

Ronald D. Coleman
Member
Mandelbaum Salsburg PC



Ron Coleman is Chairman of the Firm's Intellectual Property and Brand Management Practice Group and a member of its Commercial and Corporate Litigation Practice Groups. He is a commercial litigator focusing on torts of competition who has established an international reputation relating to the use and abuse of intellectual property as a tool of competition and free speech. Ron is best known as the lead lawyer for band leader Simon Tam in his successful appeal of the U.S. Patent and Trademark Office's refusal to register the trademark THE SLANTS on First Amendment grounds.

Ron's pioneering blog, LIKELIHOOD OF CONFUSION®, has been online since 2005, and has established Ron as one of trademark law's most influential voices. He has also been recognized for his pioneering use of social media in his legal role.

Jessica L. Copeland
Member
Bond Schoeneck & King PLLC



Jessica advises her clients in all aspects of business counsel and disputes, with a particular focus on data privacy, cybersecurity and intellectual property. Jessica is co-chair of the firm's cybersecurity and data privacy practice.

Jessica's broad experience includes advising clients on data privacy compliance, incident response strategies, and breach notification requirements. She also has experience handling the transactional aspects of intellectual property, including drafting and negotiating licenses, preparing and prosecuting trademark applications, preparing opinions, and conducting due diligence investigations.

Particular to her IP litigation experience, Jessica's practice includes protecting patents and trademarks in federal and appellate courts and before the International Trade Commission for clients in industries such as medical and mechanical devices, computer software and hardware, pharmaceuticals, telecommunications, and e-commerce technologies. Jessica's experience in appellate work includes argument before the Federal Circuit.

Jessica is a veteran commercial litigator with extensive trial and appellate advocacy experience, in both state and federal court. Prior to joining Bond, Jessica practiced in the New York City office of a prominent intellectual property law firm, Morgan & Finnegan, LLP, (acquired by Locke Lord), and she was a judicial intern for Judge Leonard D. Wexler in the U.S. District Court for the Eastern District of New York.

Jessica is a member of the Federal Court Mediation Panel for the Western District of the United States District Court.

Ira J. Levy
Partner
Goodwin Procter LLP



Ira Levy is a senior partner in Goodwin's Litigation Department and a member of its Intellectual Property practice. He is recognized globally for his cross-disciplinary expertise, successfully first-chairing patent, trademark, copyright, false advertising, IP licensing, and related matters for a wide array of industries and in a variety of technical disciplines. Mr. Levy is fluent across many product categories and technical disciplines, and has extensive experience with disputes involving biotechnology, electrochemistry, and pharmaceuticals; electronics, computers and telecommunications; mechanical devices; industrial and consumer products; and the Internet, new media and e-commerce.

Mr. Levy has handled as first chair numerous bench and jury trials in federal and state courts nationwide. He also has significant experience practicing before the U.S. Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board, Patent Trial and Appeal Board, and the U.S. Supreme Court. In addition to his litigation work, Mr. Levy works closely with the firm's Business Law Practice counseling clients on general corporate matters involving intellectual property and the Internet, as well as transactional due diligence, and other licensing issues.

Social Media Ethics

Ronald D. Coleman

Mandelbaum Salsburg P.C.

Jessica L. Copeland

Bond Schoeneck & King PLLC

Ira Jay Levy

Goodwin Procter, LLP

NYIPLA One-Day Patent CLE Seminar

November 2019



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Agenda

- Lawyers Behaving Badly
- Lawyers and Social Media
- Rules and Regulations
- Bar Association Guidance
- Final Thoughts

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LAWYERS BEHAVING BADLY SOCIAL MEDIA EDITION

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Lawyer calls client an 'idiot and a terrible criminal' on Facebook

BY DEBRA CASSENS WEISS

POSTED NOVEMBER 5, 2018, 1:48 PM CST

“[expletive] idiot and a terrible criminal”

“He needed to shut his mouth because he was the dumbest person in the conversation by 100 times”

“You wonder why we need jails huh?”

Defense – only viewable by friends

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Meet Ashley Ann Krapacs



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Florida Bar asks for emergency suspension of lawyer for social media 'attack of massive and continuous proportions'

BY DEBRA CASSENS WEISS

FEBRUARY 27, 2019, 11:40 AM CST

Moved to Florida and initiated a petition for a domestic violence injunction against former boyfriend

Dropped the case --- and began a social media blitz on Facebook, Instagram, LinkedIn and YouTube

Called former boyfriend's attorney -- "old white male attorney" and a "bully attorney"
Claimed he "flat-out LIED" and the judge "didn't bat an eye"

Accused the judge of being a member of the "Old Boys Club"

Called opposing counsel "a moron and a sexist and a bully"

Called opposing lawyer's lawyer "a backstabbing traitor" for representing "misogynist pigs, misogynist bullies"

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when opposing counsel tries to use
the same exact trick you saw in
your last case




Called her a "door lawyer...which is
basically a lawyer who takes anything
that walks in the door in any area of
law."

- "Ya'll, I just can't with this diva. SIMPLY CANNOT! Nisha Bacchus clearly isn't a fan of my social media. Today, she tells my attorney that she's going to sue me for my recent posts about her. Apparently, she's gone through all the contents of her Bag of Tricks to Mindf*ck Sexual Assault Survivors...She and her client, Russell J. Williams of Williams Hillal Wigand Grande law firm, even threatened to use personal connections in the state's attorneys office to have me arrested...This lady if OUT OF CONTROL. Nothing but an evil bully. Bring it, diva...."

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THE FLORIDA BAR

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MEMBER PROFILE

Ashley Ann Krapacs

Suspended

Not Eligible to Practice Law in Florida

Case 1:19-mc-20857 Document 3 Entered on FLSD Docket 04/17/2019 Page 1 of 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2019-30

CASE # 19-MC-20857

In re: ASHLEY ANN KRAPACS

Florida Bar # 122407

FILED BY: CW D.C.

Apr 17, 2019

ANGELA E NOBLE

CLERK U.S. DIST. CT.

