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DIGITAL IS FOREVER AND THE INTERNET NEVER FORGETS! (ETHICS)

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Digital is Forever & The Internet Never Forgets!

Legal Ethics & Professionalism in Social Media

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I. INTRODUCTION

A. Legal Ethics

Legal ethics concerns the standard of professional conduct and responsibility required of a lawyer. It includes courses on professional responsibility and malpractice. . . . Legal ethics sets forth the standards of conduct required of a lawyer.¹

B. Social Media

“Social media” are “forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.”²

According to a survey conducted in September 2014 by the Pew Research Center:

- Facebook: 71% of adult internet users and 58% of the entire adult population
- Twitter: 23% of adult internet users and 19% of the entire adult population
- LinkedIn: 28% of adult internet users and 23% of the entire adult population

The American Bar Association reported recently in its Legal Technology Survey that about 62% of law firms maintain social networks. In fact, 78% of individual lawyers maintain one or more

¹ Rule XXX(3)(c), Rules of the Supreme Court of Louisiana, Rules for Continuing Legal Education, CLE Requirement.

² Merriam-Webster.

social networks, and spend on average 1.7 hours per week using these sites for professional purposes.³

II. LEGAL ETHICS CONSIDERATIONS FOR SOCIAL MEDIA CONDUCT

A. The Client-Lawyer Relationship

1. *Competency*

Rule of Professional Conduct 1.1(a): A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.1, Comment 8: to maintain the requisite knowledge and skill, a lawyer must keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Wisdom (and common sense) from the Florida Bar:

- If you do not know much about the social media site, educate yourself before joining.
- Responsible participation in social media is time-consuming. Keeping abreast of one social media site may be all that your schedule will allow.⁴

2. *Confidentiality*

Rule of Professional Conduct 1.6(a): a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Rule of Professional Conduct 1.6(c): A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule of Professional Conduct 1.9(c)(2): A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation except as these Rules would permit or require with respect to a client.

The New York State Bar Association has opined that a lawyer may provide general answers to legal questions asked on social media. However, the opinion states that a lawyer cannot provide specific legal advice in this manner, as the responsive communications may be found to have

³ American Bar Association, 2014 Legal Technology Survey Report, *available at* http://www.americanbar.org/groups/departments_offices/legal_technology_resources/publications.html.

⁴ “The Florida Bar Best Practices for Effective Electronic Communication”, The Florida Bar Association (Aug. 7, 2015).

created an attorney-client relationship and that advice may impermissibly disclose information protected by the attorney-client privilege.⁵

In Formal Opinion 2014-300, the Pennsylvania Bar Association Ethics Committee stated that Rule 1.6 prohibits an attorney from revealing confidential information while posting celebratory statements about a successful matter. Relatedly, in Formal Opinion 2014-200, the Committee opined that lawyers may not reveal client confidential information in response to a negative online review. Moreover, the Committee stated that “while there are certain circumstances that would allow a lawyer to reveal confidential client information, a negative online client review is not a circumstance that invokes the self-defense exception.” This opinion provided a suggested response for a lawyer replying to negative online reviews:

A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post represents a fair and accurate picture of events.⁶

In real life:

- *In re: Tsamis*, Comm. File No. 2013PR00095 (Ill. 2013). The Hearing Board of the Illinois Attorney Registration and Disciplinary Commission reprimanded an attorney for responding to a negative client review on the lawyer referral website AVVO in which she mentioned confidential client information. Ms. Tsamis’ former client had been fired from a job as a flight attendant based on allegations that he assaulted a colleague during a flight. He claimed in the review that Ms. Tsamis accepted a fee even though she should have known he had a losing case. Ms. Tsamis responded: “I dislike it very much when my clients lose, but I cannot invent positive facts for clients when they are not there. I feel badly for him, but his own actions in beating up a female co-worker are what caused the consequences he is now so upset about.”
- *In re: Peshek*, No. M.R. 23794 (Ill. 2010). The Supreme Court of Illinois suspended an attorney for 60 days for writing about confidential client information and client proceedings on her personal blog. The attorney, a (now former) assistant public defender, revealed information that made her clients easily identifiable, sometimes even using their first names, derivatives thereof, or their jail identification numbers. Ms. Peshek’s blog posts revealed, among other things, that one of her clients failed to inform the court at sentencing that he was taking methadone, which Ms. Peshek failed to rectify with the court. She complained about one judge being “clueless” and another being an “a—hole.” She also wrote that one client was “taking the rap for his drug-dealing dirt bag of an older brother.” The blog was not password protected.

