



**CLE PROGRAM PRESENTED BY THE  
HISPANIC NATIONAL BAR ASSOCIATION  
BOSTON ANNUAL CONVENTION 2015**

**TOPIC:  
SOCIAL MEDIA ETHICAL IMPLICATIONS**

**Prepared by: MARIA MATOS, Chief Counsel  
New York State Appellate Division, First Department  
Committee on Character & Fitness**

## INTRODUCTION

The purpose of this CLE is to familiarize attorneys with pitfalls they may encounter as a result of the emergence of social media usage in the practice of law.

Attorneys must be ever mindful of the Rules of Professional Conduct and current trends. Social media, such as Facebook, LinkedIn, Instagram, YouTube, blogs, Twitter, chat rooms, and instant messaging have become a way of life and are rapidly being used by legal professionals as a means of communication. While there are great benefits to using social media, as for example, communicating with parties across several jurisdictions, attorneys need to be mindful of the ethics rules as such communication may implicate other jurisdictions' ethics rules.

Social media is now readily used to investigate information about parties. However, lawyers need to determine the ethical implications of viewing social media information, such as a person's social media profile or posts, during litigation. Also, lawyers must exercise caution when posting information onto their websites, profiles, etc. to ensure to ensure its accuracy and truthfulness. Lawyers also need to review the ethics implications in advertising on social media websites especially as it relates to sharing information about a lawyer's specialty. Lawyers are responsible for monitoring their social media profiles or blogs for endorsements and recommendations to ensure that the information is true and accurate. Where the information is incorrect, the lawyer has an obligation to remove or hide such content.

During the presentation, members of the audience are encouraged to ask questions and otherwise make any appropriate inquiry on the topic under discussion. It is neither rude nor discourteous to make inquiry on the subject matter under review during the presentation.

The topics discussed at this seminar are by no means an exhaustive review of the subject examination. This presentation is a general overview and is intended to acquaint the attorney with potential hazards as they practice.

While I have reviewed ethics rules in other jurisdictions, I am licensed to practice in New York but you will see that many of the Professional Rules of Practice in New York and the types of errors that I commonly see made by attorneys in New York are similar to those of other jurisdictions.

New York's Rule of Professional Conduct (22 N.Y.C.R.R. §1200):

Rule 3.5 Maintaining and Preserving the Impartiality of Tribunals and Jurors:

- (a) A Lawyer shall not:
  - (1) seek to or cause another person to influence a judge, official or employee of a tribunal by means prohibited by law .....
  - (2) in an adversarial proceeding communicate or cause another person to do so on the lawyer's behalf, as to the merits of the matter with a judge or official of a tribunal or an employee thereof before whom the matter is pending,...

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

Rule 4.2 Communication With Person Represented by Counsel

- (a) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law.
  - (b) Notwithstanding the prohibitions of paragraph (a), and unless otherwise prohibited by law, a lawyer may cause a client to communicate with a represented person unless the represented person is not legally competent, and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person's counsel that such communications will be taking place.
- © A lawyer who is acting *pro se* or is represented by counsel in a matter is subject to paragraph (a), but may communicate with a represented person, unless otherwise prohibited by law and unless the represented person is not legally competent, provided the lawyer or the lawyer's counsel gives reasonable advance notice to the represented person's counsel that such communications will be taking place.

Rule 4.3 Communicating With Unrepresented Persons

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 5.3(b)(1) Lawyer's Responsibility for Conduct of Nonlawyers

- (b) A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if

engaged in by a lawyer, if:

- (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

#### Rule 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
- (b) A lawyer shall not aid a non-lawyer in the unauthorized practice of law

New York Judiciary Law §478 - It shall be unlawful to practice or appear as an attorney at law or as an attorney and counselor at law ... without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.

