

ETHICAL

**SOCIAL MEDIA
MARKETING**

August 28, 2013

presented by Megan Hunt Dell

Dell Family Law, LLC
1180 Sam Rittenberg Boulevard, Suite 200
Charleston, SC 29407

HIRING A SOCIAL MEDIA EXPERT

Rules:

5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

5.3 Responsibilities Regarding Nonlawyer Assistants

Can you outsource your ethics?

No.

WHEN ARE YOU “ADVERTISING?”

Rule:

7.2 Advertising

Written, recorded, or electronic communication

WHEN ARE YOU “SOLICITING?”

Rule:

7.3 Direct Contact with Prospective Clients

Efforts targeted at people you know may need legal services

- Either (a) or (b) will apply to any method you could use to contact someone (in-person, direct mail, etc.)
 - Your willingness to work *pro bono* for the prospective client may matter
 - Rule may not apply to your communications with friends and family members who are prospects

Bottom Line: If you have an inkling that someone might need your services, check the Rule.

facebook®

August 22 via mobile 

Does anyone know of a good divorce lawyer?

IS THERE ANYTHING YOU CAN'T SAY?

Rule:

1.6 Confidentiality

“A lawyer shall not reveal information relating to the representation of a client...”

IS THERE ANYTHING YOU CAN'T SAY?

Rule:

7.1 Communication Regarding a Lawyer's Services

- Can't say anything false, misleading, or deceptive
- Can't include material misrepresentations of fact or law
- Can't omit a fact that is necessary to prevent the statement from being misleading
 - Can't create unjustified expectations about the results that can be achieved
 - Can't imply that the lawyer can achieve results by violating Rules
- Can't compare services to another's lawyers (unless there are facts to back it up)
 - Can't use a nickname that implies an ability to obtain results

facebook®

RISK!

████████████████████
April 13, 2012 ✨

Congratulations ██████████. An attempted murder charge dismissed at the Preliminary Hearing stage! Our clients are in good hands.

Like · Comment · Share

👍 2

████████████████████
February 23, 2012 ✨

██████████ had another DUI dismissed today. New cases this week: Murder 1, Attempted Murder, Possession with intent to distribute, Assault and Battery and 2 DUI's. Call us if you need ██████!

Like · Comment · Share

💬 2

████████████████████
December 4, 2012 ✨

Two DUI's and a DUS dismissed! All Thanks to ██████████
██████████!

Like · Comment · Share

👍 2

████████████████████
January 14 ✨

Burglary 2nd & Burglary Tools dismissed today! Innocent until proven guilty! Call us for all your legal needs!

Like · Comment · Share

👍 3

████████████████████
November 1, 2012 ✨

2 DUI's, Trafficking heroin & Possession of a controlled substance all dismissed this week. We are also taking in more and more on the job injury clients and car accidents by the day. Let us help you get your life back!

Like · Comment · Share

👍 4 💬 1

CAN YOU USE TESTIMONIALS?

Rule:

7.1(d) Communication Regarding a Lawyer's Services

Testimonials/Endorsements must state:

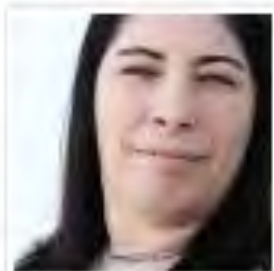
1. Identification as "testimonial" or "endorsement"
2. Payment was made for the endorsement (if it was)
3. Person making testimonial isn't actual client (if he/she isn't)
4. Results in one case does not mean similar results may be obtained in other cases



DANGER

“ENDORSEMENTS”

You might get an email like this from a friend:



Megan Hunt,

I've just endorsed you for new skills & expertise!

Add to profile

Or LinkedIn might ask you if you want to add your own info:

The screenshot shows a LinkedIn profile for Megan Hunt Dell. A blue overlay box is positioned over the top part of the profile, asking "Do you have the following skills or expertise?". The word "expertise" is circled in red. Below the question, there are several skill tags: Class Actions, Litigation Support, International Law, Insurance Law, Employment Law, Depositions, Legal Advice, Consumer Law, Attorneys, Separation, Estate Tax Planning, Business Litigation, Constitutional Law, Real Estate, and Employment Contracts. At the bottom of the overlay are "Yes" and "No" buttons. A red arrow points from the word "expertise" to the handwritten text "This is one problem!" on the right side of the image.

LinkedIn Account Type: Basic | Upgrade

Home Profile Contacts Groups Jobs Inbox Companies News More Search for people

Are You a Business Owner? - Apply Now to the National Association of Professional Writers

Do you have the following skills or **expertise**?

