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Sent: Thursday, December 31, 2009 1:19 PM
To: Ethics2020
Subject: Comments on ABA Commission on Ethics 20/20 Preliminary Issues Outline

Comments on a number of the issues related to Technological advances raised in the 20/20 Preliminary Outline:

II.C Do the Model Rules and existing disciplinary enforcement mechanisms adequately address the use of social networking sites by lawyers and law firms?

Comment: Many attorneys and state regulators are struggling with how to fit use of social media within the parameters of the Model Rules and/or state bar regulations relating to attorney advertising. Unfortunately, the history of state bar regulation of attorney advertising is replete with examples of over-reaching regulation, benefiting neither consumers or attorneys.

Some states, like Florida, are already looking at regulating social media usage as if it were advertising and/or solicitation. While these regulations will ultimately be stricken or brought back within constitutional parameters, confusion and cost will reign until that happens. The ABA should provide clearer guidance to the state regulators about the constitutional constraints on attorney advertising regulation, and not consider saddling the Model Rules with more specific regulations in an effort to hit the ever-moving target of social media communication. ABA Model Rule 7.1 (and state equivalents) is more than adequate to address advertising abuses in social media.

II.D Lawyer Accountability and Accessibility of Public Information

- Should all state lawyer disciplinary agencies and/or state bar associations make information about public lawyer regulatory actions available on the internet? Would doing so lead to litigation brought by lawyers whose practices are adversely affected?

Comment: Absolutely – **every** state should make public disciplinary decisions publicly available. While some states – like CA, TX & FL – have done an admirable job of this, such records are nearly impossible to find in other states (such as NJ and UT), and are certainly not available online. Whether attorneys affected by greater public visibility would sue should be a complete non-issue. This is public information, highly important to a consumer’s selection of counsel, and such lawsuits would have no merit whatsoever.

- Does existing law adequately protect the public when the public uses web sites that provide assessments or ratings of individual lawyers’ and law firms’ capabilities?

Comment: I am unaware of **any** evidence that the public is being harmed by sites or services that assess or rate lawyers. Quite the contrary; there’s no question the public benefits greatly from the transparency and information that sites like www.avvo.com provide. While no system of rating or assessment is perfect, any additional information on an attorney’s background, practice and client relations is better than the opacity that has long characterized the industry. Existing laws relating to false or misleading advertising can address any abuses that may arise.

Thanks for the opportunity to comment. I would be happy to provide more detailed comments as this process moves along.

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