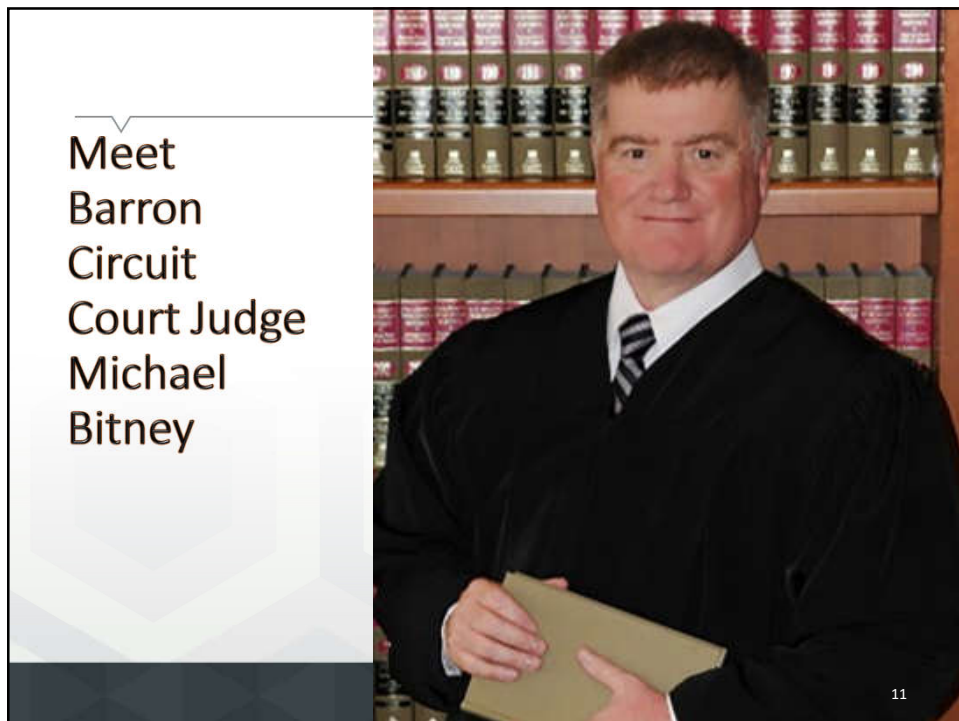
S.D. OF FLA. - MIA

ORDER OF SUSPENSION

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NEWS

Child custody case reassigned after judge accepted woman's Facebook friend request

By Associated Press

February 20, 2019 | 2:19pm

"A reasonable person could believe Carroll sent the 'friend' request in an attempt to influence Judge Bitney's decision. And because the other party had no opportunity to respond to this attempt or to review how Carroll and Judge Bitney interacted through their Facebook friendship, a reasonable person could believe that Carroll did exert, either directly or indirectly, some influence"

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No. _____

In the
Supreme Court of the United States

SIERRA PACIFIC INDUSTRIES, INC., *et al.*,
Petitioners,

v.

UNITED STATES,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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2. Whether a district court judge's impartiality might reasonably be questioned, thereby requiring recusal under 28 U.S.C. §455(a), when he not only follows the prosecution on social media, but also, just hours after denying relief to the opposing party, "tweets" a headline and link to a news article concerning the proceedings pending before him.

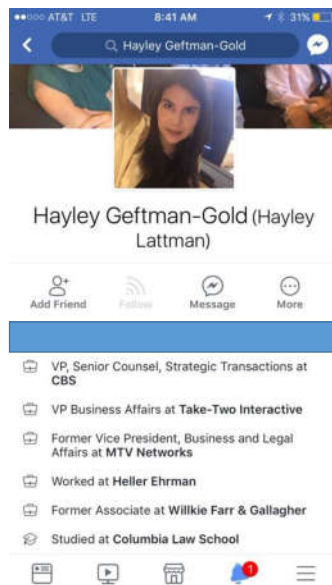
Should a judge be recused for tweeting about his or her own judicial rulings?

In a case involving sensitive allegations of prosecutorial misconduct, should a judge be "following" the prosecutors on social media?

Even if not reflecting actual partiality, do the above actions reflect an appearance of impropriety?

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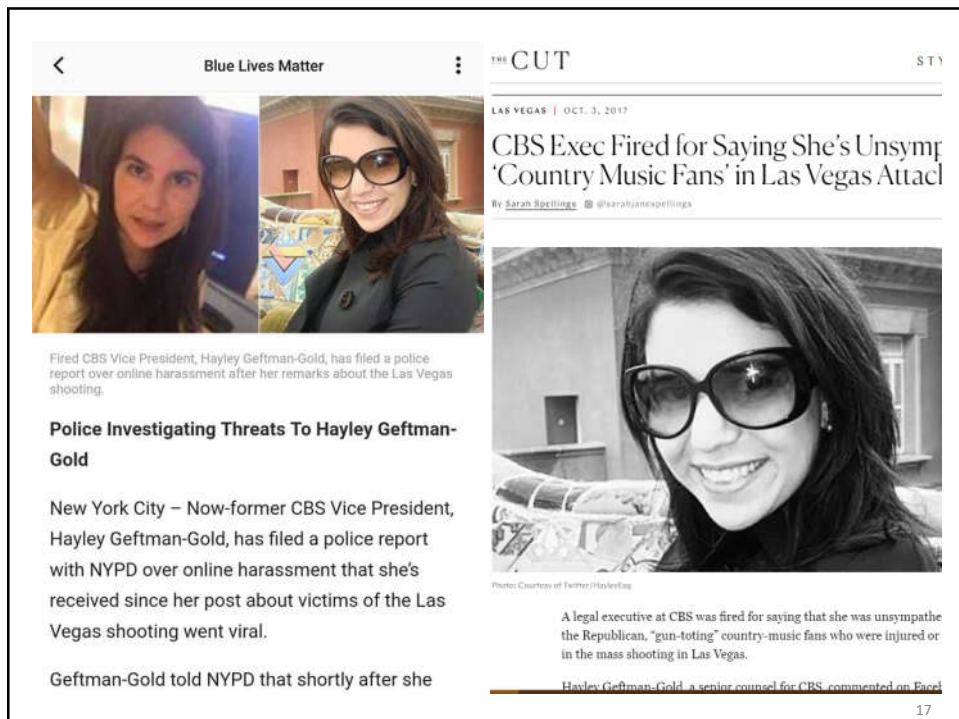


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Use of Social Media by Lawyers

- A February 2017 survey of lawyers by Attorney at Work found that ___ percent of lawyers use social media:

- A. 37%
- B. 56%
- C. 87%
- D. 96%

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Use of Social Media by Lawyers

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- ~~A. 37%~~
- ~~B. 56%~~
- ~~C. 87%~~
- D. 96%**

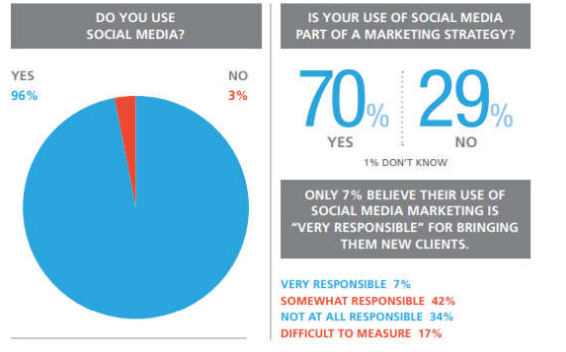
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Use of Social Media by Lawyers

Lawyers on Social Media: 2017 Survey Results

Here's how the 302 lawyers who responded to Attorney at Work's 2017 Social Media Marketing Survey tell us they are using social media.



