

- iii. For example, the lawyer cannot permit to remain on his LinkedIn page a client recommendation that says the lawyer is the “best personal injury lawyer in town” because it is a comparative statement that cannot be factually substantiated. Rule 7.1(a)(3).
- f. Invitations from a lawyer to a prospective client into the lawyer’s LinkedIn or Facebook page would likely not fall within Rule 7.3, because they can always decline the invitation – therefore not considered in-person communication with prospective clients.
- g. Disclaimer required for listing “specialty” on LinkedIn [Rule 7.4(d)] and “endorsements” made by peer or colleagues can and should be edited, if necessary, to ensure they comply with the lawyer advertising rules.

D. Unintended Relationships (Law Firm Web Sites, Chatrooms):

Despite the informality of social networking, the giving of legal advice to others including friends and acquaintances may create unintended client-lawyer relationships. At the very least, it can create confidentiality and conflicts issues. See LEO 1842 (communications with web site visitors). See also ABA Formal Opinion 10-457 (August 5, 2010) (Lawyer Websites).

1. Triggering Duty of Confidentiality

A lawyer's duty of confidentiality, whether under the ethics rules or the evidentiary attorney-client privilege, is owed only to those deemed to be clients: current, former, and prospective. See Rule 1.6, Rule 1.9, Rule 1.18; *Restatement (Third) of the Law Governing Lawyers* §§68-86 (2000) (on attorney-client privilege).

In most instances, whether an individual falls within one of these categories is a straightforward matter, having been determined by a clear understanding between the parties. But when those involved do not agree as to the nature of their relationship, courts will make the determination based upon all of the circumstances, including the course of dealings between the parties and especially the reasonable expectations of the purported “client.” Consequently, a court may find that an individual is a current, former, or prospective client, notwithstanding the lawyer's belief that the individual is none of these.

With respect to electronic communication, the greatest risk of unintentionally triggering a duty of confidentiality is by unintentionally creating a lawyer-“prospective client” relationship. A “prospective client” is defined by Rule 1.18(a) as any “person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter.” Rule 1.18(b) indicates that, even if no lawyer-client relationship is formed, a lawyer “shall not use or reveal information learned in the consultation [with a prospective client], except as Rule 1.9 would permit [as to former clients].” Comment [2] to the rule notes, however, that a person who communicates “unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship” is not a prospective client entitled to have the information he supplies protected from disclosure or use. See