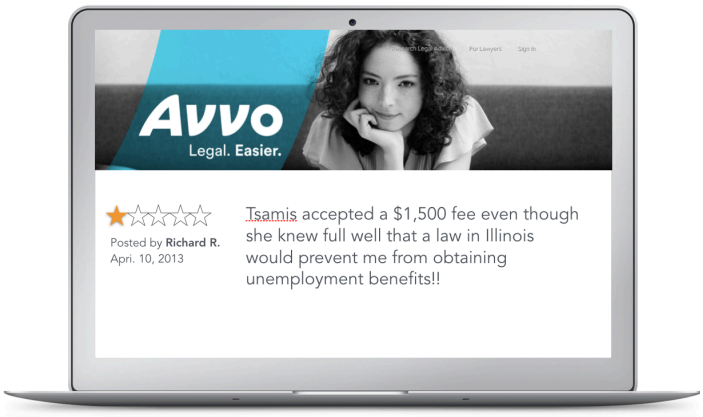
Introduction

The digital age introduced seemingly limitless efficiencies and opportunities for career and business advancement. In the realm of advertising, attorneys can now reach out to and directly communicate with potential clients through the internet in ways the legal community would never have dreamed possible, even just ten years ago.

Accompanying these incredible advancements are challenges that lawyers could not have anticipated before now. Ever-multiplying social platforms have eroded barriers between personal and professional content. Some lawyers discover countless benefits from blending their personal and professional

feeds, while others fail to strike the right note. The rules of professionalism and personal discourse continue to evolve at a break-neck speed, making it challenging to keep up.



Learning From Those That Have Gone Before Us

Many lawyers have gone ahead of us to learn painful lessons in the digital world. Lessons that we can learn from when we take the time to examine what went wrong and understand the rules governing lawyers and the world wide web.

One common area of confusion for attorney is the distinction between privilege and confidentiality. Michael Krauss from George Mason Law School says, *"Privilege is an evidentiary issue,"* but *"confidentiality is an ethical issue."* According to ABA Rule 1.6 Comment 5, confidentiality covers anything you have learned over the time you represented your client:

> **ABA Rule 1.6 Comment 5** Rule 1.6 applies not merely to matters communicated in confidence by the client but also to **all information gained in the professional relationship**, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

Georgia's General Aspirational Ideals that guide professionalism in the legal world also require lawyers to "put fidelity to clients and, through clients, to the common good, before selfish interests."

Put simply, in most cases, talking about your case, your client, or your representation is off-limits without informed consent. Betty Tsamis, an Illinois employment attorney, learned this lesson the hard way. She made national

news when her client filed a bar complaint after Tsamis responded, somewhat emotionally, to a negative review on AVVO.

Initially, Tsamis contacted the client and asked him to remove the review. He promised to take it down if she refunded his fee. In hindsight, a $1,500.00 refund was probably the least expensive way Tsamis could have resolved the matter. Instead, she lashed out at her client online, revealing the fact that he beat up a female co-worker:

> *I dislike it very much when my clients lose, but I cannot invent positive facts for clients when they are not there. I feel badly for him, but his own actions in beating up a female co-worker are what caused the consequences he is now so upset about.*

The collateral damage of these moments can be more problematic for lawyers than a public reprimand from a disciplinary complaint. Damage to the attorney's online reputation can sting more than a public reprimand from the bar.

Years later, Betty's incident is still referenced by major media outlets and her professional reputation has suffered long-lasting consequences.

One important lesson we can learn is that responding to these reviews without careful consideration often only escalates an already precarious situation. In most instances, the attorney would be far better served by a different, more measured approach. Not only should you carefully consider the words you use and avoid sharing any information that would be an ethical violation of confidentiality and run afoul of professionalism, but you should own your mistakes and consider your audience. Aim your response at potential clients, like this reply from Nathan Chapman, CEO of Firmidable:

> *I'm sorry you had this experience. At Smith Law Firm, we spend so much time helping so many injured workers get the Workers' Compensation benefits they need, perhaps we can sometimes be slower at returning individual phone calls than we would like. It's our mission to stand up for the average working guy against big insurance*

> *companies, so that does take a lot of time. We will recommit to helping as many injured workers as we can, so thank you for bringing this to my attention to address.*

As demonstrated by the Tsamis case, responding to negative online reviews can be dangerous. But this is not the only area where lawyers can get into trouble with confidential information. Many lawyers get caught up in professional and ethical issues involving informed consent, misconduct, and misrepresentation while promoting their business on social media.

Navigating Professionalism and Social Media

Social media is an invaluable tool for attorneys who want to grow their influence, reputation, and client base. Andrea Evans, a patent attorney who harnessed the power of Twitter to build a national reputation, is a big proponent of lawyers using social to build their business:

> *Social media is a free resource that can be used to expand and grow your brand, which in turn will grow your practice! Clients like working with skilled attorneys they know, like, and trust. Social media can be used to nurture and foster relationships.*

Evans is correct. Social media can be a phenomenal tool for growing your business and nurturing relationships with your clients. However, it can also be a danger zone when you do not play by the rules.