Class Actions × Litigation Support × International Law × Insurance Law ×

Employment Law × Depositions × Legal Advice × Consumer Law × Attorneys ×

Separation × Estate Tax Planning × Business Litigation × Constitutional Law ×

Real Estate × Employment Contracts ×

Yes No

Megan Hunt Dell
Owner/Attorney at Dell Family Law, LLC
Charleston, South Carolina | Law Practice

Current Dell Family Law, LLC / Megan C. Hunt, Attorney at Law, LLC
Previous South Carolina Guardian ad Litem Program, Charleston law firm focusing on family law, Kahn Law Firm, LLC
Education Charleston School of Law

Edit Profile

494 connections

www.linkedin.com/in/meganhunt Dell Contact Info

This is one problem!

And this is what it looks like on your LinkedIn page:

Skills & Expertise

Most endorsed for...

- 28 Family Law
- 24 Civil Litigation
- 23 Litigation
- 15 Wills
- 10 Commercial Litigation
- 10 Corporate Law
- 8 Legal Assistance
- 8 Legal Issues
- 8 Property Law
- 8 Trial Practice

also knows about...

- 5 Personal Injury
- 4 Slip & Fall
- 4 Criminal Defense
- 3 Personal Injury...
- 3 Guardianship
- 3 Real Estate
- 3 Appeals
- 3 Automobile Accidents
- 3 Courts
- 3 Trials
- 2 Foreclosures
- 1 Drug Cases
- 1 Estate Planning
- 1 Small Business

This is the other problem!

**WHAT CAN YOU DO
TO AVOID “EXPERT”
AND IMPROPER
TESTIMONIALS ON**



- When you get an email that someone has endorsed you, don't click "Add to Profile"
- When LinkedIn prompts you to add Skills & Expertise, click "Skip"

One more thing...

“RECOMMENDATIONS”

Recommendations are different from Endorsements!

Someone can give you a recommendation for a specific position you have held, including a narrative description of why they are recommending you.

If a recommendation does not meet the requirements of 7.1(d) (for testimonials), you should make the recommendation hidden to the public.

(The settings for this change frequently!)

IS THERE ANYTHING ELSE YOU CAN'T SAY?

Rule:

7.4 Communication of Fields of Practice and Specialization

Can't use "specialist" or "expert" (or any derivative of those words) unless you actually are one

Tip: unless you're practicing patent law, admiralty, or tax, you're probably not a "specialist" or "expert"

CAUTIONARY TALE

In Re Wells, 392 S.C. 371 (2011)

Overstated experience:	“worked in the legal environment for over twenty years” (but had only practiced for ~7 years) “numerous trained and experienced attorneys” (two associates had been practicing for <1 year)
Misrepresented experience:	stated the firm represents clients “in every level of the South Carolina state court system” (not true)
Misrepresented attorneys’ focus:	“[e]ach attorney...focuses his or her practice exclusively on one area of the law” (27+ practice areas listed for 3 lawyers in the firm)
Experience when there was none:	said firm had served clients in constitutional law, civil rights, ethics and professional responsibility, toxic torts, and products liability cases (had not taken any such cases)
Misrepresented office locations:	claimed the firm had locations in Georgia and Florida (had referral arrangements with firms in those states and intended to merge with SC lawyer who had offices in those states)
Misrepresented bilingual staff:	“We Speak Spanish” was written in Spanish (no lawyer spoke Spanish; had one Spanish-speaking employee, during part of the time the advertisement was displayed)
Facts could not be substantiated:	“recognized as an established, experienced, and reputable local Myrtle Beach law firm”

WHEN IS THERE AN “ATTORNEY-CLIENT RELATIONSHIP?”

Rule:

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

In re Broome, 356 S.C. 302 (2003):

Relationship may arise without an engagement agreement & even if lawyer fails to recognize existence of relationship

In re Warder, 316 S.C. 249 (1994):

Lawyers have the obligation of clarifying the nature of the relationship

In re Larkin, 320 S.C. 512 (1996):

A lawyer may be faulted for not being “definitive” regarding the nature of the relationship

Bottom line: it's what the client thinks that matters

Back to...



...where someone from your kindergarten class asks for advice!

July 3

10:19pm

I'm sorry. I have a personal question. My lawyer is not available right now. My husband and I are going through a divorce. He won't sign the separation agreement. No custody paperwork has been signed. He has her tonight. We agreed that I get her back tomorrow and I have a text message to prove it. Now he's refusing to give her to me. Can I take her anyway? He said he will call the cops and it will make me look bad for the custody case. He's a cop and he knows a lot of them.

