SOCIAL MEDIA AND THE LAW
Changes at Warp Speed

6 CLE Hours, Including
1 Ethics Hour | 1 Professionalism Hour | 2 Trial Practice Hours

Sponsored By: Institute of Continuing Legal Education
Who are we?

SOLACE is a program of the State Bar of Georgia designed to assist those in the legal community who have experienced some significant, potentially life-changing event in their lives. SOLACE is voluntary, simple and straightforward. SOLACE does not solicit monetary contributions but accepts assistance or donations in kind.

How does SOLACE work?

If you or someone in the legal community is in need of help, simply email SOLACE@gabar.org. Those emails are then reviewed by the SOLACE Committee. If the need fits within the parameters of the program, an email with the pertinent information is sent to members of the State Bar.

What needs are addressed?

Needs addressed by the SOLACE program can range from unique medical conditions requiring specialized referrals to a fire loss requiring help with clothing, food or housing. Some other examples of assistance include gift cards, food, meals, a rare blood type donation, assistance with transportation in a medical crisis or building a wheelchair ramp at a residence.

Contact SOLACE@gabar.org for help.
The purpose of the SOLACE program is to allow the legal community to provide help in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience loss of life or other catastrophic illness, sickness or injury.

TESTIMONIALS

In each of the Georgia SOLACE requests made to date, Bar members have graciously stepped up and used their resources to help find solutions for those in need.

A solo practitioner’s quadriplegic wife needed rehabilitation, and members of the Bar helped navigate discussions with their insurance company to obtain the rehabilitation she required.

A Louisiana lawyer was in need of a CPAP machine, but didn’t have insurance or the means to purchase one. Multiple members offered to help.

A Bar member was dealing with a serious illness and in the midst of brain surgery, her mortgage company scheduled a foreclosure on her home. Several members of the Bar were able to negotiate with the mortgage company and avoided the pending foreclosure.

Working with the South Carolina Bar, a former paralegal’s son was flown from Cyprus to Atlanta (and then to South Carolina) for cancer treatment. Members of the Georgia and South Carolina bars worked together to get Gabriel and his family home from their long-term mission work.

Contact SOLACE@gabar.org for help.
Dear ICLE Seminar Attendee,

Thank you for attending this seminar. We are grateful to the Chairperson(s) for organizing this program. Also, we would like to thank the volunteer speakers. Without the untiring dedication and efforts of the Chairperson(s) and speakers, this seminar would not have been possible. Their names are listed on the AGENDA page(s) of this book, and their contributions to the success of this seminar are immeasurable.

We would be remiss if we did not extend a special thanks to each of you who are attending this seminar and for whom the program was planned. All of us at ICLE hope your attendance will be beneficial, as well as enjoyable. We think that these program materials will provide a great initial resource and reference for you.

If you discover any substantial errors within this volume, please do not hesitate to inform us. Should you have a different legal interpretation/opinion from the speaker’s, the appropriate way to address this is by contacting him/her directly.

Your comments and suggestions are always welcome.

Sincerely,
Your ICLE Staff

Jeffrey R. Davis
Executive Director, State Bar of Georgia

Tangela S. King
Director, ICLE

Rebecca A. Hall
Associate Director, ICLE
AGENDA

FRIDAY, SEPTEMBER 14, 2018

Presiding:
Deborah Gonzalez, Program Co-Chair; Law2sm, LLC, Atlanta-New York
Paul E. Andrew, Program Co-Chair; Andrew Merritt Reilly & Smith LLP, Lawrenceville, GA

7:45  REGISTRATION AND CONTINENTAL BREAKFAST
(All attendees must check in upon arrival. A jacket or sweater is recommended.)

8:15  WELCOME AND PROGRAM OVERVIEW
Deborah Gonzalez, Program Co-Chair; Law2sm, LLC, Atlanta-New York

8:30  SETTING THE SOCIAL MEDIA AND LAW CONTEXT: UPDATE 2018
Deborah Gonzalez, Program Co-Chair; Law2sm, LLC, Atlanta-New York

9:30  ONLINE ADVERTISING
Panelists:
Pualia J. Frederick, General Counsel, State Bar of Georgia, Atlanta, GA
Robin Frazer Clark, 50th President of the State Bar of Georgia (2012-13); Robin Frazer Clark, PC, Atlanta, GA

10:30  BREAK

10:40  HOW DO I USE ALL OF THIS STUFF? EVIDENTIARY ISSUES IN SOCIAL MEDIA
Paul E. Andrew, Program Co-Chair; Andrew Merritt Reilly & Smith LLP, Lawrenceville, GA

11:40  LUNCH

12:05  DISCOVERY IN SOCIAL MEDIA – WHERE DO I START?
Evan Gumz, Hanzo, Atlanta-New York

1:05  SPONSORSHIPS “ONLINE”... CAN I GET SUED FOR “LIKING” YOU?
Julie K. Roach, Inform Inc., Atlanta, GA

2:05  BREAK

2:15  SOCIAL MEDIA – SHOW ME HOW THIS STUFF REALLY WORKS
Toby Bloomberg, President, Bloomberg Marketing, Atlanta, GA

3:15  ADJOURN
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Setting The Social Media And Law Context: Update 2018

Presented By:

Deborah Gonzalez
Law2sm, LLC
Atlanta-New York
“Setting the Context: Social Media and Law Update 2018”

Deborah Gonzalez, Esq.
deborah@law2sm.com
September 14, 2018

DISCLAIMER

This presentation is for educational purposes only and does not constitute legal advice. It is recommended that you seek legal counsel for specific matters.
Social Media – Joke or Offense

Chicago News Station Mistakenly Refers to Winter Olympics Host City PyeongChang as ‘P.F. Chang’

Social Media – Cautionary Tales

Sean Spicer
@PressSec

n9y25ah7
1/26/17, 8:42 AM
Social Media – 7 Years Ago...

2011

• The Session was titled “Social Media & the Law: the Essentials”

• Courtney Love is being sued by one of her former lawyers for making libelous statements about the legal eagle on Twitter and in an interview, claiming the attorney took bribes while representing her (May 2011)

• People spent over 500 billion minutes per month on Facebook

• 13% of lawyers found clients directly through social media (or the clients find them)

Social Media – 7 Years Ago...

2011

• After she favorited a photo tweeted by Ann Coulter that showed a church sign calling President Obama a "Taliban Muslim," Sarah Palin blamed it on the Blackberry.

• Big Issue: Privacy & Ethical Considerations and Social Media & Employment Law
Social Media – 7 Years Later...

2018

- This Session is titled “Social Media & the Law: Changes at Warp Speed”
- 1.32 billion daily active users on Facebook
- Brands post an average of 8 times per day on Facebook.
- 31.57% of consumers say social media influences their shopping, led by Facebook at 44%.
- The industry with the highest click-through rate on Facebook is the legal industry, at 1.61%. The industry with the lowest click-through rate is the employment and job training industry, at 0.47% (https://bit.ly/2FD6pKg)
- Big Issue: Privacy & Security Considerations; Authenticity and Fake News

Social Media – Attorneys

2018

- 81% of lawyers surveyed indicated that they’ve personally used social media for professional purposes,
- 77% reported that their firms also maintained a social media presence
- The lawyers most likely to maintain a personal presence on social media were 40-49 years olds (93%). Next were attorneys 40 years and under (90%), followed by those who were 50-59 (86%), and finally, those 60 or older (73%).
- Employment and labor law lawyers were most active at 89%, followed by personal injury at 84%, litigation at 84%, commercial law at 82%, and contract law at 81%.
Social Media – Attorneys

2018

- **Use of social media by attorneys**: career development and networking (67%), followed by client development (56%), education and current awareness (39%), and case investigation (21%)

- **The social network lawyers used most often** for professional purposes was LinkedIn, with 90% of lawyers indicating that they had a LinkedIn profile. Facebook was next at 40%, followed by Twitter at 26%.

- Lawyers in firms of 2-9 lawyers were the most likely to report that a client *retained them because of their social media* presence (33%), followed by solo lawyers (32%), lawyers from firms of 10-49 lawyers (22%), and lawyers from firms of 100 or more lawyers (18%).

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Social Media – Attorneys

2018

- **Who blogs?** 71% of firms with 500 or more attorneys maintain at least one law firm blog (compared with 60% in 2016). Next up is firms with 100-499 attorneys at 71% (compared with 52% in 2016), followed by mid-sized firms with 10-49 attorneys at 38%, then small firms with 2-9 lawyers at 25%, and solo law firms at 15%.

- **Attorneys blog about**: employment and labor law at 33%, personal injury law at 32%, and litigation at 31%

- **Why they blog?** Client development leading the way at 76%, followed by the enjoyment of writing and outreach (47%), and career development and networking (47%). Finally, 43% reported that they’ve had a client retain their services because of their blogging efforts

* Source: https://bit.ly/2KZfobh
On June 21, 2018, the U.S. Supreme Court declined to decide the question of whether a district court judge is required to retroactively recuse himself when he allegedly follows the federal prosecutors on Twitter and, within hours after denying relief to the defendants, tweeted a link to an allegedly erroneous news article with a title implying that the defendants were liable.


The account’s activities on social media did not warrant the judge’s retroactive recusal for two reasons.

1. Twitter is a news and social networking service generally used by news organizations, celebrities or high-up government officials as one of the official means of communication, and the mere fact that the judge allegedly “follows” the federal prosecution’s Twitter account does not evidence the personal relationship needed for recusal.

1. The tweet posted by the account concerning the Moonlight Fire consisted only of the title and link to a publicly available article about the case, without any commentary, and under the plain-error standard of review, the judge did not plainly err in not retroactively recusing himself after tweeting about this article.
**Review of Recent News: Fame Tax**

https://bit.ly/2Mg4EtO

Celebrities and Instagram influencers across Australia, the introduction of the so-called 'fame tax' as part of a raft of integrity measures announced in the 2018/19 budget means that they could end up paying higher taxes on the income and non-cash benefits earned through the commercial exploitation of their image rights (to third parties)

#sponcon (sponsored content)

Concerns still pending: how will the fame tax actually work? How does it affect trademarks of names and signatures? And more.

Effective: July 1, 2019

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**Review of Recent Cases: Trademarks**


On June 14, 2018, a federal trial court in New York issued a decision relating to a restaurant owner’s claim that the restaurant manager was using the owner’s trademarks on social media in violation of the federal trademark law known as the Lanham Act. The trial court denied the owner’s claim, in a ruling that provides some useful lessons to anyone who licenses a trademark. (Thousand Island Park Corp. v. Welser, 5:18-CV-117 (N.D.N.Y. June 14, 2018 (2018 WL 29803231))
Review of Recent Cases: Trademarks

This case provides some lessons for licensors in future trademark license agreements:

• In any agreement that permits use of your mark, consider including restrictions on the time, place, form, and extent of any use of the marks.
• Consider requiring a review of any of the licensee’s advertising or marketing material before permitting any use of your mark. You may want to include samples of permitted or not permitted uses to speed the review process.
• Bolster items 1 and 2 with the ability to audit the licensee’s use of your mark.
• Include a quick termination clause or an injunctive relief clause in the event of any unpermitted use of your mark.

Review of Recent Cases: NLRB

https://bit.ly/2nq0y8y

NLRB issued a decision in The Boeing Company, 365 NLRB No. 154 (Dec. 14, 2017)

Overturned their own Old Standard:
- an employer rule violated the National Labor Relations Act (NLRA) if a worker could “reasonably construe” it to interfere with the right to engage in protected concerted activity

Adopted New Rule:
- an employer rule will only violate the NLRA if it would be reasonably interpreted to interfere with workers’ NLRA rights considering the balance between (A) the nature and extent of the rule’s potential impact on protected rights and (B) the employer’s legitimate justifications for the rule.
The following types of rules fall within Category 1 and are thus presumptively lawful:

- Employees may not comment for or speak on behalf of the company without prior written approval;
- Employees may not make negative or disparaging remarks about other employees;
- Employees may not disclose the company’s confidential, proprietary, or trade secret information;
- Employees may not disclose information concerning the company’s clients or customers;
- Employees may not misrepresent the company’s products, services, or employees; and
- Employees may not use the Company’s logo, trademark, or graphics without prior written approval.

