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“URLs for ESQs: How to Choose and Use Ethical Domain Names”

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Catchy domain names that drive traffic to a lawyer or law firm's website are risky if they cause confusion or mislead potential clients about the firm, its lawyers and services. Domain names that become the primary identifiers of websites by not including references to names under which firms or lawyers practice are even riskier.

"Domain" has multiple meanings. Today, lawyers and law firms think of the one that has revolutionized their brand identity and visibility online—the "domain name" or Uniform Resource Locator (URL). Domain names function as Internet addresses and as professional identifiers. Domain names, not websites, make the first impression on a client or potential client. Because domain names act as online communication tools, they are regulated by state ethics rules. This article aims to alert lawyers and firms to some of the ethics issues associated with the use and selection of domain names.

Firm Names

Typically, lawyers and law firms establish domain names that closely track their names. But a firm or a lawyer may want to use a domain name that is shorter than or a variation of their name if it is lengthy or hard for clients or prospects to remember. Do the New York Rules of Professional Conduct (RPC) governing firm names apply to domain names? The RPC is silent.

The New York City Bar, Formal Opinion 2003-01 (2003), applying RPC's predecessor rule, states that domain names are not subject to the same strictures or scrutiny as a traditional law firm name.¹ Comment to the RPC by the New York State Bar Association (NYSBA Comment) provides that as long as a law firm's name complies with other ethics rules, it is always proper for the firm to use its own name, initials or some variation or abbreviation of its name as a domain name. For example, the law firm of Able & Baker may use www.ableandbaker.com, www.ab.com, www.able.com or www.ablelaw.com. (NYSBA Comment).

Trade Names Prohibited

A lawyer or firm may pick a generic domain name without including the name of the lawyer or firm to boost their marketing results. For example, "New York Attorney" followed by ".com." RPC 7.5(b) forbids a lawyer in private practice from practicing under a trade name, a name that is misleading as to the identity of the lawyers practicing under such name, or a firm name containing names other than those of one or more of the firm lawyers. New York ethics authorities and courts forbid the use of trade names due to the likelihood of confusion regarding firm identity and composition.²

The city bar opinion states that the risk of permitting domain names to not include any reference to the name under which the firm practices might in some cases cause some initial confusion among website visitors. However, the mere designation of a domain name does not mean that the firm or lawyer is "practicing" law under that name. The city bar opinion concludes that it may be ethical, under certain circumstances, to employ a domain name that does not embody the firm's name or that of any individual lawyer. (See Committee on Attorney Advertising Opinion 32, 180 NYLJ, 654 (2005)).

Targeted Domain Names

A firm or lawyer may wish to use descriptive or colloquial words or phrases in their domain name without including their own name to make it easier for clients and prospects to identify and remember. For example, www.dirtlawyers.com or www.realestatelaw.com that suggest a practice area directed at a particular group which might yield better Internet search results than the traditional lawyer or firm name. (See NYSBA Comment).

RPC 7.5(e) requires a lawyer or law firm to satisfy the following conditions if they select a domain name that does not include their own name: (1) all website pages must clearly and conspicuously include the actual name; (2) the domain name must not attempt to engage in the practice of law using the domain name;³ so, if Able & Baker uses www.realestatelaw.com it may not advertise that property owners or purchasers should "contact www.realestatelaw.com" unless the firm name is properly included; (3) the domain name must not imply an ability to obtain results in a matter; for example, a personal injury firm could not use www.win-your-case.com as it implies the firm can obtain favorable results in every matter regardless of the particular facts and circumstances; and (4) the domain name must not otherwise violate an RPC; for example, if Able and Baker are solo practitioners, they may not use www.ableandbaker.com because they would be improperly holding themselves out as partners when they are not, thereby violating RPC 7.5(c). (NYSBA Comment).

Kentucky Bar Association, Office of Bar Counsel Ethics Opinion, KBA E-427 (2007) states that if a lawyer can ethically state his or her field of practice (e.g., family law) there is no reason the same lawyer can't use a domain name conveying the same information (e.g., www.divorcelawyer.com). The Kentucky bar opinion concludes that the mere fact a domain name indicates a field of practice does not, in and of itself, make it false, deceptive or misleading.

Domain Names in Advertising

If a firm or lawyer is permitted to not include their own name in their domain name, can they advertise their services using that domain name? RPCs 7.5(a) and 7.1(a) permit firms or lawyers to use Internet websites provided they do not use or disseminate or participate in the use or dissemination of any advertisement that contains claims or statements that are false, deceptive or misleading. The city bar opinion states that domain name selection is governed by the ethical rules on attorney advertising.

A domain name may be publicized in advertising provided it is used to identify and locate a website rather than as a substitute identifier for the firm.⁴ According to the city bar opinion, if a

firm is authorized to use the domain name "NewYorkLawyer.com" it would be permissible to refer to it for the purpose of directing visitors to the firm's website,⁵ but it would not be permissible to refer to the services offered by "NewYorkLawyer" or otherwise to replace the firm's name with its domain name in describing itself, its services or its personnel.

