

New York County Lawyers Association Professional Ethics Committee

Formal Opinion 748

March 10, 2015

TOPIC: The ethical implications of attorney profiles on LinkedIn

DIGEST: Attorneys may maintain profiles on LinkedIn, containing information such as education, work history, areas of practice, skills, and recommendations written by other LinkedIn users. A LinkedIn profile that contains only one's education and current and past employment does not constitute Attorney Advertising. If an attorney includes additional information in his or her profile, such as a description of areas of practice or certain skills or endorsements, the profile may be considered Attorney Advertising, and should contain the disclaimers set forth in Rule 7.1. Categorizing certain information under the heading "Skills" or "Endorsements" does not, however, constitute a claim to be a "Specialist" under Rule 7.4, and is accordingly not barred, provided that the information is truthful and accurate.

Attorneys must ensure that all information in their LinkedIn profiles is truthful and not misleading, including endorsements and recommendations written by other LinkedIn users. If an attorney believes an endorsement or recommendation is not accurate, the attorney should exclude it from his or her profile. New York lawyers should periodically monitor and review the content of their LinkedIn profiles for accuracy.

RULES OF PROFESSIONAL CONDUCT: 7.1 and 7.4

OPINION

LinkedIn, the business-oriented social networking service, has grown in popularity in recent years, and is now commonly used by lawyers. The site provides a platform for users to create a profile containing background information, such as work history and education, and links to other users they may know based on their experience or connections. Lawyers may use the site in several ways, including to communicate with acquaintances, to locate someone with a particular skill or background—such as a law school classmate who practices in a certain jurisdiction for assistance on a matter—or to keep up-to-date on colleagues' professional activities and job changes.

The site also allows users and their connections to list certain skills, interests, and accomplishments, creating a profile similar to a resume or law firm biography. Users can list their own experience, education, skills, and interests, including descriptions of their practice areas and prior matters. Other users may also "endorse" a lawyer for certain skills—such as litigation or matrimonial law—as well as write a recommendation as to the user's professional skills.¹

¹ This opinion addresses the fields, headings, and protocols of LinkedIn as they exist on the date of this opinion. The committee cannot anticipate changes or additions to this or other social networking sites, and limits this analysis to the site as of the date of this opinion.

This opinion addresses the ethical implications of LinkedIn profiles: specifically, whether a LinkedIn Profile is considered “Attorney Advertising,” when it is appropriate for an attorney to accept endorsements and recommendations, and what information attorneys should include (and exclude) from their LinkedIn profiles to ensure compliance with the New York Rules of Professional Conduct.²

LinkedIn allows a user to provide objective, biographical information such as one’s “Education” and “Experience,” as well as subjective information, such as “Skills,” “Endorsements,” and “Recommendations.” LinkedIn users can control the fields they choose to populate. Some users may only list education and work experience, while other users may include more extensive information, such as skills, endorsements, and recommendations. Furthermore, the information in one’s profile visible to others may vary depending on the whether the viewer located the profile through an external search engine such as Google, whether the viewer is logged in to LinkedIn on the computer being used, or whether the viewer is “connected” on LinkedIn to the person whose profile he or she is viewing.

In light of the varied information an attorney may provide on his or her profile, and which information is visible to online users, the use of LinkedIn raises concerns about what aspects of an attorney’s profile constitute “Attorney Advertising,” which is subject to specific ethical rules, and what aspects do not. The New York Rules of Professional Conduct define attorney advertising as “communications made in any form about the lawyer or the law firm’s services, the primary purpose of which is retention of the lawyer or law firm for pecuniary gain as a result of the communication. RPC 7.1. The rules further delineate what information an attorney may include in an advertisement—such as education, past experience, fee arrangements, testimonials or endorsements (NYRPC 7.1(b), (d))—and what information an attorney may not include in an advertisement—such as undisclosed paid endorsements or certain trade names. RPC 7.1(c). Online advertisements must be labeled “Attorney Advertising” “on the first page, or on the home page in the case of a website” (*Id.* at 7.1(f)) and any advertisement containing statements about the lawyer’s services, testimonials, or endorsements must include the disclaimer “[p]rior results do not guarantee a similar outcome.” *Id.* at 7.1(e)(3).

The comments to the rules make clear that “[n]ot all communications made by lawyers about the lawyer or the law firm’s services are advertising” as the advertising rules do not encompass communications with current clients or former clients germane to the client’s earlier representation. RPC 7.1, Cmt. [6]. Likewise, communications to “other lawyers . . . are excluded from the special rules governing lawyer advertising even if their purpose is the retention of the lawyer or law firm.” *Id.* Cmt. [7].