Employers should still avoid the following sorts of blanket rules, which the NLRB has now clarified fall under Categories 2 and 3:

- Blanket rules prohibiting employees from making disparaging or negative remarks about the company;
- Blanket rules prohibiting employees from criticizing the employer;
- Blanket rules prohibiting employees from making false or inaccurate statements;
- Blanket rules providing that wages, benefits, or working conditions are confidential or preventing employees from discussing them; and
- Blanket rules prohibiting employees from joining outside organizations.
**Review of Recent News: GDPR**


- Permits the processing of personal data for online marketing purposes on the basis of legitimate interests of online providers.
- Legitimate interests of online providers, however, may be overridden by the interests or fundamental rights and freedoms of an EU resident, called a "data subject."
- Those fundamental rights and freedoms include privacy and protection from manipulation, in particular where the data subject is a child.
- An assessment of the specific interests of data subjects and online providers must be made and the factors of the respective circumstances must be taken into account and weighted on a case-by-case basis.

Many US companies have blocked access to EU citizens to their websites.

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**Review of Recent Cases: Revenge Porn**

https://bit.ly/2vSmNUy

Four years after a Californian woman sued her ex-boyfriend for posting sexually explicit photographs and videos of her online, she was awarded USD $6.4 million in one the largest judgments of its kind.

- Majority of intimate photos are selfies; and the posers own the copyright in them. The posting and sharing of these photos without the consent of the copyright owner is the c/o/a.

- Israel, UK, Japan, New Zealand have laws.

- South Africa has pending cyber-legislation that will address the issue.
Review of Recent News? DHS

https://bit.ly/2MaAkRo

DHS Collecting Applicants Social Media

• On March 30, 2018, the State Department released a notice of a proposed rule that would require the collection of social media information in connection with an application for a Nonimmigrant Visa through what is called a DS-160.

• Previously been used to collect certain biographical information of applicants, but the proposed rule would expand the information collected to include identifiers, or “handles,” used by applicants for various social media platforms during the previous five years.

• Many opponents have argued that the proposed rule will have a chilling effect on free speech.

• The proposed rule would affect almost 15 million people per year, excluding certain diplomats and other individuals who are exempt.

Review of Recent Cases: Copyright


Real Estate Photos Copyrights Social Media

• Photographer licensed many of his photos to the local multiple listing service (MLS) for use by area real estate agents and brokers.
• An agent or broker downloading listings from the MLS had to sign a sublicense agreement.
• That sublicense agreement incorporated the MLS’s rules, which permitted use of the MLS data solely in connection with the sale, lease, and valuation of real property.
• In May of 2013, the photographer noticed that his “sold” home photos appeared on a broker website.
• 1800 of his photos and the website encouraged users to “share” the photos with a button.
Review of Recent Cases: Copyright

• The broker website moved for summary judgment.
• The federal trial court granted the motion, based on a decision that the photographer lacked standing because he was not a party to the sublicense agreement between the MLS and the broker.
• The photographer appealed.
• The appeals court agreed with the photographer.
• The photographer sued only under the copyright law not for a breach of contract.
• The appeals court reversed the grant of summary judgment, and remanded the case back to the trial court.

Review of Recent News: #MeToo


Review:
• Sexual harassment and non-discrimination policies
• Provide regular training on these policies and how to report them
• Review social media policy
• Do you have any agreements with non-disparagement provisions
• Consider carefully how to respond to a sexual allegation on social media
**Review of Recent News: LinkedIn**


LinkedIn Updated Terms of Service

- Increase productivity, new features and give users some choices over how their information are used
- Caution: there are opt-in and opt-out options for some of the features
- New productivity bot that can provide “smart replies” to messages.
- International LinkedIn members will now be governed by Irish Law not California Law.

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**Review of Recent Cases: Anonymity Online**


On November of 2017, a federal appeals court rejected employment-related site Glassdoor’s claim that its users had a First Amendment right to anonymity that would protect their information from disclosure pursuant to a grand jury subpoena.

In re Grand Jury Subpoena, No. 16-03-217, Civ. No. 17-16221, D.C.No. 2:17-mc-00036-DJH (9th Cir. Nov. 8, 2017)).

Glassdoor contended that the panel should apply Bursey's compelling-interest test, while the government argued for Branzburg's good-faith test. The panel agreed with the government, holding that Bursey was inapplicable because the facts were distinguishable.

The Ninth Circuit also pointed to Glassdoor's own website privacy policy. Glassdoor warned its contributors before their first submissions that their information could be revealed in response to a subpoena or court order. The panel concluded that Glassdoor’s users did not have a reasonable expectation of complete privacy.
Review of Recent News: Are Memes Legal?


• US Law – memes are a derivative work; fair use – parody
  • Good reference: https://bit.ly/2MrFatE

• EU Law – considering making them illegal if you use copyrighted material to create them.

• EU Law – stronger copyright laws to begin with.

Review of Recent News: Facebook

Facebook and Twitter Face a Reckoning on Russian Trolls and Bots

Facebook and Twitter have been accounting for bots, trolls, spammers and Russian trolls from their platforms. How many fake accounts remain, and will it ever impact their bottom line?

https://bit.ly/2Dzy8MK

Facebook made changes to its newsfeed and is limited third party posting to personal Facebook accounts (ex. Hootsuite)

It is also limiting ads that will show up on newsfeeds – trying to increase organic sharing between friends and not businesses.

Facebook Security Against Russian Bots??
Review of Recent News: Banning

Banning of InfoWars
https://nyti.ms/2OY4o1o
https://techcrunch.com/2018/08/08/all-the-platforms-that-have-banned-infowars/

What does the banning mean?
https://bit.ly/2MxAUWc

- Twitter not Banning
- Infowars App Tranding After Ban – so did banning work? Is it the platform's job to police speech?

Q&A or Shared Experiences
Thank you!

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While the collective phenomena known as social media have created a new world in general, there is no specific reference to new modes of communication in the Georgia Rules of Professional Conduct. Social media postings are written communications, albeit communications with potential infinite reach and duration. All the Rules of Professional Conduct apply to things lawyers do on social media as lawyers. For all content that you post online, carefully consider whether you are confident that it would not violate any ethics rules if placed on a billboard or other print media. For purposes of this discussion, the term “social media” includes postings on your website and lawyer review sites as well as Facebook, LinkedIn, and Twitter.

Pay particular attention to Rules 1.6 (confidentiality); 7.1 through 7.5 (communications concerning a lawyer’s services/lawyer advertising); 3.5 (ex parte communications with judges, jurors, prospective jurors, or other officials); 3.4 (altering, destroying or concealing material having potential evidentiary value); 3.6 (trial publicity); 4.1 (truthfulness in statements to others); 4.2 (communication with a person represented by counsel); 4.3 (dealing with unrepresented persons); 8.4 (professional
conduct involving dishonesty, fraud, deceit or misrepresentation; also prohibits violating the Rules of Professional Conduct through the acts of another); and 5.3 (responsibilities regarding non-lawyer assistants).

I. CONFIDENTIALITY: RULE 1.6

Self-Promotion and Self-Defense on the Internet¹

Unauthorized disclosure is a recurrent, central problem in both of these arenas. Rule 1.6(a) states the lawyer's affirmative obligation:

A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.

Note first that the language – “all information gained in the professional relationship with a client” – presumptively extends the confidentiality obligation beyond information protected by the evidentiary attorney-client privilege, and beyond information the client has specifically identified as confidential. See Comment [5] to GRPC Rule 1.6. Common sense notions of what would be considered “confidential” are thus not reliable guides. For example, information may be confidential for Rule 1.6 purposes even though it might also be lawfully obtained by others, outside of the

¹ This section of the materials was authored by William J. Cobb, Assistant General Counsel, State Bar of Georgia, and is included with express permission.
attorney-client relationship or discovery rules. **Your default presumption should be that if you got the information as part of representing a client, it is confidential regardless of source;** then you can think about whether one of the rule’s exceptions applies.

Second, information may be confidential because of the potential effect of disclosure, rather than because of the source of the information. If disclosure would be “embarrassing” or likely “detrimental” to the client, it is protected. Thus, though perhaps initially counterintuitive, the mere fact that information may be in the public domain in some fashion does not automatically mean it can be disclosed without client consent, if a lawyer has learned it in the course of representing the client.

**Publicizing Successful Results**

Whether on a lawyer’s web site, a social media post, a blog, a discussion group, a comments thread or any of the myriad opportunities for on-line promotion, letting peers and potential clients know about a lawyer’s successes has obvious value for building reputations, attracting new clients and increasing revenues. It is easy to think, why would a client object to publicizing a great outcome? It means they “won” or at least attained their goal, and if it was litigation, it is highly likely to be a matter of public record already. So what’s the problem?

The answer becomes clear when one remembers that (1) confidentiality includes an “effects test,” and (2) the audiences of public records of court proceedings are highly likely to be not only different than, but often infinitesimal in number compared to the
potential recipients of the same information posted on the Internet. What if the success was acquittal of a client charged with aggravated sexual battery of a child? The truth of that result, and its existence in the “public record,” perhaps even in the news media, does not diminish the fact that for most such clients it would be both embarrassing and highly likely to be detrimental in any number of ways. Such disclosure without client informed consent would almost certainly violate the ethical obligation imposed by Rule 1.6.

Many situations will be far less black and white than that example. The simple, foolproof (if there is such a thing) solution is explicit in Rule 1.6(a) itself: disclosure is prohibited “unless the client gives informed consent.” Informed consent is a defined term which “denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” GRPC Rule 1.0(h). Always obtain informed consent before posting any information about a client’s case or matter anywhere.

What the client needs to know in order to make an informed decision will vary according to what is to be posted and where. It is impossible to list all possible considerations, but here are a few examples: Will the post be in the form of a client testimonial, or just be about the client’s case? Will the client be named or remain anonymous (beware the possibility of revealing identity from the facts)? Will it appear on the lawyer’s web site, intended to be seen only by those who choose to explore the site? (If so, will it appear prominently on the home page? Under a testimonials tab? As
part of a slide show?) Or will the post be actively disseminated via Facebook, blog, tweet, discussion group or other “push” platform? In the latter case, who is the potential audience?

In addition, think about possible unintended consequences. For example, it may not be possible to limit posted information to a lawyer’s web site, and it is likely impossible to assure that only someone browsing that web site will see it. Google and others use automated web crawlers to constantly amass, archive, package and redistribute information in various ways for various purposes. So one simple question that perhaps the client should always be asked is this: Are you comfortable with the possibility that the posted information may pop up in a Google or Yahoo! search, say by a relative or a potential employer?

All such questions interact closely with what information, exactly, a client is willing after informed consent to disclose. You will have greater protection if the client consents to the verbatim content and exact location of the posting, and to the details and context of the posting within that location to the extent that is reasonably practicable. And while Rule 1.6 does not require it, written consent signed by the client is good prophylactic practice.

**Defending Yourself Against On-line Criticism By Clients: Can You? Should You?**

Web sites like AVVO and Facebook present positive opportunities for lawyers, but the reverse is also true. What can you ethically do if an unreasonable, irate client or former client attacks you on-line with false statements and accusations, apart from a
defamation action? Can you respond on-line using truthful information that otherwise would be protected from disclosure by GRPC Rule 1.6, without obtaining client consent?

Rule 1.6(b)(1)(iii) states:

A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

An on-line attack obviously is not a criminal charge or civil claim, nor is it in a proceeding. Is it a “controversy”?

The best answer in Georgia at this time is that in these circumstances disclosure not explicitly authorized by the client is very risky. In 2014, the Georgia Supreme Court for the first time imposed discipline on a lawyer for disclosing confidential client information online, in response to negative comments about the lawyer posted by a former client on three consumer web sites. In the Matter of Skinner, 295 Ga. 217 (2014). That case involved an uncontested divorce with long delays, increasing client dissatisfaction, and eventually a fee dispute and change of counsel. After the former client posted “negative reviews” with unspecified content, the lawyer responded by posting the client’s name and employer, the amount paid to the lawyer, the county in which the divorce was filed, and a statement that the former client had a boyfriend. The Court had no difficulty concluding that those disclosures violated Rule 1.6, without need for any analysis or explanation.
The *Skinner* case should give lawyers great pause before disclosing any client information in response to client criticism, though it may not definitively resolve the issue in all circumstances. The unauthorized disclosures in *Skinner* were apparently so out of bounds in relation to the client reviews that the “controversy” exception of Rule 1.6 never came up. However, there is good reason to doubt that the exception will be recognized in this context if the Court does address it, not least because the legal definition of “controversy” simply does not fit online disputes like this:

A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity. . . . It differs from “case,” which includes all suits, criminal as well as civil; whereas “controversy” is a civil and not a criminal proceeding.

