

**Group Legal Services Association
Solo, Small Firm, and General Practice Section
2014 Annual Conference
May 1-3, 2014, Las Vegas, Nevada**

Saints and Sinners – Ethics and Marketing

Friday, May 2

3:20pm – 4:20 pm

**Presenters: John Bailey, Bailey Kennedy
Dennis Kennedy, Bailey Kennedy
Sarah Thornton, Thornton PR**



John Bailey

John Bailey is an attorney specializing in corporate litigation, healthcare law, and gaming law. He is the founding member and managing partner of Bailey Kennedy, LLP. He is Acting Chairman of the Moral Character and Fitness Committee of the Nevada State Bar. He earned his law degree from McGeorge School of Law. Mr. Bailey was recommended for a Judgeship on the U.S. Court of Appeals. He is a Director of the Public Education Foundation and Council for a Better Nevada. Mr. Bailey is also the Chairman of the Advisory Board of the Andre Agassi College Preparatory Academy. He is a former Director of SHFL entertainment, Inc. and a past Member/Chairman of the Nevada State Athletic Commission.



Dennis Kennedy

Mr. Kennedy is a partner in the firm of Bailey Kennedy. Before that, he was a partner in Nevada's largest law firm (1975-2005) where he was chairman of the firm's Health Care Practice Group. He represents a wide range of businesses and professionals in the protection and defense of their rights. Mr. Kennedy practices primarily in general commercial litigation, health care and insurance law and professional ethics. He is the Chairman of the Board of Trustees of Nathan Adelson Hospice.



Sarah Thornton

With 20 years of experience in the Las Vegas public relations and marketing industry, Sarah has represented a variety of clients both locally and nationally. Her work in media relations has garnered millions of dollars' worth of earned news placements for her clients. Her boutique firm has grown since opening in 2007 and she now works in other major markets to serve her clients even better. In 2011, the firm began working in the Phoenix market and in 2012 Sarah opened an office in Denver, Colorado. She now has five colleagues in the three states.

SAINTS AND SINNERS IN SIN CITY
ETHICS ISSUES IN MARKETING AND
CLIENT DEVELOPMENT

ABA GROUP LEGAL SERVICES
ASSOCIATION AND SOLO, SMALL
FIRM AND GENERAL PRACTICE
DIVISION

MAY 2, 2014

ARIA RESORT & CASINO,
LAS VEGAS, NEVADA

Presented by:

Sarah Thornton (non-sinner, specially
appearing)

John R. Bailey

Dennis L. Kennedy

1. INTRODUCTION: IT'S NOT CLEAR HOW WE GOT HERE, BUT HERE WE ARE

A few examples of legal practice development by some dignified and restrained practitioners are an excellent place to begin. Today, almost anything goes, so long as it is not untrue or deceptive. Taste? De gustibus non est disputandum.

2. THE SPIN DOCTOR IS IN: THERE ARE MANY PRESCRIPTIONS FOR WHAT AILS YOU

Typical types of legal marketing devices (Sarah Thornton)

A. Social media and online marketing

1. Firm website
2. Linked in
3. Facebook
4. Twitter
5. Blogs
6. Search engine optimization (paid searches)
7. Online advertising on other sites (both targeted and random)

B. Reputation building

1. Superlawyers.com
2. Best Lawyers in America
3. Chambers USA
4. Benchmark Litigation

C. Traditional marketing

1. Print/television/radio advertising
2. Bylined articles
3. Speaking engagements
4. Profiles of attorneys

3. DAMNED ETHICS: I'LL BET P. T. BARNUM NEVER HAD TO DEAL WITH THIS STUFF. HE JUST LEFT TOWN

Just about every one of the marketing devices just discussed has ethics perils. (Panel).

A. Firm Websites: These are “advertising.” Cal. Ethics Op. 2012-186.

1. Misleading biographical data. Rules 4.1 (Truthfulness in statements to others); 7.1 (Communications Concerning a Lawyer’s Services); ABA Op 10-457.
2. General information versus legal advice
3. Creation of attorney-client relationship
 - a. Disclaimer
 - b. Rule 1.18 duty to prospective client
4. UPL – access from other jurisdictions. See Cal. Formal Op. 2001-155, which recommends the following disclaimer:
 - an explanation of where the attorney is licensed to practice law;
 - a description of where the attorney maintains law offices and actually practices law;
 - an explanation of any limitation on the courts in which the attorney is willing to appear; and
 - a statement that the attorney does not seek to represent anyone based solely on a visit to the attorney’s website.

B. Advertising

1. Groupon (ABA Formal Op. 465) (implicates fee sharing, advertising, conflicts and proper handling of fees).
2. Client endorsements (Va. Bar Op. 1750 (2008)) (disapproves of “hard” testimonials – lawyer is “the best,” but permits “soft” testimonials – “always appeared concerned”); (Phila. Bar Op. 2008-1 (2008) (photographs of lawyer with famous athletes disapproved); (Utah Op. 08-03 (2009) (client testimonial must be accompanied by cautionary disclaimer).

3. Win/loss percentages. Must be verifiable. Restrictions on claimed monetary recoveries. See Nevada RPC 7.2(i)
 4. Solicitation. Rule 7.3
 5. “Specialist” – MRPC 7.4
- C. Virtual office
1. UPL – contacts from other jurisdictions
 2. 900 numbers - \$1.00/minute advice (N.Y. State Bar Op. 664-6/3/94) (permitted, subject to cautions)
- D. Lawyer-ranking publications
1. Pay to play
 2. Peer surveys
- E. Television/talk shows (Colo. Op. 83 (1993); Ohio Op. 94-13 (1994); and others: general advice only. Disclaim creation of attorney-client relationship).
- F. Lawyer blogs
1. Advertising
 2. Lawyers talking about themselves and their cases. Confidentiality rules apply. Do not discuss client information. *In re Skinner*, 740 S.E. 2d 171 (Ga. 2013); *In re Peshek*, 798 N.W. 2d 879 (Wis. 2011).
 3. General stupidity is not allowed.¹
 - A Missouri lawyer was suspended for six months for e-mailing a photograph – with his commentary – of the overweight deceased lying on an emergency room table.
 - A Chicago lawyer advertised for a legal assistant, and asked for a description of “physical features and measurements.” He responded to an e-mail inquiry by stating that the applicant “would be required to have sexual relations with me or any partner.”

¹ These examples came from a 6/18/10 New York Lawyer article.

- A Texas prosecutor sought and received a trial continuance in order to attend a funeral. The judge found her Facebook postings, which showed her drinking and riding motorcycles.
- A Florida criminal defense attorney blogged that a certain judge was “an evil unfair witch; who was ‘seemingly mentally ill.’” That cost him \$1200 for violating Florida’s Rule against criticizing the integrity of a judge.

G. Litigation

1. “Friending” to gain information. See Assn. of NYC Bar Ethics Op. 2010-2 (Use discovery tools; not deceit)
2. Discoverability of “private” information
3. Advice to client to remove information. See N.Y. County Lawyers Assn. Ethics Op. 745 (7/2/13) (remove or protect, but not destroy)