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Use of Social Media by Lawyers

- A February 2017 survey of lawyers by Attorney at Work found that:
 - 96% of attorneys use social media
 - 84% use LinkedIn
 - 80% use Facebook
 - 59% use Twitter
 - 70% of attorneys say that social media is part of their overall marketing strategy

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EDITORIAL

Social Media Ethics Guidance Needed

Law Journal Editorial Board, New Jersey Law Journal

June 12, 2017 | 0 Comments

SHARE

PRINT

REPRINTS



“Other jurisdictions have issued opinions directly addressing the use of social media by lawyers in various ways. Among the most recent is the District of Columbia, issuing social media guidelines, in.... November 2016...

We urge the Supreme Court to assign this matter for consideration to the most appropriate committee.”

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NYSBA Social Media Ethics Guidelines

1. ATTORNEY COMPETENCE

Guideline No. 1.A: Attorneys' Social Media Competence

A lawyer has a duty to understand the benefits, risks and ethical implications associated with social media, including its use for communication, advertising and research and investigation.

NYRPC 1.1(a) and (b).

“Maintaining this level of understanding is a serious challenge that lawyers need to appreciate and cannot take lightly”

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Is it ethically acceptable for a lawyer to “accept” the terms and conditions of a social media site used in connection with the lawyer’s practice without actually scrolling through and reading those terms first?

- A. Yes it’s fine
- B. No, a lawyer must read and be aware of the functionality and privacy settings of each social media site. Further, a lawyer is ethically obligated to be aware of any changes to privacy and other settings, by reading all notices of changes for each site.

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ABA Formal Opinion 486 (2014)

As indicated by [ABA Rule of Professional Conduct] Rule 1.1, Comment 8, it is important for a lawyer to be current with technology. While many people simply click their agreement to the terms and conditions for use of an [electronic social media] network, a lawyer who uses an [electronic social media] network in his practice should review the terms and conditions, including privacy features – which change frequently – prior to using such a network.”

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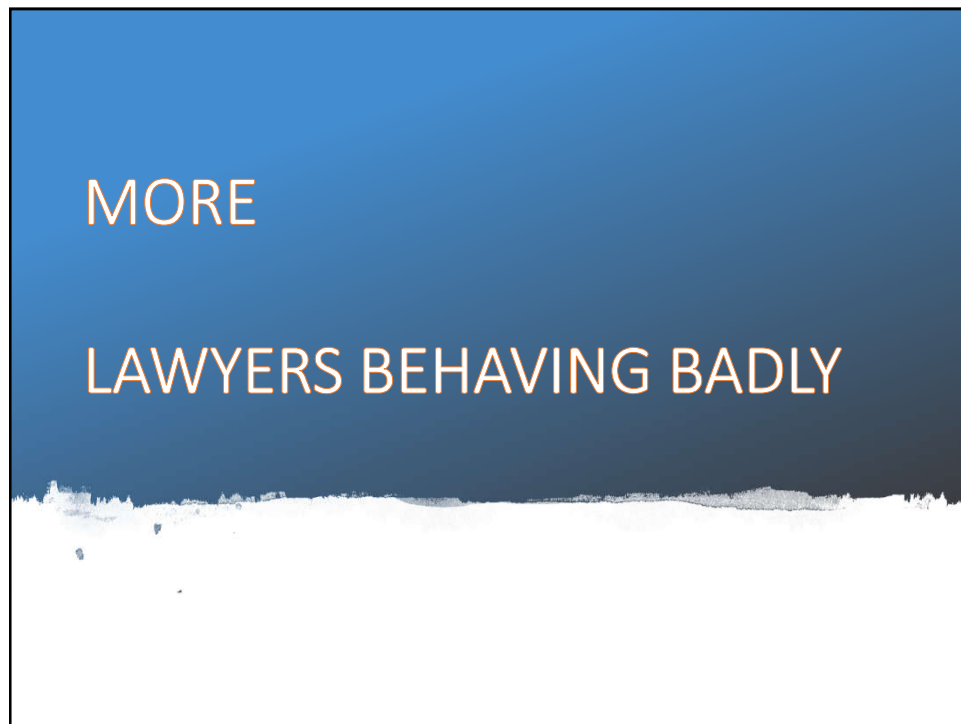
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DC Bar Ethics Opinion 370 – March 12, 2018

“...this Committee concludes that a lawyer who chooses to maintain a presence on social media, for personal or professional reasons, must take affirmative steps to remain competent regarding the technology being used and to ensure compliance with the applicable Rules of Professional Conduct.

The world of social media is a nascent area that continues to change as new technology is introduced into the marketplace. Best practices and ethical guidelines will, as a result, continue to evolve to keep pace with such developments.”

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In re McCool – Louisiana 2015

- Attorney Joyce McCool represented her friend Raven Skye Boyd Maurer in a bitter custody dispute
 - Included were allegations of sexual abuse by the father
- McCool also represented Ms. Maurer's new husband in attempting to adopt the children
- Generally unsuccessful in both actions
- Attorney decided to wage "digital war" against the judges in the two cases
- Change.org petitions; blog postings urging people to contact the judges to have them "do their jobs"

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In re McCool – Louisiana 2015

- McCool went all out on Twitter
 - "Shouldn't judges base decisions about kids on evidence?,"
 - "Think u can convince a judge to look at it? Sign this petition,"
 - "Judges are supposed to know shit about ... the law ... aren't they. And like evidence and shit? Due process?"
- McCool clearly intended to sway voters in a judicial election state

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In re McCool – Louisiana 2015

- Court was not impressed by behavior
 - Respondent's online posting and twitter feeds are littered with misrepresentations and outright false statements. Although she claims they were not made intentionally, respondent even concedes to the misrepresentations. Moreover, even after learning of the "mistakes" through her own review of the underlying records, respondent made no attempt to remedy them, but merely took the position they were her client's subjective view of the proceedings, raising the level of her continuous posting and twitter conduct from a simple mischaracterization into a knowing and arguably intentional dissemination of false information. This is particularly true regarding the judges' "refusal" to "hear," "view," or "admit" evidence, namely the audio recordings, which were never offered into evidence at any proceeding before either Judge Gambrell or Judge Amacker.

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In re McCool – Louisiana 2015

- I suggest you read the opinion if you want to appreciate the depth of the "wrongness" here
- Court spent a lot of time focusing on how the use of social media made this worse
- In an interview with ABA Magazine, McCool said
 - "At the center of this disciplinary action is a mother who was deprived of justice and two children who were not protected because the judges refused to abide by the law....I, as this mother's attorney, was willing to stand up to two judges who ignored the law. ... I thought that was what our oath demanded of us and it is why I became an attorney.
 - "I have no interest in practicing law in a profession that demands absolute deference to an individual, rather than the law."