Informed Consent

Understandably, you want to share big wins and celebrate moments of victory for your clients. And while it is easy to snap a photo and upload it to social media hoping for a "thumbs up" from your followers, it does not make it professionally or ethically sound. Even when you ask permission, posting a picture that shows your client's face, or sharing information about a case could violate client confidentiality.

Keeping in mind that informed consent requires more just asking permission.

In Georgia, by definition, a client's informed consent:

> *[D]enotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.*

Arguably a brief exchange in the parking lot along the lines of "he*y, do you mind if I take this victory photo of us and post it on Instagram?"* will not survive close scrutiny.

Even when informed consent is given, one must wonder how it comports with **Georgia's General Aspirational Ideals**, which require attorneys to *"counsel clients about the moral and social consequences of their conduct."*

For example, let's say you post about winning a felony drug case and include a photo and the name of your client. In the excitement, maybe your client did not think through the negative repercussions of having this information posted online when they agreed to it. But this is something that could have a lasting impact on their reputation.

Are there circumstances where this conduct is in line with professionalism?

Perhaps. However, it is difficult to imagine how it would be in a client's best interest for the attorney to broadcast a criminal charge on Instagram, regardless of how impressive the outcome may have been.

An open and public discussion of matters that are usually kept private, can have long-lasting implications on a client's future.

Posting this kind of content might boost your bottom line and make you look favorable to potential clients but, in addition to violating the rules, you run the risk of bringing harm to your client for your own advantage.

It is vital to consider the consequences for you and your client before putting something out there for the world to see. This might require more creative tactics for posting your wins to social media. And creatively using your

resources can be a great thing as long as you remain truthful and follow the rules.

Misconduct and Misrepresentation

Many lawyers take miscalculated risks with social media by getting too creative and not following ethical conduct and communication. But your job is to operate within the rules. Consider the codes of misconduct and marketing before posting content online:

> **Rule 8.4(C) Misconduct**
>
> It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation.
>
> **Rule 7.1 Communications Concerning a Lawyer's Services**
>
> A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered a whole not materially misleading.
>
> According to Rule 7.1, misrepresentation is more than making false statements. By omitting information, you are also committing an ethical violation.

A DUI attorney posted the following message on Instagram:

> *Another day of WINNING in Fulton County! Two DUIs dismissed today - .23 and .17!*

The statement implies that the lawyer won due to his phenomenal trial skills. But those who are familiar with DUI cases in that county understood this comment was a misrepresentation because it's common for officers in this jurisdiction to not show up to court, resulting in dismissals like the ones referenced in this post.

Half-truths may seem like an innocent way to boast about your skills, but it is a risky business that could result in a disciplinary complaint. Especially when a client realizes you misled them. While this attorney may have thought he was creatively sharing content, in reality, he was probably running afoul of the rules.

Personal vs. Professional

It is not enough to be cautious of your online actions on a professional level. There is no longer a distinction between your professional and private life online. This reality was a hard lesson learned by Anya Citron Stern, a former Public Defender in Florida.

It was the morning of trial in a murder case, and the defendant's family brought clothes for them to change into for court. The officer inspects the clothing, holding up a pair of leather print underwear. Sterns posted a photo to her private Facebook account with the comment: *"Proper attire for trial?"*

Within 24 hours, the judge found out about the post and declared a mistrial, and Sterns lost her job. Her boss made public statements condemning her actions as unprofessional:

> *When a lawyer broadcasts disparaging and humiliating words and pictures, it undermines the basic client relationship and it give's the appearance that he is not receiving a fair trial.*

These comments are echoed in **Georgia's General Aspirational Ideals**, which instruct lawyers to:

> P*reserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.*

Though Anya did not receive disciplinary action, the mishap caused lasting damage. Even now, when you Google her name, this event is one of the first things to pop up because it is difficult to overcome negative coverage.

Extrajudicial Comments on Social Media

It is not just private attorneys who find themselves in trouble. In New Orleans, Sal Perricone, a former prosecutor, was disbarred for online comments made using pseudonyms. He posted 100 to 200 anonymous comments at the New Orleans Times-Picayune that referenced cases that were being prosecuted by his office. He would often complain about the process and insult those he deemed culpable parties:

> The sad part of all this is that Bill is preventing his siblings from pleading guilty and cooperating, thus exposing them to more prison time. Additionally, local defense attorneys are just milking these cases for their own ego gratification and financial enrichment. Something is sick about our system. -May 22, 2009, 9:40 p.m.

