

Opinions Address Social Media Concerns

By Michael Petitti

IN A REVIEW OF ITS SECOND SOCIAL media-related ethics issue in recent months, the Philadelphia Bar Association and its Professional Guidance Committee remain at the forefront of national commentary on modern electronic communication matters still in their infancy both in terms of how they affect the practice of law and general societal behavior.

In Opinion 2010-6 (June 2010) the Committee advised that a lawyer wishing to announce his/her presence and offer his/her services in a blog where other individuals are discussing a legal problem is permitted so long as the other blog participants are not compelled to respond immediately.

In March 2009 the Committee reviewed another social networking inquiry that involved the propriety of an attorney gaining access to an individual's Facebook page via a third party (2009-2). The Committee deemed this behavior unethical.

The June opinion represents a departure from previous interpretations of Pennsylvania Rule of Professional Conduct 7.3(a), which provides that, "A lawyer shall not solicit in-person or by intermediary professional employment from a prospective client...when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in-person, by telephone or by real-time electronic communication, but...does not include written communications, which may include targeted, direct mail advertisements."

Clearly the concern behind Rule 7.3a is overreaching by an attorney in solicitation. As such, the Committee opined that "real-time electronic communication is limited to electronic modes of communication used in a way in which it would be socially awkward or difficult for a recipient of a lawyer's overtures to not respond in real time" – much like expectations when having a face-to-face or telephone conversation – and did not believe a blog posting met this criteria.

The Committee compared a lawyer's involvement in a blog post with the distribution of mail advertisements, citing *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988). In the case, the U.S. Supreme Court held that the First Amendment prohibited a ban on a lawyer engaging in commercial speech by sending "targeted, direct mail solicitations."

The Committee wrote, "With the

increasing sophistication and ubiquity of social media, it has become readily apparent to everyone that they need not respond instantaneously to electronic overtures.... Everyone realizes that, like targeted mail...blogs can be readily ignored, or not, as the recipient wishes."

The Committee did recommend that a

lawyer participating in a blog post retain for no less than two years the contents of the communications in accordance with Rule 7.2(b), however.

A similar inquiry to 2010-6 was reviewed by the Committee in Opinion 2004-5 (October 2004). The issue involved attorney participation in chat

rooms and the Committee opined that such participation would be prohibited when the newly adopted version of Rule 7.3a took effect in January 2005.

"Opinion 2010-6 reflects the rapid advancement in electronic communications and the need for the Rules of Professional

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August CLE Calendar

These CLE programs will be held at the CLE Conference Center, Wanamaker Building, 10th Floor, Suite 1010, Juniper Street entrance unless otherwise noted.

8/2	Fundamentals of Estate Planning	8/17	Internet Legal Research
8/3	Pension Problems, Pitfalls and Solutions: The Viewpoint of the Master, Expert and Counsel		Slip, Trip and Fall
	The New Support Guidelines		Handling the Sexual Harassment Case
	Ethics Potpourri: An Attorney's Work and Taran's Wanderings	8/18	Contempt of Court
8/4	Social Security Disability: The Basics		CLE with Sean Carter – Comedic Legal Education
	Global Financial Issues 2010: Preparing for the Future	8/19	The Basics of Employment Law
8/5	A Day on Real Estate – East		Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites
	Fundamentals of Criminal Law Practice		Should PA have a Constitutional Conviction?
	Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites	8/20	Sheriff Sales in PA
8/6	Defending the Back Injury Claim		Fundamentals of Civil Practice
	Ethics Potpourri: Strategic Approaches for Stress, Substance Abuse and Depression		Ethics Potpourri: Strategic Approaches for Stress, Substance Abuse and Depression
8/9	Electronic Discovery 2010	8/23	14th Annual Insurance Institute
	Guardianships in Pennsylvania: Just the Basics		Ethics Potpourri: An Attorney's Work and Taran's Wanderings
8/10	Due Diligence in Business Transactions	8/24	Get Organized and Get Things Done
	Ethics Potpourri: An Attorney's Work and Taran's Wanderings		Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites
8/11	Common Estate Planning Blunders and How to Correct and Avoid Them		UM/UIM
	Breaking Down the Basics Series – How to Conduct Effective & Efficient Discovery in the Personal Injury Case	8/25	Veterans Benefits Planning for Seniors: VA Pension, Aid & Attendance and Other Popular Benefits
	Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites		Real Estate 101
8/12	Practice Before the Department of Veteran's Affairs	8/26	Ethics Potpourri: Strategic Approaches for Stress, Substance Abuse and Depression
	Powerful Witness Preparation	8/27	Breaking Down the Basics Series – How to Draft a Simple Will
	The New Wave of Title Problems and How to Solve Them	8/30	Seventh Annual Animal Law Conference
8/13	Distressed Commercial Mortgage Loan Workouts		Ethics Potpourri: August 2010
	Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites		Business Insurance
	Medicare Secondary Payer Statute Program	8/31	Layoff Litigation
8/16	Autism: Fitting the Pieces Together		Ethics Potpourri: An Attorney's Work and Taran's Wanderings
	Ethics Potpourri: An Attorney's Work and Taran's Wanderings		Internet Defamation
	Open Source Software Licensing		How to Prepare the Fiduciary Income and Decedent's Final Lifetime Income Tax Returns
			Ethics Potpourri: Ethical Considerations for Marketing Your Law Practice with Social Networking Sites



