



Future of Louisiana's Ethics and Professionalism Rules:

As Technology Changes, Will Ethics Stay the Same?

By Cassandra R. Hewlings

If Dane Ciolino had it his way, the future of Louisiana's ethics and professionalism rules would be rather dull.

As the Louisiana State Bar Association reflects on where it has been in its first 75 years, it is only natural to look forward and ponder what lies ahead. It is easy to wonder what novel technologies today will be commonplace to attorneys years from now, or how the legal profession will be accessed by clients in the future.

But as far as the Louisiana Rules of Professional Conduct are concerned, Ciolino cautions against revising the rules to address each advancement in technology. That's because, regardless of the technology, he says, ethics issues generally remain the same when that technology is applied to the practice of law. Still, the ethics expert and Loyola University law professor notes, as each new technology integrates into the practice of law, the questions of how and what extent the ethics rules address the use of technology always arise.

"I remember when fax machines first came out, the issue was can you send confidential communications over fax.

Then that same question was raised with regard to cell phones, and then email, and now storage of information in the cloud," Ciolino says. "The questions are always asked when new technologies come along, and eventually the answer is first, 'Yes,' and then later, 'Of course.'"

There is a lot to talk about these days as far as new technology and its integration into the legal profession, such as the use of social media, online review sites such as Yelp and Avvo, and cloud computing and virtual offices. As Ciolino notes, Louisiana tends to follow the American Bar Association (ABA) in terms of modeling its ethics and professionalism rules, and the ABA is constantly grappling with the reconciliation of new technologies with ethical obligations.

Indeed, the ABA has issued a number of Formal Opinions in recent years that relate to the permissible use of specific technology by lawyers and judges. Just in the last three years, the ABA has released formal opinions discussing the use of social media by judges (Formal Opinion 462); identifying the ethical pitfalls associated with lawyers marketing

through "deal-of-the-day" websites such as Groupon (Formal Opinion 465); and cautioning that a lawyer may not attempt to access information on a juror's social media accounts that the juror has not made public (Formal Opinion 466). In other words, a lawyer cannot send a "friend request" to a juror on Facebook.

The ABA is not alone, either. A number of states have issued ethics opinions targeted at the use of a specific technology, with at least seven states -- North Carolina, Massachusetts, Oregon, Florida, New York, Pennsylvania and Iowa -- having opined in the last five to six years on the use of cloud-based storage of client information.

As the breadth of these opinions suggest, each new technology comes with its own set of ethical pitfalls and, unfortunately, cautionary tales from lawyers who fail to mind them. Most recently, for instance, the Indiana Supreme Court disbarred a lawyer for manipulating his Avvo reviews. In *In the Matter of David J. Steele*, attorney David J. Steele enacted a system of reward and punishment for his clients, providing monetary incentives



for positive reviews, and releasing confidential information and making false statements for negative reviews. For this, the Court found Steele violated the duties of confidentiality to existing and former clients in Indiana Professional Conduct Rules 1.6 and 1.9(c), and the duty to refrain from making false or misleading communications about the lawyer or the lawyer's services embodied in Rule 7.1.

Despite the fact that online reviews of legal services are relatively new, each advancement in technology does not necessarily require an amendment or addition to Louisiana's ethical rules, Ciolino says.

"Rules don't really need to be changed to accommodate new technologies because all of the ethical issues are the

same," Ciolino says. "New technologies just give lawyers the opportunity to violate the rules on a much grander scale."

Using Louisiana's rules regarding advertising a lawyer's services, Ciolino notes that the detail to which those rules regulate lawyer conduct may be unnecessary. The rules contained in Article 7, "Information about Legal Services," of the Louisiana Rules of Professional Conduct were adopted in 2008 and became effective in 2009, although some rules have been amended since then.

"At their core, the rules prohibit false and misleading ads," he says. "That's true whether you're doing it on a stone tablet or Snapchat, so I don't think we need new rules for those."

Instead, Ciolino says, Louisiana's ethics and professionalism rules should stay true to the state's civilian roots and maintain broad, generalized rules that can flex and adapt to new technologies.

All of which is to say that, in Ciolino's mind, perhaps the more technology changes, the more ethics issues stay the same.

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