² This opinion is limited to the committee’s analysis of the New York Rules of Professional Conduct. Attorneys should be aware that other jurisdictions may have different ethical rules, and should consult those rules where appropriate.

Applying these rules to LinkedIn profiles, it is the opinion of this Committee that a LinkedIn profile that contains only biographical information, such as a lawyer's education and work history, does not constitute an attorney advertisement. An attorney with certain experience such as a Supreme Court clerkship or government service may attract clients simply because the experience is impressive, or knowledge gained during that position may be useful for a particular matter. As the comments to the New York Rules of Professional Conduct make clear, however, not all communications, including communications that may have the ultimate purpose of attracting clients, constitute attorney advertising. Thus, the Committee concludes that a LinkedIn profile containing *only* one's education and a list of one's current and past employment falls within this exclusion and does not constitute attorney advertising.³

The additional information that LinkedIn allows users to provide beyond one's education and work history, however, implicates more complicated ethical considerations. First, do LinkedIn fields such as "Skills" and "Endorsements" constitute a claim that the attorney is a specialist, which is ethically permissible only where the attorney has certain certifications set forth in RPC 7.4? Second, even if certain statements do not constitute a claim that the attorney is a specialist, do such statements nonetheless constitute attorney advertising, which may require the disclaimers set forth in RPC 7.1?

a. Specialization

New York Rule of Professional Conduct 7.4 prohibits an attorney from identifying herself as a "specialist" or "specializ[ing] in a particular field of law" unless the attorney has been certified by an appropriate organization or jurisdiction. RPC 7.4(a)–(c). The New York State Bar Association (NYSBA), interpreting the New York Rules of Professional Conduct, concluded in a 2013 opinion that "a lawyer or law firm listed on a social media site may . . . identify one or more areas of law practice [but] to list those areas under a heading of 'Specialties' would constitute a claim that the lawyer or law firm 'is a specialist or specializes in a particular filed of law,'" and would likely run afoul of Rule 7.4, unless the attorney's certifications meet the requirements of that Rule. *See* NYSBA Ethics Opinion 972 (June 26, 2013).

While NYSBA has addressed the ethical implications of the heading "Specialties," the applicability of these guidelines to LinkedIn fields such as "Skills," "Endorsements," and "Recommendations" has not been previously addressed in New York. Further complicating this question is the fact that LinkedIn profile headings are not chosen by users. The LinkedIn website provides certain default fields, from which users can choose to add to their profiles. NYSBA advises users who are concerned about these headings to consider avoiding them entirely, by "includ[ing] information about the lawyer's experience elsewhere, such as under another heading or in an untitled field that permits biographical information to be included." Social Media Ethics Guidelines of the

³ Of course, as with all statements made by an attorney, either to a client, an adversary, or a judge, the biographical information must be truthful and not misleading. *See* RPC 7.1, Cmt. [6].

Commercial Federal Litigation Section of the New York State Bar Association at 4 (Mar. 18, 2014) available at <http://www.nysba.org/workarea/DownloadAsset.aspx?id=47547>.

With respect to skills or practice areas on lawyers' profiles under a heading, such as "Experience" or "Skills," this Committee is of the opinion that such information does not constitute a claim to be a specialist under Rule 7.4. The rule contemplates advertising regarding an attorney's practice areas, noting that an attorney may "publicly identify one or more areas of law in which the lawyer or law firm practices, or may state that the practice of the lawyer or law firm is limited to one or more areas of law, provided that the lawyer or law firm shall not state that the lawyer or law firm is a specialist or specializes in a particular field of law, except as provided in Rule 7.4(c)." RPC 7.4(a). This provision contemplates the distinction between claims that an attorney has certain experience or skills and an attorney's claim to be a "specialist" under Rule 7.4. Categorizing one's practice areas or experience under a heading such as "Skills" or "Experience" therefore, does not run afoul of RPC 7.4, provided that the word "specialist" is not used or endorsed by the attorney, directly or indirectly. Attorneys should periodically monitor their LinkedIn pages at reasonable intervals to ensure that others are not endorsing them as specialists.

b. Endorsements and Recommendations

Endorsements and recommendations written by other LinkedIn users raise additional ethical considerations. While these endorsements and recommendations originate from other users, they nonetheless appear on the attorney's LinkedIn profile. The ethical treatment of endorsements and recommendations depends on who is considered to "own" the endorsement and recommendation: the author of the endorsement or recommendation or the person whose profile is enhanced by it.

