

Lawyer's Ethics and the Internet

Antonina Taran^{1,2,*}

¹Samara University, Samara 443086, Russian Federation

²Togliatti State University, Togliatti 445020, Russian Federation

*Corresponding author. Email: topsikt@mail.ru

ABSTRACT

In the modern society, the Internet information system is an integral part of life. Both professional activity and private life cannot be imagined without its use. Moral norms impose additional requirements on representatives of certain professions. In this regard, their behavior on the Internet must be subject to special regulations represented by the norms of professional ethics.

The aim of the study is to analyze the current state of the spread of advocacy ethics in the communication of a lawyer and posting information on the Internet. Many relevant studies demonstrated that advocate ethics is quite relevant in the context of Internet communication of lawyers. The requirements for compliance with legal ethics in the Internet space apply to the information posted by the lawyer, both associated with advocacy and not directly related to it. Rules of Conduct for Lawyers in the Information and Telecommunication Network "Internet" establish ethical standards of conduct that are binding on all lawyers. However, the paper argues that the legitimacy of their adoption is questionable.

Keywords: Lawyer, ethics, Internet behavior, advocate ethics, communication, digitalization.

1. INTRODUCTION

It is impossible to imagine our life without the Internet. In modern society, the World Wide Web (WWW) penetrated all spheres of human relations, both personal and professional. At the same time, the thin line between the first and the second, due to the openness and accessibility of information posted on sites and in social networks, becomes blurred. This is especially true for representatives of the so-called public or conditionally public professions: artists, journalists, government officials, teachers. The latter is also true in relation to the legal profession, including lawyers [1].

It used to be believed that, unlike lawyers, representatives of state power: judges, prosecutors, investigators, etc., whose professional morality applies to both official and non-official behavior, the rules of advocate ethics regulate exclusively advocate, i.e. professional activity. In the codes of professional ethics of the first, independent sections are devoted to off-duty behavior. There are no corresponding norms in the Code of Professional Ethics of a Lawyer of the Russian Federation (hereinafter referred to as the Code or KPEA) [2]. Studying the disciplinary practice of the Chamber of Advocates of the Samara Region (hereinafter - PASO) we were faced with repeated refusals to initiate disciplinary proceedings precisely on this basis: the applicant's complaint concerns the non-professional sphere of behavior of a lawyer [3].

However, over time, it became clear that the provisions of the KPEA, which require a lawyer to

maintain, under all circumstances, the honor and dignity inherent in his profession (part 1 of Article 4 of the KPEA), to avoid actions that undermine the trust not only in him personally, but also in the legal profession in general (clause 2, article 5 of the KPEA), etc., in certain cases should also apply to the off-duty behavior of a lawyer. In connection with the appeals of the chambers of lawyers on this issue, the Commission of the Federal Chamber of Lawyers of the Russian Federation on Ethics and Standards in the clarifications of February 16, 2018 pointed out that the behavior of a lawyer outside of professional activity, which damages the authority of the legal profession or undermines the credibility of it, may be qualified as a violation of the rules of professional ethics, stipulating that this rule applies provided that the affiliation of such a person to the legal community is obvious or it follows from his behavior [4].

Since the Internet makes the information posted by a lawyer publicly available, it is relevant to extend the requirements of professional ethics to such actions of a lawyer that, not being directly related to his profession, cast a shadow on his reputation as a holder of the title of lawyer, as well as on the law firm as a whole [5].

The aim of the study is to analyze the current state of the spread of advocate ethics to the actions of a lawyer on the Internet. In this regard, the primary tasks should be considered the analysis of the disciplinary practice of the Chambers of Lawyers of the Russian Federation, the identification of disciplinary proceedings related to the ethical assessment of the behavior of lawyers in the Internet space. In addition, it is necessary to study the opinions expressed in the press of scientists, as well as lawyers themselves, on the issue

of the existence of special ethical requirements for the online activity of a lawyer. It is necessary to analyze the existing norms of legal ethics from the point of view of their application to the regulation of relations arising in the process of posting information by a lawyer on the Internet. All this will serve to solve the problem of forming in the minds of lawyers an understanding of the need to comply with the requirements of lawyer ethics within the framework of the Internet space.