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Chase v. Loisel - Judges Behaving Badly

- *Chase v. Loisel*
- Jan 24, 2014
- Matrimonial case
- Prior to final judgment Judge reached out to friend wife on Facebook
- Wife did not accept request

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Chase v. Loisel - Judges Behaving Badly

- Judge attributed most of marital debt to wife
- Judge gave husband disproportionately excessive alimony award
- Wife filed a request to disqualify the Judge arguing that the Judge retaliated against her not accepting the "friend" request

It seems clear that a judge's ex parte communication with a party presents a legally sufficient claim for disqualification, particularly in the case where the party's failure to respond to a Facebook "friend" request creates a reasonable fear of offending the solicitor. The "friend" request placed the litigant between the proverbial rock and a hard place: either engage in improper ex parte communications with the judge presiding over the case or risk offending the judge by not accepting the "friend" request.

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Chase v. Loisel - Judges Behaving Badly

- Court distinguished cases that disqualified judges for “friending” attorneys
- “The word ‘friend’ on face book is a word of art. A number of words or phrases could more aptly describe the concept, including acquaintance and, sometimes, virtual stranger.”
- The Judge was disqualified because the ex parte contact was prohibited, and gave rise to a concern about the judges neutrality

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“Evil, Unfair Witch.”

Reprimanded and Fined
\$1200 For Blogging

A Legal Battle: Online Attitude vs. Rules of the Bar

By JOHN SCHWARTZ
Published: September 12, 2009

Sean Conway was steamed at a Fort Lauderdale judge, so he did what millions of angry people do these days: he blogged about her, saying she was an “Evil, Unfair Witch.”



[Enlarge This Image](#)

But Mr. Conway is a lawyer. And unlike millions of other online hotheads, he found himself hauled up before the Florida bar, which in April issued a reprimand and a fine for his intemperate blog post.

- ☒ SIGN IN TO RECOMMEND
- TWITTER
- COMMENTS (33)
- E-MAIL
- SEND TO PHONE
- PRINT
- REPRINTS
- SHARE

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Lawyer begins 60-day suspension for hijacking former firm's email account, derogatory Facebook post

BY DEBRA CASSENS WEISS

POSTED OCTOBER 23, 2018, 7:45 AM CDT



Francois Poirier/Shutterstock.com

A Florida lawyer began a 60-day suspension over the weekend for a campaign of retaliation against the owner of the law firm that fired him.

The Florida Supreme Court ordered the suspension of Jacksonville lawyer Paul H. Green Jr. last month, to take effect in 30 days. Green also will have to contact Florida Lawyers Assistance for an evaluation. The Florida Record and the Miami Herald have coverage.

According to a summary by the Florida Bar, Green was accused of hijacking his firm's email after his firing, posting derogatory comments on Facebook about the lawyer who fired him, and communicating inappropriately with a client.

The Florida Supreme Court based the suspension on the uncontested report of a referee.

According to the referee's report, Green was fired from Parker & Green after he allegedly used the firm credit card for personal matters, took unauthorized draws from the firm, missed work and took vacation without discussing them with the owner of the firm, made political

comments on the firm's Facebook page, and wrote a derogatory text message about his wife's lawyer during his divorce. The text read: "Tell Dana Price I hope she dies of dirty Jew AIDS."

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Lawyer censured for texting nonpaying client

BY DEBRA CASSENS WEISS

POSTED NOVEMBER 6, 2018, 7:30 AM CST



Image from Shutterstock.

A New Jersey lawyer has been censured for telling a nonpaying client he wouldn't prepare for his impending trial if he didn't pay his legal bills and he should

The New Jersey Supreme Court censured lawyer Logan Terry in a Nov. 1 order, the Legal Profession Blog reports. The court accepted the recommendation of the Disciplinary Review Board, which described the case in a June 8 decision.

Terry had twice asked a judge to allow him to withdraw from the representation and was turned down both times.

Terry's client was accused of sexual assaults on four minors under age 13. He faced a potential sentence of more than 200 years in prison. Just days before the scheduled trial date in June 2016,

Terry told the client that he couldn't prepare an adequate defense unless his legal fees were paid.

In a text, Terry told the client he wouldn't prepare in the weekend before the trial without getting paid first. Then he wrote, in all capital letters:

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Lawyer censured for texting nonpaying client 'have fun in prison'

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POSTED NOVEMBER 6, 2018, 7:30 AM CST



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Judges Behaving Badly

COMMONWEALTH OF KENTUCKY JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

SANDRA L. McLAUGHLIN, DISTRICT COURT JUDGE
30TH JUDICIAL CIRCUIT

AGREED ORDER PUBLIC REPRIMAND

Sandra L. McLaughlin is a District Court Judge for Kentucky's 30th Judicial Circuit consisting of Jefferson County. Judge McLaughlin has waived formal proceedings and has agreed to this disposition.

The Commission received information during a preliminary investigation that Judge McLaughlin maintains a social media account on Facebook which is entitled "Judge Sandra McLaughlin." On August 3, 2017, Judge McLaughlin shared a news story on this account regarding Jefferson District Court Case No. 17-F-009237, with the comment: "This murder suspect was RELEASED FROM JAIL just hours after killing a man and confessing to police."

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Think Before Blogging

“Judge Clueless”

According to the [complaint](#) by officials of the state’s [legal disciplinary body](#), Ms. Peshek wrote posts to her blog in 2007 and 2008 that referred to one jurist as “Judge Clueless” and thinly veiled the identities of clients and confidential details of a case, including statements like, “This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because ‘he’s no snitch.’”

Another client testified that she was drug free and received a light sentence with just five days’ jail time, and then complained to Ms. Peshek that she was using methadone and could not go five days without it. Ms. Peshek wrote that her reaction was, “Huh? You want to go back and tell the judge that you lied to him, you lied to the presentence investigator, you lied to me?”

The complaint, first noted by the [Legal Profession Blog](#), said that not only did Ms. Peshek seem to reveal confidential information about a case, but that her actions might also constitute “assisting a criminal or fraudulent act.”

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45-day suspension, loss of job, and \$14k in fees

Severe Consequences

Frank R. Wilson, a lawyer in San Diego, caused a criminal conviction to be set aside and sent back to a lower court because of his blog postings as a juror. According to a decision published recently in the [California Law Journal](#) and picked up by the [Legal Profession Blog](#), Mr. Wilson, while serving on a jury in 2006, posted details of the case on his blog. Any juror who blogs about the details of a trial risks trouble and even civil contempt charges. But lawyers like Mr. Wilson also face professional penalties that can threaten their livelihood.

