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Kelcey Nichols

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CLIENT CONFIDENTIALITY, PROFESSIONAL PRIVILEGE AND ONLINE COMMUNICATION: POTENTIAL IMPLICATIONS OF THE BARTON DECISION

Kelcey Nichols[1]

Abstract

In a recent case of first impression, *Barton v. U.S. District Court for the Central District of California*, the U.S. Court of Appeals for the Ninth Circuit held that an online communication involving an online intake form filled out by prospective clients gave rise to an attorney-client relationship governed by the duty of confidentiality and subject to attorney-client-privilege. The Ninth Circuit's multi-factored analysis suggests a modified framework for evaluating when the duty of confidentiality and attorney-client relationship can be formed through online communications. This Article discusses *Barton*'s implications for attorneys and law firms that communicate with clients and potential clients online. Attorneys should be able to avoid an unexpected duty of confidentiality created through an online communication by clearly defining the attorney-client relationship and adhering to the Rules of Professional Conduct.

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INTRODUCTION

<1>In a case of first impression, *Barton v. U.S. District Court for the Central District of California*, the U.S. Court of Appeals for the

Ninth Circuit ("Ninth Circuit") held that a duty of confidentiality arose when prospective clients filled out an online questionnaire posted by a law firm.[2] In *Barton*, a law firm sought potential clients to participate in a class action suit involving the prescription drug Paxil. The law firm posted a detailed questionnaire for potential class members on its website.[3] Although the firm's website included a disclaimer stating that voluntary completion of the online questionnaire did not initiate an attorney-client relationship, the court characterized the interaction as an initial consultation.[4] The Ninth Circuit, however, when viewing the attorney-client relationship from the perspective of a prospective client, held the online communication did give rise to a duty of confidentiality based on the attorney's duties to their prospective clients.[5] When the defendants in the suit sought disclosure of the online forms, the Ninth Circuit ruled that the questionnaires were protected under attorney-client privilege.[6]

<2>The *Barton* decision may have implications for attorneys who communicate with clients and potential clients online. In *Barton*, the Ninth Circuit considered several factors before determining that the online communication gave rise to a professional relationship governed by the duty of confidentiality and subject to attorney-client-privilege. As online communication with clients increases, courts will need to determine when the duty of confidentiality arises online and, subsequently, when attorney-client privilege attaches. The Ninth Circuit's analysis provides a useful framework for addressing the ethical and evidentiary implications raised by online communications.[7] However, the factors that determine if an attorney-client relationship exists will depend on the context of each case and who asserts the privilege. Courts are likely to apply the Barton factors differently in situations involving a client's assertion of attorney-client privilege to prevent an opponent from obtaining information through discovery as contrasted with cases of attorney malpractice because of the different nature of each of proceeding.

PROFESSIONAL PRIVILEGE

<3>Online communication between an attorney and a current or prospective client[8] may give rise to a duty of confidentiality.[9] Once a lawyer communicates with a prospective client by way of an initial consultation, the lawyer has a duty of confidentiality, even if no subsequent client-relationship forms.[10] Online communications with prospective clients can be particularly fraught with complications because many means of online communication remain legally undefined. For example, the law has yet to define what constitutes the unauthorized practice of law with respect to Internet communications.[11]

<4>Most states have adopted some form of the Model Rules of Professional Conduct that govern attorney conduct. Accordingly, lawyers have generally used state law governing professional conduct and the Restatement (Third) of the Law Governing Lawyers to advise their online communications with clients and prospective clients.[12] However, not all of these rules are readily adaptable to the Internet, where there are no readily apparent jurisdictional boundaries.[13] Furthermore, prospective clients and attorneys may expect different things from online communication.[14] These expectations play a crucial role in determining when a communication gives rise to an attorney's duty to protect a prospective client's confidentiality.[15]

<5>Client confidences protected by rules of professional conduct may also be protected under attorney-client privilege and therefore inadmissible as evidence.[16] In general, the professional duty of confidentiality is broader than the evidentiary protection under attorney-client privilege.[17] Because privilege results in withholding information from the fact-finder, courts construe privilege narrowly.[18] The proponent of the privilege has the burden of proving that the privilege exists.[19] An existing privilege may be waived either by voluntary disclosure to people outside, or not essential to, the attorney-client relationship, or by failing to take reasonable measures to protect confidentiality.[20] The opponent of the privilege has the burden of showing waiver.[21]