⁵ “Social Media Ethics Guidelines”, New York State Bar Association (update June 9, 2015).

⁶ See also “Social Media Ethics Guidelines”, New York State Bar Association (updated June 9, 2015).

B. Advocate

1. Advising Clients on their Social Media

Rule of Professional Conduct 3.4(a): A lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

It is the opinion of the Pennsylvania Bar Association Ethics Committee that, consistent with Rule 3.4(a), a lawyer may not instruct a client to alter, destroy, or conceal any relevant information, regardless whether that information is in paper or digital form. A lawyer may, however, instruct a client to delete information that may be damaging from the client's social media page, provided that the conduct does not constitute spoliation or is otherwise illegal, but must take appropriate action to preserve the information in the event it is discoverable or becomes relevant to the client's matter.⁷ The Committee recognized that the common practice is simply to advise client to refrain from posting any information relevant to a case on any social media, and to refrain from using the same until the case concludes.⁸

In reaching this recommendation, the Pennsylvania Bar Association Ethics Committee relied largely on Opinion 2014-5 issued by the Philadelphia Bar Association Professional Guidance Committee, which concluded that a lawyer may advise a client to change the privacy setting on the client's social media page but may not instruct a client to destroy any relevant content on the page. Additionally, a lawyer must respond to a discovery request with any relevant social media content posted by the client. The Committee found that changing a client's profile to "private" simply restricts access to the content of the page but does not completely prevent the opposing party from accessing the information.

Likewise, in New York, lawyers are instructed that they may advise a client as to what content may be maintained or made private on a social media account, as well as to what content may be "taken down" or removed, whether posted by the client or someone else, so long as there is no violation of law relating to the preservation of information. Unless an appropriate record of the social media information or data is preserved, a party or nonparty, when appropriate, may not delete information from a social media profile that is subject to a duty to preserve.⁹

The West Virginia Lawyer Disciplinary Board has provided nearly identical guidance on these issues.¹⁰

In real life:

- *In the Matter of Matthew B. Murray*, VSB Nos. 11-070-088405 and 11-070-088422 (June 9, 2013). The Virginia State Bar Disciplinary Board suspended an attorney for five years for (1) instructing his client to delete certain damaging photographs from his Facebook account, (2) withholding the photographs from opposing counsel, and (3) withholding

⁷ See also Formal Ethics Opinion 5, North Carolina State Bar (2014).

⁸ Formal Opinion 2014-300, "Ethical Obligations for Attorneys Using Social Media", Pennsylvania Bar Association.

⁹ "Social Media Ethics Guidelines", New York State Bar Association (updated June 9, 2015).

¹⁰ L.E.O. No. 2015-02, "Social Media and Attorneys", West Virginia Lawyer Disciplinary Board.

from the trial court the emails discussing the plan to delete the information from the client's Facebook page. In addition, the trial court imposed hefty sanctions to compensate opposing counsel for their legal fees.

2. *Connecting with Judges*

Rule of Professional Conduct 3.5(a): A lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

Rule of Professional Conduct 3.5(b): A lawyer shall not communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order.

The Colorado Bar Association Ethics Committee believes that lawyers may participate on social media networking sites with judges, seeking permission to view restricted portions of a judge's social media profile, or becoming "friends" with judges through social media during any period in which the lawyer is not appearing in a legal matter over which the judge presides. However, a lawyer generally should not send a "friend request" to a judge while the judge is presiding over a case in which the lawyer is appearing as counsel or a party. If the lawyer and the judge are already "friends" and subsequently learn that the lawyer is to appear in a matter before the judge, the Committee does not believe it necessary to "un-friend" one another; rather, the Committee advises that the lawyer must be cautious about what they post on any social media network of which they know a judge is a member while the legal matter is pending before that judge.