General ethical standards of lawyer conduct, which are relevant today, including in relation to the actions of a lawyer in the field of the Internet community, are disclosed in general theoretical studies on legal ethics

This article presents an analysis of the emerging disciplinary practice of the chambers of law in the Russian Federation regarding the deviant behavior of lawyers on the Internet. An assessment is given for the first adopted Rules of conduct for lawyers in the Internet telecommunications network. Approved by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016.

The rest of the paper is structured as follows. Section 2 highlights the emerging practice of disciplining defense lawyers for unethical behavior on the Internet. Section 3 assesses the structure and content of the Rules of conduct for lawyers in the Internet telecommunications network. Approved by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016. Section 4 analyzes the issues of the legitimacy of the adoption of the specified content of the Rules of conduct for lawyers in the Internet telecommunications network. Approved by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016.

2. REQUIREMENTS OF LAWYER'S ETHICS

The active use of the Internet has exacerbated the problem of lawyers' compliance with professional ethics in the Internet space, and not only in the framework of providing legal assistance. In our country, the practice of bringing lawyers to disciplinary responsibility for incorrect behavior on the Internet has begun to take shape.

For example, in 2013 the lawyer V.V.V. was found to have violated the requirements of professional ethics under the following circumstances: after she was filed by her client S.E.S. complaints against her to the Chamber of Lawyers of the Moscow Region, the lawyer posted two publications on the Internet. The first - in my personal blog on the radio site "Echo of Moscow" under the title "The story of S.'s betrayal. I am

publishing documents about which we have been talking for so long." The second - on the social network "Twitter" with the headline "Feeling fear of the system, ready to betray friends for the sake of his own freedom - proudly bear the name S.". In an additional complaint the applicant S.Ye.S. pointed out that both of these publications, relating to him personally and his criminal case, were posted without his consent and are offensive.

The qualification commission of the Moscow Region Bar Association admitted that by these publications the lawyer V.V.V. abused the confidence of S.Ye.S., violating paragraphs. 2 and 3 st. 5 of the Code of Professional Ethics of a Lawyer. The commission especially noted that it considered it proven that the author of the articles under consideration is lawyer V.V.V., since they are posted under her name and are on the Internet for a considerable time, during which lawyer V.V.V. did not take measures to refute her authorship.

Another example is the prosecution in 2015 of a lawyer by the Council of the Bar Association of the Kirov Region for disseminating incorrect information about oneself on the Internet. On his personal website, he referred to himself as "a leading attorney," and published praise, mostly anonymous, about his work. The Council considered that such statements, hints, ambiguities can mislead potential principals and cause them unfounded hopes.

There is a known case of bringing a lawyer to justice for a "like". On March 31, 2016, the Disciplinary Proceedings Council of the Chamber of Lawyers of the Samara Region No. 16-03-165 / SP issued a reprimand to lawyer Andrey Sokolov, who liked and repost on his personal Facebook page the obscene address of the poet Alexander Gutin to the head of Samara. Immediately after this incident, a commission was established to monitor the behavior of lawyers on the Internet [6]

Some incidents related to the positioning of lawyers in the Internet community have caused quite a wide discussion in lawyers' circles. An example is the posting by lawyer Sukhov of his photos on his personal page on Instagram. Some piquancy of the pictures made lawyers think about the compliance of their posting on the Internet with the requirements of legal ethics [7].

3. RULES OF CONDUCT OF THE ATTORNEY ON THE INTERNET

The emerging disciplinary practice, discussions about certain manifestations of lawyers on individual sites, in social networks, gradually formed an opinion about the need for special regulation in our country of

the rules of behavior of lawyers on the Internet, which were expressed, among other things, by the lawyers themselves [8]. Foreign experience on this issue is also known. France has an Internal National Regulation that regulates the activities of lawyers, including on the Internet. There are International Principles of Conduct for Legal Professionals in Social Networks of May 24, 2014, developed under the auspices of the International Bar Association, posted by the Federal Chamber of Lawyers of the Russian Federation on the official website. Some researchers discuss possible standards of ethical behavior of lawyers in their works. In 2012, in the Law Technology News (USA), an American lawyer and journalist conducting research in the field of law and technology, Bob Ambrogi published guidelines for lawyers. They contained "10 Tips on How to Avoid Trouble for a Lawyer on the Internet" [9]. The issues of placing advertisements and other information on the Internet by lawyers from an ethical point of view are analyzed in articles by Fenton [10], Bik [11] Rubin [12] and others.

