

CASTING YOUR NET FOR CLIENTS:

Using the internet to attract clients has its risks.

By David A. Grossbaum

Like those telephone solicitors who always manage to catch you just in the middle of dinner, it is difficult to avoid the barrage of e-mail imploring lawyers to join websites if they want to attract new clients in the new economy. Not all of these websites are created equal, and there are ethical and malpractice traps out there in cyberspace for the unwary.

The opportunities to get clients over the internet can come in the form of a simple attorney directory, a firm web page, or even being listed on a website through which clients seek and receive information or legal advice. The fact that the website may be endorsed by a well-known lawyer or legal ethicist doesn't offer any protection for the lawyer who violates an ethical rule or commits an act of legal malpractice over the internet; it is ultimately the lawyer who is accountable.

One of the most basic problems in getting clients through the Internet is the loss of the ability to size up new clients face-to-face. If you feel uneasy about a new client after the first meeting, you pass it up and chances are you won't be sorry. There's a lot less opportunity to put the client to the smell test over the internet.

Trying the client out with a little friendly advice about the legal problem could later be interpreted as the beginning of an attorney-client relationship, triggering all the legal duties and obligations. Although many websites contain disclaimers cautioning that an attorney-client relationship is not intended from this casual banter, these disclaimers provide only luke warm comfort. The ultimate test is usually what the client reasonably understood, and there is a real possibility for the person to misconstrue the nature of the relationship.

Receiving information from a client through a web site in order to discuss a legal problem or give legal advice raises issues with respect to confidentiality. These communications may not be entitled to confidential treatment if other people had access to the information.

Avoiding an ethical violation in this new economy should also be paramount. Ethical rules of every jurisdiction limit lawyer advertising in some way. These rules may limit a lawyer's claim of specialization, the payment to another party for recommending the lawyer's services, and the sharing of fees with a non-lawyer, and may require that certain disclaimers be used and that records of the materials be kept. Considering that information on a website can be viewed all over the globe, and that ethical rules of a jurisdiction may apply to lawyers who are not licensed there, making sure you are in compliance with even the most restrictive standards is crucial.

The potential for conflicts of interest must be as scrupulously avoided in internet situations as in office visits. Lawyers must make sure that they receive the same type of information about a client who comes to the firm through the internet as they would if a client came through the door. A client who is looking for a quick legal opinion over the internet should be treated the same way as a client looking for a long term relationship.

The global availability of the internet also makes it easy to “practice law” in a jurisdiction where you are not licensed. The now well-known California Supreme Court case of Birbrower serves as a warning that, although you may not be “physically present” in another state, you could be practicing law there simply “by telephone, fax, computer or modern technological means.” Not only is the unauthorized practice of law a criminal misdemeanor offense in some places, it could result in the loss of some or all of the fee if the fee agreement is an illegal contract.

If an on-line client does sue for legal advice given over the web, you could be sued anywhere in the world. Courts have long found personal jurisdiction over lawyers based upon telephone, mail, and fax communications sent to the client. Courts have started to consider the use of the internet by a defendant as a significant factor for personal jurisdiction purposes. Be aware that many malpractice policies do not cover claims brought outside the U.S. and Canada.

The following check list should be useful for internet client development:

1. Make it clear whether you are giving friendly advice or legal advice;
2. Do the same conflicts check you would do if the client came through the door;
3. Assume that the legal advice you give over the internet is open to the public; if you need to speak confidentially, use private e-mail, telephone, or letter;
4. Make sure that the legal website complies with the strictest advertising and fee-splitting rules;
5. Indicate where you are licensed to practice and that you are not giving legal advice where you are not licensed to do so; and
6. Buy worldwide malpractice coverage.

David Grossbaum is a partner at the Boston law firm of Cetrulo & Capone, LLP, where his practice concentrates on the defense of lawyers and on professional liability insurance coverage issues. He is the chair-elect of the Professionals’, Officers’ and Directors’ Liability Committee of the Tort & Insurance Practice Section of the ABA.