

## **The IP Dating Game: The Ethics of Counsel Selection**

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The New York Rules of Professional Conduct recognize that outside counsel can and should educate people to recognize legal problems and facilitate the process of selecting legal counsel. The Conner Inn IP Dating Game explores ethical and tactical issues involved in outside counsel pitching for business and in-house counsel choosing representation.

A proposal delivered in response to a specific request of in-house counsel – the traditional pitch – is not considered an attorney solicitation. But finding and obtaining work, particularly in the internet age, means grappling with ethical issues that are not expressly addressed by the New York Rules of Professional Conduct. The outside counsel “contestants” in the Conner Inn IP Dating Game use modern marketing tools that are the subject of recent New York State Bar Association Ethics Opinions – blogging (Ethics Opinion 1039), social media (Ethics Opinion 1049), and online attorney superlatives and ratings (Ethics Opinions 1007 and 1052). We will discuss how outside and in-house counsel can benefit from these tools within the bounds of Rules 7.1 (advertising) and 7.3 (solicitation and recommendation of professional employment).

Also, while the art of “selling” legal services to in-house counsel naturally implicates the advertising and solicitation rules, there are additional issues both sides should consider. Those doing the pitching should consider how far to go in relying on the experience of colleagues not in the room, or perhaps not even available. When there is an already-identified legal problem, outside counsel should consider how detailed to make strategy proposals and opinions on the merits of the prospective client’s position, particularly if outside counsel has not run a conflicts check. Recognizing that in-house counsel are often cost-conscious, outside counsel should give thought to how detailed or flexible to make budget estimates and whether to promise discounts or caps. Finally, how far should outside counsel go to make a prospective client happy as to the terms of the representation and personal favors? The Conner Inn IP Dating Game participants will advance a range of approaches to allow discussion of the best practices in the pitch process.