

# Ethical Issues in Your New Media Practice

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## DISCLAIMER

The following presentation reflects the personal opinions of its authors and does not necessarily represent the views of their respective employers or of the NYSBA. Additionally, the following content is presented solely for the purposes of discussion and illustration, and does not comprise, nor is not to be considered, as legal advice.

## Competence

- RULE 1.1: COMPETENCE (a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- Comment 8: To maintain the requisite knowledge and skill, a lawyer should . . . keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information. . . .

## Material Developments

- RULE 1.4: COMMUNICATION (a) A lawyer shall: (1) promptly inform the client of . . . material developments in the matter . . .
- Do data breaches constitute “material developments”?

## Unauthorized Disclosure

- RULE 1.6: CONFIDENTIALITY OF INFORMATION: (c) A lawyer [shall] make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).

## Safeguarding Confidential Information

- Comment 16: Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to: (i) the sensitivity of the information; (ii) the likelihood of disclosure if additional safeguards are not employed; (iii) the cost of employing additional safeguards; (iv) the difficulty of implementing the safeguards; and (v) the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule, or may give informed consent to forgo security measures that would otherwise be required by this Rule. . . .

## Safeguarding Confidential Information

- Comment 17: . . . However, a lawyer may be required to take specific steps to safeguard a client's information to comply with a court order (such as a protective order) or to comply with other law (such as state and federal laws or court rules that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information. . . .

## Publicity

- RULE 3.6: TRIAL PUBLICITY: (a) A lawyer who is participating in or has participated in a criminal or civil 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.

## Advertising

- RULE 7.1:ADVERTISING: (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; or (2) violates a Rule.

## Advertising and New Media Issues

- Which state rules govern new media advertising which can be viewed anywhere?
- Do new media communications (like blogs or tweets) create an attorney-client relationship?
- Does accepting a Linked- in endorsement constitute attorney advertising?
- Etc?