#### 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.
  - (b) Subject to the provisions of paragraph (a), an advertisement may include information as to:
    - (1) legal and nonlegal education, degrees and other scholastic distinctions, dates of admission to any bar; areas of the law in which the lawyer or law firm practices, as authorized by these Rules; public offices and teaching positions held; publications of law related matters authored by the lawyer; memberships in bar associations or other professional societies or organizations, including offices and committee assignments therein; foreign language fluency; and bona fide professional ratings;
    - (2) names of clients regularly represented, provided that the client has given prior written consent;
    - (3) bank references; credit arrangements accepted; prepaid or group legal services programs in which the lawyer or law firm participates; nonlegal services provided by the lawyer or law firm or by an entity owned and controlled by the lawyer or law firm; the existence of contractual relationships between the lawyer or law firm and a nonlegal professional or nonlegal professional service firm, to the extent permitted by Rule 5.8, and the nature and extent of services available through those contractual relationships; and
    - (4) legal fees for initial consultation; contingent fee rates in civil matters when accompanied by a statement disclosing the information required by paragraph (p); range of fees for legal and nonlegal services, provided that there be available to the public free of charge a written statement clearly describing the scope of each advertised service; hourly rates; and fixed fees for specified legal and nonlegal services.
- © An advertisement shall not:
- (1) include a paid endorsement of, or testimonial about, a lawyer or law firm without disclosing that the person is being compensated therefor;

- (2) include the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case;
  - (3) use actors to portray a judge, the lawyer, members of the law firm, or clients, or utilize depictions of fictionalized events or scenes, without disclosure of same; or
  - (4) be made to resemble legal documents.
- (d) An advertisement that complies with subdivision (e) of this section may contain the following:
- (1) statements that are reasonably likely to create an expectation about results the lawyer can achieve;
  - (2) statements that compare the lawyer's services with the services of other lawyers;
  - (3) testimonials or endorsements of clients, and of former clients; or
  - (4) statements describing or characterizing the quality of the lawyer's or law firm's services.
- (e) It is permissible to provide the information set forth in subdivision(d) of this section provided:
- (1) its dissemination does not violate subdivision(a)of this section;
  - (2) it can be factually supported by the lawyer or law firm as of the date on which the advertisement is published or disseminated;
  - (3) it is accompanied by the following disclaimer: "Prior results do not guarantee a similar outcome"; and
  - (4) in the case of a testimonial or endorsement from a client with respect to a matter still pending, the client gives informed consent confirmed in writing.
- (f) Every advertisement other than those appearing in a radio, television or billboard advertisement, in a directory, newspaper, magazine or other periodical (and any web sites related thereto), or made in person pursuant to Rule 7.3(a)(1), shall be labeled "Attorney Advertising" on the first page, or on the home page in the case of a web site. If the communication is in the form of a self-mailing brochure or postcard, the words "Attorney Advertising" shall appear therein. In the case of electronic mail, the subject line shall contain the notation "ATTORNEYADVERTISING."
- (g) A lawyer or law firm shall not utilize meta tags or other hidden computer codes that, if displayed, would violate these Rules.
- (h) All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.
- (I) Any words or statements required by this Rule to appear in an advertisement must be clearly legible and capable of being read by the average person, if written, and intelligible if spoken aloud. In the case of a web site, the required words or statements shall appear on the home page.
- (j) A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service. Such legal services shall include all those services that are recognized as reasonable and necessary under local custom in the area of practice in the community where the services are performed.