*Black's Law Dictionary Free On-line 2d Ed.* (accessed October 9, 2013)(internal citations omitted). The few ethics decisions on point in other jurisdictions are mixed, and the summary in the *ABA Annotated Model Rules* at pp. 122-123 (2015) includes the statement that “[m]ere criticism of the lawyer, however, may be insufficient to warrant disclosures in self defense, even when the criticisms appear in the press.”

For anyone willing to risk violating Rule 1.6 in these circumstances, the question still remains: *Should* you defend with disclosure of information about the client or case, or even defend at all? One school of thought is that, as professionals, lawyers should just accept this sort of thing as an occupational hazard and ignore it. (If it is a recurrent problem, that may well suggest that the lawyer has an actual underlying problem.) Most on-line denizens recognize by now that over-the-top criticisms are ubiquitous on the Internet, and would not expect lawyers to be immune from them. One libelous rant, this
thinking goes, is therefore unlikely to drive away droves of potential clients, and if it cannot be taken down it will eventually drop off, become submerged and/or be an obvious outlier.

Others suggest that if a response is deemed essential, it should be extremely limited and *disclose no client information* at all. Something like, “I respectfully disagree,” and/or “Confidentiality rules prevent me from responding.”

A non-disclosing response like the just stated examples would avoid a Rule 1.6 violation, but it is this author’s view that pragmatic considerations nevertheless counsel against responding even to false and malicious attacks, at least as a long term strategy. Even such a short, fact-free response is virtually certain to generate additional vitriol, and then what do you do? Each increment of additional content is likely to add fuel to the fire and bulk to an exchange that could easily tilt towards the unseemly. In addition, put yourself in the position of a potential client who sees this back and forth. Might not he or she naturally wonder if this publicly played out dispute portends undesirable conflict if the lawyer and potential client come to be at odds about the conduct or outcome of a case?

Nevertheless, the potential harm of a critical post should be weighed against the potential impact of responding or not responding on a case by case basis. You might decide, for example, that silence in the face of a critique that appears superficially credible and serious, not an over-the-top rant, would be more damaging to you than whatever fall-out a response would cause. Remember, however, that any disclosure of
information covered by GRPC Rule 1.6 carries a very high risk of violating the rule no matter what.

All of the above notwithstanding, GRPC Rule 1.6 does not preclude lawyers from pursuing civil remedies for wrongful criticism or accusations posted by clients. A lawsuit is without doubt a controversy excepted from the Rule 1.6 prohibitions,\(^2\) and in 2014 a Georgia lawyer prevailed rather dramatically against a former client’s false representations while a client, and baseless criticisms later posted online. She obtained a substantial verdict based on fraud, libel \textit{per se}, and false light invasion of privacy. \textit{Pampattiwar v. Hinson}, 326 Ga.App. 163 (2014).

Finally, a word about Better Business Bureaus. Through the ethics advice hotline, the Office of the General Counsel has seen some instances where standard BBB practices, which apparently vary from place to place, directly conflict with lawyers’ ethical obligations to their clients. For example, the BBB may forward a client complaint to the lawyer and ask for a substantive response before the BBB decides how to take the complaint into account in its “scoring” of the lawyer or firm as a business. To respond as requested would certainly violate GRPC Rule 1.6, but in one instance that caused a firm to get an “F” rating on the local BBB site. If you receive such a request, this author advises a strong response pointing out the ethical obligation of confidentiality about clients and their cases, the lawyer’s refusal to breach that ethical duty, the disciplinary consequences of breach even if the lawyer was so inclined, and taking the bureau to task for even considering imposing a ratings penalty for doing what

\(^2\) Of course, the lawyer’s claims must be meritorious within the meaning of GRPC Rule 3.1.
is ethically both required and right. There is at present no data regarding the effectiveness of that approach.

II. ADVERTISING & MARKETING: RULES 7.1—7.5

Communications that you make to the public regarding your services must comply with Rules 7.1 through 7.5. If you have a professional presence on social media, it is likely that the content, if available to the public, will be considered as advertising and thus will need to be compliance with the advertising rules. Your communications cannot be false, fraudulent, deceptive or misleading. Rule 7.1(a)(1)-(5) provides an illustrative list of communications that would violate this rule. All communications must contain your name. Rule 7.2 requires various disclosures regarding the location of your practice, whether it is a referral practice, use of spokespersons and portrayals, and information about fixed fees.

Many lawyers used LinkedIn as a networking and marketing tool. Some lawyer rating sites, such as Avvo, allow the lawyer to post information and also allow endorsements. Obviously, any content that you post must be truthful. A problem arises if others, such as colleagues, friends or clients, post endorsements that are exaggerated or make claims that you could not make for yourself. For example, if someone says that you have vast experience or expertise in an area of law that you do not in fact have, you
need to take all actions permitted by the site to remove the statement or add a corrective statement.

The space limitations of Twitter will not allow for the information that is generally required to be provided in lawyer advertisements. However, it can be appropriately used as a marketing tool for posts in which you show that you are knowledgeable and following legal developments, such as links to news items or important legal developments.

III. TRIAL PUBLICITY: RULE 3.6

Even if you have your client’s informed consent to publicly comment on a matter, remember your duties under Rule 3.6 which provides as follows:

a. A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a person would reasonably believe to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

b. Reserved.

c. Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

d. No lawyer associated in a firm or government entity with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Tweets or Facebook posts or blog entries from the courthouse are not a wise idea. They are definitely extrajudicial statements widely disseminated, so the only remaining
question is whether there is a substantial likelihood of materially prejudicing the adjudicative proceeding. And, as discussed above, they may violate confidentiality.

IV. COMMUNICATIONS WITH WITNESSES & PARTIES

RULES 4.2, 4.3 & 8.4

Rule 4.2 provides that a lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order. As indicated in Comment 3, the rule applies to communications with any person, whether or not a party to the formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates.

Rule 4.3 provides that when dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:

a. state or imply that the lawyer is disinterested; when the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding; and

b. give advice other than the advice to secure counsel, if a lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of a client.
There is no prohibition on viewing any information that a party or witness has publically posted. The problem arises if you attempt to “friend” or otherwise communicate with the person. You obviously cannot communicate with an opposing party who is represented by counsel. But what about witnesses when you do not know whether or not they are represented? Can you send a friend request to a witness? The safest answer is no. However, given that it is not expressly prohibited by the language of Rule 4.3, and Georgia has not yet issued an advisory opinion on the issue, if you insist on attempting such a communication, you should take great care to disclose your identity, your role, and ask whether the person in represented. You should act as you would in placing a phone call or sending a letter to that person. The problem is that the process of a “friend” request may not allow the opportunity to provide the information that is necessary for a legitimate contact.

Remember that you cannot have someone else—such as your client, an employee, or an investigator—do that which you could not ethically do yourself. Rule 8.4(a)(1).

V. JUDGES & JURORS

RULE 3.5: INPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

a. seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
b. communicate ex parte with such a person except as permitted by law;
c. communicate with a juror or prospective juror after discharge of the jury if:
i. the communication is prohibited by law or court order; or
ii. the juror has made known to the lawyer a desire not to communicate; or
iii. the communication involves misrepresentation, coercion, duress or harassment.

d. engage in conduct intended to disrupt a tribunal.

Judges are responsible for their social media conduct under the Judicial Canon of Ethics. It is unwise at best for judges and lawyers to communicate as “friends” on Facebook, particularly when the lawyer has a matter pending before the judge and/or regularly has cases with that judge.

The social media trails of jurors and potential jurors are of obvious interest to lawyers trying a case. As with an opposing party or witness, there is certainly no problem with viewing information that is publicly available. It should go without saying that attempting to communicate with a juror through social media is as forbidden as a phone call or hallway conversation. While such a communication after discharge may be permissible, you should ensure that you fully identify yourself and your purpose in making any such contact.

VI. HAVE AND ENFORCE AN OFFICE POLICY ON SOCIAL MEDIA

Rules 5.1 and 5.3 impose a duty to supervise subordinate attorneys and non-attorney staff to ensure that their conduct is compatible with your professional obligations. Have a clear policy to ensure that your staff understands the ethical implications of use of social media. As Rule 8.4(a)(1) provides that it is a violation of the Rules of Professional Conduct to violate or knowingly attempt to violate the Georgia Rules of Professional
Conduct, knowingly assist or induce another to do so, or do so through the acts of another, social media conduct of your staff, or even your client could haunt you.

VII. MISCELLANEOUS CAUTIONS

BEWARE OF FORMING UNINTENDED ATTORNEY-CLIENT RELATIONSHIP

If you choose to answer questions from potential clients or participate in online forums, be careful to use cautionary language and disclaimers. Keep your answers generic and avoid specific facts. Remember also that social media communications with strangers can result in conflicts of interest. If someone is providing you with specific facts, you need to know his/her real name for your conflicts database.

BEWARE OF UNAUTHORIZED PRACTICE

Your communications online know no state line boundaries. Be clear about where you are licensed and disclaim any advice as to residents of other states.

VII. CONCLUSION

No advisory opinions have been requested in Georgia on lawyers' use of social media. With the exception of the Skinner case discussed herein, there are no disciplinary decisions in Georgia involving social media. Appended is a list of some advisory opinions from other states. They reach differing conclusions, and are not
authoritative for Georgia lawyers. However, they are useful in illustrating the reasoning involved in applying the rules to new modes of communication.

While the technological aspects sometimes matter (such as whether a juror can discern that his/her social media site has been viewed by a lawyer), you will generally stay safe by considering your social media activity through the same ethics lens as your communications activity in traditional modes.
How Do I Use All Of This Stuff? 
Evidentiary Issues In Social Media

Presented By:

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“How Do I Use All of this Stuff? Evidentiary Issues in Social Media”

Paul E. Andrew, Esq.
September 14, 2018

DISCLAIMER

This presentation is for educational purposes only and does not constitute legal advice. It is recommended that you seek legal counsel for specific matters.
Social Media – Why Should I Care?

Your Clients are on Social Media
- Many Businesses have Social Media accounts
- Most Individuals have Social Media accounts

Competency
- ABA Model Rule 1.1 – requires lawyer to have basic knowledge of social media and advise clients about issue arising from use of sites
- GRPC Rule 1.1 - Competent Representation

Trends - Adult Usage of Social Media in U.S.
- 73% of adults use YouTube
- 68% of adults use Facebook
- 35% of adults used Instagram
- 29% of adults used Pinterest
- 27% of adults used Snapchat
- 25% of adults used LinkedIn
- 24% of adults used Twitter
- 22% of adults used WhatsApp
- Discovery > Evidence issues?

