Being an Ethical Lawyer on the Internet

Christina Lynn, Esq.

Agenda

- Your Social Media Presence
  - Websites
  - Social Media
  - Referral Websites
- Furnishing Legal Advice Online
  - Forums
  - Blogs
- Social Media and Research/Discovery

Lawyer Competency

- You have an affirmative obligation to know and use technology in your practice.
- Rule 1.1: Competence
  - **August 2012 Comment**
  - [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, ***including the benefits and risks associated with relevant technology***, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
  - Keep current with the impact of eDiscovery and technology on litigation.

Your Online Legal Presence

Considerations for Operating Online

- Is what I am doing considered advertising?
- Am I creating an attorney-client relationship?
- Are there any privilege or confidentiality concerns?
- Is what I am saying truthful and accurate?

Websites

Ian Smart, Esq.

Contact Today for All Your Legal Needs!

Click Here to Contact!
IanSmartestLawyer.com

Ian Smart, Esq.



Family Law Specialist.
Over 30 years of experience handling family law matters, including divorce, child custody, and support plans and modifications.

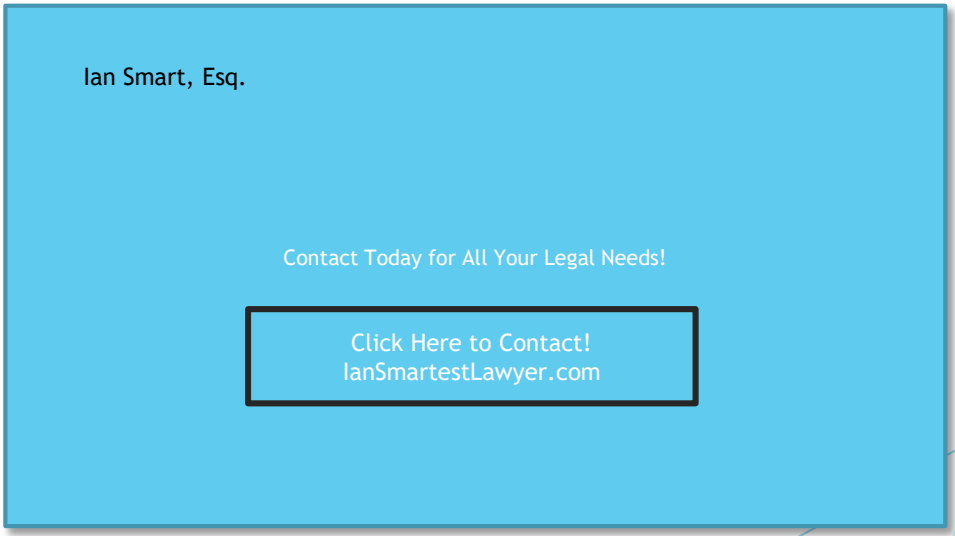
See What Clients Are Saying
Ian is the kindest attorney I have ever met. – Sarah H.
Ian is very smart and puts clients first. – Anonymous

News
Ian Smart obtained one of the largest divorce settlements ever in Massachusetts for client Sarah Handelson. The case involved accusations of domestic abuse and fraud with respect to financial…

Websites

- Model Rules
  - 4.1 Truthfulness in Statements to Others
  - 7.1 Communications Concerning Services
  - 7.2 Lawyer Advertising
  - 7.3 Solicitation of Clients
  - 7.4 Communication of Fields of Practice and Specialization
  - 5.5 Unauthorized Practice of Law
  - 1.6 Confidentiality (1.9, 1.18)

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Websites: Disclaimers

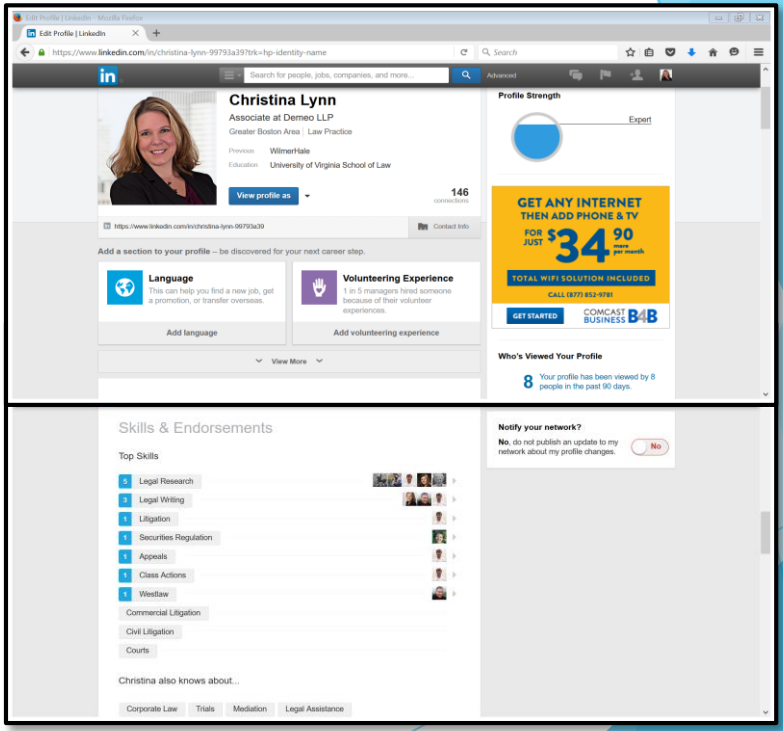
- Advertisement.
- Communications made through the website do not create an attorney-client relationship.
- Materials or information transmitted to the attorney or through or on the website may not remain confidential.
- Content on the website should not be considered legal advice.
- Results are not a guarantee or indicative of future success.
- Consider “active” acceptance of disclaimers.
- Consider placement. Homepage only may not be enough.