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Golf Classic Nets \$73,000 for Bar Foundation



Robert C. Lane and past Chancellor Abraham C. Reich.



A crowd gathers to watch William P. Fedullo try his hand at the putting contest.



Golf Classic Planning Committee Chair Rod Wittenberg (from left) joins Chancellor Scott F. Cooper and Richard Bailey after the Golf Classic.

120 Take Part in 22nd Annual Event

THE DAY WAS WARM AND SUNNY AND the course was in great shape when 120 golfers took to their carts for the 22nd Annual Philadelphia Bar Foundation Golf Classic on June 21. On the course there were skills competitions – straightest drive, closest to the pin, a putting contest, team and individual prizes – as well as the chance to win a lease on a Lexus donated by Wilkie Lexus...if you got a hole-in-one, that is.

Off the course, the golfers and their guests retired to the terrace of Huntingdon Valley's beautiful club house for a Grand Cocktail Party featuring lobster, filet mignon, a scotch tasting provided by Johnnie Walker and a silent auction

with items donated by area merchants, law firms, sports teams and restaurants.

Through the generosity of the tournament sponsors and golfers, the Golf Classic netted more than \$73,000 that will support grants for legal services for the most vulnerable citizens of our community. The Bar Foundation represents the Philadelphia legal community's efforts to expand access to justice for all, particularly those struggling with poverty, abuse and discrimination.

The Philadelphia Bar Foundation extends its thanks to the Golf Classic Planning Committee, the sponsors, golfers and donors who made this great event a success!

Photos by Carl Kemmerle

Hoez Honored by Philly VIP

THIS MONTH PHILADELPHIA VIP recognizes George Hoez Sr., Certified General Appraiser, for his outstanding volunteer assistance to VIP clients.

For more than 25 years, Hoez has appraised industrial, commercial and residential properties, including office and apartment buildings, shopping centers, hotels and motels, residences and condominiums. He serves as an expert witness for the City of Philadelphia, the U.S. District Court, and Tax Appeals Boards in Philadelphia and neighboring counties. He is an instructor and Board Member of the American Society of Appraisers.

The cost of an appraisal is impossible for VIP's clients to afford, yet can be critically important in determining



George Hoez Sr.

the outcome of a case. Before Hoez generously agreed to donate his services to VIP in divorce and homeownership cases, VIP clients had nowhere to turn for appraisals. Hoez was one of the only appraisers in the Philadelphia area to respond to VIP's call for pro bono appraisal services. In a recent case, Hoez offered to visit a client's property in the evening to accommodate the client's work schedule. Without his expertise and consultation, many VIP volunteer attorneys would be unable to assist clients with equitable distribution in divorce cases or in the transfer of title in homeownership cases.

For his flexibility, time, and his valuable appraisal services, VIP offers its heartfelt appreciation to George Hoez.

Guidance

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Conduct to catch-up with those advancements," said Paul Kazaras, the Association's assistant executive director and counsel to the Professional Guidance Committee.

"This opinion defines the prohibition in the rule by its character rather than its characteristics. Before now, there was a bright-line rule based upon how chat rooms and e-mail worked in the early part of this decade. The reality has now changed. Back

then nobody considered blogs, Facebook, Twitter and MySpace as components of the ways that attorneys would communicate with potential clients. Now these have become important advertising venues, and the Guidance Committee hopes that this opinion will provide valuable direction to many attorneys."

For more on the Professional Guidance Committee and its decisions, including 2010-6, visit <http://www.philadelphiabar.org/page/EthicsOpinions?appNum=2>.