Source: Pew Research January 2018
Social Media Usage – 2 Fronts

- Your own Client’s Activities
- No deletions – Allied Concrete v. Lester, 285 Va. 295 (2013)
- $722,000 is a large number
- FB - “Profile” & “Settings” has a “download file” feature
- Twitter – “Settings” then “request your archive”
- Videos/photos may not have “exif” data if uploaded

- Identify the social media platforms used by your opponent
- Data Preservation letter

Social Media Usage – Where to Hunt for the Smoking Gun

- Facebook – Family law, Personal Injury
- LinkedIn – Business cases (especially restrictive covenants)
- YouTube – Personal Injury
- Instagram – Family law, Personal Injury
- Twitter – Family law, Personal Injury
How to Hunt on Social Media for the Smoking Gun - DIY

- DIY approach
  - Search engines (Pipl.com)
  - Email and image searches
  - Opponents friends/Facebook Groups

- Use Extreme Care
  - O.C.G.A. 16-9-93(c) (Avoid becoming a party)
  - Ethical issues
  - Supervise your staff

How to Hunt on Social Media for the Smoking Gun – Formal discovery

- Formal discovery to third party providers (subpoenas)
- Formal discovery to opposing party
  - Interrogatories
    - Identify all social networks even inactive
    - Identify screen names & email addresses
    - Identify all technology devices used
    - Identify all cloud storage providers
  - Document requests (Romano v. Steelcase, 907 NYS2d 650 (2010))
  - Court ordered “consent” with follow up an option
  - Request for Admissions, depositions
How to Use Social Media - Preliminary Fact Questions in Evidence

Practical side – familiarity - restrictions on judiciary
Judge as gatekeeper (weight v. admissibility)

Technical Issues (OCGA 24-1-104(a))
- Hearsay exceptions
- Privilege
- Daubert Issues

Relevance Issues (OCGA 24-1-104(b))
- Does the evidence link to case facts?
- Example – authentication is key

Admissibility Issues - Authentication

Authentication – the item is what you claim it to be
- Easy case – full name and photo
- More challenge - different names on profile page
  - Witnesses
  - Facts on web site relating to opponent
Admissibility Issues - Hearsay

Hearsay
- Do not assume hearsay (OCGA 24-4-801)
- Exceptions applicable?
  - Excited utterance (especially smartphones)
  - Present sense impression
  - State of mind

Georgia cases related to Web/Social Media Evidence

- Smoot v. State 316 Ga. App. 102 (2012). Neighbors complain about house of prostitution. Officers conduct surveillance, question a man leaving premises and the conduct research on Craigslist and on the “ifshewontiwill website.” There the police find evidence including pictures of Smoot. At trial, the State offers printouts of web pages from “ifshewontiwill website.” Smoot objects, claiming lack of foundation and the printouts were hearsay. Trial court overrules those objections but the Court of Appeals partially overrules:
  - Documents from electronic sources subject to same rules of authentication as other documents (citing Hammontree v. State, 283 Ga. App. 736, 739 (2007)).
  - May use circumstantial evidence for authentication
  - Detective who had investigated testified 1) he made the printouts of the website, 2) the printouts were a fair and accurate representation of that actual things that he personally viewed on the website, 3) State also introduced business cards from residence which had the website URL printed on them, and 4) Smoot admitted that she was “familiar” with the website.
  - Printouts were sufficiently authenticated
  - As to hearsay, Court agreed ad content was not hearsay but admissible as “verbal acts”
  - Craigslist printouts NOT admitted because detective did not testify that the printouts “fairly and accurately represented the contents of the website she personally viewed as part of her investigation.”
Georgia cases related to Social Media Evidence

- Burgess v. State 292 Ga. 821, (2013). Burgess was driving vehicle for a drive-by shooting. At trial, State offers a screenshot printout from MySpace. The printout is for an individual by the name of “Oops” who describes himself as a 19 year old male from New York and as a member of the “Murk Mob.” Burgess objects based on authentication, alleging State did not show who owned the profile page or who created it and the State has not subpoenaed the website provider. The trial court allows the printout and the Court of Appeals affirms, finding as follows:
  - Documents from electronic sources subject to same rules of authentication as other documents (citing Hammontree v. State, 283 Ga. App. 736 (2007)).
  - Individuals testified 1) Burgess known as “Oops,” 2) that he was a member of Murk Mob, 3) detective learned of his “Oops” name from sister and conducted a search for “Oops” on MySpace, 4) the document was printed while viewing the profile page for “Oops,” 5) printouts fairly and accurately depicted what detective observed on his computer screen, 5) identified Burgess pictures posted on “Oops” page and 6) noted that he biographical data (age and being from New York) matched Burgess’ data.
  - Printouts of MySpace page were sufficiently authenticated

- In the Interest of LP 324 Ga. App. 78 (2013). Juvenile (LP) charged with participation in street gang activity. LP admits association with “Alley Mob Bosses.” Police search Facebook and find a user profile “Alley for Real.” FB page matches LP’s DOB and has his photos. Judge finds him guilty and he challenges admission of Facebook pages claiming lack of foundation. Court of Appeals noted:
  - Documents from electronic sources subject to same rules of authentication as other documents (citing Smoot v. State, 316 Ga. App. 102, 109 (2012)).
  - May use circumstantial evidence for authentication
  - Detective who had interviewed LP testified 1) access FB on his computer, 2) conducted a search for “Alley for Real,” 3) printed the documents while viewing the profile page for “Alley for Real,” 4) testified printouts fairly and accurately depicted what he observed on his computer screen, 5) identified LP in pictures posted on “Alley for Real” and 6) noted that he biographical data (DOB) matched LP’s data.
  - Printouts of FB page were sufficiently authenticated
Georgia cases related to Social Media Evidence

- Moore v. State 295 Ga. 709 (2014). Moore was convicted of murder. During trial, the State submitted testimony from Hale, Moore’s girlfriend, and contents of Moore’s Facebook page. Moore objected, claiming lack of authentication and that the testimony constituted improper character evidence. The Court of Appeals found as follows:
  - As to FB authentication, Hale testified 1) the picture on FB page was of Moore and confirmed he was from Indiana, 2) the FB page contained Moore’s cell phone number and mentioned the nickname “Crown” that Moore had used, 3) the FB page contained details about Moore not generally known to the public, 4) the FB page had postings that matched the structure and style of texts Moore had sent Hale, 5) Moore admitted to Hale that the FB page was his FB page.
  - Printouts of FB page were sufficiently authenticated
  - Issue of character evidence was not properly preserved for review

- Cotton v. State 297 Ga. 257 (2015). Cotton had a home in PA but was living with his sister and her boyfriend in GA. One night a fight occurred between sister and boyfriend Turner and Cotton intervenes and stabs Turner. Turner dies and Cotton returns to PA. Turner’s mother and her friend set up fake FB accounts and friend Cotton. They message him and he replies bragging about killing Turner. At trial, the State offered into evidence the 2 incriminating messages and the trial court allowed them over 1 poorly made objection (“prejudicial and not probative”). Turner appealed and the Court of Appeals made the following rulings:
  - Court deals with the authentication issue even thought it was not properly made and found the testimony of Turner’s mother provided enough details for authentication.
  - In a note, the Court stated that FB evidence can be authenticated like any other document but did point out that courts must be alert to the possibility of hacking or counterfeit sites.
Georgia cases related to Social Media Evidence

  - Court assumes photos were not properly authenticated but affirms convictions based on other evidence (multiple witnesses place him at scene, 3 witnesses saw him holding shotgun, 2 witnesses saw him shoot Jordan).
  - Court notes that the 2013 revisions to the evidence code retain the “harmless error doctrine.”

- Timmons v. State 302 Ga. 464 (2017). Timmons has an altercation with Spears at a bar. They leave and about a month later they meet again at an apartment complex. A fight ensues and Timmons fatally shoots Spears. At trial, the State introduces FB posts made by Timmons. Timmons was claiming self defense so the trial court allowed them to show Timmon’s own propensity for violence. The Court of Appeals finds the FB pages were not proper evidence.
  - Character evidence is governed by OCGA 24-4-404 and 24-4-405
  - The trial court should have strictly followed the requirements of the statute and the defendant’s FB pages were not “testimony as to the reputation or ... testimony in the form of an opinion.”
Recent cases in other jurisdictions

- Forman v. Henkin 2018 WL 828101 (Feb. 13, 2018). In this personal injury action filed in New York, the plaintiff had been thrown from a horse and suffered spine and brain injuries. In deposition, she admitted she had a Facebook account and she had posted "a lot" prior to the accident but had deactivated the account 6 months after the accident. Plaintiff alleged that she could no longer cook, travel, go to movies or the theater and had great difficulty even using a computer and "composing coherent messages." Defendant sought unlimited authorization to obtain plaintiff's entire "private" Facebook account. The trial court granted access to most photos (except those depicting nudity or romantic encounters) but did not order disclosure of posts written before or after the accident. It also allowed access to records showing each time plaintiff posted a private message after the accident and the number of words and characters in each message. The first appellate court then reversed that, only ordering her to disclose FB pictures that she intended to use at trial. The New York State Court of Appeals reversed with several key points:
  - "Courts should first consider the nature of the event giving rise to the litigation and the injuries claimed, as well as any other information specific to the case, to address whether relevant material is likely to be found on the Facebook account."
  - Court rejected the concept that plaintiff's privacy settings governed discovery scope
  - Court reinstated trial court's order

Recent Federal Cases

- U.S. v. Farrad No. 16-5102 (6th Cir., July 17, 2018). A 21st Century undercover investigation began and ends on Facebook in cyberspace. Farrad was a convicted felon and was released from jail in 2013. Later in 2013 one or more informants tipped off local police that he might have weapons. A local officer using an undercover account "friended" Farrad. Farrad accepted the request and the officer scanned the photos and saw one photo of guns on a toilet seat. The photo had been uploaded in October of 2013. A warrant issues and is served electronically on FB. Additional photos found uploaded that same month and some of those photos display identifying characteristics. The parties held a hearing for the admission of the photos on evidentiary grounds. The government argued they were business records under FRE 803(6) and as such were self-authenticating under FRE 902(11)(with an affidavit from FB). Farrad argued the photos were "hearsay within hearsay" and that no one could testify who took the photos, when photos were taken. District court found no lack of trustworthiness and that photos qualified as business records and that they were relevant. Farrad was convicted and he appealed. The Court of Appeals held:
  - The district court admitted the FB photos as self-authenticated records but should have been authenticated under Rule 901 (the photos were what they claimed to be and the jury could make that determination). This was because the FB account was linked to Farrad, the photos show distinctive tattoos of Farrad and distinctive features of his apartment (corroborated by officers). This allowed the jury to conclude the photos were what they purported to be.
  - Court disagrees with self-authenticating approach in this case and sides with similar approaches in other circuits: U.S. v. Vayner, 769 F.3d 125 (2nd Cir. 2014); U.S. v. Brown, 834 F.3d 403 (9th Cir. 2016), cert. den. 137 S.Ct. 995 (2017); U.S. v. Barnes, 803 F.3d 209 (5th Cir. 2015).
Miscellaneous Cases & Issues

A few other Georgia cases of interest involving social media or social media platforms

- **Blackmon v. State, 300 Ga. 35 (2016).** Individual’s Instagram photo of himself with weapon similar to that used in shooting is used by prosecution (no detail on admission of evidence).

- **Maynard v. McGee, State Court of Spalding (16-SV-89)(2017).** Motor vehicle collision, car operated by young driver who apparently was trying to use Snapchat’s speed filter to document her “hitting” over 100 m.p.h. Plaintiffs sue Snapchat, trial court granted Snapchat’s motion to dismiss based on CDA (42 USC 230). Reversed on appeal. Georgia Court of Appeals agrees that plaintiffs were not seeking to hold Snapchat liable for content but for the creation of the speed filter and failure to warn it could encourage speeding. This case then spawns secondary litigation - Attorney for plaintiff posts an article on this website. Defendant in the underlying action claims the article is defamatory. Attorney filed a motion to dismiss based on anti-SLAPP statute. That motion was denied by the trial court but the Court of Appeals reversed the trial court by finding that the attorneys’ statements were conditionally privileged. 2018 WL 3062269. Neff v. McGee

- **Gilreath v. Smith, 340 Ga. App. 265 (2017).** The case of the “dangerous rooster.” Owner had sent Facebook Message “Rooster will attack?” No evidence fight because plaintiff had admitted content of message in interrogatory responses.

Emoji Law

- “Emoji law” – Study by Santa Clara University indicated that 80 opinions in 2016 contained the term “emoji” or “emoticon”

- Variations in emoticons sent vs. received

- **People v. Enrique Garcia, (CA 2017).** Defense uses Facebook logins along with other evidence to place defendant away from crime scene
Added Resources

• Evolving Rules on Usage – DC Ethics Opinion 370 & 371 related to Social Media (November 2016)
• New York Bar “Social Media Ethics Guidelines” (updated 2017)
• “Legal Ethics & Social Media” ABA Publishing 2017
• Webcease – Service that searches internet for all accounts linked to a specific email address

Q&A or Shared Experiences
Thank you!

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Discovery In Social Media – Where Do I Start?

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State Bar of Georgia ICLE
September 14, 2018

Social Media is...
Interactive
User Generated
Built for Sharing and Connecting with Others
Can Change and Update Quickly
Social Media Sources and Sites

Pew Research: The 8 most popular social media in 2018 are (% of U.S. adults):
1. YouTube (73%)
2. Facebook (68%)
3. Instagram (35%)
4. Pinterest (29%)
5. Snapchat (27%)
6. LinkedIn (25%)
7. Twitter (24%)
8. WhatsApp (22%)

Pew found the typical American uses 3 of these 8 social media services.