Sent from [redacted]

6:31am

Hey Megan! Hope all is well! I was wondering if I could get your opinion on something. My dad is really needing and wanting to get a Will done and he wanted me to check out that Legal Zoom website first to see how that works but I was concerned about how valid something would be if gotten through a website like that. Do you know much about it or have you ever heard someone having issues with it? He is not opposed to just getting it done by a lawyer, which I think would work out better in the end. He is by no means a millionaire so it's not going to be a complicated will, just a couple insurance policies and a little money. Thanks!

6:51pm

Hey Megan! I hope all is going well with the firm 😊 I have a question....Is a careless operation ticket a misdemeanor in the state of SC?

8:29am

Hey megan how ya been!?.i have a few questions i was wanting to ask ya..kinda embarrassing 4 me but...i was wondering if you deal with family court issues..me and [redacted] have been together over [redacted] yrs now and have a son together..he will be [redacted]...while i was in [redacted] she took my boy and moved out back [redacted] Well the issue is, she is saying we are done and i will not get to see my son unless she is with..and it will be supervised visits....basically she is not wanting me to have [redacted] every other wknd unless she is there with him...thats all im asking for is my standard visitation..im not trying to fight for full custody because of my work schedule....i love my little man to death megan and its killing me not being able to see him....what do i have to do?.. This is all new to me.. Never thought i would be going through this....

Conversation started [redacted]

10:41am

What do u charge for legal advice? I think I'm screwed since I already have a lawyer! Attorney [redacted] He has my husbands [redacted] case resulting in [redacted] but i havent told him my brother [redacted] so can i talk to other lawyers about the situation?

What can you do?

Have a system:

If they need what you do, have a somewhat “canned” response:

“I’m so sorry to hear about _____. I might be able to help you, but the first thing we need to do is get a consultation set up. To do that, you can call my office at ###-###-#### to set up an appointment. Most initial consultations last ____ minutes. The consultation fee is \$____ and can be paid by cash, check, or credit card. During that meeting, we’ll talk about the details of your case and what I would charge to begin representing you. I’m also able to give you the name of a different attorney, if you’d prefer. Just let me know.”

If they need someone else, tell them whether you can help them find someone or not:

“I’m so sorry to hear about _____. Unfortunately, that’s not my area of practice, but I do have a few friends who do that kind of work. I’d suggest that you call Joe Schmoe at ###-###-#### - his office is in _____, which should be convenient for you. If you’d prefer someone in a different area, just let me know, and I’ll be happy to give you other names.”

Business Page:

Put a disclaimer

“The information provided within this site is offered for informational purposes only. It is not legal advice with regard to any specific facts or situation. Reading this site, or contacting Law Firm, LLC through this site, does not establish an attorney-client relationship.”

CREATION OF CONFLICTS AND PREJUDICE

Rules:

3.5 Impartiality and Decorum of the Tribunal

- no improper influence of a judge
(ABA Formal Opinion #462, February 21, 2013)
- no improper influence of a juror
- improper *ex parte* communication

3.6 Trial Publicity

- Can't make an extrajudicial statement that the lawyer knows/should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter

CAUTIONARY TALE

“Rakofsky vs. The Internet”

Meet the Lawyer Who Sued the Internet

-against-

IndexNo.: I05573/11

THE WASHINGTON POST COMPANY
 KEITH L. ALEXANDER
 JENNIFER JENKINS
 CREATIVE LOAFING MEDIA
 WASHINGTON CITY PAPER
 REND SMITH
 BREAKING MEDIA, LLC
 ABOVEHELAW.COM
 ELIE MYSTAL
 AMERICAN BAR ASSOCIATION
 ABAJOURNAL.COM
 DEBRA CASSENS WEISS
 SARAH RANDAG
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 CAROLYN ELEFANT
 SIMPLE.JUSTICE.NY, LLC
 BLOG.SIMPLEJUSTICE.US
 KRAVET & VOGEL, LLP
 SCOTT H. GREENFIELD
 LAW OFFICE OF ERIC L. MAYER
 ERIC L. MAYER *individually*



Adam Martin 11,187 Views Jun 14, 2011

A young lawyer who gained some fame by having his first-ever case tossed out of court by an angry judge* has decided to fight back by suing not just the *Washington Post*, which first thrust his name into the spotlight, but some 80 other reporters, news outlets and legal writers. It's not going well, and today a judge will consider motions by the defense to dismiss his complaint.

