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Ethics and Marketing in the Digital Age


Presented by Brenda Speer
BL Speer & Associates
El Paso County Bar Association
Solo/Small Firm Section
August 5, 2015


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Definitions

- **Marketing** is the *activity*, set of institutions, and *processes for creating, communicating, delivering, and exchanging offerings* that have value for customers, clients, partners, and society at large.

- American Marketing Association


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Definitions...

- **Advertising** is the *placement of announcements and messages in time or space* by business firms, nonprofit organizations, government agencies, and individuals who seek to inform and/or persuade members of a particular target market or audience about their products, services, organizations, or ideas.

- American Marketing Association

Definitions...

- **Ethics**
 1. a. A set of principles of **right conduct**.
b. A theory or a system of **moral values**.
 2. **ethics** (*used with a sing. verb*) The study of the general nature of morals and of the **specific moral choices to be made by a person**; moral philosophy.
 3. **ethics** (*used with a sing. or pl. verb*) The rules or **standards governing the conduct** of a person or the **members of a profession**.

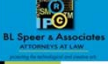
- www.thefreedictionary.com

Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
– **7.1 Communications Concerning a Lawyer’s Services**
 - Not false or misleading
 - No payment of others ads
 - No registered mail
 - Disclose costs for no-recovery-no-fee
 - No knowing communications on lawyer’s behalf by others
 - Can vouch for competence in a firm sale

Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
– **7.2 Advertising**
 - Can advertise (writing, recording, e-communication)
 - No value for recommendation, except:
 - Cost of communication
 - Referral services usual charges
 - Buy a practice
 - Non-exclusive referrals AND client informed
 - Include name and address of lawyer/firm

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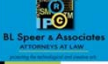
Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
 - 7.3 Direct Contact with Prospective Clients
 - No solicitation when significant motive is pecuniary gain
 - No solicitation if opt-out, coercion, duress, harassment
 - No PI solicitation within 30 days
 - “Advertising Material”; No reveal; Keep 4 years
 - Pre-paid services solicitation if no ownership, no known need

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Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
 - 7.4 Communication of Fields of Practice
 - Do/Do Not Practice, or Specialist
 - Patent Attorney, Proctor in Admiralty
 - No ‘certified as specialist’, unless by ABA or State and identify
 - Disclaimer: “Colorado does not certify lawyers as specialists in any field.”

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Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
 - 7.5 Firm Names and Letterheads
 - In compliance with RPC
 - Trade name, but no implication of gov’t agency or charitable organization
 - Indicate jurisdiction limitations
 - No naming lawyer in public office
 - State or imply practice affiliation only if true


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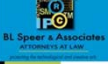
Ethics: Direct Rules

- Colorado Rules of Professional Conduct
Information About Legal Services
 - 7.6 Political Contributions to Obtain Legal Engagements or Appointments by Judges
 - No government legal engagement or appointment in exchange for contributions or solicitations


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Ethics: Related Rules

- Colorado Rules of Professional Conduct
Client-Lawyer Relationship
 - 1.4 Communication
 - Promptly inform
 - Reasonably consult
 - Keep reasonably informed
 - Comply with request for information
 - Consult with client re limitations on lawyer's conduct


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Ethics: Related Rules

- Colorado Rules of Professional Conduct
Client-Lawyer Relationship
 - 1.6 Confidentiality of Information
 - Do not reveal information relating to representation, unless informed consent, impliedly authorized, or permitted per RPC 1.6(b):
 - Death, harm, crime, fraud, financial injury, etc.


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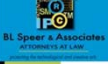
Ethics: Related Rules

- Colorado Rules of Professional Conduct
Client-Lawyer Relationship
 - 1.16 Declining or Terminating Representation
 - Representation will be a violation of RPC


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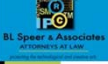
Ethics: Related Rules

- Colorado Rules of Professional Conduct
Client-Lawyer Relationship
 - 1.18 Duties to Prospective Client
 - Discusses possibility of forming client-lawyer relationship
 - If no relationship, shall not use or reveal information



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Ethics: Related Rules...

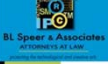
- Colorado Rules of Professional Conduct
Transactions with Persons Other Than Clients
 - 4.1 Truthfulness in Statements to Others
 - No knowing false statement of material fact or law to third person
 - Fail to disclose material fact to third person when disclosure is necessary per RPC

 **Ethics: Related Rules...**

- Colorado Rules of Professional Conduct
Maintaining the Integrity of the Profession
– 8.3 Reporting Professional Misconduct
(a) A lawyer who **knows** that another lawyer has **committed a violation** of the RPC that raises a **substantial question** as to that lawyers' **honesty, trustworthiness** or **fitness** as a lawyer in other respects, **shall inform** the appropriate professional authority.