Other Sources To Keep In Mind:
• Google Plus, Flickr and MySpace
• Blogs (Tumblr, Wordpress, Blogspot) and Personal Sites
• Message boards, Reddit, user comments & reviews
• Fund Raising Pages (GoFundMe) and Testimonials
• Dating Sites: Match.com, OK Cupid
• Collaboration Tools: Slack, Yammer, FB Workplace

Social Media Discovery

Relevance and Proportionality
“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case…” FRCP 26(b)(1)

Social Media is Relevant to:
• Person’s Physical, Mental, Emotional State
• Credibility and Bias
• Statute of Limitations

Public and private social media content is discoverable if relevant to the case.

Key Questions:
• Relevance – does it really have something to do with the case?
• Proportionality – ALL posts on an account v. targeted collection (e.g. date range, search terms)
• Burden / Cost – consider the amount in controversy or potential exposure to client

To resolve discovery disputes and privacy concerns, in camera review can be an option.
 Discovery Considerations

**Stored Communications Act**
Social media company is forbidden to produce the contents of communications stored on its service, in response to a civil subpoena. The SCA protects non-public content from disclosure.

Changing social media privacy settings might be OK, but responding party has duty not to delete their social media content. This can result in serious sanctions. See Allied Concrete v. Lester, 736 S.E.2d 699 (Va. 2013) (court sanctioned counsel for telling his client to clean up his Facebook); See also Painter v. Atwood (D. Nev. 2014) (counsel should have informed client of her duty to preserve Facebook posts).

**REQUESTING PARTY**

Discovery Requests
Request for Production (FRCP 34)
- especially where relevant content is private
- aim for specificity in request
Request for Admission (FRCP 36)
- to confirm the existence of social media accounts belonging to party

**RESPONDING PARTY**

Party’s Preservation Duties
- Arises when there is litigation or reasonable anticipation of litigation.
- Counsel should conduct reasonable inquiry into client’s relevant social media content. See Calvert v. Red Robin International, (N.D. Cal. 2012) (counsel should have flagged communications between named plaintiff - his client- and putative class members in class action lawsuit).

Failure to Preserve & Sanctions – FRCP 37(e)
- If ESI is lost because a party failed to take reasonable steps to preserve it, the court may order sanctions - upon finding prejudice to another party.
- If the court finds party acted with intent to deprive, the court may:
  A) Presume that the lost information was unfavorable to the party;
  B) Instruct the jury that it may or must presume the information was unfavorable to the party; or
  C) Dismiss the action or enter a default judgment.

Proactive Discovery of Publicly Available Content

- Google
  Common Social Media Handle (@johndoe)
  - Figure out the person’s usual handle, find their accounts

- Search Is Back! searchisback.com
  - Lets you find People and Events on Facebook
  - Search People by Name, Gender, Location, Company, School
  - Search Events by Date and Location

- Private Investigator
  - Traditional approach
  - May not include collection or preservation services

- eDiscovery Service Provider
  - Automated Process using Data Science and Web Crawling
  - Data Set (name, hometown, birthdate, email address, etc.)

- Automated Search Process v. Human Researchers
  - Accuracy
  - Time
  - Cost – Flat Fee or Hourly Charge?
How To Get It: Social Media Collection Methods

**Self-Export** (such as Facebook Download Your Information or Twitter Archive)
- Gets private messages and user’s posts
- Doesn’t include third party links and videos posted by other users

**Screenshot or Printout**
- Static. No videos or dynamic content.
- Can be very time-consuming for long social media pages
- Authentication challenges and admissibility risks

**File -> Save As Webpage**
- Downloads most information from the page. Usually saved as .MHT file.
- Browser-dependent. An .MHT will look different in IE, Chrome, Safari, etc.

**Social Media API (Application Programming Interface)**
- Automated method to stream data from certain social media
- Collects posts, comments, photos, metadata
- Social Media API restrictions following the Cambridge Analytica scandal

**Native Format Collection and Preservation (ISO 28500)**
- Collect without transforming original format (dynamic content)
- Playback must be identical to original (“working replica”)
- Preserve content isolated from live web (avoid spoliation)
- Maintain audit trail to prove authenticity (digital chain of custody)

Common Social Media Collection Pitfalls!

**Taking on Huge Burden and Time Expense**
- Manually collecting Facebook can take up to 2000 screenshots and 20 hours of your time!

**Missing Content (make sure collection is complete)**
- Not expanding posts in full - or comments in full - to see the whole conversation thread
- Videos
- Externally linked pages to see what is being shared and talked about

**Missing Metadata (make sure to gather data that supports authentication)**
- URL of page / URL of post
- Timestamp of Post
- Timestamp of Capture
- Hash Values of Native Format Capture, PDF snapshot, extracted text.

**Missing Context (valuable to see how users would have interacted with the site)**
- Hover-over information
- Click photo to see name tags
- Flip through embedded image galleries, play video
- Navigation of page / opening posts / scrolling to see comments encased in “slider frame”

**Preservation (after collecting)**
- Static or Native Format?
### Collection Methods Compared

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<td>Downloads in format that’s hard to review; export may be limited</td>
<td><strong>The Whole Picture</strong> – have you collected all available content and context?</td>
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<td>Screenshot / Printout</td>
<td>Loses all dynamic content, time-consuming, human error</td>
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<td>Native Collection</td>
<td>Speed of collection limited by target site</td>
<td><strong>Preservation</strong> – will the content be unchanged and remain viewable in its original format?</td>
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- **Pros**: Gets direct / private messages, easy, inexpensive or free, fast, real-time, easily done.
- **Cons**: Authenticity, ISO 28500 standard, rendering / preservation issues (live links), speed of collection limited by target site.
Reviewing Social Media Collections

- Searchable Format?
  - Keyword Searches
  - Post Timestamp Searches
  - Metadata Searches (e.g. page URL / post URL)

- Ready For Use with Document Review Platforms?
  - Load Files
  - PDFs, fielded metadata, extracted text
  - Native Format Review

- All available content?
  - Comments, replies
  - Likes, reactions, emojis
  - Image galleries
  - Videos
  - External Links

- Saving Search Results / Building Your Case

Authentication of Social Media Evidence

FRE 901 Authenticating Evidence
(b)(1) Testimony of Witness with Knowledge
  - For example, the account holder or friend of account holder

(b)(4) Distinctive Characteristics
  - The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
  - See Federal District Court Judge Paul Grimm's Duck Rule – “If it looks like a duck and quacks like a duck, it must be a duck.”

(b)(9) Evidence About a Process or System
  - Automated process with reliable result. See also 902(13).

Texas Approach to Social Media Authentication, formulated in Tienda v. State, 358 S.W.3d 633 (Tex. Crim. App. 2012): Is there sufficient proof from which a reasonable jury could find the social media content is authentic?

Georgia courts follow the Texas approach in allowing authentication of social media based on circumstantial evidence: “Documents from electronic sources such as the printouts from a website like MySpace are subject to the same rules of authentication as other more traditional documentary evidence and may be authenticated using circumstantial evidence.” Burgess v. State, 742 S.E.2d 464, 467 (Ga. 2013)

Best practice: Metadata, hashed elements, server requests and responses, and native format preservation can be critical evidence in showing authenticity.
Self-Authenticating ESI – Federal Rule of Evidence 902(13) and (14)

FRE 902 Evidence That is Self-Authenticating

(13) Certified Records Generated by an Electronic Process or System
  • Record generated by an electronic process or system
  • That produces an accurate result
  • Shown by Certification of qualified person

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File
  • Data copied from an electronic device, storage medium, or file
  • If authenticated by a process of digital identification
  • Shown by Certification of qualified person

Rationale for New Rules (as discussed in Advisory Committee Notes):
• Expense and inconvenience of having a live witness testify is often unnecessary.
• New rules let parties authenticate certain ESI – such as social media and websites –
  with the certification of a qualified person.
• Notes on 902(13) discuss how a party can authenticate a webpage printout by
  offering a certification describing the process by which the webpage was retrieved.
• Notes on 902(14) discuss how you can offer certification by qualified person that
  they have checked the hash value of a file and it is identical to the original.
  Hash Value = alpha-numeric sequence of characters, produced by an algorithm based
  upon the digital contents of a file. If hash values of the original and copy are the
  same, it's highly improbable they are not identical.

See Advisory Committee Notes, Federal Rules of Evidence 902(13) and 902(14).
https://www.law.cornell.edu/rules/fre/rule_902

Takeaways

- Typical American is using 3 social media sites. 73% of U.S. adults on Facebook.
- Social Media is discoverable and admissible evidence.
- Proactive Discovery v. Discovery Requests
- Social Media Collection can be done in various ways, from screenshots to native
  format preservation. Depending on the needs of the case, certain methods may be
  preferable. Be aware of common pitfalls and consider all potential costs (including
  review & production).
- How are you going to search and review your collection? How can you get the
  most insight?
- Authentication is essential. Does your evidence have the distinctive characteristics
  of a social media page? Do you have a witness or certification to back it up?
- Social Media is a fixture of 21st Century life and not going away anytime soon.
Sponsorships “Online”... Can I Get Sued For “Liking” You?

Presented By:

Julie K. Roach
Inform Inc.
Atlanta, GA
SPONSORSHIPS “ONLINE” … CAN I GET SUED FOR LIKING YOU? (ETHICS)

Julie K. Roach, Esq.
Brightree LLC
Atlanta, Georgia

This paper is for educational purposes only and does not constitute legal advice. It is recommended that you seek legal counsel for specific matters.

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Introduction

Professionals are expanding their presence online with social media sites like LinkedIn, Facebook, Twitter, or Google+. As lawyers, we must pause and consider how the ethics rules apply to our online activities. Some ethical constraints which are applicable to a lawyers’ social media usage as a legal professional may catch you by surprise. In addition, legal ethics regulators are starting to pay closer attention to what legal professionals are doing via social media, how they are doing it, and why (10 Tips). Ethics opinions and rule changes are released frequently and it’s important for lawyers to pay close attention to how the rules of professional conduct are clarified and intended to apply to social media activities. This article will provide ten specific tips and examples for avoiding ethical pitfalls while using social media as a legal professional. In addition, at the end, this article will touch briefly on online sponsorship relationships between brands and digitally native talent. The ethical rules and implications will be sprinkled throughout the article.

Social Media Profiles, Posts, and Legal Advertising

Advertising, and specifically legal advertising, is no longer limited to brochures, billboards, bus benches, TV commercials, and the phonebook. Although lawyers may not consider their social media profiles and posts to be legal advertisements, a lawyer’s and law firm’s websites are considered advertisements in a number of jurisdictions (10 Tips). Since blogs, Facebook pages, LinkedIn profiles, and other social media profiles are by their nature websites, they are also considered advertisements (10 Tips). Many of the restrictions applicable to traditional forms of legal advertising are also applicable to social networking sites (Fl Bar 4-7). Florida’s Supreme Court recently clarified in its advertising rules that lawyer and law firm websites (including social networking sites) were subject to similar restrictions applicable to traditional forms of legal advertising (Fl Bar 4-7). California’s state bar decided that the nature of the posted statement or content should control whether or not the state’s lawyer advertising rules would apply to a social media post (Ca Ethics). The safest course of action is to ensure that you as a lawyer, even a judge or in-house counsel, abides by traditional legal advertising restrictions when creating profiles or posting on social media sites.
False and Misleading Statements

The following ABA Model Rules of Professional Conduct prohibit making false or misleading statements:

- 4.1 (Truthfulness in Statements to Others)
- 4.3 (Dealing with Unrepresented Person)
- 4.4 (Respect for Rights of Third Persons)
- 7.1 (Communication Concerning a Lawyer’s Services)
- 7.4 (Communication of Fields of Practice and Specialization)
- 8.4 (Misconduct)

ABA Formal Opinion 10-457 concluded that lawyer websites (including social media sites) must comply with the ABA Model Rules that prohibit false or misleading statements (ABA 10-457). As an example, the South Carolina Ethics Opinion 12-03 concluded that lawyers may not participate in websites engineered to allow non-lawyers to post legal questions where the website highlights the attorneys answering those questions as “experts” (SC 12-03).

A common occurrence of an ethical pitfall in this arena includes a social media platform automatically branding and promoting a lawyer to the public as an “expert” or “specialist” or as having legal “expertise” or “specialties” when the lawyer creates an account or profile (10 Tips). ABA Model Rule RPC 7.4 (Communication of Fields of Practice and Specialization) generally prohibits lawyers from claiming to be a “specialist” in the law or using terms like “expert” or “expertise.” Lawyers should specifically be aware of social media platforms like LinkedIn and Avvo that invite lawyers to identify “specialties” or “expertise” in their profiles.

