taking sides on an issue.



- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client,
 - (1) whose interests are materially adverse to that person; and
 - (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.



- c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
 - use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
 - reveal information relating the representation except as these Rules would permit or require with respect to a client.



- This rule creates the same obligations with respect to past clients that RPC 1. 6 (a) creates with respect to present clients and RPC 1.18 provides to prospective clients. That is, client confidentiality.
- Just because the case is finished doesn't give you cart blanche to begin writing about it on social media or in blogs.



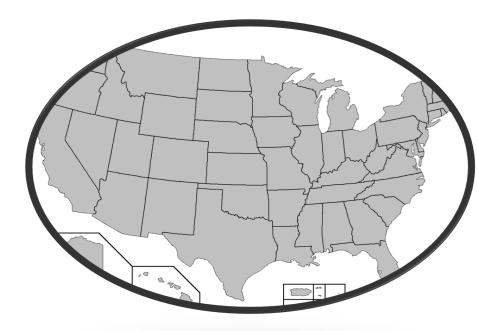
- Anytime you want to blog about a successful out come of a case with the facts of the case, if it is not available in the public domain, you have two choices:
 - 1. Ask your client if it's okay and
 - 2. Don't
- There are so many things you could discuss or write about
- There are also other ways to promote your wins by being more generic. As long as the information does not point to a particular client or case you can write about it.
- Use Disclaimers



- ABA Formal Opinion 479 discusses the "Generally Known" exception to Rule 1.9(c)
- "A lawyer may use information that is generally known to a former client's disadvantage without the former client's informed consent. Information is generally known within the meaning of Model Rule 1.9(c)(1) if it is widely recognized by members of the public in the relevant geographic area or it is widely recognized in the former client's industry, profession, or trade. For information to be generally known it must previously have been revealed by some source other than the lawyer or the lawyer's agents. Information that is publicly available is not necessarily generally known." (ABA Formal Opinion 479, December 17, 2017)

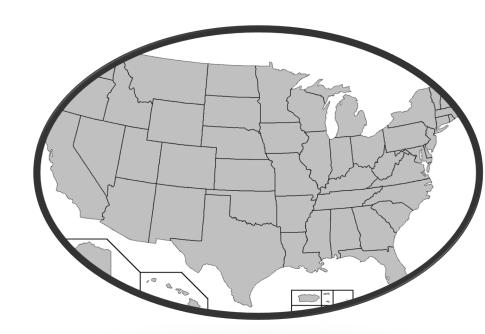
5.5 Unauthorized Practice of Law

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.



5.5 Unauthorized Practice of Law

- The internet and social media has allowed us to connect with people all of the world.
- A public social media post (like a public Tweet) knows no geographic boundaries.
- If attorneys elect to interact with nonlawyer social media users, their activities may be subject not only to the ethics rules of the jurisdictions in which they are licensed, but also potentially the ethics rules in any jurisdiction where the recipient(s) of any communication is(are) located
- Use Disclaimers to explain that this only applies in the states in which you are licensed.



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.



7.1 Communications Concerning a Lawyer's Services

- Any communications you make with regard to your services cannot be "false and misleading."
- This rule applies to social media, blogging, videos, and podcasts as well as any of the traditional marketing avenues you may use.
- A statement that is, prima facie, truthful but omits certain facts is considered misleading
- All of your social media profiles are subject to Rule 7.1 and may necessitate the need for including the statement "Attorney Advertising" on the page.



7.1 Communications Concerning a Lawyer's Services

- You must be aware of the language you are using on social media to market yourself and your services.
- If it cannot be factually proved, you should not post about it.
- In certain states you MUST include disclaimer language: such as "prior results do not guarantee similar outcome."
- This also includes your speaking about various awards like Super Lawyer, Best Lawyer, Etc.



7.2 Communications Concerning a Lawyer's Services: Specific Rules



(a) A lawyer may communicate information regarding the lawyer's services through any media.



- (b) A lawyer shall not compensate, give or promise anything of value to a person_for recommending the lawyer's services except that a lawyer may:
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-forprofit or qualified lawyer referral service;
 - (3) pay for a law practice in accordance with Rule 1.17;
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
 - (i) the reciprocal referral agreement is not exclusive; and
 - (ii) the client is informed of the existence and nature of the agreement; and
 - (5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

7.2 Communications Concerning a Lawyer's Services: Specific Rules



- (c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.



- This includes offering to pay people to write testimonials and recommendations on the various sites available where reviews are posted:
 - Google
 - Yelp
 - Facebook
 - LinkedIn
- Ratings sites specific to lawyers:
 - AVVO
 - Super Lawyers
 - Martindale
 - Lawyer Ratingz
 - Lawyerreviews.com



- According to research done by BrightLocal, 91% of people regularly or occasionally read online reviews and 84% trust those reviews as much as a personal recommendation.
- FindLaw has specifically found that "...
 that consumers are more likely to hire a
 lawyer who has online reviews. In addition,
 most consumers have used online reviews
 in choosing providers of professional
 services."
- Story of attorney who was providing gift cards to any of her clients who would give her a review.