Mr. Wilson received a 45-day suspension, paid \$14,000 in legal fees and lost his job. He said that warnings not to discuss the case did not ban blogging; the bar disagreed. Mr. Wilson also had not disclosed during jury selection that he was a lawyer. In an interview, Mr. Wilson said he had not been working as a lawyer at the time and had only been asked his occupation.

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In-House Lawyer/Blogger Opens Company to Suit

- The “Troll Tracker” was a popular blogger about patent litigation, focusing on non-practicing entity cases
- Troll Tracker accused two Texas attorneys, by name, of altering dates on documents, a potential felony
- Troll Tracker also wrote “If you shoot and kill Ray Niro tonight, I would consider it a justifiable killing”
- Cisco was not aware that the Troll Tracker was their in-house patent counsel
- Lawyers accused of altering documents sued Cisco and in-house lawyer for defamation

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Assistant AG Fired for Blogging and Harassment

- Assistant AG fired after creating a blog that accused a University of Michigan student of having a “radical homosexual agenda” and being “Satan’s representative”
- Also posted harassing messages on the student’s Facebook page
- Fired for conduct “unbecoming a state employee”
- Ordered to pay \$4.5 million in a civil suit

Update: Shirvell fired after targeting openly gay student leader



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Associate Blogging While On DA Internship

Called Out By Judge and Ultimately Left Firm

- Keker and Van Nest had an exchange program with the San Francisco DA's office
- Extern was reprimanded by the judge presiding over a misdemeanor case he was handling
- According to the ruling, the attorney, in a blog
 - called his opposing counsel "chicken" when she asked for a continuance
 - directly alluded to her with some posting titles obscene enough that the judge did not repeat them
 - mentioned a prior conviction that had not yet been deemed admissible at trial
- The judge called the attorney's behavior "juvenile, obnoxious and unprofessional"

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LinkedIn Issues

- According to the New York County Lawyer's Association, which of the following LinkedIn profile is considered to be "Attorney Advertising"? :
 - A. A profile describing the attorney's undergraduate institution and law school
 - B. A profile describing the attorney's employment history
 - C. A profile describing the attorney's skills, area of practice and testimonials from clients
 - D. All of the above

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- B. ~~A profile describing the attorney's employment history~~
- C. **A profile describing the attorney's skills, area of practice and testimonials from clients**
- D. ~~All of the above~~

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Advertising on LinkedIn



Attorney Reprimanded For LinkedIn Profile

- Errors on LinkedIn Page
- Material misrepresentations and omissions of fact
- Mischaracterized legal skills and successes
- Overstated and exaggerated – reputation, skill, experience, past results
- Used a form of the word "specialist"

February 1, 2012

Website Puffery Results in Reprimand

An attorney has been publicly reprimanded by the South Carolina Supreme Court for misconduct described in the court's order:

Upon admission, respondent opened a solo practice, handling primarily domestic and criminal matters. Between July 2010 and July 2011, respondent consulted with 93 potential clients. He opened 79 client files and resolved 25 cases by settlement, guilty plea, or completion of non-litigation legal work (i.e., drafting a deed). Representation of 15 of the opened files ended without resolution of the client's legal matters. As of July 2010, respondent had never handled any matter involving contested litigation to jury verdict.

In August 2010, respondent began using a law firm website at www.divorcelawcolumbia.com. In December 2010, respondent added a website at www.dmd-law.net to his law firm marketing. Respondent began using these websites without adequate review of the relevant provisions of the South Carolina Rules of Professional Conduct.

The websites contained the following rule violations:

1. **Material misrepresentations of fact and omissions of fact** necessary to make the statements considered as a whole not materially misleading to **mischaracterizing respondent's legal skills and prior experience**, falsely stating he handled matters in federal court, falsely stating he graduated from law school in 2005, and, listing approximately 50 practice areas in which he had little or no experience;
2. statements likely to create unjustified expectations about the results respondent could achieve;
3. statements comparing respondent's services with other lawyers' services in ways which could not be factually substantiated; and
4. descriptions and characterizations of the quality of respondent's services.

In addition, respondent set up internet profiles on various online directories and professional marketing sites, including www.lawyers.com, www.lawguru.com, and www.linkedin.com. Respondent relied on company representatives who were lawyers and non-lawyer web designers who assured him that the advertisements would comply with respondent's ethical requirements. Respondent did not review the applicable provisions of the South Carolina Rules of Professional Conduct prior to posting the internet profiles. As a result, respondent's internet profiles contained the following:

1. material misrepresentations of fact by **overstating and exaggerating respondent's reputation, skill, experience, and past results**;
2. a form of the word "**specialist**" even though respondent is not certified by this Court as a specialist;

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Revealing Client Confidential Information on Consumer Review Websites

Attorney reprimanded for responding to negative reviews from a client on a professional services consumer review website

Ethics Tip of the Month

Brought to you by ABA ETHICSearch

April, 2013

In a different factual setting, a Georgia lawyer became upset when clients posted criticism and negative comments on websites that gather consumer reviews on service professionals. This lawyer, who was also having some stressful personal issues, fought back on her own social media pages, giving her side of the story and in the process revealing the clients' personal and confidential information. The Georgia Supreme Court stating that the preservation of client confidences "is a fundamental principle in the client-lawyer relationship" rejected the lawyer's request for a voluntary reprimand. It also found that there was insufficient factual information about what the lawyer had disclosed and what if any resultant harm there was to the client and remanded the matter for further proceedings. See, *In The Matter Of Margrett A. Skinner, Supreme Court of Georgia* S13Y0105 March 18, 2013.

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Facebook Photo Causes Mistrial

The Miami Herald 

Posted on Thu, Sep. 13, 2012

Lawyer's Facebook photo causes mistrial in Miami-Dade murder case

By DAVID OVALLE
dovalle@miamiherald.com

A Miami-Dade judge declared a mistrial in a murder case Wednesday after a defense lawyer posted a photo of her client's leopard-print underwear on Facebook.

The defendant: Fermin Recalde, accused of stabbing his girlfriend to death in Hialeah in 2010.

Recalde's family brought him a bag of fresh clothes to wear during trial. When Miami-Dade corrections officers lifted up the pieces for a routine inspection, Recalde's public defender Anya Cintron Stern snapped a photo of Recalde's briefs with her cellphone, witnesses said.

While on a break, the 31-year-old lawyer posted the photo on her personal Facebook page with a caption suggesting the client's family believed the underwear was "proper attire for trial."

Although her Facebook page is private and can only be viewed by her friends, somebody who saw the posting notified Miami-Dade Judge Leon Firtel, who declared a mistrial.

And Cintron Stern was immediately fired, according to Miami-Dade Public Defender Carlos Martinez, whose office represents clients who cannot afford a private attorney.