The Council of the Federal Chamber of Lawyers of the Russian Federation did not stay away from this problem. September 28, 2016 it adopted the Rules of Conduct for Lawyers on the Internet Information and Telecommunication. In those rules, it outlined the basic norms of communication and self-presentation of a lawyer on the World Wide Web. The rules include 5 sections. Section 1 "General provisions", section 2 - "Basic principles of the lawyer's activities on the Internet." Separate sections are devoted to the problem of conflicts of interest (section 3) and advocate secrecy (section 4). Section 5 is titled "Lawyer Formations on the Internet" [13].

The first section contains general provisions justifying the meaning of the Rules, their legal basis. It emphasizes the right of a lawyer, based on the Constitution of the Russian Federation, to freedom of expression and freedom of dissemination of information. The necessity of the lawyer's compliance with the requirements of professional behavior on the Internet is substantiated, as well as the mandatory requirements of the Rules.

Section 2 discloses the basic principles of a lawyer's activities on the Internet. Namely: they include the principles of professionalism, restraint and correctness, dignity, safety and corporation. The principle of professionalism in the Rules is revealed through the obligation of a lawyer to comply with the requirements of the law for his professional activities. The need to ensure the safety and confidentiality of the information posted is indicated. The rules prescribe "with caution" to provide legal advice online, accessible to an indefinite circle of people (with the exception of scientific, discussion, analytical, etc. comments). The

principle of restraint and correctness obliges the lawyer to refrain from public comments that belittle the dignity or demean the professional qualities of other lawyers. A lawyer must refrain from commenting on the circumstances and positions of participants in criminal cases in which he does not participate. Public censure of the accused and suspects by the lawyer is strictly prohibited. The principle of dignity implies the absence of manifestations of legal nihilism, aggression, insults in the statements of a lawyer. The statements of the lawyer on the Internet must be responsible and reliable.

The principle of security is considered in the key of ensuring the confidentiality of the information posted. He requires a lawyer to constantly check their Internet resources for extraneous information. Corporateness imposes on lawyers the obligation to treat the signing of collective letters and appeals with "reasonable restraint". And also, to separate one's opinion from the position of the professional community and not pass the former off as the latter.

The rules established the obligation of lawyers to avoid possible conflicts of interest when communicating on the Internet, to protect lawyer secrets, and extended their requirements to lawyers' formations, obliging their managers to familiarize lawyers with them and monitor their implementation. However, these rules for lawyers adopted in Russia appeared to be controversial. Comments were made regarding the appropriateness and correctness of the prohibitions and prescriptions established by them. Some lawyers believe that they should be used to assess the behavior of lawyers only directly in the implementation of their advocacy. In addition, they criticize the closedness of the procedure for preparing the rules, the absence of public discussions. In particular, it can be noted that the rules for lawyers, as in the good old days, were lowered from above.

4. LEGITIMITY OF THE RULES OF CONDUCT OF THE ATTORNEY ON THE INTERNET

In the light of the last statement, one can raise the question of the legitimacy of the adoption of the Rules and the legal force of their prescriptions. The Rules specifically indicate that their violation can be regarded as a violation of the rules of the legal profession and the norms of professional ethics of a lawyer and become the basis for bringing to disciplinary liability (clause 1.4).

Such a serious statement raises certain concerns. First of all, the legality of the adoption of these rules by the Council is not entirely obvious. Within the competence of the FPA Council, established by the

legislation of the Russian Federation, there is no authority to adopt the Rules of this kind, that is, the norms of advocate ethics, violation of which entails disciplinary liability. Remotely reminiscent of this activity is the authority established by clause 9, part 3 of Art. 57 of the Federal Law "On advocacy and the legal profession in the Russian Federation" of May 31, 2002: "The Council approves recommendations on disciplinary practice existing in the chambers of lawyers." However, the guidelines for disciplinary practice and these Rules are completely different phenomena. To be convinced of this, it is enough to take any recommendations issued by the Council: the difference in form and content is quite obvious. Recommendations are given on a specific, narrow issue, and in them the Council explicitly states that it only explains the current legal norms.