Several other judicial ethics committees have addressed this issue, concluding that judges may utilize social networking sites, but must do so cautiously. These opinions are instructive to lawyers, to the extent Rule 3.5 also requires lawyers to consider the interplay between a lawyer's actions and a judge's obligations and authority under the Code of Judicial Conduct:

- While judges may participate in social media, they must do so with caution and with the expectation that their use of the media likely will be scrutinized [for] various reasons by others. . . . In short, judges must decide whether the benefit and utility of participating in social media justify the attendant risks.¹¹
- While they must be circumspect in all of their activities, and sensitive to the impressions such activities may create, judges may and do continue to socialize with attorneys and others.¹²
- The mere fact of a social connection does not create a conflict, but "it is the nature of the [social] interaction that should govern the analysis, not the medium in which it takes place."¹³

¹¹ Advisory Opinion No. 12-01, Tennessee Judicial Ethics Committee. See also Formal Judicial Ethics Opinion JE-119, Ethics Committee of the Kentucky Judiciary (" . . . the Committee struggled with this issue, and whether the answer should be a 'Qualified Yes' or 'Qualified No.' . . . the reality that Kentucky judges are elected and should not be isolated from the community in which they serve tipped the Committee's decision.")

¹² Opinion 2011-6, Massachusetts Judicial Ethics Committee.

¹³ Opinion No. 2012-07, Maryland Judicial Ethics Committee, citing Opinion 66, California Judicial Ethics Committee.

- A judge may be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge. As with any action a judge takes, a judge’s participation on a social networking site must be done carefully in order to comply with the ethical rules in the Ohio Code of Judicial Conduct. To ensure compliance with these rules, a judge should be aware of the contents of his or her social networking page, be familiar with social networking site policies and privacy controls, and be prudent in all interactions on a social networking site.¹⁴

The American Bar Association (“ABA”) Standing Committee on Ethics and Professional Responsibility has reached a similar conclusion, finding that “as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge’s independence, integrity, or impartiality, or create an appearance of impropriety.”¹⁵

On the other hand, the Florida Judicial Ethics Advisory Committee has found that there should be no social media friendships between a lawyer and a judge he or she may appear before.¹⁶

In real life:

- A defendant who pleaded guilty to assaulting his girlfriend in Texas sought a new trial on the basis that the judge in his case did not disclose a Facebook connection with the girlfriend’s father. Prior to the plea agreement, the father sent the judge a Facebook message asking that the judge go easy on the defendant. The judge acknowledged that he received the message, but testified that he only knew the sender because they ran for office at the same time. He responded to the message, advising that the communication violated ex parte communication rules. The Fifth District of Texas Court of Appeals affirmed the sentencing judgment, noting the ABA’s Formal Opinion 462 and finding that the contact did not cause the judge to abandon his judicial role of impartiality.¹⁷

3. *Connecting with Jurors*

Rule of Professional Conduct 3.5(a): A lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

Rule of Professional Conduct 3.5(b): A lawyer shall not communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order.

The ABA Standing Committee on Ethics and Professional Responsibility has addressed three situations concerning lawyer review of the Internet footprints of jurors or potential jurors:¹⁸

¹⁴ Opinion 2010-7, The Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline. See also Advisory Opinion 08-176, New York Advisory Committee on Judicial Ethics.

¹⁵ Formal Opinion 462, “Judge’s Use of Electronic Social Networking Media”, American Bar Association (Feb. 21, 2013).

¹⁶ Opinion No. 2010-6, Florida Supreme Court Judicial Ethics Advisory Committee. In 2013, the Florida Supreme Court declined to answer the Fourth District Court of Appeal’s certified question of whether a presiding judge in a criminal case could be ordered to recuse himself when he is Facebook friends with the prosecutor assigned to a case before him. Without a definitive Florida Supreme Court ruling, the debate has, and will likely, continue.

¹⁷ *Youkers v. State*, 400 S.W.3d 200 (Tex. App. –Dallas 2013, no writ).

¹⁸ Formal Opinion 466, American Bar Association (Apr. 23, 2014).

- The “mere act of observing” a juror’s social media accounts or website without that juror’s knowledge is not improper ex parte conduct.
- Asking a juror for access to his or her social media is improper.
- When a juror finds out that a lawyer has viewed his or her publicly available social media account or website through a notification feature, the social media provider—not the lawyer—is communicating with the juror, which is not an improper ex parte communication.