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Spoliation of Social Networking Data

- Litigation Holds
 - *Lester v. Allied Concrete*. (S.D. Ohio)
 - Attorney sanctioned \$522,000 for instructing client to remove pictures from Facebook
 - Client sanctioned \$180,000 for obeying the instruction
 - Rule 3.4: A lawyer shall not:
 - Suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce
 - Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal

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Spoliation of Social Networking Data

- Spoliation
 - *Lester v. Allied Concrete* – (January 2013)
 - Nearly \$10,000,000 wrongful death verdict
 - Accusation that lawyer conspired with client to
 - Intentionally destroy evidence related to Facebook account
 - Provide false testimony related to
 - Facebook account
 - Prior use of antidepressants
 - Medical history
 - Spoliation of evidence
 - Lower court ordered remittitur but was reversed by appeals court
 - Lawyer fined more than \$500,000 for his actions

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What Was So Important To Delete From Facebook...



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Friending The Judge

Request For Adjournment Denied – Job Impact

Of course, some lawyers' online problems are the same as everyone else's, like getting caught in a fib. Judge [Susan Criss](#) of the Texas District Court in Galveston recalled in an interview a young lawyer who requested a trial delay because of a death in the family. The judge granted the delay, but checked the lawyer's Facebook page.

"There was a funeral, but there wasn't a lot of grief expressed online," Judge Criss said. "All week long, as the week is going by, I can see that this lawyer is posting about partying. One night drinking wine, another night drinking mojitos, another day motorbiking." At the end of the delay, the lawyer sought a second one; this time the judge declined, and disclosed her online research to a senior partner of the lawyer's firm.

Judge Criss, who first [told the story at a panel during an American Bar Association conference](#), said that the lawyer has since removed her from her friends list.

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CFO of Public Company Fired for Postings on Twitter and Facebook

- Fired because he “improperly communicated company information through social media.”
- Postings included:
 - “Dinner w/Board tonite. Used to be fun. Now one must be on guard every second.”
 - “Board meeting. Good numbers=Happy Board.”
 - “Earnings released. Conference call completed. How do you like me now Mr. Shorty?”
 - “Roadshow completed. Sold \$275 million of secondary shares. Earned my pay this week.”

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Attorney-Client Relation?



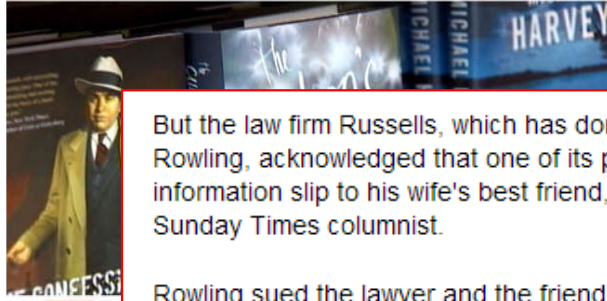
- Attorney called on carpet by judge for posting a courtroom “selfie” with client following acquittal on retrial for murder.
- Previously convicted and serving a life sentence
- Judge explained that he was concerned that the picture could be seen by the victim’s family and that the picture may have included jurors
- Lawyer apologized to the Court and removed the picture
- Milwaukee Rule 62: lawyers should “conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.”

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The Law Firm Partner And The Secret Author

Law firm to make donation for revealing J.K. Rowling identity on crime novel



But the law firm Russells, which has done work for Rowling, acknowledged that one of its partners had let the information slip to his wife's best friend, who tweeted it to a Sunday Times columnist.

Rowling sued the lawyer and the friend. Her attorney, Jenny Afia, told Britain's High Court on Wednesday that Rowling had been left "angry and distressed that her confidences had been betrayed."

The Associated Press
Published Wednesday, 14 July 2015

LONDON -- Author J.K. Rowling
a law firm which re

The "Harry Potter" author was exposed by a newspaper on July 14 as the author of "The Cuckoo's Calling," a thriller ostensibly written by former soldier and first-time novelist Robert Galbraith.

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What Are the Primary Risks of Participation in Social Networks

- Blurring the line between professionalism and fun
- Conflicts/Creation of attorney-client relationships
- Unauthorized/Extraterritorial practice of law
- Advertising
- Competence/Character
- Waiver of privilege
- Discovery concerns
- Ex-Parte communications

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The Relevant Rules (ABA)

Rule 1.1: Duty of Competence

Rule 1.6: Confidentiality of Information

Rule 1.7: Conflict of Interest: Current Clients

Rule 1.18: Duties to Prospective Clients

Rule 3.3: Fairness to Opposing Party and Counsel

Rule 3.6: Trial Publicity

Rule 4.1: Truthfulness in Statements to Others

Rule 4.2: Communication with Person Represented by Counsel

Rule 4.3: Dealing with Unrepresented Persons

Rule 5.1: Responsibilities of Partner or Supervisory Lawyer

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

Rule 7.1: Communications Concerning a Lawyer's Services

Rule 7.2: Advertising

Rule 7.3: Direct Contact With Prospective Clients

Rule 8.2: Statements Concerning Judges

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Social Media Ethics Guidelines – State Guidance



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NYSBA – June 20, 2019 (most recent release)

- Attorney Competence
- Attorney Advertising
- Furnishing Legal Advice Through Social Media
- Review and Use of Evidence From Social Media
- Communicating With Clients
- Researching Jurors and Reporting Juror Misconduct
- Using Social Media to Communicate With Judicial Officer

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NYSBA Social Media Ethics Guidelines

Guideline No. 1.A: Attorneys' Social Media Competence - A lawyer has a duty to understand the benefits and risks and ethical implications associated with social media, including its use for communication, advertising and research and investigation.

Guideline No. 2.A: Applicability of Advertising Rules - A lawyer's social media profile that is used only for personal purposes is not subject to attorney advertising and solicitation rules. However, a social media profile, posting or blog a lawyer primarily uses for the purpose of the retention of the lawyer or his law firm is subject to such rules. Hybrid accounts may need to comply with attorney advertising and solicitation rules if used for the primary purpose of the retention of the lawyer or his law firm.

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NYSBA Social Media Ethics Guidelines

Guideline No. 2.B: Prohibited use of the term "Specialists" on Social Media - Lawyers shall not advertise areas of practice under headings in social media platforms that include the terms "specialist," unless the lawyer is certified by the appropriate accrediting body in the particular area.

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NYSBA Social Media Ethics Guidelines

Guideline No. 2.C: Lawyer's Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer's Social Media Page

- A lawyer who maintains a social media profile must be mindful of the ethical restrictions relating to solicitation by her and the recommendations of her by others, especially when inviting others to view her social media network, account, blog or profile.