- (k) All advertisements shall be pre-approved by the lawyer or law firm, and a copy shall be retained for a period of not less than three years following its initial dissemination. Any advertisement contained in a computer-accessed communication shall be retained for a period of not less than one year. A copy of the contents of any web site covered by this Rule shall be preserved upon the initial publication of the web site, any major web site redesign, or a meaningful and extensive content change, but in no event less frequently than once every 90 days.
- (l) If a lawyer or law firm advertises a range of fees or an hourly rate for services, the lawyer or law firm shall not charge more than the fee advertised for such services. If a lawyer or law firm advertises a fixed fee for specified legal services, or performs services described in a fee schedule, the lawyer or law firm shall not charge more than the fixed fee for such stated legal service as set forth in the advertisement or fee schedule, unless the client agrees in writing that the services performed or to be performed were not legal services referred to or implied in the advertisement or in the fee schedule and, further, that a different fee arrangement shall apply to the transaction.
- (m) Unless otherwise specified in the advertisement, if a lawyer publishes any fee information authorized under this Rule in a publication that is published more frequently than once per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes any fee information authorized under this Rule in a publication that is published once per month or less frequently, the lawyer shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes any fee information authorized under this Rule in a publication that has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication, but in no event less than 90 days.
- (n) Unless otherwise specified, if a lawyer broadcasts any fee information authorized under this Rule, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.
- (o) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television or other communication medium in anticipation of or in return for professional publicity in a news item.
- (p) All advertisements that contain information about the fees charged by the lawyer or law firm, including those indicating that in the absence of a recovery no fee will be charged, shall comply with the provisions of Judiciary Law §488(3).
- (q) A lawyer may accept employment that results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services.
- ® Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not undertake to give individual advice.

#### RULE 7.2 Payment for Referrals

- (a) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

- (1) a lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuing basis as permitted by Rule 5.8, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; and
  - (2) a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by Rule 1.5(g).
- (b) A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations that promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:
- (1) a legal aid office or public defender office:
    - (I) operated or sponsored by a duly accredited law school;
    - (ii) operated or sponsored by a bona fide, nonprofit community organization;
    - (iii) operated or sponsored by a governmental agency; or
    - (iv) operated, sponsored, or approved by a bar association;
  - (2) a military legal assistance office;
  - (3) a lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule; or
  - (4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
    - (I) Neither the lawyer, nor the lawyer's partner, nor associate, nor any other affiliated lawyer nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer;
    - (ii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization;
    - (iii) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter;
    - (iv) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief;
    - (v) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations; and
    - (vi) Such organization has filed with the appropriate disciplinary authority, to the

extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

**RULE 7.3. Solicitation and Recommendation of Professional Employment**

- (a) A lawyer shall not engage in solicitation:
- (1) by in-person or telephone contact, or by real-time or interactive computer-accessed communication unless the recipient is a close friend, relative, former client or existing client; or
  - (2) by any form of communication if:
    - (I) the communication or contact violates Rule 4.5, Rule 7.1(a), or paragraph (e) of this Rule;
    - (ii) the recipient has made known to the lawyer a desire not to be solicited by the lawyer;
    - (iii) the solicitation involves coercion, duress or harassment;
    - (iv) the lawyer knows or reasonably should know that the age or the physical, emotional or mental state of the recipient makes it unlikely that the recipient will be able to exercise reasonable judgment in retaining a lawyer; or (v) the lawyer intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by another lawyer who is not affiliated with the soliciting lawyer as a partner, associate or of counsel.
- (b) For purposes of this Rule, “solicitation” means any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request of a prospective client.
- © A solicitation directed to a recipient in this State shall be subject to the following provisions:
- (1) A copy of the solicitation shall at the time of its dissemination be filed with the attorney disciplinary committee of the judicial district or judicial department wherein the lawyer or law firm maintains its principal office. Where no such office is maintained, the filing shall be made in the judicial department where the solicitation is targeted. A filing shall consist of:
    - (I) a copy of the solicitation;
    - (ii) a transcript of the audio portion of any radio or television solicitation; and
    - (iii) if the solicitation is in a language other than English, an accurate English-language translation.
  - (2) Such solicitation shall contain no reference to the fact of filing.
  - (3) If a solicitation is directed to a predetermined recipient, a list containing the names and addresses of all recipients shall be retained by the lawyer or law firm for a period of not less than three years following the last date of its dissemination.



