

characterized as offering personal legal advice,” while a lawyer who simply “poses and answers a hypothetical question usually will not be characterized as offering legal advice.” See ABA Formal Ethics Op. 10-457, 26 Law. Man. Prof. Conduct 577 (2010). “To avoid misunderstanding,” the ABA’s ethics committee advised, “lawyers who provide general legal information [should] include statements that characterize the information as general in nature.”

E. Chatrooms, Listserves

Lawyers who participate in online discussions via chatrooms or listservs sometimes expressly identify themselves to other participants as lawyers. If a lawyer-client relationship is formed or another participant in the discussion is deemed to be a prospective client under Rule 1.18, the lawyer must not disclose or adversely use the information conveyed. District of Columbia Ethics Op. 316, 18 Law. Man. Prof. Conduct 667 (2002) (lawyer speaking in real time in chatroom or listserv must safeguard confidences revealed “even if an attorney-client relationship has not formed but the lawyer is in a situation in which he or she properly should regard an advice seeker as a prospective client”); New Mexico Ethics Op. 2001-1, 17 Law. Man. Prof. Conduct 573 (2001) (“If a lawyer begins a dialogue on the Listserv, it is possible that an attorney-client relationship may come into existence [and so create a duty to protect the information conveyed].... Further, it is incumbent upon the lawyer to retain as confidential any matters the person intends to be confidential”); Philadelphia Ethics Op. 98-6 (1998) (cautions lawyers about participation in chatrooms: “[a lawyer] should also be mindful that in the course of an interaction with any person on the internet an attorney/client relationship may begin with all that such a relationship implies including ... expectations of confidentiality”).

The fact that others may also have viewed the information posted by a client or prospective client in a chatroom or on a listserv does not affect the lawyer’s ethical obligation under Rule 1.6 not to disclose the information.

1. Lawyer-Only Listservs, Blogs, Etc.

Increasingly, lawyers, like other professionals, are participating in law-related listservs to network and consult with colleagues. However, just as lawyers may not, without client authorization, disclose client information in chatrooms, blogs, newspapers, broadcast media, or other public forums, lawyers must take care not to disclose client information on listservs, even ones limited to lawyers. See Los Angeles County Ethics Op. 514, 21 Law. Man. Prof. Conduct 452 (2005) (lawyers communicating on professional association’s listserv “should avoid including information in listserv postings identifiable to particular cases or controversies”).

F. Pretexting

Before beginning a jury trial, many attorneys are turning to social networking sites as an invaluable research tool into the suitability of citizens on the jury list. Judges are increasingly checking probationer’s web pages for evidence of drug and alcohol violations. But, diligent research becomes an ethical violation when this passive collection of available information leads to more active online investigations. A defense attorney or investigator, for example, cannot “friend” a prosecution witnesses in an attempt to glean impeachment evidence.