

Ethics and the Internet: Are You Sailing in Uncharted Waters?  
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Actually, the waters are not completely uncharted – there are a number of bar association ethics opinions, commentary from ethics writers, and Web sites that give guidance on lawyers’ use of the Internet in their practices. However, there are no provisions of the Code of Professional Responsibility that specifically address Internet ethics issues, and lawyers’ use of the Internet must be considered in light of Code provisions that were written long before use of the Internet became widespread. Here are some points to keep in mind when incorporating the Internet and e-mail into your practice.

**Advertising:** Websites are considered a form of advertising, and therefore must comply with the provisions of Canon 2 relating to advertising. The Website may not contain information that is false, deceptive or misleading, and the lawyer must keep a copy of the Website and its variations for one year. All advertisements, including Websites, must contain the lawyer’s name, street address and telephone number. A Website address is not sufficient; clients want to know where the lawyer or law firm is physically located.

**Solicitation:** DR 2-103 of the Code prohibits a lawyer from engaging in in-person or telephone solicitation. Does this rule prohibit communications via computer? There are no rulings specific to this question yet; however, some authorities have given opinions that soliciting potential clients in computer chat rooms is sufficiently similar to in-person solicitation that it should be prohibited; similarly, instant messaging should not include solicitation. E-mail, however, may be considered similar to written communication, in which case it would be prohibited only if the recipient falls into one of the categories listed in DR 2-103 of persons to whom written communication may not be directed.

**Communicating with people online:** Have you created an attorney-client relationship as a result of giving advice? As a general rule, a lawyer-client relationship can be found to exist when the lawyer has provided specific legal advice to a layperson when the lawyer should reasonably expect that the layperson will act on that advice. If you are providing specific legal advice, you are responsible for (a) ensuring that there is no conflict of interest with an existing or former client and (b) providing competent advice – which means obtaining sufficient information from the other party and performing any legal research that is necessary.

If you do not intend to establish a lawyer-client relationship – for example, you are responding to a bulletin board posting and simply want to provide generalized advice – your posting should indicate that you are only providing general guidance and that the person needing legal assistance should consult with an attorney to review the inquirer’s specific factual situation.

Communicating with clients via e-mail: When both lawyers and clients first began utilizing e-mail, there was a concern that the use of e-mail for client communications might destroy the attorney-client privilege because it could be intercepted. Today, e-mail communication is protected by Federal law – it is a crime to intercept e-mail communications – as well as by CPLR 4547, which specifically provides that a communication does not lose its privileged status because it is sent by e-mail. Nevertheless, you should discuss the use of e-mail with your client; if your client does not wish to communicate by e-mail, you should follow the client’s wishes. In addition, you should keep up with technological advances and use e-mail systems that offer the best protection.

Conflicts of Interest: I noted above that if you are establishing a lawyer-client relationship – online or otherwise - you are required to check to make sure there is no conflict with a present or former client. This is required by DR 5-105(E), which requires a law firm to keep records of prior engagements and put in place a system to check for conflicts. You should have records of not only clients who actually retained you, but also prospective clients who consulted you but did not retain your services – even though they did not retain you, you cannot later undertake a representation adverse to them regarding the issue for which they consulted you.

#### References:

NYSBA Committee on Professional Ethics Opinion 709 (1998)  
NYSBA Committee on Professional Ethics Opinion 756 (2002)  
N.Y. City Committee on Professional and Judicial Ethics Formal Opinion 2003-1  
N.Y. City Committee on Professional and Judicial Ethics Formal Opinion 2001-1  
N.Y. County Committee on Professional Ethics Opinion 721 (1997)