- (4) Solicitations filed pursuant to this subdivision shall be open to public inspection.
- (5) The provisions of this paragraph shall not apply to:
- (I) a solicitation directed or disseminated to a close friend, relative, or former or existing client;
  - (ii) a web site maintained by the lawyer or law firm, unless the web site is designed for and directed to or targeted at a prospective client affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or
  - (iii) professional cards or other announcements the distribution of which is authorized by Rule 7.5(a).
- (d) A written solicitation shall not be sent by a method that requires the recipient to travel to a location other than that at which the recipient ordinarily receives business or personal mail or that requires a signature on the part of the recipient.
- (e) No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death shall be disseminated before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.
- (f) Any solicitation made in writing or by computer-accessed communication and directed to a pre-determined recipient, if prompted by a specific occurrence involving or affecting a recipient, shall disclose how the lawyer obtained the identity of the recipient and learned of the recipient's potential legal need.
- (g) If a retainer agreement is provided with any solicitation, the top of each page shall be marked "SAMPLE" in red ink in a type size equal to the largest type size used in the agreement and the words "DO NOT SIGN" shall appear on the client signature line.
- (h) Any solicitation covered by this section shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.
- (I) The provisions of this Rule shall apply to a lawyer or members of a law firm not admitted to practice in this State who shall solicit retention by residents of this State.

#### Rule 7.4 Identification of Practice and Specialty

- (a) A lawyer or law firm may publicly identify one or more areas of law in which the lawyer or the law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law, except as provided in Rule 7.4©.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- © A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:

(1) A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "The [name of the private certifying organization] is not affiliated with any governmental authority."

(2) A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: "Certification granted by the [identify state or territory] is not recognized by any governmental authority within the State of New York."

#### Rule 8.4 Misconduct

A lawyer or law firm shall not:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability:
  - (1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or
  - (2) to achieve results using means that violate these Rules or other law;...
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

## Scenario 1:

Louisiana attorney, offered her friend assistance in her post-divorce child custody dispute in Mississippi. Attorney R's friend (M) alleged that her former husband sexually abused their two young daughters (H and Z). M unsuccessfully sought to terminate her former husband's parental rights in proceedings pending in Mississippi before Judge G. R is not admitted in Mississippi, but offered assistance to M as a friend. R filed a petition in Louisiana to represent M's new husband who sought to adopt M's daughters. Judge A in Louisiana stayed the adoption proceedings pending resolution of the Mississippi matter. Judge A also issued a ruling declining to exercise subject matter jurisdiction in response to R's motion for emergency custody. Unhappy with the rulings by Judges A and G, R did as follows:

1. drafted an online petition entitled Justice for children H and Z, which she posted on the internet at change.org. along with photos of the girls. The online petition provided as follows: "To Judge G, we, the undersigned, ask that you renounce jurisdiction in this matter to the Louisiana court for various reasons. If you refuse to relinquish jurisdiction to Louisiana, we insist that you replace the Guardian Ad Litem (G.A.L.) with someone who has proper training." R also requested that Judge G define the role of the G.A.L. and require the G.A.L. to follow certain specified guidelines.

**Query:** Any thoughts as to R's actions? Is it permissible to post photos of children involved in a domestic dispute? (Refer to confidentiality provisions).

**Query:** May an attorney post an online petition during the pendency of litigation? Is it encouraging others to influence a judge's decision?

2. drafted an online petition as to Judge A, stating and insisting, in sum and substance that Judge A withdraw the "unlawful stay of the adoption proceedings and a hearing be set.

**Query:** Is this conduct ethical? Why or why not? (Refer to 3.5 and 8.4 © and (d).

3. R re-posted the online petition on her blog site and in online articles she authored and posted the photos of the girls. In her blog site she also provided contact information for the judges' offices and the court and added comments in which she solicited and encouraged others to express their feelings to the judges and the court about the pending cases. She stated as follows on her blog site:

In spite of overwhelming evidence that the girls have been abused by their father, Judge G refuses to even look at the evidence, and has now ordered the girls be sent to unsupervised visitation with their father. Judge A also refused to protect the girls. Insist that Judge A & Judge G do their jobs! Please sign the petition, circulate it to all of your friends and families and call Judge A & Judge G during the hours of 8:30 to 5:00 starting Monday, August 15 to ask why they won't follow the law and protect these children. Let

them know you are watching and expect them to do their job and most of all, make sure these precious little girls are safe! Call the Louisiana Supreme Court and tell them you want the law to protect these girls (xxx-xxx-xxxx). Ask about the writ pending that was filed by attorney R on Friday, August 12. Let's turn this around and be heroes for the children. Please sign the petition and continue to call the judges to ask why they are unwilling to afford the children justice. You can sign the petition and lend your voice to this cause here. Or, you can contact them directly at ....