<6>Online communications raise distinct issues regarding waiver. First, online communications may be less secure than a face-to-face meeting or written correspondence.[22] In addition, boilerplate disclaimers used online by attorneys may be insufficient to adequately inform prospective clients about a potential waiver of confidentiality and secure the necessary consent.[23] Furthermore, in determining whether an attorney has a duty of confidentiality to a client or a prospective client, courts consider the client, rather than the attorney's, expectations.[24] The client's belief that an attorney-client relationship exists must be reasonable.[25]

THE BARTON DECISION

<7>In *Barton*, a law firm posted an online questionnaire on its website in order to identify potential members of a class comprised of persons who had experienced adverse effects after ceasing to take the drug Paxil.[26] During discovery, the manufacturer of Paxil sought disclosure of four of the plaintiffs' questionnaires: the plaintiffs argued that the questionnaires were protected by attorney-client privilege.[27] However, the plaintiffs'

attorneys also tried to use the online questionnaire's disclaimer to protect themselves from liability arising under the attorney-client relationship.[28] The U.S. District Court for the Central District of California concluded that the plaintiffs' attorneys could not have it both ways and found in favor of the defendants.[29] The district court therefore declined to protect the allegedly privileged information.[30]

<8>The plaintiffs appealed to the Ninth Circuit and sought a writ of mandamus because the defendants' exposure to the information the plaintiffs sought to protect could not be undone.[31] In deciding whether to grant the writ of mandamus,[32] the Ninth Circuit evaluated the online contact from the prospective clients. The Ninth Circuit weighed several factors in determining whether the questionnaires were confidential and protected by attorney-client privilege, granted the plaintiffs' writ of mandamus and vacated the District Court's decision.[33]

<9>In finding that the online questionnaire gave rise to a duty of confidentiality, the Ninth Circuit outlined several reasons why the online questionnaire served as an initial contact between the potential client and attorney.[34] First, the law firm used the form to gather "information about potential class members."[35] Although the online questionnaire expressly stated that no attorney-client relationship had been formed, the law firm referred to the form as an "intake" questionnaire in its briefs, implying that the form resembled an initial meeting with a prospective client.[36] Furthermore, the disclaimer regarding the attorney-client relationship did not disclaim confidentiality.[37] Second, four of the plaintiffs secured legal representation by filling out the online form.[38] Third, some of the people who filled out the online questionnaire did so in order to "get in on the class action."[39] Fourth, the court considered the level of inquiry of the questionnaires, including the request for detailed information about psychological and physical symptoms.[40]

<10>The court further identified several factors weighing against confidentiality and the protection of the attorney-client privilege, including: 1) the ambiguous wording of the online questionnaire; 2) the law firm's disclaimer; 3) the response of one participant who did not think the questionnaire formed an attorney-client relationship; 4) an acknowledgement by the person who had filled out the form that he/she was not requesting legal advice; and 5) the law firm's statement about gathering information about potential class action members rather than soliciting clients.[41]

<11>The Ninth Circuit concluded, however, that "more important than what the law firm intended is what the clients thought."[42] In

contrast to the district court, the Ninth Circuit concluded that the duty of confidentiality *did* attach through the initial online contact between the law firm and prospective clients. The Ninth Circuit held that attorney-client privilege protected from discovery the information submitted by the prospective clients.[43]

<12>The court construed the ambiguity surrounding the formation of the attorney-client relationship against the law firm, holding that the online questionnaire did not constitute a "disclaimer of confidentiality" because the questionnaire failed to address confidentiality.[44] As a result of the questionnaire's silence on confidentiality, the court found that the law firm's online questionnaire gave rise to a professional duty of confidentiality that allowed the clients to subsequently assert attorney-client privilege. The court also weighed the ambiguity of the online intake form and held that the plaintiffs should not be penalized for the law firm's lack of clarity in drafting the form. The court left open the possibility that a less ambiguous form and clear waiver of confidentiality could avoid the creation of an attorney-client relationship.

