

# SWEAT the Small Stuff:

## The Ethics of Marketing Your Law Practice

By Terrie S. Wheeler, MBC

**M**any of you have heard of the book, “Don’t Sweat the Small Stuff,” by Richard Carlson. When it comes to ethically marketing your law practice, it’s the small stuff that matters. From returning calls and emails in a timely fashion to zealously advocating for your clients, compliance with the rules involves making the small stuff a priority in your practice.

Having recently been appointed to serve as vice chair of the Minnesota Lawyers Board of Professional Responsibility, I thought an article on ethics would be timely. Having participated in the ethics system for well over 15 years I can tell you one thing. Some of the most common ethics complaints surround a lawyer’s perceived inattentiveness to clients manifested through lack of responsiveness or poor communication habits. One common fact is that ethics complaints are preventable.

Think about the fact that you control important facets of your career including your level of competence, how diligent you are, your ability to serve as an adviser, as well as the practices you employ to develop new business and to communicate with your clients and prospects.

Following are some of the rules related to marketing you might find yourself up against if a disgruntled client ever files an ethics complaint against you. I will leave it to you to read the actual language of each rule. My purpose is to provide practi-

cal, proactive ways in which you can comply with what I call the rules related to marketing.

**Competence (MRPC 1.1)** – There are myriad ways in which to develop and demonstrate your competence including:

- Attend CLEs in your primary practice area(s) to ensure you stay cutting edge.
- Don’t dabble. Only take on cases you feel competent delivering services.
- Find a mentor in your firm or through your bar association to back you up.
- Write and speak within your areas of expertise thereby demonstrating your competence.

**Diligence (MRPC 1.3)** – This rule requires diligence and promptness. Tips for your consideration include:

- Develop a replicable process for every step of a client’s case or matter and apply to all of your clients.
- Note all deadlines in your calendar (and that of your assistant or paralegal).
- Regularly meet with your team to discuss strategy and upcoming deadlines.
- Develop a peer review process to analyze your work before sending to a client or filing.

**Adviser (MRPC 2.1)** – This rule is all about using professional judgment and rendering candid advice. Tips for compliance include:

- View yourself as a consultant who also happens to be a lawyer. Make it your mission to deliver legal advice that takes

other business and economic factors into account.

- Make sure you do not deliver legal services in a vacuum. Rather, make a point of reading the paper, watching the news, and in other ways staying on top of current trends in the marketplace so you can give comprehensive advice.
- Stay up-to-date on trends affecting the industries your clients are in.
- Join and become active in at least one trade association attracting clients or referral sources and become the go-to resource.

**Direct Contact with Prospective Clients (MRPC 7.3)** – This is the rule that (thankfully!) prevents lawyers from making cold calls. A few tips for compliance include:

- Do not solicit those with whom you have no prior family or business relationship.
- Actively maintain your contacts on LinkedIn. If one of your contacts opens the door for you with one of their contacts by providing a warm introduction, you are likely not violating rule 7.3.
- At upcoming trade association meetings, develop business relationships with members and selectively follow up with those you view as referral sources or prospective clients – after you have built a relationship with them.
- Focus on networking. As you build genuine relationships with your contacts,

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you will not be in violation of the direct solicitation rule.

**Communication (MRPC 1.4)** – This rule covers how you keep your clients informed on the status of their case or matter. Tips for your consideration:

- Set communications objectives upfront with your client by determining how best to communicate with them.
- Return phone calls within four hours; email messages same day. Use your voicemail message to let clients know if you are out of the office and who they can contact.
- Proactively communicate case or matter updates – don't wait for your clients to ask.
- Make sure your staff has the opportunity to meet your clients.

**Communications Surrounding Services (MRPC 7.1)** – This rule covers not making false or misleading statements:

- Do not imply results generated for a client can be generated for another.
- Do not cite fees in your communications.
- Do not refer to yourself as an “expert” or “specialist” without actual certification from your bar association or another professional association (Rule 7.4 A).
- Keep your biography up to date and use representative experience to show clients you have done what they need.

**Advertising (MRPC 7.2)** – This rule is

designed to prevent the public from being confused about solicitations they may receive from a lawyer. Many suggest this rule is designed to prevent “ambulance chasing:”

- Any communication sent to a prospective (non-lawyer) client you do not know needs to clearly be marked “advertising material.”
- If you do choose to do paid advertising, make sure your firm's unique messages come through.
- Track how new clients find out about your firm; ask this question on your new matter report.
- Consider other ways in which to build name recognition like public relations and social media.

While the tips above merely scratch the surface of the Rules of Professional Conduct governing the attorney-client relationship, they stress the fact that many common ethics complaints can be prevented by exercising sound judgment and treating your clients as you would like to be treated.



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