Ethics authorities outside New York opine that domain names are regulated by the attorney advertising rules and are permissible unless false or misleading.⁶ The New Jersey opinion states that a firm may adopt a URL that does not include the name of the firm or lawyer, provided the website to which the browser is directed clearly and prominently identifies the actual firm name and address. The New Jersey opinion warns that a firm may not convert the domain name to the formal name of the firm or use that name in lieu of the formal name.

Attorney advertising rules in some jurisdictions⁷ prohibit domain names that are self laudatory, false, fraudulent, deceptive, misleading, unfair statements, create unjustified expectations, contain material misrepresentations of fact, compare a lawyer's services with other lawyers, employed to practice law, or imply results that can be achieved. For example, the Kentucky bar opinion states that www.greatestlawyerinky.com may create unjustified expectations and compare services with other lawyers and www.louisvillelegalclinic.com may suggest a connection with a governmental entity or non-profit organization that would mislead a potential client. Arizona Ethics Opinion 97-04 (1997) notes that "countybar.com" is misleading as it falsely implies an affiliation with the county bar association and the designation "arizonalawyer.org" is misleading because the top level domain suffix ".org" falsely indicates the firm is a non-profit organization.

In addition, domain names must not imply a lawyer has been recognized or certified as a specialist or imply special competence or experience in fields of practice.⁸ RPC 7.4(a) permits a lawyer or firm to publicly identify areas of law in which the lawyer or firm practices or to state that the practice is limited to one or more areas of law, but prohibits the use of the words "specialist" or "specializes" in describing a particular field of law, unless permitted by the rules.

New Jersey specifically forbids domain names that imply a lawyer has been recognized or certified as a specialist, unless otherwise permitted.⁹ Kentucky bars use of the words "certified," "specialist," or "expert," so the domain name www.accidentspecialist.com would constitute an ethical violation.¹⁰ Ohio Board of Commissioners on Grievances and Discipline, Opinion No. 99-4 (1999), observes that a domain name such as "specializedpersonalinjurylawyers" would imply special competence or experience.

Links to Websites

A difficult issue arises if a lawyer or firm selects a domain name that does not identify the lawyer or firm, but instead connects directly to a website that clearly identifies the sponsoring lawyer or firm. In this scenario, the objective would be to use the domain name as a means of communication to attract the user and connect the person to the lawyer's or firm's website where the lawyer or the firm is identified. The city bar opinion concludes that a domain name that does not include the name of the lawyer or firm is not per se unethical as long as it complies with the general attorney advertising rules.¹¹

Primary Identifiers

A more complex question arises if a firm decides to maintain a website that is identified by a domain name only, in lieu of the lawyer's or firm's name, where the identity of the lawyer or firm is unclear. Similar to the last scenario, the domain name would be used to attract the user, but unlike the former scenario, the domain name itself would become the primary identifier because it would connect to a website that does not identify the lawyer or firm.

As discussed above, the city bar opinion cautions that a domain name may not be used as a substitute identifier for the firm name and must comply with attorney advertising rules. The Kentucky bar opinion concludes that the practice of not prominently identifying the lawyer or the firm on a website is troublesome for two reasons. First, attorney advertisements must be truthful, not deceptive or misleading. By failing to identify the name of the firm or lawyer the public may be misled as to the identity, status and responsibility of those involved. Second, every communication made under Kentucky's advertising rules must include the name of at least one lawyer or the firm responsible for its contents.

Failure to prominently identify the lawyer or firm on the webpage violates this rule. The Kentucky bar opinion further suggests that if a lawyer maintains a website that does not identify the lawyer or firm but uses the domain name as the identifier, the domain name becomes a trade name.

Conclusion

The "domain name game" is not as simple as it may appear. Lawyers and law firms should pay close attention to the intricate web of ethics rules in their jurisdictions that govern websites and domain names when they establish new websites or update existing ones. Search engine optimization is necessary to draw new clients, but avoiding ethical violations and possible professional discipline should be top priority.

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Endnotes:

¹ See Ariz. Ethics Op. 97-04 (1997); Ohio Bd. of Commissioners on Grievances and Discipline Op. No. 99-4 (1999); and Texas Interpretive Comment 17 (March 1996, revised May 2003).

² See N.Y. State Bar Op. 709 (1998); In re Shapiro, 455 N.Y.S.2d 604 (1st Dept. 1982).

³ This restriction parallels the general prohibition against the use of trade names by law firms in RPC 7.5(b).

⁴ See New Jersey opinion.

⁵ See New Jersey opinion.

⁶ See Ariz. Ethics Op. 97-04 (1997); Kentucky bar opinion; New Jersey opinion; and Ohio Bd. of Commissioners on Grievances and Discipline Op. No. 99-4 (1999).

⁷ See Ariz. Ethics Op. 97-04 (1997); Kentucky bar opinion; New Jersey opinion; and Ohio Bd. of Commissioners on Grievances and Discipline Op. No. 99-4 (1999).

⁸ See Ohio Bd. of Commissioners on Grievances and Discipline Op. No. 99-4 (1999).

⁹ See New Jersey opinion.

¹⁰ See Kentucky bar opinion.

¹¹ See New Jersey opinion.

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