The disbarring Court strongly disapproved of Perricone's conduct and did not find his claims of PTSD compelling as it related to explaining his conduct. They sharply criticized his behavior, noting:

> In this age of social media, it is important for all attorneys to bear in mind that the vigorous advocacy we demand of the legal profession is accepted because it takes place under the neutral, dispassionate control of the judicial system. As the Court in Gentile wisely explained, a profession which takes just pride in these traditions may consider

> them disserved if lawyers use their skills and insight to make untested allegations in the press instead of in the courtroom.
>
> Respondent's conscious decision to vent his anger by posting caustic, extrajudicial comments about pending cases strikes at the heart of the neutral dispassionate control which is the foundation of our system. **Our decision today must send a strong message to respondent and to all the members of the bar that a lawyer's ethical obligations are not diminished by the mask of anonymity provided by the Internet**.

Supreme Court of Louisiana, Dec. 2018

There are so many good reasons to avoid this kind of behavior, one of them being that **Georgia's General Aspirational Ideals** explicitly prohibit bias and hate speech.

> *Avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.*

Conclusion

The modern world requires us to think carefully about how we show up online. We are held to rules that are outside the common domain. Instead of letting peers influence your actions, consider the rules governing legal ethics and professionalism and the consequences of what you put out. Be intentional about how you do that so you can show up in the best way possible.

A LAWYER'S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013

ASPIRATIONAL STATEMENT ON PROFESSIONALISM

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

(a) To put fidelity to clients and, through clients, to the common good, before selfish interests.

(b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.

(c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.

(d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

(e) To make the law, the legal system, and other dispute resolution processes available to all.

(f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.

(g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.

(h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.

(i) To practice law not as a business, but as a calling in the spirit of public service.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

(a) To expeditious and economical achievement of all client objectives.

(b) To fully informed client decision-making. As a professional, I should:

(1) Counsel clients about all forms of dispute resolution;
(2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
(3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
(4) Communicate promptly and clearly with clients; and,
(5) Reach clear agreements with clients concerning the nature of the representation.

(c) To fair and equitable fee agreements. As a professional, I should:

(1) Discuss alternative methods of charging fees with all clients;
(2) Offer fee arrangements that reflect the true value of the services rendered;
(3) Reach agreements with clients as early in the relationship as possible;
(4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
(5) Provide written agreements as to all fee arrangements; and
(6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.

(d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:

(1) Notify opposing counsel in a timely fashion of any cancelled appearance;
(2) Grant reasonable requests for extensions or scheduling changes; and,
(3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:

(1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
(2) Be courteous and civil in all communications;
(3) Respond promptly to all requests by opposing counsel;
(4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
(5) Prepare documents that accurately reflect the agreement of all parties; and
(6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:

(1) Avoid non-essential litigation and non-essential pleading in litigation;
(2) Explore the possibilities of settlement of all litigated matters;
(3) Seek non-coerced agreement between the parties on procedural and discovery matters;
(4) Avoid all delays not dictated by a competent presentation of a client's claims;
(5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
(6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

(b) To model for others the respect due to our courts. As a professional I should:

(1) Act with complete honesty;
(2) Know court rules and procedures;
(3) Give appropriate deference to court rulings;
(4) Avoid undue familiarity with members of the judiciary;
(5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
(6) Show respect by attire and demeanor;
(7) Assist the judiciary in determining the applicable law; and,
(8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

(a) To recognize and to develop our interdependence;

(b) To respect the needs of others, especially the need to develop as a whole person; and,

(c) To assist my colleagues become better people in the practice of law and to accept

their assistance offered to me.

<u>As to our profession</u>, I will aspire:

(a) To improve the practice of law. As a professional, I should:

(1) Assist in continuing legal education efforts;
(2) Assist in organized bar activities; and,
(3) Assist law schools in the education of our future lawyers.

(b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:

(1) Assist in bar admissions activities;
(2) Report violations of ethical regulations by fellow lawyers; and,
(3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

<u>As to the public and our systems of justice</u>, I will aspire:

(a) To counsel clients about the moral and social consequences of their conduct.

(b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods. As a professional, I should ensure that any advertisement of my services:

(1) is consistent with the dignity of the justice system and a learned profession;
(2) provides a beneficial service to the public by providing accurate information about the availability of legal services;
(3) educates the public about the law and legal system;
(4) provides completely honest and straightforward information about my qualifications, fees, and costs; and
(5) does not imply that clients' legal needs can be met only through aggressive tactics.

(c) To provide the pro bono representation that is necessary to make our system of justice available to all.

(d) To support organizations that provide pro bono representation to indigent clients.

(e) To improve our laws and legal system by, for example:

(1) Serving as a public official;
(2) Assisting in the education of the public concerning our laws and legal system;
(3) Commenting publicly upon our laws; and,
(4) Using other appropriate methods of effecting positive change in our laws and legal system.