

Tip of the Month

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Be Cautious When Using Listservs

The posting of questions and comments to listservs helps lawyers in all practice areas (including mine) benefit from the knowledge and experience of other lawyers who work in the same area. Using listservs most often benefits clients in multiple ways, including saving time (and therefore money), expanding creative approaches to issues, and obtaining unbiased review of facts and law. But, as we've often said here, with benefit comes risk. Lawyers must be certain to abide by the rules of professional conduct at all times, and certainly when using listservs.

The ABA Standing Committee on Ethics and Professional Responsibility's most recent opinion provides some guidance to lawyers that use listservs or comparable media: Formal Opinion 511, titled "Confidentiality Obligations of Lawyers Posting to Listservs."

The Opinion concludes: Rule 1.6 prohibits a lawyer from posting comments or questions relating to a representation to a listserv, even in hypothetical or abstract form, without the client's informed consent if there is a reasonable likelihood that the lawyer's posts will disclose information relating to the representation that would allow a reader then or later to recognize or infer the identity of the lawyer's client or the situation involved. A lawyer may, however, participate in listserv discussions such as those related to legal news, recent decisions, or changes in the law, without a client's consent if the lawyer's contributions will not disclose information relating to a client representation.

This is the same conclusion reached by most other ethics opinions that address the subject. See, e.g., ABA Formal Op. 480, Colorado Bar Op. 130, Illinois Bar Op. 12-15, LA County Bar Op. 514, Maryland Bar Op. 2015-3, Oregon Bar Op. 2011-184, Texas Bar Op. 673. Note that the analysis, reasoning, and specific conclusions can vary state-to-state, so it's important to check the ethics opinions in your jurisdiction.

In general, best practice is to avoid posting information sufficient for anyone to connect the facts with you or your client. According to the ABA Opinion, lawyers may obtain informed consent to share confidential information, but even then, take great care in making disclosures. Depending on the specificity of listserv, opposing counsel may be a part of the very listserv asked to weigh in on a topic.

Have a risk management or ethics questions? We're here to help. To obtain a consultation, you should log in to [Attorneys Risk Management](#), and click on the "Request a Risk Management Consultation" button.