

# IPN

## Immigration Practice News

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## Online Legal Forums: Advise With Care

### Steps To Avoid Forming Inadvertent Client-Lawyer Relationships on the Web

By Alan B. Goldfarb

**S**ocial media sites give the public new ways to ask lawyers for answers to legal questions. Lawyers participate in these online forums because they provide an effective and affordable way of marketing their services to the public. Avvo, which bills itself as the world's largest legal directory, explains on its own site that: "One of the most effective ways to get clients and show off your expertise is to answer consumer questions posted to our Ask a Lawyer forum."

#### ***Use Caution in Answering Legal Questions Online***

Attorney-client relationships are easily created. Lawyers also owe duties to prospective clients. This advisory addresses specific risks

of participating in social networking sites, including disqualifying conflicts of interest and the inadvertent creation of client-lawyer relationships. It also provides practical steps to avoid these unintended consequences. The possibility of a conflict of interest stems from the anonymous nature of the conversation. In an extreme case, a lawyer posting answers on a legal forum may unknowingly be communicating with an adverse party.

#### ***Avoid Inadvertently Creating Client-Lawyer Relationship***

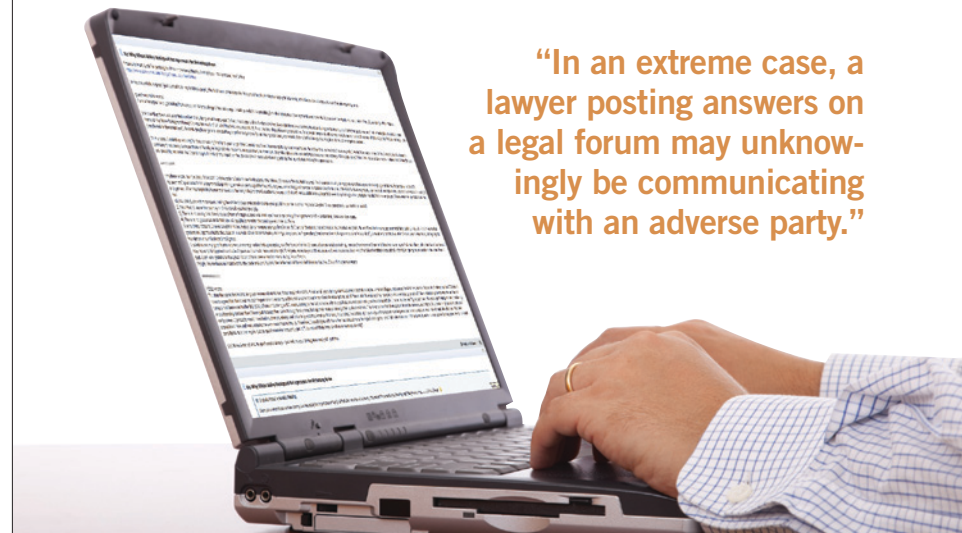
ABA Model Rule 1.18 and ABA and State Ethics Opinions offer some practical guidance. Arizona Opinion 97-04 addressed the question whether lawyers should answer specific legal questions posed by lay persons in legal chat rooms. According to this opinion, lawyers should not answer specific questions because

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**"In an extreme case, a lawyer posting answers on a legal forum may unknowingly be communicating with an adverse party."**

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of the inability to screen for conflicts of interest and the possibility of disclosing confidential information, unless the question presented is of a general nature and the advice given is not fact specific.

### **Give Legal Information, Not Legal Advice**

The lawyer's confidentiality obligations and professional liability largely depend on the sometimes difficult distinction to make between legal information and legal advice. ABA Formal Opinion 10-457 acknowledges that there is no exact line between the two, but that the context and content of the information is helpful in making the distinction. For instance, lawyers speaking to groups are generally considered to be providing legal information, while lawyers answering fact specific questions are considered to be providing legal advice, especially if their answers address a person's individual circumstances. A lawyer who addresses a problem in a hypothetical would generally be regarded as giving legal information, not legal advice.

The importance of this distinction between legal advice and information is reinforced by Model

Rule 1.18, which protects the confidentiality of prospective client communications. Lawyers normally have confidentiality obligations only to individuals who are clients (Rule 1.6), former clients (Rule 1.9), or prospective clients (Rule 1.18). Rule 1.18(a) specifically defines a prospective client as "a person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." For a discussion, there must be a two-way communication. The attorney who answers a specific legal question would be engaged in a discussion. If a lawyer has engaged in a discussion with a prospective client, Rule 1.18(b) prohibits the use or disclosure of that information without the prospective client's informed consent.

### **Follow These Steps When Posting to Social Media Site**

Lawyers avoid inadvertently creating a client-lawyer relationship by being careful to give only general information. Do not give answers to specific legal questions or supply cases or statutes, and use the same types of disclaimers on your social media profile that you would use on your firm's web site. The disclaimer should state that the information provided is not legal advice but only legal information; that the information is not a substitute for hiring a lawyer; that the visitor should consult with a lawyer if the visitor has a legal problem; and, that no lawyer-client relationship has been created.

*Alan Goldfarb is a partner with the Minneapolis law firm Davis & Goldfarb, PLLC. He is a cum laude graduate of the University of Minnesota Law School, and he earned his bachelor's degree from Columbia University.*

## NEWS YOU CAN USE

- The [ABA Commission on Ethics 20/20](#) is looking at the future of the practice of law and will soon make recommended changes to the Model Rules of Professional Conduct. The Model Rules are then used by each state to make changes to the state rules that apply to bar members. Stay on top of these issues posted to the Commission's website.
- AILA's Ethics & Practice Management Committee has produced a free podcast and accompanying article, [Six Steps to Transition Your Practice From Paper to Digital Files](#) to help interested law firms start planning to go paperless.
- In case you missed it, check out [60 iPhone/iPad Apps for Lawyers](#) to find useful and productive apps for you and your immigration practice.
- Legal ethics is not a "once and done" topic. Ethical conduct requires continual education to maintain high standards. AILA has the resources you need to stay current, including [articles](#), [webinars](#), and [conference recordings](#) on immigration-specific ethical issues.

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