The case, dubbed by law blogger and defendant Scott Greenfield as "Rakofsky v. Internet," hinges, strangely enough, on a sort of twisted victory for upstart litigator Joseph Rakofsky. The first trial that the freshly sworn-in attorney took on was a Washington D.C. murder case in March. The judge in the case declared a mistrial, according to the Post story that spurred the lawsuit:

Judge William Jackson told attorney Joseph Rakofsky during a hearing Friday that he was "astonished" at his performance and at his "not having a good grasp of legal procedures" before dismissing him.

What angered Jackson even more was a filing he received

early Friday from an investigator hired by Rakofsky in which the attorney told the investigator via an attached e-mail to "trick" a government witness into testifying in court that she did not see his client at the murder scene.

Despite the judge's comments, Rakofsky considered the mistrial a victory of sorts and bragged about it on Facebook.

However, he later told the *Washington City Paper* that he felt "humiliated" by the decision. By that time, his case had gotten the attention of a phalanx of legal bloggers, who would show him he hadn't begun to understand the meaning of the word "humiliated." The blog posts, collected here by law blogger Mark Bennett, told the story of a recently minted lawyer who blanketed New Jersey, New York and Washington, D.C. with advertisements online and in cheap newspapers, playing up experience he didn't have. Blogger and defense counsel for the defendant-lawyers Eric Turkewitz notes that many of his touted achievements came while he was an intern. Bennett himself ran some screen shots of a Rakofsky ad showing what he called "fraudulent trustworthy grey-haired lawyer pictures."

Since his online skewering in April, Rakofsky has apparently scrubbed the Web of his presence. His law firm's site is down, his listing on lawsearch.net, which the *Post* quoted in its story, has been deactivated, and a New York cell phone number associated with his listing in Washington, D.C. has been disconnected. We did find a working phone

number for his office, which we've called, but with no answer as of yet. We also put in two calls to his attorney, Richard Borzouye, who has also not replied. We'll update if we hear from them.

Eventually, Rakofsky had had enough of the online bashing. On May 16 he filed suit in the New York Supreme Court, alleging defamation by some 81 different parties, including the *Post*, a host of law bloggers, Thompson Reuters, and *Post* reporter Keith Alexander. Amid the 217 points within the 81-page complaint, is an account of a prickly exchange between Rakofsky and Alexander that seems to have gotten under the now-plaintiff's skin:

130. Following Judge Jackson's publication of the nonexistent alleged "ethical issues," **ALEXANDER**, the reporter from the **WASHINGTON POST**, stopped **RAKOFSKY** in the hallway, asked him whether "Judge Jackson's allegation about the investigator" was true and informed him that he would be reporting about "Judge Jackson's allegation about the investigator."

131. At that time, **RAKOFSKY** refused to comment. However, **ALEXANDER** persisted. **RAKOFSKY** asked **ALEXANDER** whether he had any respect for **RAKOFSKY**'s wish not to give a comment. **ALEXANDER** replied in sum or substance, "I'm going to make sure you regret your decision; just wait until everyone reads my article," which constitutes an obvious reckless disregard for truth (**RAKOFSKY** declining to comment) as well as the intention to cause harm to **RAKOFSKY**.

With the lawsuit underway in court and scores of attorney-defendants working simultaneously to have it thrown out, it seems unlikely we'll see a judgment in the case of *Rakofsky v. Internet*. But Greenfield, who runs the Simple Justice blog, said via telephone that the point of the debacle wasn't to protect the defendants from having to pay damages, but to send a message. "What he's doing here is the kind of thing that really has to be made clear that neither some kid nor some newspaper nor somebody else can think that if you sue a long list of people who say mean things about you that a) it's going to go away or b) they're going to give you a dime... We're taking a firm stance, and it needs to be understood that even though we're just a bunch of dopey bloggers, we're not inclined to be pushed around by anybody."

**Shortly after this story was published, Rakofsky wrote in to object to the original lead's use of the word "incompetence." His suit argues that the mistrial was based solely upon Rakofsky's motion to withdraw as counsel*

because a conflict existed between him and his client."

Want to add to this story? Let us know in comments or send an email to the author at amartin@theatlantic.com. You can share ideas for stories on the Open Wire.

Follow

Adam Martin

Sources

- [Rakofsky v. Internet*](#), Scott Greenfield, Simple Justice
- [Joseph Rakofsky — I Have An Answer For You](#), Eric Turkewitz, New York Personal Injury Blog
- [D.C. Superior Court judge declares mistrial over attorney's competence in murder case](#), Keith L. Alexander, Washington Post

Around The Web (Sponsored)



Surprising Abraham Lincoln Descendants Discovered
ancestry.com



14 Stars Who Lost It All
Investopedia



5 Richest Women In The U.S.
Investopedia



Do You Need \$100,000 to Make a Living With Stocks?
The Life Wiki

by Taboola