IMPLICATIONS OF THE BARTON DECISION

<13>The *Barton* decision will have a significant impact on the professional duty of confidentiality and subsequent assertion of attorney-client privilege originating from online communication. Attorneys and law firms in a diverse array of practice areas use the Internet as a communication tool, regardless of whether they provide advice over the Internet. [45] Attorneys may use the Internet to find class action litigants, as the firm in *Barton* did, or to provide intake forms for prospective clients.[46] As more attorneys offer an online component to their services, courts will need to establish how to apply the Rules of Professional Conduct to online communications, determine when such communications give rise to the duty of confidentiality and when attorney-client privilege protects online communications.

<14>While some states have expanded their laws regarding online practice, many ethical issues remain unaddressed.[47] Both the Model Rules of Professional Conduct and some state ethics commissions have become more accepting of online communications between attorneys and potential clients. For example, several jurisdiction view email communications as no more likely to breach client confidentiality than letters, faxes and landline telephones.[48] In addition, the Texas State Bar committee recently decided that an attorney may participate in an online service that matches prospective clients with attorneys as long as the online service does not operate as a private referral service.[49]

<15>Neither state law nor the Model Rules of Professional Conduct address the potential for a breach of confidentiality through an online form. Hackers who attempt to illegally intercept information transmitted between computers may threaten online communications.[50] While federal laws now impose civil and criminal penalties for intercepting electronic information without authorization, as with mail fraud, the risk still remains palpable.[51]

<16>Nonetheless, *Barton* helps define when an online communication between an attorney and a prospective client seeking legal advice will likely give rise to a duty of confidentiality by applying the existing ethical rules to Internet-related communications.[52] *Barton* illustrates that an initial online contact with a prospective client, like an initial meeting in a law office, may be seen as an initial consultation.[53] As with an initial face-to-face meeting with a prospective client, an attorney may need to screen for conflicts when initiating online communication with a prospective client.[54] However, a unilateral unsolicited contact from a prospective client to an attorney may not give rise to a duty of confidentiality, even if the prospective client discloses confidential information.[55] Clearly defining the attorney-client relationship with regard to online communication plays a critical role in protecting attorney-client privilege and avoiding professional liability.[56]

<17>However, absent state or federal laws that define when an online communication between an attorney and prospective gives rise to a duty of confidentiality, courts and ethics committees will likely decide whether the duty exists based on the particular facts of each case.[57] In *Barton*, the court focused on the clients' rights and found the law firm's disclaimer vague and ambiguous.[58] The court then construed this ambiguous language in favor of the persons who completed the questionnaires and held that the vague nature of the disclaimer precluded a determination that those persons had waived the confidentiality of their responses.[59] The fact that the questionnaire-takers later became clients of the law firm also played a role in the court's determination.

<18>In the wake of *Barton*, courts may hold that confidential information communicated to an attorney online constitutes strong evidence of a prospective client's intent to form a professional relationship.[60] In addition, the overall context of the online communication, which the Ninth Circuit emphasized in *Barton*, may determine whether the communication qualifies as a request for legal services.[61] If an attorney gives advice over the Internet, courts may weigh the specificity of that advice in determining whether an attorney-client relationship has formed.[62] An attorney who gives advice over the Internet may also be liable for the

unauthorized practice of law if that attorney gives advice to a client in different jurisdiction.[63]

<19>The formation of an attorney-client relationship also requires that a lawyer "manifests consent" to represent a client or that, absent express consent, the lawyer "knows or reasonably should have known" the client is relying on the lawyer to provide legal services.[64] Attorneys need to be aware of the fact that prospective clients using the Internet for legal services may have different expectations of the attorney's role and obligations.[65] As seen in *Barton*, courts are likely to give the benefit of the doubt to prospective clients rather than attorneys. Coupled with courts' narrow construction of privilege in general,[66] *Barton* should alert attorneys that the responsibility of defining the attorney-client relationship falls on lawyers. Although the Model Rules of Professional Conduct explicitly states that an attorney does not have a duty of confidentiality to people who communicate "unilaterally" with the attorney, [67] online communications appear to give rise to a gray area where attorneys and prospective clients' expectations do not match.