The Council did not even try to make these rules even remotely similar to such recommendations. He explicitly indicated that he was adopting the Rules in connection with the growing importance of the Internet for the lawyer corporation, realizing "the need to establish uniform rules of conduct for lawyers in this information environment.

Meanwhile, according to the law, prescriptions binding on every lawyer that establish ethical standards of the legal profession are regulated by the Code of Professional Ethics of a Lawyer, adopted in the manner prescribed by the Federal Law. The Law "On advocacy ..." entrusted the All-Russian Congress of Lawyers with the authority to adopt such a Code. This body is also authorized to make amendments and additions to it (which is quite logical), as well as to approve the standards for the provision of qualified legal assistance and other standards of advocacy that are mandatory for all lawyers (clauses 2, 2.1, part 2 of Art. 36 FZ "On advocacy"). It is this body, and no other, that has the right to adopt the ethical standards of the legal profession, norms, the violation of which entails bringing a lawyer to disciplinary responsibility. And although the FPA Council made a reservation in the Rules that they are based on the Federal Law "On advocacy" and KPEA, it has not changed the legal force of these norms. Firstly, this instruction does not give them the status of provisions of the CPEA and they should not serve as a basis for disciplinary liability in and of themselves. Secondly, this did not remove their essentially obvious rule-making nature, even if there was an attempt to create the appearance of the opposite.

The confirmation is the introduction of changes to the Rules, in particular, on March 20, 2018, clause 2.2.2 was changed. It was the establishment of new normative prescriptions in the rules and the disagreement with them of the lawyer community that caused their correction.

At present, the mentioned rules are actively used to resolve the issue of bringing lawyers to disciplinary responsibility. An example is the disciplinary proceedings against lawyer F. The Council of the Presidential Administration of Moscow established that the lawyer published on the website in the social network Instagram in his account, statements containing profanity. It was noted that the lawyer F. showed disrespect towards an unlimited number of persons by using the word "idiots" when addressing them. In addition, the lawyer gave an intemperate and incorrect assessment of the content of the procedural document drawn up by his procedural opponent.

The lawyer was charged with a violation not only of the Federal Law "On advocacy ..." (subparagraph 4 of paragraph 1 of article 7) and the Code of professional ethics of a lawyer (paragraph 1 of article 4), but also of the Rules (paragraphs 1.3, 2.2.1, 2.3 .1, 2.3.2). Moreover, in the legal assessment of the actions of the lawyer F., the reference to the Rules came immediately after the Federal Law "On advocacy ..." and before the KPEA, which indicates that the Rules were clearly more significant than the latter. For violations of the requirements of legal ethics, lawyer F. was brought to the strictest disciplinary measure - deprivation of status. With regard to these cases, we believe that disciplinary proceedings against lawyers, all the more very severe, should not be based on prescriptions, the legal force of which is questionable as it happens in other countries [14, 15].

Of course, the CPEA itself contains provisions that can and should be guided by when assessing the Internet activity of lawyers. For example, this is Part 1 of Art. 4 - the duty of a lawyer to preserve the honor and dignity inherent in his profession, Art. 6 - the obligation to preserve advocate secrets, paragraph 2 of part 1 of Art. 8 - the requirement to respect the rights, honor and dignity of persons who turned to a lawyer for legal assistance, principals, colleagues and other persons, Art. 15 - rules of mutual respect when dealing with colleagues, art. 17 - requirements for information about a lawyer and legal education.

5. CONCLUSIONS

All in all, our results have shown that advocate ethics is quite relevant in the context of Internet communication of lawyers. The requirements for compliance with legal ethics in the Internet space apply to the information posted by him, both associated with legal activity and not directly related to it: to his personal, non-professional, informal communication, if the unethical behavior of a lawyer casts a shadow on the law firm.