Prohibited Solicitations

ABA Model Rule of Professional Conduct 7.3 Solicitations of Clients governs solicitations by a lawyer or law firm offering to provide legal services (RPC 7.3). Specifically, section (b) states that “A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless” an exception applies (RPC 7.3). Exceptions apply for communications to other lawyers, family members, close personal friends, persons with whom the lawyer has a prior professional relationship, and/or persons who
have specifically requested information from the lawyer (RPC 7.3, 10 Tips).

A Facebook “friend request” or LinkedIn “invitation” that offers to provide legal services to a non-lawyer with whom the sending lawyer does not have an existing relationship may be considered a prohibited solicitation. Lawyers need to be aware of automatic invitations and reminders platforms send which could each be considered a separate violation of RPC 7.3 and analogous state rules prohibiting solicitations.

**Disclosure of Privileged or Confidential Information**

The following ABA Model Rules of Professional Conduct address the duty to protect privileged and confidential client information:

- 1.6 (current clients)
- 1.9 (former clients)
- 1.18 (prospective clients)

Also, ABA Formal Opinion 10-457 requires lawyers to obtain client consent before posting information about clients on websites (including social media sites).

Lawyers should avoid posting any information which might conceivably be considered confidential (10 Tips). Remember that the casual or almost inadvertent use of geo-tagging in social media posts or photos reveals your geographic location and this could be problematic when traveling on confidential client business (10 Tips). As an example, an attorney received a public reprimand when he posted personal and confidential information about a former client which he had learned in the course of representing the client in response to a negative review posted on three consumer Internet pages (Skinner). Lawyers should ensure that they are not disclosing confidential information when blogging, responding to reviews, and taking any other social media action.

**“Friends” and Connections**

Real-world professional and personal relationships like meeting, networking, interacting, and becoming personal friends are subject to ethical constraints in both offline and online worlds. Georgia Bar Rules 3.5 (ex-parte communication, Impartiality) and 8.4 (misconduct) govern these communications (Chandler). ABA Formal Opinion 462 recently concluded that a judge may participate in online social
networking, but in doing so much comply with the Code of Judicial Conduct and consider his or her ethical obligations on a case-by-case (and connection-by-connection) basis. Connecticut, Kentucky, Maryland, New York, Ohio, South Carolina, and Tennessee have adopted similar views (10 Tips). While other states like Florida, Massachusetts, and Oklahoma have adopted more restrictive views (10 Tips). For example, Florida Ethics Opinion 2009-20 concluded that a judge could not friend lawyers on Facebook who might appear before that judge being doing so suggests that the lawyer is in a special position to influence the judge. The Florida Ethics Board extended that same analysis to judges using LinkedIn Opinion 2012-12 and Twitter (Opinion 2013-14). Lawyers should use caution when sending or accepting a friend request on Facebook, a connection request on LinkedIn, or even following a judge or lawyer on Twitter.

**Communications with Represented Parties**

ABA Model Rule of Professional Conduct 4.2 and similar state ethics rules forbid a lawyer from communicating with a person whom the lawyer knows to be represented by counsel without first obtaining consent from the represented person’s lawyer. ABA Model Rule of Professional Conduct 8.4(a) extends this prohibition to agents (secretaries, paralegals, private investigators, etc.) who may act on the lawyer’s behalf. Facebook friend requests and gaining access to Facebook content could be considered a prohibited communication under the rules whereas viewing publicly accessible social media content generally doesn’t constitute a communication with a represented party (10 Tips). Lawyers should remember agency rules here and that a high-ranking employee of a corporation could be considered a represented party (10 Tips).

**Communications with Unrepresented Third Parties**

A concern for protecting third parties against abusive lawyer conduct underlies the following ABA Model Rules of Professional Conduct:

- 3.4 (Fairness to Opposing Party and Counsel)
- 4.1 (Truthfulness in Statements to Others)
- 4.3 (Dealing with Unrepresented Person)
- 4.4 (Respect for Rights of Third Persons)
- 8.4 (Misconduct)
A lawyer should not attempt to gain access to non-public social media content by using subterfuge, trickery, dishonesty, deception, pretext, false pretenses, or an alias (10 Tips). Lawyers should be very cautious when interacting online with unrepresented third parties, especially if the lawyer is obtaining information from third-party witnesses which may be useful in a litigation matter (10 Tips). As mentioned in the previous section, viewing publicly available social media content is typically allowed, but accessing information which is protected or hidden by a third party’s privacy settings would be limited by ethical constraints (10 Tips).

**Inadvertent Attorney-Client Relationships**

ABA Formal Opinion 10-457 recognizes that by enabling communications between prospective clients and lawyers, websites may give rise to inadvertent attorney-client relationships which triggers ethical obligations to prospective clients under ABA Rules of Professional Conduct 1.18 (10 Tips).

While disclaimers may help so long as a lawyer’s online activity is consistent, social media communications can trigger an attorney-client relationship. The real risk of creating such a relationship occurs when a lawyer responds to legal questions posted by users on a message board or a law firm’s Facebook page, engages in Twitter conversations, or invites and responds to comments on a blog post (10 Tips). A test of whether or not the communication triggers an attorney-client relationship is to evaluate whether the objective purpose of the communication (from a consumer’s perspective) is to consult with a lawyer regarding a specific matter or legal need. If that is the objective purpose of the communication, then an attorney-client relationship has most likely been formed. If an attorney-client relationship is triggered by the communication, then the ethical obligations of confidentiality and to avoid conflicts of interest also attach to the relationship (10 Tips).

**Unauthorized Practice Violations**

Under ABA Model Rules of Professional Conduct 5.5 and similar state ethics rules, lawyers are not permitted to practice law in jurisdictions where they are not admitted to practice. Also, under ABA Model Rules of Professional Conduct 8.5, a lawyer may be disciplined in any jurisdiction where he or she is admitted to practice (irrespective of where the conduct at issue takes place) or in any jurisdiction where he/she provides or offers to provide legal services.

Unlike the offline world, public social media posts are accessible to everyone with an Internet connection and really have no geographic boundaries (10 Tips). Lawyers should keep in mind that
interactions with non-lawyers via social media may subject them to ethics rules in any jurisdiction where the recipient of the communication is located (10 Tips). The communication is not just governed by the jurisdiction in which the lawyer is licensed (10 Tips). In order to avoid unauthorized practice of law in any jurisdictions where a lawyer is not admitted to practice, lawyers should avoid online activities that could be considered practice of law (10 Tips).

**Testimonials, Endorsements, and Ratings**

ABA Model Rules of Professional Conduct 7.1 prohibits a lawyer from making any false or misleading claims about his or her services. In comparison, South Carolina Ethics Opinion 09-10 provides that 1) lawyers cannot solicit or allow publication of testimonials on websites and 2) lawyers cannot solicit or allow publication of endorsements unless presented in a way that would not be misleading or likely to create unjustified expectations. ABA Model Rules of Professional Conduct 7.2(b) states that “A lawyer shall not give anything of value to a person for recommending the lawyer’s services” except for the applicable exceptions (RPC 7.2).

Even if someone else posted an endorsement, a lawyer should remove it if it’s misleading or false. Truthful endorsements are typically okay to accept, but a lawyer should also consider restrictions on endorsements by clients as well as paid testimonials (Endorsements). Lawyers should evaluate whether their use of an endorsement, testimonial, or rating feature on a social networking site can comply with ethics rules that apply in that state(s) in which they’re licensed (10 Tips). If their use of that endorsement, testimonial, or rating feature is not compliant, then the lawyer must remove that content from their social media site or profile (10 Tips).

**Brands and Digitally Native Talent**

Deals between major brands and viral online video performers (aka digitally native talent) is a business estimated to reach $10 billion in 2020 (Online Stars). Lawyers practicing in this space whether it be with the brand, the digitally native talent, or the advertiser should be aware of Federal Trade Commission (FTC) requirements for disclosure when publishing a piece of content which is paid for. In addition, lawyers representing digitally native talent should become knowledgeable about morality clauses and also what limitations or restrictions the talent will and will not accept in a branding deal. The money spent in this particular area continues to rise so lawyers need to stay abreast of trends while practicing and participating in this arena.
Conclusion

For rules specifically related to Georgia, attorneys should consult the Georgia Bar Association website (gabar.org), Georgia Formal Advisory Opinions, the Georgia Rules of Professional Conduct, and Georgia Supreme Court rules, regulations, and opinions. Like social media and internet use, the rules regulating an attorney’s ethical use of social media continues to be in flux. In order to maintain an ethical legal practice, lawyers need to stay abreast of these changes and continue to evaluate and reevaluate their online activities, especially with regard to interactive social media platforms. While the ABA Rules of Professional Conduct provide a nice framework, each state has their own rules and application of rules so it’s important to keep pace with the rules and developments in the particular jurisdiction in which you practice. Social media is not going away. If anything, the use and presence is going to continue to rise. Therefore, lawyers must stay aware of the ethical rules and regulations which govern their online activities.
WORKS CITED


“ABA Formal Opinion 10-457” American Bar Association (Cited as “ABA 10-457”)

“ABA Model Rule of Professional Conduct 7.3 Solicitations of Clients” American Bar Association Center for Professional Responsibility (Cited as “RPC 7.3”)

“ABA Model Rule of Professional Conduct 7.2 Advertising” American Bar Association Center for Professional Responsibility (Cited as “RPC 7.2”)

“California Ethics Opinion 2012-186” The State Bar of California (Cited as “Ca Ethics”)


“In Re: Amendments to the Rules Regulating the Florida Bar-Subchapter 4-7, Lawyer Advertising Rules” Supreme Court of Florida, No. SC11-1327 (January 31, 2013) (Cited as “Fl Bar 4-7”)

In re Skinner, 740 S.E.2d 171 (Ga. 2013) & 758 S.E.2d 788 (Ga. 2014) (Cited as “Skinner”)


“South Carolina Ethics Opinion 12-03” The State Bar of South Carolina (Cited as “SC 12-03”)

SPONSORSHIPS "ONLINE" ... CAN I GET SUED FOR "LIKING" YOU? (ETHICS)

Julie K. Roach, Esq., Brightree LLC, Atlanta

This presentation is for educational purposes only and does not constitute legal advice. It is recommended that you seek legal counsel for specific matters.
1. Social Media Profiles & Posts = Legal Advertising

- Legal advertising is no longer limited to brochures, billboards, bus benches, TV commercials, and the back of the phone book.

- Blogs, Facebook pages, and LinkedIn profiles = Websites = Advertisements

- Many of the restrictions applicable to traditional forms of lawyer advertising are also applicable to social networking sites.
2. Avoid Making False or Misleading Statements

- Ethical prohibition against making false or misleading statements - ABA Model Rules, including RPC:
  - 4.1 (Truthfulness in Statements to Others)
  - 4.3 (Dealing with Unrepresented Person)
  - 4.4 (Respect for Rights of Third Persons)
  - 7.1 (Communication Concerning a Lawyer’s Services)
  - 7.4 (Communication of Fields of Practice and Specialization)
  - 8.4 (Misconduct)
- ABA Formal Opinion 10-457: lawyer websites (including social media sites) must comply with the ABA Model Rules that prohibit false or misleading statements.

Branding as an “expert” or “specialist”

- Linda the lawyer creates a LinkedIn account and completes a profile
- LinkedIn identifies her as a real estate closing expert or specialist
- Linda has never completed or even observed a real estate closing. Rather, she handles landlord-tenant litigation matters.
- Can Linda get in trouble ethically for LinkedIn branding her to the public as having legal expertise in real estate closings?
Branding as an “expert” or “specialist”

- RPC 7.4 - Lawyers are generally prohibited from claiming to be a "specialist" in the law or using terms like "expert" or "expertise"
- Many professional social networking platforms (e.g., LinkedIn and Avvo) may invite lawyers to identify "specialties" or "expertise" in their profiles, or sites may by default identify and actively promote a lawyer to other users as an "expert" or "specialist" in the law.

Solicitations

Linda the lawyer sends a Facebook "friend request" or LinkedIn "invitation" to Tim who is not a lawyer and doesn't already know Linda.