Because LinkedIn gives users control over the entire content of their profiles, including "Endorsements" and "Recommendations" by other users (by allowing an attorney to accept or reject an endorsement or recommendation), we conclude that attorneys are responsible for periodically monitoring the content of their LinkedIn pages at reasonable intervals. To that end, endorsements and recommendations must be truthful, not misleading, and based on actual knowledge pursuant to Rule 7.1. For example, if a distant acquaintance endorses a matrimonial lawyer for international transactional law, and the attorney has no actual experience in that area, the attorney should remove the endorsement from his or her profile within a reasonable period of time, once the attorney becomes aware of the inaccurate posting. If a colleague or former client, however, endorses that attorney for matrimonial law, a field in which the attorney has actual experience, the endorsement would not be considered misleading. The Pennsylvania Bar Association, interpreting the Pennsylvania Rules of Professional Conduct, reached a similar conclusion in a 2014 opinion, emphasizing that an attorney must "monitor his or her social networking websites, [] verify the accuracy of any information posted, [and] remove or correct any inaccurate endorsements. . . . This obligation exists regardless of whether the information was posted by the attorney, by a client, or by a third party."

Pennsylvania Bar Association Formal Op. 2014-300, “Ethical Obligations for Attorneys Using Social Media,” at 12. While we do not believe that attorneys are ethically obligated to review, monitor and revise their LinkedIn sites on a daily or even a weekly basis, there is a duty to review social networking sites and confirm their accuracy periodically, at reasonable intervals.

c. LinkedIn Profiles as “Attorney Advertising” and Appropriate Disclaimers

Finally, if an attorney chooses to include information such as practice areas, skills, endorsements, or recommendations, the attorney must treat his or her LinkedIn profile as attorney advertising and include appropriate disclaimers pursuant to Rule 7.1. As discussed above, not all communications are advertising, and a LinkedIn profile containing nothing more than biographical information would not ordinarily be considered an advertisement. But a LinkedIn profile that includes subjective statements regarding an attorney’s skills, areas of practice, endorsements, or testimonials from clients or colleagues is likely to be considered advertising.

Attorneys who wish to include this information should review Rule 7.1 to determine the appropriate language to include in their profiles. While the Committee declines to provide guidelines for all potential profile content, the Committee provides the following recommendations for attorneys’ consideration and directs attorneys to review Rule 7.1 before creating or significantly amending their LinkedIn profiles.

If an attorney’s LinkedIn profile includes a detailed description of practice areas and types of work done in prior employment, the user should include the words “Attorney Advertising” on the lawyer’s LinkedIn profile. *See* RPC 7.1(f). If an attorney also includes (1) statements that are reasonably likely to create an expectation about results the lawyer can achieve; (2) statements that compare the lawyer’s services with the services of other lawyers; (3) testimonials or endorsements of clients; or (4) statements describing or characterizing the quality of the lawyer’s or law firm’s services, the attorney should also include the disclaimer “Prior results do not guarantee a similar outcome.” *See* RPC 7.1(d) and (e). Because the rules contemplate “testimonials or endorsements,” attorneys who allow “Endorsements” from other users and “Recommendations” to appear on one’s profile fall within Rule 7.1(d), and therefore must include the disclaimer set forth in Rule 7.1(e). An attorney who claims to have certain skills must also include this disclaimer because a description of one’s skills—even where those skills are chosen from fields created by LinkedIn—constitutes a statement “characterizing the quality of the lawyer’s [] services” under Rule 7.1(d).

Conclusion

Attorneys may maintain profiles on LinkedIn, containing information such as education, work history, areas of practice, skills, and recommendations written by other LinkedIn users. A LinkedIn profile that contains only one’s education and current and past employment does not constitute Attorney Advertising. If an attorney includes additional information in his or her profile, such as a description of areas of practice or certain skills

or endorsements, the profile may be considered Attorney Advertising and should contain the disclaimers set forth in Rule 7.1. Categorizing certain information under the heading “Skills” or “Endorsements” does not, however, constitute a claim to be a “Specialist” under Rule 7.4, and is accordingly not barred, provided that the information is truthful and accurate.

Attorneys must ensure that all information in their LinkedIn profiles, including endorsements and recommendations written by other LinkedIn users, is truthful and not misleading. If an attorney believes an endorsement or recommendation is not accurate, the attorney should exclude it from his or her profile. New York lawyers should periodically monitor and review the content of their LinkedIn profiles for accuracy.