On September 28, 2016, the Council of the Federal Chamber of Lawyers of the Russian Federation adopted the Rules of Conduct for Lawyers on the Internet. They have established ethical standards of conduct on the Internet that are binding on all lawyers, violation of which entails disciplinary responsibility. Meanwhile, according to the legislation on the Bar, the adoption of such orders is the exclusive prerogative of the All-Russian Congress of Lawyers, from which it follows that the Council has gone beyond its powers.

Lawyers should proceed from the assumption that their Internet positioning and Internet communication is subject to the requirements of the professional ethics of a lawyer.

Rules of Conduct for Lawyers in the Information and Telecommunication Network "Internet" dated September 28, 2016, should not replace the norms of the KPEA, the latter are of obvious priority in assessing the behavior of a lawyer. Ethical norms should not be a product of the executive authorities of the legal community. The norms of legal ethics should be the result of a broad discussion of the entire legal community and be adopted by the All-Russian Congress of Lawyers, as required by the legislation of the Russian Federation on the Bar.

In connection with the development of forms and methods of Internet communication, scientific research on the requirements of advocate ethics in the Internet space remains urgent and relevant. Thence, it needs to constitute pathways for further research in this important and relevant area.

REFERENCES

- [1] K. Tung, AI, the internet of legal things, and lawyers. *Journal of Management Analytics*, 6(4) (2019), 390-403. DOI: <https://doi.org/10.1080/23270012.2019.1671242>
- [2] Code of Professional Ethics of a Lawyer in the Russian Federation of January 31, 2003
- [3] A. Taran, Advokatskaya distsiplinarnaya praktika (na primere Palaty advokatov v Samarskoy oblasti), *Advokatskaya praktika* 3 (2005) 8-9.
- [4] Clarifications of the Commission of the Federal Chamber of Lawyers of the Russian Federation on Ethics and Standards dated February 16, 2018. n 02/18 on the application of paragraph 2 of Art. 5 and paragraph 5 of Art. 9 Code of Professional Ethics for a Lawyer.
- [5] S. Henricks, Social Media, Publicly Available Information, and the Intelligence Community. *American Intelligence Journal* 34(1) (2017), 21-31.
- [6] A. Sokolov, The Lawyer's Palace appreciated the creativity of Gutin on his own. <https://and-sokolov.livejournal.com/420101.html> Accessed on 27 Feb 2021
- [7] R. Melnichenko, Oleg Sukhov's case. <https://www.youtube.com/watch?v=Sr5IDV20syE> Accessed on 23 Feb 2021
- [8] M. Kopyrina (2015) My vse v odnom reestre. <https://fparf.ru/polemic/opinions/my-vse-v-odnom-reestre/> Accessed 22 Oct 2020
- [9] B. Ambrogi, Bob Ambrogi's Tips for Legal Bloggers, <https://www.editinglawyer.com/2019/12/20/bob-ambrogis-tips-for-legal-bloggers> Accessed on 20 Feb 2021
- [10] M. Fenton (1997) Kathrin Legal Ethics and the Internet//NeonOnline Sec. 16. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/bstaba1&div=44&id=&page> Accessed 20 Oct 2020
- [11] J. Bik (2017) Internet Legal Ethics and Client Privacy. <http://www.lawjournalnewsletters.com/sites/lawjournalnewsletters/2017/08/01/internet-legal-ethics-and-client-privacy/> Accessed 19 Oct 2020
- [12] K. Rubin (2018) Social media follies: watch your step. <https://www.thelawforlawyerstoday.com/2018/06/3945/> Accessed 22 Oct 2020
- [13] Federal Chamber of the Russian Federation (2014) IBA International Principles on Social Media Conduct for the Legal Profession. <https://fparf.ru/documents/international-acts/international-principles-of-conduct-of-legal-professionals-in-social-networks> Accessed 19 Oct 2020
- [14] F. Schauer, *The force of law*. Harvard University Press, 2015
- [15] D. Rhode, Virtue and the law: The good moral character requirement in occupational licensing, bar regulation, and immigration proceedings. *Law & Social Inquiry*, 43(3) (2018), 1027-1058. DOI: <https://doi.org/10.1111/lsi.12332>