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“Coming To The Clubhouse Stage: Legal Ethics?”

By Kimberly Ohanuka

Clubhouse is the new audio-only chatroom social media app. The app allows its members to host audio events as presenters or moderators on the Clubhouse stage and join various chatrooms. Many professionals turned to this app during the pandemic to network with others, share their perspectives on a variety of topics, showcase their expertise in the field, facilitate conversations among their peers, and learn new information. This interactive social medium allows attorneys to “show & tell” their talents to prospective clients.

In our last article, “[Socially Acceptable vs. Ethically Unacceptable](#),” we focused on three tips to stay ethically compliant when advertising your legal services on social media. Because Clubhouse is a live-audio interactive platform that can reach many people across the world – including potential clients - we suggest the following additional tips: (1) present your true self; (2) read the room; and (2) think before you speak.

Before diving into some tips for using Clubhouse ethically, a little background on the app is helpful. First, when you create a Clubhouse profile, you are encouraged to use your real name. You can write a bio about yourself and link your other social media accounts to your Clubhouse profile. You can follow individuals and be followed, and you can become a member of Club, which is an interest-based group. One of the app’s main features is its chatrooms. You can create three different chatrooms: closed, social, or open. A closed chatroom is “invite-only”, and no one can invite other users without your knowledge. A social chatroom is only for your followers. An open chatroom is for anyone, and users may invite other people to join the chatroom.

When using Clubhouse, here are a few key rules to keep in mind to ensure you do not run afoul of your ethical obligations:

Number One: Present your true self. As discussed in our last article, it is imperative that attorneys present an authentic brand. Accordingly, your Clubhouse profile should be accurate and truthful. Use your real name as your username, and your profile should not state or imply that you are certified as a specialist in a particular field of law unless you are certified as a specialist by an organization approved by the state or has been accredited by the ABA and the name of the certifying organization is identified on your profile.

Number Two: Read the room. Clubhouse allows its members to create open or closed chatrooms. If you would like to freely exchange legal perspectives and information among your peers, then create a closed chatroom for attorneys only. If you would like to host public chatrooms for visibility in the market, then be mindful of your audience because you do not want to provide information that may be interpreted as legal advice.

For instance, if you host a Clubhouse discussion about negotiating settlements in civil matters, then you should tailor your message according to your room. In a closed room, you may share different tactics for negotiating and be more candid in your discussions because you have control over who is listening. In an open room, you may provide general information to demonstrate your expertise in negotiating settlements. Regardless of what type of chatroom you are in, however, you should always be mindful of your confidentiality obligations. Moreover, you should disclaim the information as non-legal advice, avoid answering specific legal questions, and do not solicit professional employment. The same applies if you are given the opportunity to speak in a chatroom that is not moderated by you.

Number Three: Think before you speak.



Chatroom discussions on Clubhouse occur in real-time, so the conversations are fluid. Accordingly, when you approach the Clubhouse stage in an open chatroom, be sure to: (1) state the jurisdiction in which you practice; (2) make clear that the topics you intend to speak on should not be considered as legal advice; and (3) explain that if users have specific questions, they should contact an attorney in their jurisdiction for a consultation. For example, if you are a criminal defense attorney, then it may be appropriate to discuss, in an open chatroom, the racial inequities in sentencing. However, you may inadvertently create an attorney-client relationship if you start providing specific advice to another user about pursuing a sentencing appeal. The conversation could be construed as legal advice and thus implicate numerous ethical rules.

Ultimately, when you are using Clubhouse, you should hold yourself out truthfully and accurately, read the room by determining whether the chatroom is closed for legal professionals or open to the public, and think before you speak to make sure your discussions are consistent with your ethical obligations.

For more information about the ethical issues discussed in this article, or for legal ethics counseling, contact Dennis Quinn at 202-310-5519 or djq@carrmaloney.com

Actions on Rule Changes and Legal Ethics Opinions

All proposed changes listed below are available for public comment. You may submit your comments to the Virginia State Bar at www.vsb.org. All proposed LEOS pending approval by the Supreme Court are not available for comment.

Recently Adopted LEOs

[Amendments to Clients' Protection Fund Rules. Approved by VSB Council 10/29/21](#)

[UPL Opinion 218: regarding power of attorney and the uniform power of attorney act. Approved by the Supreme Court of Virginia September 13, 2021. Effective immediately](#)

Proposed LEOs

[Legal Ethics Opinion 1894, Conflict of Interest: Representing Multiple Infant Claimants by "Next Friend." Comments due by January 7, 2022.](#)

[Amendments to Rules 1.8, 1.10, and 1.15 of the Rules of Professional Conduct. Pending approval by the Supreme Court of Virginia.](#)

[Legal Ethics Opinion 1896, Out-of-State Lawyers Working Remotely in Virginia. Pending approval by the Supreme Court of Virginia.](#)

[LEO 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case. pending review by the Ethics Committee](#)

[Amendments to Rule 1.2 of the Rules of Professional Conduct. Pending approval by the Supreme Court of Virginia.](#)

[Amendment to Paragraph 13-6.H regarding the Disciplinary Board's review of Agreed Dispositions. Pending approval by the Supreme Court of Virginia.](#)



10th Annual Avoiding Legal Malpractice Seminar 2021

Carr Maloney Partner Dennis Quinn and Eileen Garczynski, Senior VP and Equity Partner, Ames & Gough's presentation is now available as an online seminar.

Malpractice suits not only cost firms money, they also rob the firm's leadership of valuable time they need to spend with clients or to address other management issues. They can also inflict enduring damage to a firm's reputation.

This course is designed to educate attorneys on measures that can be taken to better serve the interests of their clients; and to encourage lawyers to establish and maintain standards in their law practice to meet their responsibilities to their clients. During this 2-hour seminar, Eileen Garczynski and Dennis Quinn provide both new and experienced practitioners with an overview of the most common legal malpractice claims (and related risks, such as cyber, management, and employment-related claims), and how to avoid them. They also explain how to avoid the errors that frequently occur and how to respond appropriately to risky situations with a dive deep into the ethical issues associated with these risks. Attendees should be able to come away from this session with ways to reduce risk while also making the firm eligible for favorable Lawyers' Professional Liability Insurance pricing and coverage.

Topics of discussion include:

- Update on Legal Malpractice Claim Statistics
- Most likely types of legal malpractice claims arising out of the economic downturn and how to avoid them
- Lateral hires and associate training issues during and post-COVID
- Identifying potential conflicts of interest among affiliated companies
- Recognizing which clients to take and which to avoid
- Tips for better engagement and disengagement letters
- Protecting client confidences and communications
- Technology and cybersecurity concerns for attorneys working from home
- Lawyer well-being post-pandemic

[Click here to view presentation](#)