- Who is the intended recipient?
- Why is Linda the Lawyer communicating with Tim in particular?
- Does Linda's invitation/request rise to the level of a prohibited solicitation under the ethics rules?

What if Linda utilizes the option in LinkedIn to import her e-mail address books and LinkedIn automatically sends batch invitations to everyone? Some recipients do not accept the initial networking invitation, so LinkedIn automatically sends two follow up reminders.
3. Avoid Making Prohibited Solicitations

- A Facebook “friend request” or LinkedIn “invitation” that offers to provide legal services to a non-lawyer with whom the sending lawyer does not have an existing relationship may be a prohibited solicitation.
- Each automatic invitation and reminder could constitute a separate violation of the rules prohibiting solicitations.
- RPC 7.3 - Solicitations by a lawyer or a law firm offering to provide legal services and motivated by pecuniary gain are restricted.
- Some limited exceptions for communications to specific people (other lawyers, family members, close personal friends, persons with whom the lawyer has a prior professional relationship, and/or persons who have specifically requested information from the lawyer).

Responding to Negative Reviews

July 2015: Client retains Linda, the lawyer, to represent him in an uncontested divorce and pays Linda $900, including $150 for the filing fee. Client hears nothing from Linda for 6 weeks.

October 2015: After multiple attempts to contact Linda, the Client finally reaches Linda again. At this point, Linda informs the Client that she lost the paperwork that the Client had given her in July. Linda and the Client meet again and Linda finally begins to draft pleadings for the divorce.

October - early November 2015: The initial drafts of the pleadings have multiple errors, and Linda and the Client exchange several drafts and communicate via email about the status of the case. There are no more communications between Client and Linda for over 4 months.

March 18, 2016: Client reports to Linda that his wife would not sign the divorce papers without changes.

April 2016: Both the Client and wife sign the papers.

A disagreement develops about the fees and expenses of the divorce. Linda requests an additional $185 from Client for certain travel expenses and the filing fee.
Responding to Negative Reviews

April and Early May 2016: Linda and Client exchange several emails about the request for additional money.

May 18, 2016: Client informs Linda that he has hired another lawyer to complete his divorce & asks Linda to deliver file to new counsel and to refund $750. Linda replies that she won't release the file unless paid.

Linda eventually refunds $650 to Client, but never delivers file to new counsel, contending that it only contains her "work product." New counsel completes the divorce within 3 months of his engagement.

Client posts negative reviews of Linda on 3 consumer Internet pages.

Linda learns of the negative reviews, and posts a response containing Client's name, employer, how much the Client paid Linda, the county in which the divorce had been filed, and stated that the Client has a boyfriend.

August 2017: Client files a grievance against Linda and Linda says she'll remove the her posting from the Internet. Linda doesn't remove the post until February 2018.

4. Do Not Disclose Privileged or Confidential Information

- The duty to protect privileged and confidential client information extends to current clients (RPC 1.6), former clients (RPC 1.9), and prospective clients (RPC 1.18).
- ABA Formal Opinion 10-457: lawyers must obtain client consent before posting information about clients on websites.
- In RE: Skinner, 758 S.E.2d 788 (GA. 2014)
- Be careful with geo-tagging which may inadvertently reveal your geographic location when traveling on confidential client business.
Judy the Judge sends a LinkedIn connection request or a Facebook friend request to Linda the Lawyer?

- Can Linda the Lawyer accept the request?
- Is Judy the Judge allowed to send such a request?

5. Do Not Assume You Can “Friend” Judges

- ABA Formal Opinion 462: A Judge may participate in online social networking, but in doing so must comply with the Code of Judicial Conduct and consider his/her ethical obligations on a case-by-case (and connection-by-connection) basis.
- Georgia Bar Rules 3.5 (ex-parte communication, Impartiality) & 8.4 (Misconduct)
Linda is currently representing an opposing party in litigation against Coca-Cola.

1) Linda the lawyer sends a Facebook friend request to the CEO of Coca-Cola to gain access to their Facebook Content.
2) Linda views the CEO of Coca-Cola's public blog posts and Tweets.

Are both of these methods of discovery ethical?

6. Avoid Communications with Represented Parties

- 1) High-ranking employees of a corporation should be treated as represented parties and therefore, a lawyer should not send a Facebook friend request to those employees to gain access to their Facebook content.
- 2) Viewing publicly accessible social media content that does not precipitate communication with a represented party is generally considered fair game.
- RPC 4.2: A Lawyer is forbidden from communicating with a person whom the lawyer knows to be represented by counsel without first obtaining consent from the represented person's lawyer.
- RPC 8.4(a): This prohibition extends to any agents (secretaries, paralegals, private investigators, etc.) who may act on the lawyer's behalf.
Linda the lawyer circumvents Wanda the witness's privacy settings on Facebook to obtain information which may be useful in her current litigation matter. Wanda is a third-party witness.

### 7. Communications with Unrepresented Third Parties

- A lawyer may not attempt to gain access to non-public social media content by using subterfuge, trickery, dishonesty, deception, pretext, false pretenses, or an alias.
- RPC 3.4 (Fairness to Opposing Party and Counsel)
- RPC 4.1 (Truthfulness in Statements to Others)
- RPC 4.3 (Dealing with Unrepresented Person)
- RPC 4.4 (Respect for Rights of Third Persons)
- RPC 8.4 (Misconduct)
Linda the Lawyer sees a Twitter post asking about the legality of specific provisions in a Lease Agreement.

Linda tweets her legal opinion about the specific matter.

Has Linda created an attorney-client relationship with the owner of that Twitter account?

Is the analysis different if Linda has responded to the question posted on a message board or on her law firm's Facebook page?

8. Inadvertently Creating Attorney-Client Relationships

- ABA Formal Opinion 10-457: By enabling communications between prospective clients and lawyers, websites may give rise to inadvertent lawyer-client relationships and trigger ethical obligations to prospective clients under RPC 1.18.
- Beware when the objective purpose of the communication from the consumer's perspective is to consult with the lawyer about the possibility of forming a lawyer-client relationship regarding a specific matter or legal need.
- Use of appropriate disclaimers may help so long as lawyer's online conduct is consistent with the disclaimer.
9. Unauthorized Practice Violations

A public social media post knows no geographic boundaries.

RPC 5.5: Lawyers are not permitted to practice law in jurisdictions where they are not admitted to practice.

RPC 8.5: A Lawyer may be disciplined in any jurisdiction where he or she is admitted to practice (irrespective of where the conduct as issue takes place) or in any jurisdiction where he/she provides or offers to provide legal services.

Linda the Lawyer receives an email alert this afternoon notifying her that an Internet acquaintance she’s never met or spoken to has endorsed her for real estate closings on LinkedIn.

* Does this endorsement violate legal ethics?
10. Tread Cautiously with Testimonials, Endorsements, and Ratings

- ABA Model Rule 7.1, a Lawyer is not to make any false or misleading claims about his or her services.
- A lawyer should not permit an endorsement to remain on the lawyer’s LinkedIn profile that the lawyer knows to be misleading, even if someone else posted the endorsement.
- Lawyers should remove endorsements they believe are false or misleading. LinkedIn provides the ability to “hide” endorsements others have given you.

Assume Frank actually knows Linda’s professional abilities because he works with her at the litigation law firm.

Is it permissible for Linda to accept an endorsement from Frank for litigation skills on LinkedIn?
10. Tread Cautiously with Testimonials, Endorsements, and Ratings

- Truthful endorsements are OK.
- Be careful if the endorsement is by a client or is a paid testimonial.

What if Linda the Lawyer offers to endorse her co-worker Frank on LinkedIn only if Frank endorses her or if Linda accepts an endorsement on the condition that she offer a reciprocal endorsement?
Rule 7.2: Advertising

Information About Legal Services

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Resources on Rules in Georgia

- Georgia Bar Association Website - www.qabar.org & Phone: (404) 527-8700
- Georgia Formal Advisory Opinions
- Georgia Rules of Professional Conduct
- Georgia Supreme Court - court rules, regulations, and opinions
Brands, YouTube Stars (Digitally Native Talent), & Advertisers

- Deals between big brands & viral online video performers is a business estimated to reach $10 billion in 2020.
- Most advertising deals with YouTube or Instagram starts now include a "morality clause."
- FTC requires creators to disclose when a piece of content is paid for. #ad

SOURCES

"Neither Friend Nor Follower: Ethical Boundaries on the Lawyer's Use of Social Media" by Robert Keeling, Tami Weerasingha-Cote & John Paul Schnappen-Casteras

"10 Tips for Avoiding Ethical Lapses When Using Social Media" by Christina Vassiliou Harvey, Mac R. McCoy, and Brook Sneath

"Ethical Obligations for Attorneys Using Social Media" by Douglas Chandler

"Do LinkedIn endorsements violated legal ethics rules?" by Rachel Zahorsky

"The Ethics of Accepting LinkedIn Endorsements" by Andrew Perlman

Comment on Rule 7.2, American Bar Association

"Inside the Mating Rituals of Brands and Online Stars" by Daisuke Wakahayashi
Thank you!

Any Questions?
Social Media – Show Me How This Stuff Really Works

Presented By:
Toby Bloomberg
Bloomberg Marketing
Atlanta, GA
SHOW ME HOW THIS STUFF REALLY WORKS!

SOCIAL MEDIA AND THE LAW

Changes at Warp Speed

ICLE: State Bar Series
9-14-18

#SMLAW

Toby Bloomberg @tobydiva
Bloomberg Marketing
My social media story

@tobydiva

Helping people in organizations join the digital conversations and not get blown-up.

What We Do In Buzz Words

Social media as a catalyst to build stronger, authentic, results-oriented, integrated, accountable, brand-to-audience relationships.
Our Game Plan

Introductions
Perception versus Reality
Success
3 C’s of Social Media Marketing
  Channels
  Content
  Collaboration
At The End of The Day
Perceptions of Social Media Marketing
Realities of Social Media Marketing
YOU Define Success

UNIQUE

SERVICES

THOUGHT LEADERSHIP

RELATIONSHIPS/LISTEN
YOU Control Your Social Media Assets
YOU Control Your Resources

TIME

MONEY

PEOPLE
Deconstruct Social Media Marketing
3 C’s of Social Media Marketing

People do business with people they know, like and trust.
People do business with people they know, like and trust.

Similar - Social Media Channels Networks Include:
1. Bio
2. Avatar/Handle
3. Posts – multiple media
4. Share/Engage
5. Ads
6. **Rent not own**

Different
1. Community norms/culture
2. Format
CHAPTER Basics:

Branding Opportunities

Cover Photo

Avatar/Photo

Saper Law Offices, LLC
August 13 at 11:01 AM ·

https://www.facebook.com/SaperLawOffices/
CHANNEL Basics: Facebook

Branding Opportunities

Cover Photo - Video

https://www.facebook.com/AndrewCherinAttorneyAtLaw/
CHANNEL Basics:

Branding Opportunities

Avatar/Photo

Cover Photo

Twitter

BIO

SaperLaw

@SaperLaw

Intellectual Property, Social Media, and Business Attorney representing creative entrepreneurs and innovative business organizations. bit.ly/2XLw9Jt

Chibugo

saperlaw.com

Joined October 2008
CHANNEL Basics: Twitter

Branding Opportunities

Avatar/Photo

Cover Photo

BIO

Dr Tunde Okeawle MBE
@UrbanLawyer

Thought Leader, Barrister and Founding Partner of Urban Law
@UrbanLawyer/TundeBarrister

Barrister & Chambers @TundeOkeawle

Tweets	23.3K Following	3.7K Followers	23.6K Likes	15.6K

Who to follow

Refresh - View

Follow

Urban Lawyers BLU

Pennsylvania

xvandxmemories.59

who/are/you/back/again

Tunde Okeawle MBE (@UrbanLawyer)

Who to follow:

#Barrister

CHANNEL Basics: LinkedIn

Personal Branding Opportunities

Avatar/Photo

Daliah Saper
Intellectual Property, Media, Entertainment, and Business Attorney at Saper Law; Adjunct Law Professor at Loyola

Cover Photo

Nationally Recognized
Saper Law is an intellectual property, social media, and business law firm with decades of experience and success.