**Query:** What if anything did R do that you consider unethical?

**Query:** Would it make any difference in Mississippi since she is not admitted there and is simply lending her voice to her friend's cause? Refer to Rule 3.5(a), 5.5 & 8.4©.

4. In response to the postings made by R, two days before the hearing in Mississippi, Judge G's staff received an e-mail from a signer of the online petition stating that she would be paying attention to R's case due to the fact that Judge G refused to hear evidence of abuse by the children's father. "Judge G has an obligation to protect our most vulnerable children. Please do not let them down Judge!

**Query:** How many of you believe that the signer of the petition's actions in contacting Judge G's chambers and requesting the judge to protect the children would have an impact on R's ethical obligations? Why?

5. M (R's friend) filed a copy of the online petition and faxed it directly to Judge A in Louisiana.

**Query:** Could it be considered an ex parte communication by R?

6. R continued her online and social media campaign and further disseminated the sexual abuse allegations and linked audio recordings in which her friend and the subject children discussed the alleged abuse. R also stated that no judge had ever heard these recordings because Judge G refused to allow the recordings into evidence and Judge A refused to conduct a hearing. (If you recall, Judge G denied to hear the case based on jurisdictional grounds). R also used her personal Twitter account to promote the online petition and to otherwise draw attention to the audio recordings and the manner in which the judges were handling the cases. The day of the Mississippi hearing, R tweeted 30 messages about the case and petition, including:  
"I realize most of you think the courts care about kids, but too often there's no walk to go with the talk... Shouldn't judges base decisions about kids on evidence?..."  
The next day R tweeted: "Make judges protect H and Z from abuse by their father!"

Do you consider any of these actions unethical? Refer to Rule 8.4.

7. R then tweeted a local investigative news organization and provided statements about the manner in which she felt the judges handled the pending cases. R then filed motions to recuse Judge A in two unrelated matter. In response, Judge A voluntarily recused herself from the cases.

**Query:** May an attorney contact the media to express her opinion about how a judge is handling a case? Does it matter if it's during the pendency of the proceeding or after? What about her right to Freedom of Speech?

Scenario 2: Lawyer's Responsibility to Monitor or Remove Social Media Content by Others & Attorney Endorsements. (New York County Lawyers Association Formal Opinion 748).

Refer to Rule 7.1, 7.2, 7.3, 7.4

Attorney X, a seasoned personal injury attorney and partner at a general practice firm, has a LinkedIn account and has over 500 contacts. Attorney's X's law school buddy endorses Attorney X as a world renowned personal injury attorney who also specializes in real estate transactions, copyright infringement and maritime law. Attorney X is elated that his friend would endorse him in such a manner. Others continue to endorse Attorney X as a world renowned personal injury attorney and about his skills in real estate, copyright infringement and maritime law. What are Attorney X's ethical responsibilities with respect to his LinkedIn account?

**Query:** What aspects of Attorney X's LinkedIn profile constitute attorney advertising?  
Refer to New York County Lawyers Association Professional Ethics Committee Formal Opinion 748.

Scenario 3: Lawyer's access to public pages of another party's social networking site for the purpose of gathering information for a client in a pending litigation.

**Query:** May Lawyer Lenny either directly or with an agent, contact an unrepresented person through Facebook or MySpace pages to request permission to access her web page to obtain information for use in litigation stating that he is a friend of a friend and that his name is Mighty Minion?

**Query:** May Lawyer Lenny during pending litigation access the public pages of another party's Facebook or Twitter pages for the purpose of obtaining possible impeachment material for use in the pending case?

Refer to Rules 4.1, 4.2, 4.3, 5.3(b)(1), 8.4 (a) & ©; New York State Bar Association Ethics Opinion 843; New York City Bar Association Opinion 2010-2