 **Ethics: Related Rules...**

- Colorado Rules of Professional Conduct
Maintaining the Integrity of the Profession
– 8.4 Misconduct
 - Violate, or attempt to, RPC
 - Commit a criminal act
 - Conduct involving dishonesty, fraud, deceit, misrepresentation
 - Conduct prejudicial to administration of justice

 **Ethics: Related Rules...**

- Colorado Rules of Professional Conduct
Maintaining the Integrity of the Profession
– 8.4 Misconduct...
 - State or imply influence of government agency or official
 - Knowingly assist judge or judicial officer
 - Conduct to engender bias against a person
 - Conduct that harms others and adversely reflects on lawyer's fitness to practice


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Digital Marketing

- Websites
- Blogs


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Digital Marketing...

- Social Media
 - Twitter
 - Facebook
 - Google+
 - LinkedIn
 - YouTube
 - Instagram
 - Pinterest


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Digital Marketing...

- Legal Services Advertising and Referral Websites
 - Avvo
 - Justia
 - FindLaw
 - El Paso County Bar Association


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Digital Marketing...

- Consumer Review Sites
 - Yelp!
 - Yodel
 - Google+


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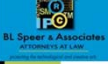
Digital Marketing...

- Broadcast
 - Television
 - Radio
 - YouTube


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Digital Marketing...

- Electronic Communication
 - Email
 - Text Message
 - Fax

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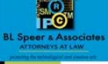
Tips to Avoid Trouble

1. **Rules** of Professional Conduct apply.
2. You are **responsible** for everything that is posted on your profile or social media.
3. Don't hold yourself out as a **specialist** when you are not.
4. Don't release any **confidential information** regarding your clients.

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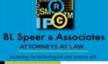
Tips to Avoid Trouble...

5. Make sure you put the work '**advertising**' somewhere in your posts or profiles.
6. Make clear in what **jurisdiction(s)** you are licensed to practice to avoid UPL violation
7. Make sure you clearly state that prior results **don't guarantee** future outcomes.
8. Encourage visitors that come across you via social media to contact you by phone.


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Resources

- *Rules of Professional Conduct*
Colorado Rules of Civil Procedure
- *Colorado Ethics Handbook*
Continuing Legal Education in Colorado, Inc.
- *Lawyers Professional Liability in Colorado: Preventing Legal Malpractice and Disciplinary Actions*
Continuing Legal Education in Colorado, Inc.


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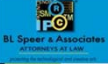
Discussion Examples

- Email Signatures
 - *Expertise in Immigration and Naturalization Law*
 - *A US World & News Report rated "Best Law Firm in America"*
 - 


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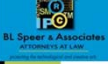
Discussion Examples...

- Email Signatures...
 - *Practicing Family Law, Misdemeanor Criminal and DUI, Civil Litigation, Business Law, Real Estate, and Mediation*
 - Law Firm Name
Intelligent Immigration Solutions


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Discussion Examples...

- El Paso County Bar Association
 - \$100/year
 - Callers pay service \$40 referral fee
 - Free 30-minute initial consult
 - A percentage fee for referred cases of 15% of the fees collected in excess of \$1,000.0

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Discussion Examples...

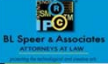
- RPC 7.2(b)
“A lawyer shall not give anything of value to a person for recommending the lawyer’s services.”

Q: What is an appropriate acknowledgment?

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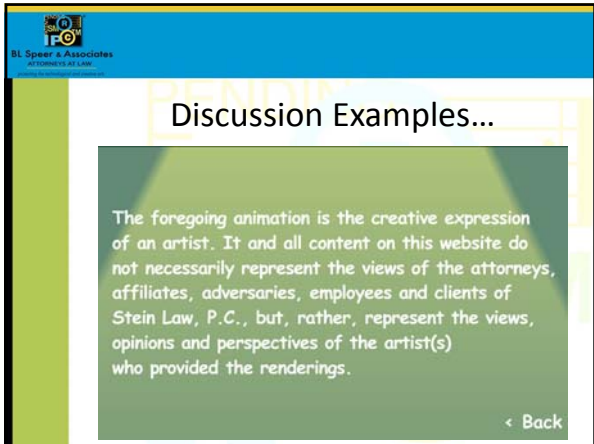
Discussion Examples...

- Website
– www.kingofip.com

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Discussion Examples...

Stein Law, P.C.
Intellectual Property - Strategies and Protection...
Patents, Trademarks, Trade Secrets, Copyrights, Unfair Competition and Related Causes
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Northport, New York 11768
TEL: 631.757.8400 NYC: 646.250.7007 FAX: 631.757.8404
Mitchell A. Stein, Esq.: mitch@kingofip.com
Bradley R. Slenn, Esq.: bslenn@kingofip.com
Madeleine Kohn, M.S. Ed., M.A.: madeleine@kingofip.com
To our adversaries...click here! Click here for disclaimer



The screenshot shows a website header with a logo for 'BL Spear & Associates ATTORNEYS AT LAW'. Below the header, the title 'Discussion Examples...' is displayed in a yellow box. The main content area has a green background and contains the following text: 'The foregoing animation is the creative expression of an artist. It and all content on this website do not necessarily represent the views of the attorneys, affiliates, adversaries, employees and clients of Stein Law, P.C., but, rather, represent the views, opinions and perspectives of the artist(s) who provided the renderings.' At the bottom right of the content area, there is a '< Back' link.