<20>*Barton* left open the possibility that a clear disclaimer, written in "plain English,"[68] may avoid the formation of an attorney-client relationship.[69] The law firm's disclaimer in *Barton* did not specify whether respondents' answers would be confidential.[70] In addition, the disclaimer failed because of the attorneys' subsequent actions and representation of persons who had completed the relevant questionnaires. Accordingly, courts will likely consider the overall circumstances surrounding the disclaimer. If attorneys' actions are inconsistent with the disclaimer, courts are unlikely to uphold the waiver given the general construction against the attorney.[71]

<21>In *Barton*, the disclaimer failed both because of the ambiguous language, failure to address confidentiality and the law firm's subsequent actions in asserting attorney-client privilege.[72] In contrast, a court may uphold a disclaimer that is clear from the client's perspective if the attorney's actions are in keeping with the disclaimer. For example, an attorney, who uses a clear disclaimer online and does not pursue representation, may prevent the formation of attorney-client relationship. To avoid ambiguity, attorneys should use a follow-up communication that clarifies that the attorney has declined representation.[73] A successful disclaimer of the attorney-client relationship should not be confused with a waiver of confidentiality.

CONCLUSION

<22>*Barton* illustrates that even online communications that do not involve attorneys giving advice are subject to the standards of professional conduct. A person's online communication with an attorney may give rise to a duty of confidentiality. Accordingly, that communication may be subsequently protected by attorney-client privilege. While Internet lawyering has often been characterized in terms of online chatrooms and bulletin boards,[74] traditional law firms, such as the one in *Barton*, will likely confront issues of professional responsibility as they use the Internet to reach out to prospective clients.

PRACTICE POINTERS

- Online communications with prospective clients should clearly define the professional relationship from the client's point of view.
- Online communications should clearly set forth the duty of confidentiality and any waiver of confidentiality from the potential client's point of view.
- Attorneys should be wary of online communications that would lead them to practice in a state where they are not licensed.
- When advertising online, attorneys should strictly follow the rules of professional conduct, keeping in mind that courts have not yet fully defined the parameters of acceptable online advertising.
- Attorneys should be conservative in their online communications given courts' general construction against the attorney.
- Attorneys should monitor the development of the law in their jurisdiction as other courts have not yet confronted this issue.

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Footnotes

1. Kelcey Nichols, University of Washington School of Law, Class of 2007. Thank you to Professor Robert Aronson, Professor Anita Ramasastry, Terrance Keenan, Emma Scanlan, and Jamila Johnson.
2. Barton v. U.S. Dist. Court for the Central Dist. of Cal., 410 F.3d 1104 (9th Cir. 2005).
3. *Id* at 1106.

4. *Id* at 1111.
5. *Id.* at 1107.
6. *Id.* at 1108.
7. *Id.* at 1104.
8. The majority of states have adopted some form of the Model Rules of Professional Conduct which defines a prospective client is a "person who discusses with a lawyer the possibility of forming a client-lawyer relationship." Model Rules of Prof'l Conduct R. 1.18(b) (2003).
9. *Id.*; Model Rules of Prof'l Conduct R. 1.6 (2003).
10. Model Rules of Prof'l Conduct R. 1.18(b) (2003): "Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client."
11. Joel Michael Schwarz, *Practicing Law Over the Internet: Sometime Practice Doesn't Make Perfect*, 14 HARV. J.L. & TECH. 657, 660 (2001); *see also* Melissa Blades & Sarah Vermylen, *Virtual Ethics for a New Age: The Internet and the Ethical Lawyer*, 17 GEO. J. LEGAL ETHICS, 637, 638 (2004).
12. *See* Randi Kopf, *Virtual Law Firm*, 27-OCT Md. B.J. 17 (2004); Blades & Vermylen, *supra* note 11, at 639-40.
13. Vanessa S. Browne-Barbour, *Lawyer and Law Firm Web Pages as Advertising: Proposed Guidelines*, 28 RUTGERS COMPUTER & TECH L.J., 275, 316 (2002); *see also* Blades & Vermylen, *supra* note 11, at 641.
14. Schwarz, *supra* note 11, at 675-76; *see also* Blades & Vermylen, *supra* note 11, at 641.
15. *See* Barton v. U.S. District Court for the Central District of California, 410 F.3d 1104, 1111 (9th Cir. 2005).
16. The question of privilege should be judged in accordance with the common law. Fed. R. Evid. 501. State rules, statutes and common law all recognize that privileged information is inadmissible. Fed. R. Evid. 501 advisory committee's notes. Privilege may be set forth by state and federal statutes.
17. Paul R. Rice, Attorney-Client Privilege in the United States § 2:1 (2d ed. 2006): "The attorney-client

privilege is a rule of evidence that protects the confidentiality of communications between an attorney and client. The mere fact that an individual communicates with an attorney, however, does not make his communications privileged."