Websites: Summary

- Jurisdiction(s)
- Avoid “specialist” language
- Careful with testimonials
- Consider confidentiality
- Is it legal advice?
- Filing or registration requirements
- Preservation
- Content is your responsibility

LinkedIn

- Is it advertising?
- Testimonials/Endorsements
- Content

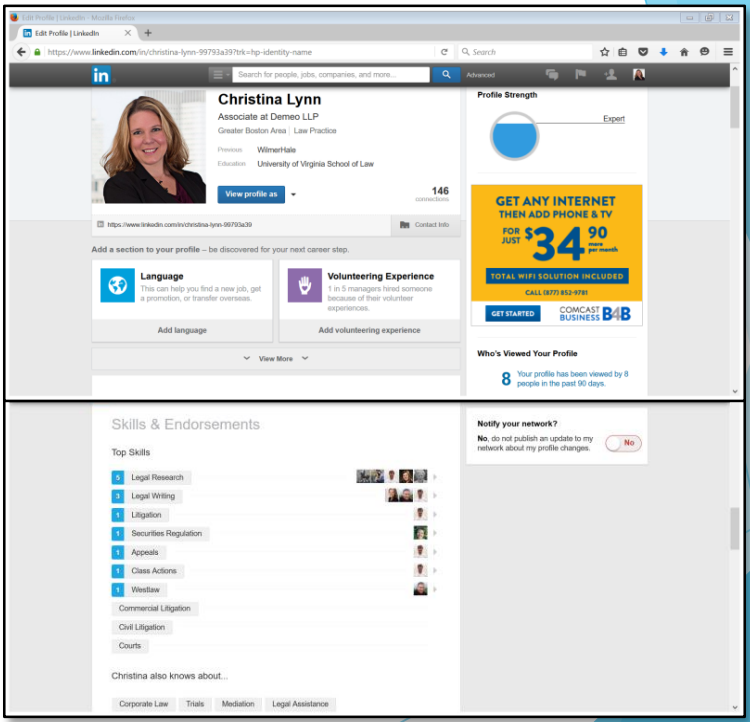


LinkedIn: Is it advertising?

- NY Bar Opinion 2015-7
  - Five factors
    - Communication made by or on behalf of lawyer
    - Primary purpose is to attract new clients for pecuniary gain
    - Content relates to the legal services offered by the lawyer
    - Intended to be viewed by potential new clients
    - Does not fall into any recognized exception
  - If it is advertising…
    - Label as “attorney advertising”
    - Include the name, principal law office address and phone number
    - Pre approval of content posted
    - Preservation of content for one year
    - No false or misleading statements

LinkedIn

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- Testimonials/Endorsements
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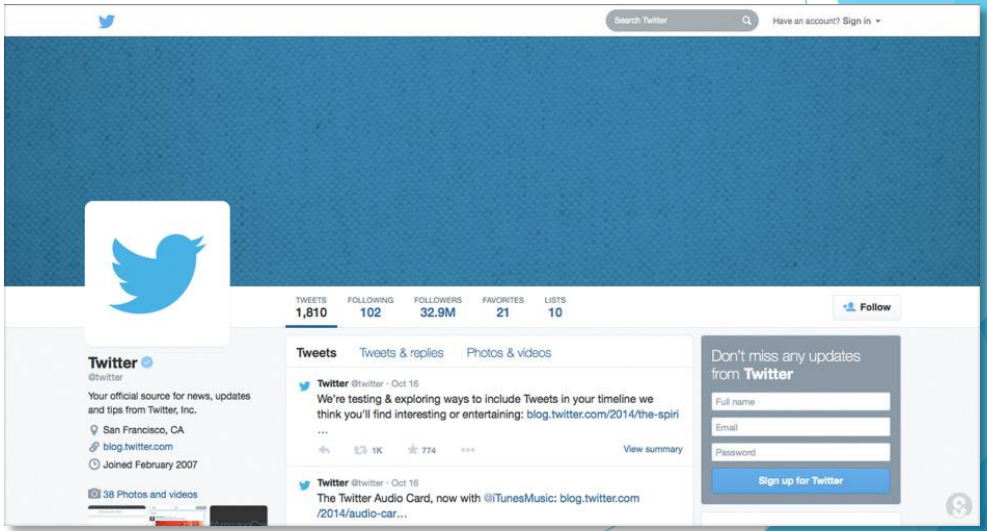