- You cannot call yourself a "specialist" or say you "specialize" in a certain area or practice area of law without a certification recognized by the American Bar Association
- If you do have that certification, then you may publicize it as long as there are prominent disclaimers on your social media, blog or even if you are podcasting and using video.

7.3 Solicitation of Clients

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.



7.3 Solicitation of Clients

- (b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:
 - (1) lawyer;
 - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or
 - (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.



7.3 Solicitation of Clients

- (c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:
 - (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation involves coercion, duress or harassment.



7.3 Solicitation of Clients

- This rule was initially aimed at prohibiting the practice of "ambulance chasing
- In today's digital age, this now rule prohibits improper solicitations on Social Media.



7.3 Solicitation of Clients

- Solicitation of business means approaching a potential client proactively and pitching them to hire you.
- It doesn't apply to situations where the potential client opens the dialogue
- With regard to social media, the rule applies in situations where a client is under duress. It is applicable in other situations where the potential client is not in the proper frame of mind to choose counsel or in the case of mass disaster or mass torts.



3.6 Trial Publicity



(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

3.6 Trial Publicity



- b) Notwithstanding paragraph (a), a lawyer may state:
 - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) information contained in a public record;
 - (3) that an investigation of a matter is in progress;
 - (4) the scheduling or result of any step in litigation;
 - (5) a request for assistance in obtaining evidence and information necessary thereto;
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

3.6 Trial Publicity



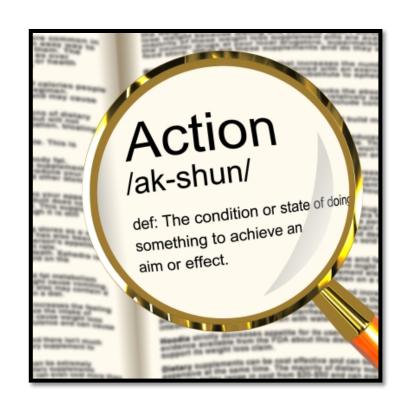
c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

3.6 Trial Publicity



- This rule is designed to ensure that clients have the right to a fair trial.
- We live in a world where information is needed 24/7/365. And we also live in a world of misinformation.
- There are certain things you are allowed to clarify and they are detailed in the rest of the rule.
- This rule applies to any extrajudicial statement, even made on social media or in a blog or even in comments to a blog that can prejudice a case.

Creating Your Online Presence



Manage Client Expectations

Create Amazing Client Service

Communicate, Communicate, Communicate



Vanity Search or "Ego Surfing"

Put Your Name In "Quotes"

Go Directly To The Rating Sites

















martindale.com

LawyerRatingz.com



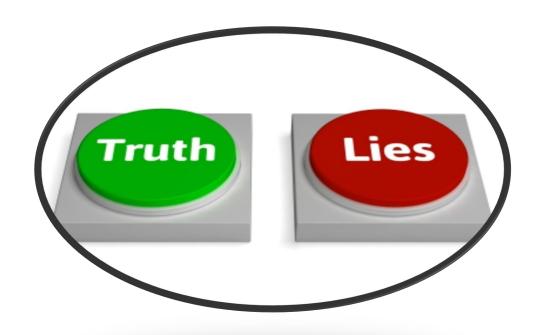
OH NO!
There's a Bad Review!!

 Responding Immediately Could Lead To An Ethics Violation

 Think Before You Respond



 Use It As A Marketing Opportunity





 Ask Site Management To Remove From Site

Write a Response
 Which Explains Your
 POV Without Violating
 Ethics Rules

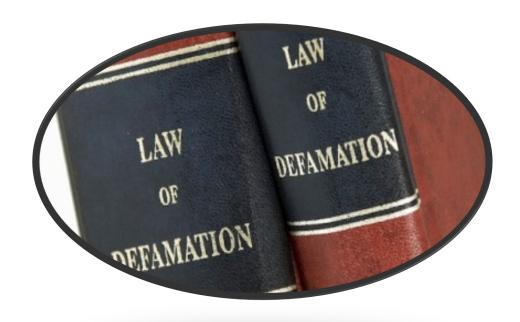
 Try To Get It Pushed Down The Search Page





• Don't Engage!

 File a Defamation Suit Only As A Last Resort



"It takes less time to do a thing right than explain why you did it wrong."

Henry Wadsworth Longfellow



For More Information

- Learn The "How To's" of Building a Brand Both On and Off Line
- Sign Up for Bi-Monthly Rainmaking Tips
- Join a Group Rainmaking Coaching class (beginning soon)!
- One-on-One Rainmaking Coaching

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