18. United States v. Zolin, 491 U.S. 554, 562, 109 S.Ct, 2619, 105 L.Ed. 469 (1989); *see also*: Fisher v. United States, 425 U.S. 391, 403, (U.S. 1976), In re Grand Jury Matter No. 91-01386, 969 F.2d 995 (11th Cir. 1992), In re Grand Jury Investigation No. 83-2-35, 723 F.2d 447, 451, (6th Cir. 1983), United States v. Evans, 113 F.3d 1457, 1461 (7th Cir. 1997).

19. *Barton*, 410 F.3d at 1110.

20. In re Grand Jury Subpoena Dated June 30, 2003, 1 Misc. 3d 510, 516-17 (N.Y. Misc. 2003).

21. *Barton*, 410 F.3d at 1110, *see also* In re Asia Global Crossing, Ltd., 322 B.R. 247, 255 (Bankr. D.N.Y. 2005).

22. *See* Kopf, *supra* note 12, at 21.

23. Catherine J. Lanctot, *Symposium Online Activities and Their Impact on the Legal Profession: Regulating Legal Advice in Cyberspace*, 16 ST. JOHN'S J. LEGAL COMMENTARY 569, 573 (2002); *see also* Blades & Vermylen, *supra* note 11, at 643.

24. Model Rules of Prof'l Conduct R. 1.18 (2003); Model Rules of Prof'l Conduct R. 1.6 (2003). *See e.g.*, In re McGlothlen, 99 Wash.2d, 515, 523, 663 P.2d 1330, 1334 (Wash. 1983); Grace v. Center for Auto Safety, 72 F.3d 1236 (6th Cir.1996); Glover v. Libman, 578 F.Supp. 748 (N.D.Ga.1983); Excalibur Oil, Inc. v. Sullivan, 616 F.Supp. 458 (N.D.Ill.1985); Dalrymple v. National Bank and Trust Co. of Traverse City, 615 F.Supp. 979 (W.D.Mich.1985). *See also* McCormick On Evidence, § 88 (John William Strong, ed. 1992); 8 Wigmore, Evidence § 2304 (McNaughton rev.1961).

25. *See, e.g.* Green v. Montgomery County, Ala., 784 F.Supp. 841 (M.D.Ala.1992); Ageloff v. Noranda, Inc., 936 F.Supp. 72 (D.R.I.1996); Polyagro Plastics, Inc. v. Cincinnati Milacron, Inc., 903 F.Supp. 253 (D.P.R.1995); DCA Food Indus., Inc. v. Tasty Foods, Inc., 626 F.Supp. 54 (W.D.Wis.1985).

26. *Barton*, 410 F.3d at 1106.

27. *Id.* at 1108.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* "Plaintiffs seek a writ of mandamus because once the information is out of the bag, you can't stuff it back in."

32. *Id.* at 1108.

33. *Id.* at 1108-1112. The Ninth Circuit found that the following five factors weighted in favor of granting the writ: "(1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (3) The district court's order is clearly erroneous as a matter of law. (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impression."

34. *Id.* at 1107.

35. *Id.*

36. *Id. See also* Model Rules of Prof'l Conduct R. 1.16 (2003); In re Auclair, 961 F.2d 65, 70 (5th Cir. 1992) ("The existence of the privilege is an essential ingredient to a full and free exchange of information needed by the attorney for an intelligent assessment of the representation invitation.").

37. *Barton*, 410 F.3d at 1110.

38. *Id.* at 1109.

39. *Id.* at 1110.

40. *Id.*

41. *Id.*

42. *Id.* at 1107.

43. *Id.* at 1111.

44. *Id*, at 1110, "[T]he district court based its conclusion on a misunderstanding that the law firm had made 'a disclaimer of confidentiality.' It did not. Neither the word 'confidentiality' nor the substance of a disclaimer of confidentiality can be found in the online questionnaire."

45. This use of the Internet should be distinguished from "cyber-attorneys," i.e. lawyers who give clients advice through websites such as Dear Esquire, FreeAdvice, and LawGuru. *See* Catherine L. Lantcot, *Attorney-Client Relationships in Cyberspace: the Peril and the Promise*, 49 Duke L.J. 147, 151 (1999) [hereinafter Lantcot].