A lawyer is responsible for all content that the lawyer posts on her social media website or profile. A lawyer also has a duty to periodically monitor her social media profile(s) or blog(s) for comments, endorsements and recommendations to ensure that such third-party posts do not violate ethics rules. If a person who is not an agent of the lawyer unilaterally posts content to the lawyer's social media, profile or blog that violates the ethics rules, the lawyer must remove or hide such content if such removal is within the lawyer's control and, if not within the lawyer's control, she must ask that person to remove it.

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NYSBA Social Media Ethics Guidelines

Guideline No. 2.D: Attorney Endorsements - A lawyer must ensure the accuracy of third-party legal endorsements, recommendations, or online reviews posted to the lawyer's social media profile. To that end, a lawyer must periodically monitor and review such posts for accuracy and must correct misleading or incorrect information posted by clients or other third-parties.

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Positional Consistency

- According to the New York State Social Media Ethics Guidelines a lawyer's comments on social media must be consistent with those advanced in representing clients and clients of her firm.

A. True.

B. False

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Positional Consistency

- According to the New York State Social Media Ethics Guidelines a lawyer's comments on social media must be consistent with those advanced in representing clients and clients of her firm.

A. True.

~~B. False~~

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NYSBA Social Media Ethics Guidelines

Guideline No. 2.E: When communicating and stating positions on issues and legal developments, via social media or traditional media, a lawyer should avoid situations where her communicated position on issues and legal developments are inconsistent with those advanced on behalf of her clients and the clients of her firm.

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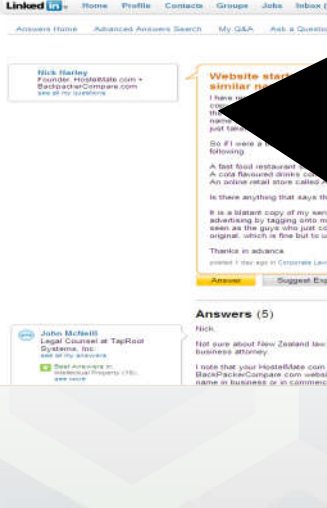
NYSBA Social Media Ethics Guidelines

Guideline No. 3.A: Provision of General Information A lawyer may provide general answers to legal questions asked on social media. A lawyer, however, cannot provide specific legal advice on a social media network because a lawyer's responsive communications may be found to have created an attorney-client relationship and legal advice also may impermissibly disclose information protected by the attorney-client privilege.

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Real World Application



Website startup company have started trading as similar name to me

I have recently come across a competitor to my business that has decided to copy my pricing structure and services, create a similar product (meaning exactly the same sector and same services to users) AND have also registered a domain name and are using a business name that is extremely similar to mine. they have just taken the letter "E" off the end of my company name.

So if I were a business and I set up a business in this way it would be like the following:

- A fast food restaurant selling burgers and fries etc called - McDonald
- A cola flavoured drinks company called - Peps
- An online retail store called Amazo

Is there anything that says they cannot do this? Am I protected?

It is a blatant copy of my service and name. I think they are trying to gain advertising by tagging onto my services name. I don't know why, they'll always be seen as the guys who just copied someone elses idea and came up with nothing original, which is fine but to use a very similar name aswell? crazy?

Thanks in advance

posted 1 day ago in Corporate Law | Report question as...

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NYSBA Social Media Ethics Guidelines

Guideline No. 3.C: Retention of Social Media Communications with Clients - If an attorney utilizes social media to communicate with a client relating to legal representation, the attorney should retain records of those communications, just as she would if the communications were memorialized on paper.

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NYSBA Social Media Ethics Guidelines

Guideline No. 4.A: Viewing a Public Portion of a Social Media Website - A lawyer may view the public portion of a person's social media profile or public posts even if such person is represented by another lawyer.

Guideline No. 4.B: Contacting an Unrepresented Party and/or Requesting to View a Restricted Social Media Website - A lawyer may communicate with an unrepresented party and also request permission to view a restricted portion of the party's social media website or profile. However, the lawyer must use her full name and an accurate profile, and may not create a different or false profile in order to mask her identity. If the unrepresented person asks for additional information from the lawyer in response to the communication or access request, the lawyer must accurately provide the information requested by the person or otherwise cease all further communication and withdraw the request, if applicable.

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The Perils of LinkedIn Notifications

LinkedIn Search Nearly Upends BofA Mortgage Fraud Trial

by MICHAEL VANDERKAM

Law360, New York (September 27, 2013, 8:10 PM EDT) -- A first-year associate on Friday came close to derailing the high-profile Manhattan fraud trial over a Bank of America Corp. unit's mortgage lending practices, after a juror complained that the attorney had cyberstalked him on LinkedIn.

U.S. District Judge Jed S. Rakoff admonished the juror, number 10, for complaining "the defense was checking on me on social media."

"It was a good faith misunderstanding," LLF told the judge.

After raising concerns about whether the juror was properly qualified, Judge Rakoff ultimately decided to continue the trial. The juror, number 10, is a former Bank of America subsidiary Countrywide Financial Corp. knowingly sold low-quality loans to Freddie Mac and Fannie Mae.

Experts have warned about the dangers of using LinkedIn as a research tool during jury selection. The social media site, which allows professional to post online versions of their resumes, can let a search target know who is looking at their profile and even allow them to communicate with the target.

Judge Rakoff allowed the juror to check on the Internet to check on the Goldman Sachs Group.

The judge said he interviewed the juror, number 10, and asked an assistant to check on the juror.

The juror, number 10, said he was checking on me on LinkedIn.

"I feel intimidated and don't feel I can be objective," he wrote. The juror also complained about a press photographer.

Law360, New York (September 27, 2013, 8:10 PM EDT) -- A first-year associate on Friday came close to derailing the high-profile Manhattan fraud trial over a Bank of America Corp. unit's mortgage lending practices, after a juror complained that the attorney had cyberstalked him on LinkedIn.

The juror, number 10, complained in a note to the judge Friday morning that "I saw that defense was checking on me on social media."

"I feel intimidated and don't feel I can be objective," he wrote. The juror also complained about a press photographer.

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NYSBA Social Media Ethics Guidelines

Guideline No. 4.C: Contacting a Represented Party and/or Viewing Restricted Social Media Website - A lawyer shall not contact a represented person or request access to review the restricted portion of the person's social media profile unless express consent has been furnished by the person's counsel.

Guideline No. 4.D: Lawyer's Use of Agents to Contact a Represented Party - As it relates to viewing a person's social media account, a lawyer shall not order or direct an agent to engage in specific conduct, or with knowledge of the specific conduct by such person, ratify it, where such conduct if engaged in by the lawyer would violate any ethics rules.