A Note on Solicitation

- Model Rule 7.3 states: “A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain.”
- Easy to engage in prohibited solicitation over the Internet
- States differ regarding what counts as solicitation over the Internet (i.e., what is real time?)
- Best practice: avoid pursuit of individuals as potential clients that most closely resembles live, in person solicitation.
  - Don’t harass

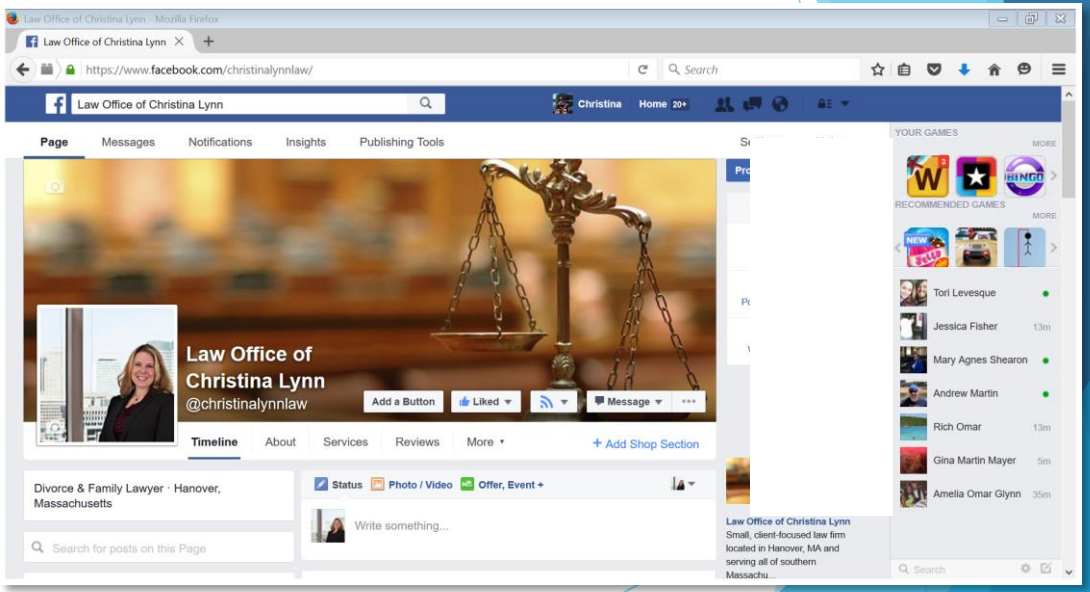
Twitter

- Is it advertising?
- Your “handle”
- Confidentiality



Facebook

- Is it advertising?
- Testimonials
- Confidentiality
- Disclaimers



What about Groupon?

- Seems like a great way to market your services.
- But tread ***carefully***
- ABA says maybe
  - Some states (AL) say “no”
- Implications
  - Fee splitting with non-lawyers
  - Advertising rules
  - Formation of attorney-client relationship

“Referral” Sites (www.avvo.com and similar)

- Creation/adoption of the profile
- Testimonial/endorsements
  - Reciprocal endorsements
- Truthful and accurate
- Participation in paid legal services obtained through site

Online Legal Information or Legal Advice

Furnishing Legal Advice Online: Q&A, Forums, Chat Rooms

- Is it advertising/solicitation?
- General advice OK
  - Legal advice v. legal information
- Caution
  - Attorney-client relationship
    - *Togstad v. Vesley* example
  - Confidentiality
  - Privilege
  - "Experts"

Furnishing Legal Advice Online: Blogs

- Is it advertising/solicitation?
- Is it legal advice?
- Consider including
  - Disclaimers
  - Contact information
  - Jurisdiction information
- Caution
  - Confidentiality
  - Attorney client relationship
  - Retention

Social Media and Discovery

Social Media: Discovery Issues

- What can you look at?
  - Public portions of sites
  - What if you need to “friend” someone or request access to view?
    - Identify yourself?
    - If the party is represented?
  - What if you can only view it by using someone else to gain access?
    - What if your client is “friends” with the person already?

Social Media: Your Client

- Counsel your client
  - Posts that exist prior to litigation
  - New posts
  - Preservation of evidence
  - Communications with other party
- What if you do online research and learn something negative about your client or the claims?

Social Media: Jurors and Judges

- Useful research tool
- Rules similar to review of parties' posts online
  - Rules against contact
  - Careful where sites give individual notice that someone reviewed
  - Monitoring during trial
    - Obligation if you see something amiss?
- Friending Judges

Summary

- Your Social Media Presence
  - Is it advertising?
    - Truthful
    - Label
    - Disclaimer
  - Is it prohibited solicitation?
  - Is it unauthorized practice of law?
  - Have you created an attorney-client relationship?
  - Have you protected confidentiality?
- Other Parties' Social Media
  - Advise your clients about what they already have and what they add
  - Communications with any other parties require truthfulness
  - Use social media research but be wary of unintended communications with other parties, including jurors and judges