46. Mark L. Tuft, *Techno Ethics Coming of Age on Ethics and the Internet*, GPSolo Magazine, June 2005, available at http://www.abanet.org/genpractice/magazine/2005/jun/technoethics.h (last visited February 3, 2007).

47. *See id.*

48. *See* Model Rules of Prof'l Conduct R. 1.6 annotation (2003), *citing* ABA Formal Ethics Op. 99-413 (1999), "The ABA Ethics Committee has concluded that a lawyer may communicate with a client via electronic mail without encryption; the expectation of privacy for electronic mail is the same as that for ordinary telephone calls, it reasons, and the unauthorized interception of an electronic message is illegal." *see also* Tuft, *supra* note 46. Note that ABA Formal Ethics Op. 99-413 (1999) has been criticized due to the ease of intercepting electronic messages. *See* David M. Greenwald, *Protecting Confidential Legal Information: a Handbook for Analyzing Issues Under Attorney-Client Privilege and the Work Product Doctrine*, 2006 A.L.I. – A.B.A. Continuing Legal Education, ("The prudent attorney should therefore feel comfortable in taking advantage of the relative security and ease of use of e-mail technology, but bear in mind the risks associated both with accidental transmission to an unintended party and the ease with which the intended party may forward the e-mail to unprivileged persons.").

49. Tex. State Bar Comm. on Prof'l Ethics, Op. 573 (2006).

50. *See* Kopf, supra note 22, at 22.

51. *See* Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C. §§ 2510-2521 (2002); *see also* Tuft, *supra* note 46.

52. An online communication that does not constitute a substantial communication, such as a casual discussion

in passing, will not likely give rise to a duty of confidentiality. *See* Model Rules of Prof'l Conduct R. 1.16 annotation (2003).

53. Barton v. U.S. District Court for the Central District of California, 410 F.3d 1104, 1111 (9th Cir. 2005)..

54. Katy Ellen Deady, *Cyberadvice: the Ethical Implications of Giving Professional Advice over the Internet*, 14 Geo. J. Legal Ethics 891, 905 (2001).

55. Model Rules of Prof'l Conduct R. 1.18, cmt. 2 (2003), "Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a)."

56. Ranney V. Wiesemann, *On-Line or On-Call? Legal and Ethical Challenges Emerging in Cybermedicine*, 43 St. Louis U.L.J. 1119, 1132 (1999).

57. *See* Lantcot, *supra* note 45, at 157-152; *see also* Blades & Vermylen, *supra* note 11, at 656.

58. *Barton*, 410 F.3d at 1110.

59. *Id.*

60. Lantcot, *supra* note 45, at 176.

61. *Id.* at 177.

62. Bridget Hoy, *Watch What You Say: Avoiding the Accidental Attorney-Client Relationship*, 93 Ill. B.J. 22, 25 (2005).

63. Blades & Vermylen, *supra* note 11, at 643.

64. Restatement (Third) of the Law Governing Lawyers § 26 (2000); *see* Lantcot, *supra* note 45, at 170.

65. Schwarz, supra note 11, at 675.

66. United States v. Zolin, 491 U.S. 554, 562, 109 S.Ct, 2619, 105 L.Ed. 469 (1989); *see also*: Fisher v. United States, 425 U.S. 391, 403, (U.S. 1976), In re Grand Jury Matter No. 91-01386, 969 F.2d 995 (11th Cir. 1992), In re Grand Jury Investigation No. 83-2-35, 723 F.2d 447, 451, (6th Cir. 1983), United States v. Evans, 113 F.3d 1457, 1461 (7th Cir. 1997).

67. Model Rules of Prof'l Conduct R. 1.18, cmt. 2 (2003).

68. Barton v. U.S. District Court for the Central District of California, 410 F.3d 1104, 1111 (9th Cir. 2005). The court noted that: "A risky and expensive trip to this court could have been avoided by a plain English explanation on the website."

69. Lantcot, *supra* note 45, at 193, *see also* Hoy, *supra* note 62, at 25.

70. *Barton*, 410 F.3d at 1107.

71. Lantcot, *supra* note 45, at 193.

72. *Barton*, 410 F.3d at 1107.

73. *See* Hoy, *supra* note 62, at 24.

74. Lantcot, *supra* note 45, at 168.

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