LinkedIn Basics:

- Personal
- Channel
- Basics
CHANNEL Basics: LinkedIn Company

Branding Opportunities

Avatar/Photo
Logo

Cover Photo

https://www.linkedin.com/company/saper-law-offices-llc/
CHANNEL Basics: Instagram

Branding Opportunities

Avatar/Photo

https://www.instagram.com/p/BmgC0_HAwga/?taken-by=saperlaw
In response to a question I sent out on what other people suggest for DUI laws and protection measures, one reader stated that US should follow Norway’s laws for drinking and driving to prevent drunk driving car accidents, which often leave victims extremely injured or dead. I looked into the laws for Norway and they state that the legal drinking limit is about .02 BAC compared to the US of .08 BAC.

Norway is dead serious about stopping drunk driving and preventing senseless deaths and injuries related to car accidents. Norway’s .02 BAC level basically means that you cannot even have one drink and drive, otherwise you could potentially lose your drivers license for one year, lose one month’s salary, and go to jail. If your BAC is between .10-.15 you would go to jail for a minimum of 21 days in addition to losing your license for a year.

The problem is the US with .08 BAC limits is that people can have one drink and sometimes two drinks and blow below a .08 BAC, even though they may exhibit signs of sloe reaction times and poor motor functions, diminishing their ability to drive. In the US, people believe they are good to drive after drinking because it was just a couple drinks and they feel fine. In Norway, people drink and they do not risk driving because they have had a drink and know they could get a DUI and lose their license even though they are perfectly capable of driving, in American standards of thinking.
CHANNEL Basics: Podcast

Your Show: Branding Opportunities

Lawyer 2 Lawyer

Dahlia Saper interviewed by Legal Talk Network

The podcast of Dahlia's interview on Lawyer 2 Lawyer, a show on the Legal Talk Network, is now available online. Details below. Click on the links to listen!

Title: Legal Issues Surrounding Social Media

Description: The abuse of social media has attracted businesses, law firms, and the general public, but with the popularity of social media in and out of the workplace, comes potential legal issues. Attorney and co-host J. Craig Williams welcomes Dahlia Saper, Principal at Saper Law Offices and Attorney Bradley S. Shear, Founder and Managing Partner of the Law Office of Bradley S. Shear, LLC, to take a look at legal issues such as defamation, privacy issues, employee use of social media and how firms and businesses can protect themselves from a potential lawsuit.


MP3 Link:

https://legaltalknetwork.com/podcasts/lawyer-2-lawyer/
CHANNEL Basics: Branding Opportunities

Video (YouTube)

https://www.youtube.com/user/whitecaseglobal
3 C’s of Social Media Marketing

People do business with people they know, like and trust.

1. Facebook
2. Twitter
3. LinkedIn
4. YouTube
5. Instagram
6. Podcasts
7. Blogs
CONTENTS - a surprise

Best Practice Elements of a Post

- Headline
- Copy
- Call to action
- Visual
- Link
- Hash tag

---

Squire Patton Boggs
© SPB_Global

Squire Patton Boggs is a full service global law firm providing insight at the point where law, business and government meet.

@apotpattonboggs.com
CONTENT - a surprise

YouTube Information – Personality – Culture - Story

https://www.youtube.com/user/HoganLovells
CONTENT - a surprise

Gift

https://www.linkedin.com/in/andrew-s-bosin-saas-lawyer-57b49034/
Chapter 6

Legal Issues Faced By Pre-A Round SaaS Startups

If you want to be a successful entrepreneur, you need to think through and design your legal structure. You will need to decide whether your business is a C Corp or an S Corp. This decision is not easy, and it will impact your business's structure. You will need to consult with your accountant to make sure that your structure is the right one for your business. If you are unsure about how much tax you will be paying, it is best to talk to your accountant before you make a decision.

Legal Issues:

1. Intellectual Property: You will need to protect your intellectual property by registering your trademarks, copyrights, and patents. You will also need to consider whether you need to license your technology to other companies.

2. Contracts: You will need to have a strong contract with your customers and employees. You will need to consider whether you need to negotiate a distribution agreement or a license agreement.

3. Employment: You will need to have a strong employment agreement with your employees. You will need to consider whether you need to negotiate a non-compete agreement or a non-disclosure agreement.

Legal Issues: A complete guide to the legal requirements for SaaS startups.

https://www.linkedin.com/in/andrew-s-bosin-saas-lawyer-57b49034/
CONTENT: a surprise Gift

Branding Opportunities

https://www.instagram.com/bk_in_bk/
CONTENT: a surprise Gift

Branding Opportunities

https://www.instagram.com/kennethstephens/
CONTENT a surprise Gift

Create

Curate
18 Content Ideas

1. Now I Care Content
2. Pinned post
3. Instagram & Twitter – do not link
4. Be generous
5. Say thanks
6. Visuals
7. Multiple formats
8. Original or curated
9. Repurpose
10. Your story- your values – your culture
11. Consistent
12. #Hast Tag
13. Link to blog, website
14. Tone
15. Live tweets, posts
16. Live video – Facebook, Twitter, IG, LinkedIn
17. Interviews
18. Tweet Chats
COLLABORATION aka Sharing

Sharing is the power behind social media
COLLABORATION aka Sharing

Sharing is the power behind social media
COLLABORATION aka sharing

Without interactions it’s one-way messaging. Why Bother?
At The End Of The Day

Business Communications
Creating Trusted Relationships

The Man in the Chair Ad:
Yesterday and Today

With thanks to McGraw Hill, whose agency, Fuller Smith and Ross, created this iconic and still relevant ad in 1950.

http://www.youtube.com/watch?v=nXG7zYWKHGU
Forget your perfect offering
There is a crack, a crack in everything
That's how the light gets in.

Leonard Cohen
Resources
## Getting Started

<table>
<thead>
<tr>
<th>Questions</th>
<th>Your Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>How do you define success?</td>
<td></td>
</tr>
<tr>
<td>What is your area expertise?</td>
<td></td>
</tr>
<tr>
<td>Who is your audience/s? Who will you follow/friend?</td>
<td></td>
</tr>
<tr>
<td>What social networks will best drive results?</td>
<td></td>
</tr>
<tr>
<td>How will you add value?</td>
<td></td>
</tr>
<tr>
<td>Who will contribute to content creation?</td>
<td></td>
</tr>
<tr>
<td>How often will you post and when?</td>
<td></td>
</tr>
<tr>
<td>What type of content will you focus on media posts, topic curation, your creation?</td>
<td></td>
</tr>
</tbody>
</table>
## Getting Started: On Your Terms

<table>
<thead>
<tr>
<th>Social Media Platform</th>
<th>Who will you friend, follow, connect, etc.*</th>
<th>Personal Sharing Scale of 1-5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blog</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facebook</td>
<td></td>
<td></td>
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<tr>
<td>Twitter</td>
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<td></td>
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<tr>
<td>Podcast</td>
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<td>Video</td>
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<tr>
<td>Google+</td>
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<td>LinkedIn</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pinterest</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Colleagues, clients, friends, vendors, media, etc.*

** Scale of 1-5 where 1 means no personal sharing, 5 means a lot.
### Figure 2: Quantify And Assign Value To The Key Benefits Of Blogging

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Increased brand visibility</strong></td>
<td><strong>Blog traffic</strong></td>
<td><strong>Cost of advertising in similar content channel</strong></td>
</tr>
<tr>
<td></td>
<td>Number of unique visitors, page views</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Press mentions</strong></td>
<td><strong>Cost of advertising in same publication</strong></td>
</tr>
<tr>
<td></td>
<td>Number of blog-driven stories by offline press, Web media, or high-profile bloggers</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Search engine positioning</strong></td>
<td><strong>Cost of search engine optimization to improve ranking</strong></td>
</tr>
<tr>
<td></td>
<td>Percentage of search results landing in the first three search pages driven by blog</td>
<td><strong>Cost of paid search for blog-driven keywords</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Word of mouth</strong></td>
<td><strong>Cost of hiring a buzz agent</strong></td>
</tr>
<tr>
<td></td>
<td>Number of blog posts in a Technorati search</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of people commenting on blog</td>
<td></td>
</tr>
<tr>
<td>Savings on customer insight</td>
<td><strong>Number of times a year that blog comments provide useful business insight</strong></td>
<td><strong>Cost of a focus group or other market research tactic</strong></td>
</tr>
<tr>
<td><strong>Reduced impact from negative user-generated content (UGC)</strong></td>
<td><strong>Number of press stories that mention UGC</strong></td>
<td><strong>Historical change in sales associated with change in N Promoter-type metric</strong></td>
</tr>
<tr>
<td></td>
<td>Change in Net Promoter Score or other attitude metric post-UGC</td>
<td></td>
</tr>
<tr>
<td><strong>Increased sales efficiency</strong></td>
<td><strong>Number of clients/prospects who read the blog, number of salespeople who read blog</strong></td>
<td><strong>Decrease in the cost of sales</strong></td>
</tr>
</tbody>
</table>
Examples of Objectives

- Increase sales
- Build brand awareness
- Promote WOM
- Product feedback & development
- Launch products
- Increase loyalty/retention
- Share information
- Product/usage training
- Improve customer service
- Lower support costs
- Search engine lift
- Main stream media attention
- Promote product usage
- Emotional connection with customers
- Build relationships
Next Steps

Reconstruct
Continue the Conversation

Toby Bloomberg
toby@bloombergmarketing.com

@tobydiva
www.bloombergmarketing.com
linkedin.com/in/tobybloomberg
Appendix
<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carol V. Clark</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Harold T. Daniel, Jr.</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Laverne Lewis Gaskins</td>
<td>Member</td>
<td>2021</td>
</tr>
<tr>
<td>Allegra J. Lawrence</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>C. James McCallar, Jr.</td>
<td>Member</td>
<td>2021</td>
</tr>
<tr>
<td>Jennifer Campbell Mock</td>
<td>Member</td>
<td>2020</td>
</tr>
<tr>
<td>Brian DeVoe Rogers</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Kenneth L. Shigley</td>
<td>Member</td>
<td>2020</td>
</tr>
<tr>
<td>A. James Elliott</td>
<td>Emory University</td>
<td>2019</td>
</tr>
<tr>
<td>Buddy M. Mears</td>
<td>John Marshall</td>
<td>2019</td>
</tr>
<tr>
<td>Dean Daisy Hurst Floyd</td>
<td>Mercer University</td>
<td>2019</td>
</tr>
<tr>
<td>Cassady Vaughn Brewer</td>
<td>Georgia State University</td>
<td>2019</td>
</tr>
<tr>
<td>Carol Ellis Morgan</td>
<td>University of Georgia</td>
<td>2019</td>
</tr>
<tr>
<td>Hon. Harold David Melton</td>
<td>Liaison</td>
<td>2019</td>
</tr>
<tr>
<td>Jeffrey Reese Davis</td>
<td>Staff Liaison</td>
<td>2019</td>
</tr>
<tr>
<td>Tangela Sarita King</td>
<td>Staff Liaison</td>
<td>2019</td>
</tr>
</tbody>
</table>
GEORGIA MANDATORY CLE FACT SHEET

Every “active” attorney in Georgia must attend 12 “approved” CLE hours of instruction annually, with one of the CLE hours being in the area of legal ethics and one of the CLE hours being in the area of professionalism. Furthermore, any attorney who appears as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case in 1990 or in any subsequent calendar year, must complete for such year a minimum of three hours of continuing legal education activity in the area of trial practice. These trial practice hours are included in, and not in addition to, the 12 hour requirement. ICLE is an “accredited” provider of “approved” CLE instruction.

Excess creditable CLE hours (i.e., over 12) earned in one CY may be carried over into the next succeeding CY. Excess ethics and professionalism credits may be carried over for two years. Excess trial practice hours may be carried over for one year.

A portion of your ICLE name tag is your ATTENDANCE CONFIRMATION which indicates the program name, date, amount paid, CLE hours (including ethics, professionalism and trial practice, if any) and should be retained for your personal CLE and tax records. DO NOT SEND THIS CARD TO THE COMMISSION!

ICLE will electronically transmit computerized CLE attendance records directly into the Official State Bar Membership computer records for recording on the attendee’s Bar record. Attendees at ICLE programs need do nothing more as their attendance will be recorded in their Bar record.

Should you need CLE credit in a state other than Georgia, please inquire as to the procedure at the registration desk. ICLE does not guarantee credit in any state other than Georgia.

If you have any questions concerning attendance credit at ICLE seminars, please call: 678-529-6688