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NYSBA Social Media Ethics Guidelines

Guideline No. 5.A: Removing Existing Social Media Information - A lawyer may advise a client as to what content may be maintained or made nonpublic on her social media account, including advising on changing her privacy and/or security settings. A lawyer may also advise a client as to what content may be "taken down" or removed, whether posted by the client or someone else. However, the lawyer must be cognizant of preservation obligations applicable to the client and/or matter, such as a statute, rule, regulation or common law duty relating to the preservation of information, including legal hold obligations. Unless an appropriate record of the social media information or data is preserved, a party or nonparty, a party or nonparty may not delete information from a social media profile that is subject to a duty to preserve.

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NYSBA Social Media Ethics Guidelines

Guideline No. 5.B: Adding New Social Media Content - A lawyer may advise a client with regard to posting new content on a social media, as long as the proposed content is not known to be false by the lawyer. A lawyer also may not “direct or facilitate the client’s publishing of false or misleading information that may be relevant to a claim.”

Guideline No. 5.C: False Social Media Statements - A lawyer is prohibited from proffering, supporting, or using false statements if she learns from a client’s social media posting that a client’s lawsuit involves the assertion of material false factual statements or evidence supporting such a conclusion and if proper inquiry of the client does not negate that conclusion.

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NYSBA Social Media Ethics Guidelines

Guideline No. 5.D. A Lawyer’s Use of Client-Provided Social Media Information - A lawyer may review a represented person’s non-public social media information provided to the lawyer by her client, as long as the lawyer did not cause or assist the client to: (i) inappropriately obtain non-public information from the represented person; (ii) invite the represented person to take action without the advice of his or her lawyer; or (iii) otherwise overreach with respect to the represented person.

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NYSBA Social Media Ethics Guidelines

Guideline No. 5.E: Maintaining Client Confidences and Confidential Information - Subject to the attorney-client privilege rules, a lawyer is prohibited from disclosing client confidences and confidential information relating to the legal representation of a client, unless the client has provided informed consent. Social media activities and a lawyer's website or blog must comply with these limitations.

A lawyer should also be aware of potential risks created by social media services, tools or practices that seek to create new user connections by importing contacts or connecting platforms. A lawyer should understand how the service, tool or practice operates before using it and consider whether any activity places client information and confidences at risk.

Where a client has posted an online review of the lawyer or her services, the lawyer's response, if any, shall not reveal confidential information relating to the representation of the client. Where a lawyer uses a social media account to communicate with a client or otherwise store client confidences, the lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, such an account.

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NYSBA Social Media Ethics Guidelines

Guideline No. 6.A: Lawyers May Conduct Social Media Research - A lawyer may research a prospective or sitting juror's public social media profile, and posts.

Guideline No. 6.B: A Juror's Social Media Profile May Be Viewed as Long as There Is No Communication with the Juror - A lawyer may view the social media profile of a prospective juror or sitting juror provided that there is no communication (whether initiated by the lawyer, her agent or automatically generated by the social media network) with the juror.

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NYSBA Social Media Ethics Guidelines

Guideline No. 6.C: Deceit Shall Not Be Used to View a Juror's Social Media. - A lawyer may not make misrepresentations or engage in deceit in order to be able to view the social media profile of a prospective juror or sitting juror, nor may a lawyer direct others to do so.

Guideline No. 6.D: Juror Contact During Trial - After a juror has been sworn in and throughout the trial, a lawyer may view or monitor the social media profile and posts of a juror provided that there is no communication (whether initiated by the lawyer, her agent or automatically generated by the social media network) with the juror.

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NYSBA Social Media Ethics Guidelines

Guideline No. 6.E: Juror Misconduct - In the event that a lawyer learns of possible juror misconduct, whether as a result of reviewing a sitting juror's social media profile or posts, or otherwise, she must promptly bring it to the court's attention

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NYSBA Social Media Ethics Guidelines

7. Using Social Media To Communicate With A Judicial Officer -

A lawyer shall not communicate with a judicial officer over social media if the lawyer intends to influence the judicial officer in the performance of his or her official duties.

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Some Final
Thoughts

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LinkedIn Specific Issues

- Is your profile accurate?
- Are you identified as an expert or specialist
- Is your profile an advertisement?
 - Do you need disclaimers?
 - If you report on a success, do you need to qualify it?
- Are there recommendations on your profile?
 - Are they permissible?
- Are you disclosing confidential information?
- Automatic searching of contacts

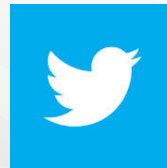


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Twitter Specific Issues

- Who is following you?
- Do your clients know?
- Does your adversary know?
- Do your colleagues know?
- Tweets must be treated with caution
 - Are you breaching privilege?
 - Are you disclosing confidential information?
 - Does your message contain what could be legal advice?



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Facebook Specific Issues

- Are you friends with outside counsel/business clients/judicial officers?
- Are your privacy settings appropriate?
- Do you have lists set up?
- Are you comfortable with in-house counsel or a business client seeing those pictures of you from college?
- You are delayed in responding to a business client, do you care if they know you went out drinking the night before and slept in?
- Are you complaining about a colleague/outside counsel/a subordinate?
- Are you providing "updates" that could breach confidentiality?
- Are you providing updates that could cause an issue with the business client or compromise a strategy of in-house counsel?
- Are you a "fan" of something/someone you would not be comfortable having a client know about?
- What about an adversary/competitor?



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Let's End
With Drew
Quitschau



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BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:
DREW RANDOLPH QUITTSCHAU,
Attorney-Respondent,
No. 6278288.

Commission No. 2017PR00084
FILED --- August 4, 2017

COMPLAINT

Doe was separated from her husband
Doe's children sometimes live with her
Doe smokes but is trying to quit
Doe regularly drinks alcohol
Doe is agnostic
Doe is 56 years old
Doe does not exercise and enjoys auto racing and motor cross
Doe has cats
Doe's favorite hot spots are the grocery store, all restaurants, the Pizza Ranch, all buffets and NASCAR

Created False Profile Of Opposing Counsel on Match.com

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BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:
DREW RANDOLPH QUITTSCHAU,
Attorney-Respondent,
No. 6278288.

Commission No. 2017PR00084

Harassed Opposing Counsel On Line

- Signed Opposing Counsel Up on Multiple Websites to Flood her email and phone
- Obesity Action Coalition
- Pig International (A global nutrition and health publication on pork production)
- Diabetic Living
- Auto Trader
- Attacked her professional reputation with fake reviews on Lawyers.com
Martindale.com
- Created a false Facebook account to create additional negative reviews

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Ill. Atty Suspended After Making Fake Dating Profile For Rival



By [Diana Novak Jones](#)

Law360 (September 21, 2018, 6:45 PM EDT) -- The [Illinois Supreme Court](#) on Thursday indefinitely suspended the law license of an attorney who admitted to creating a fake online dating profile for a lawyer whom he frequently opposed in court.

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			<p>Social Media Ethics</p>
			
SCAN ME	SCAN ME	SCAN ME	

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