New York and Pennsylvania have followed the lead of the ABA, concluding that an attorney may access the public portion of a juror’s social networking website but may not attempt or request to access the private portions of the website, which would constitute an ex parte communication prohibited under Rule 3.5(b).¹⁹

4. *Trial Publicity*

Rule of Professional Conduct 3.6(a): A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

In Formal Opinion 2014-300, the Pennsylvania Bar Association Ethics Committee found that Rule 3.6 also prohibits lawyers from updating a social media page with information relevant to an ongoing adjudication.

In real life:

- *In re: Schmeltz*, No. 15 MC 583 (N.D. Ill. 2015). A committee of federal judges sanctioned a partner at a Chicago law firm for tweeting photos of evidence while observing a federal trial, in violation of the courthouse’s ban on photography and cell phone use.
- A senior judge was reprimanded by the Minnesota Board on Judicial Standards for posting on Facebook about trials he was overseeing. The Board found that the posts cast doubt on his impartiality and violated rules of judicial conduct. At least one mistrial resulted from the judge’s posts.²⁰
- A Texas judge also posted on her Facebook account about trials she was overseeing and was publicly admonished by the state Commission on Judicial Conduct. In particular, the panel noted that the judge had referenced material that was not yet in evidence.²¹
- The Missouri Court of Appeals, Eastern District, held that a prosecutor’s public twitter comments—even where arguably inappropriate and improper under the Rules of

¹⁹ “Social Media Ethics Guidelines”, New York State Bar Association (updated June 9, 2015); Formal Opinion 2014-300, “Ethical Obligations for Attorneys Using Social Media”, Pennsylvania Bar Association.

²⁰ Judge Edward W. Bearse, Amended Public Reprimand, Minnesota Board on Judicial Standards, No. 15-17 (Nov. 24, 2015).

²¹ Hon. Michelle Slaughter, Public Admonition and Order of Additional Education, Texas State Commission on Judicial Conduct, CJC No. 14-0820-DI & 14-0838-DI (April 20, 2015).

Professional Conduct—did not justify reversal of a verdict when there is no evidence that the jury is aware of or influenced by those comments.²²

- In 2012, (now former) New Orleans prosecutor Jan Mann was demoted after admitting that she posted anonymous comments on a newspaper website criticizing a landfill operator whose business was the subject of a federal probe.

C. Transactions with Persons other than Clients

I. *Connecting with Unrepresented Parties or Witnesses*

Rule of Professional Conduct 4.3: In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not 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 a matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The various bar association ethics committees that have addressed this issue appear to agree generally that contact with an unrepresented party through social media is permissible, as long as an attorney does not use deception to gain access to information on an unrepresented party’s personal website that would otherwise be private or unavailable to the public. In particular, these committees have concluded that a lawyer must use his actual name when requesting such access.²³

The Philadelphia Bar Association Professional Guidance Committee, the Colorado Bar Association Ethics Committee, and the Florida Bar Association have also concluded that an attorney may not utilize the assistance of a third party to contact an unrepresented party and request access to that party’s personal website.²⁴

The Philadelphia, San Diego and New Hampshire Committees further require the attorney to state the purpose of the request.²⁵ The West Virginia Lawyer Disciplinary Board and the Pennsylvania Bar Association have also espoused this requirement, reasoning that an attorney’s omission of this purpose in requesting access might state or imply disinterest and fail to correct any misunderstandings concerning the attorney’s role, in violation of the Rules of Professional Conduct.²⁶ Similarly, in Massachusetts, it is not permissible for the lawyer who is seeking

²² *State v. Polk*, No. ED98946 (Mo. Ct. of Appeals, E.D., Fourth Div.) (Dec. 17, 2013).

²³ *See, e.g.*, Formal Opinion KBA E-434 (2012), Kentucky Bar Association, Ethics Comm.; Formal Opinion 2014-300, “Ethical Obligations for Attorneys Using Social Media”, Pennsylvania Bar Association; Opinion 2012-13/05, New Hampshire Bar Association, Ethics Comm.; Opinion 2013-189, Oregon State Bar, Legal Ethics Comm.

²⁴ Opinion 2009-02, Philadelphia Bar Association, Prof’l Guidance Comm.; Opinion 127 (Sept. 2015), “Use of Social Media for Investigative Purposes”, Colorado Bar Association Ethics Comm.; “The Florida Bar Best Practices for Effective Electronic Communication”, The Florida Bar Association (Aug. 7, 2015).

²⁵ Opinion 2009-02, Philadelphia Bar Association, Prof’l Guidance Comm.; Opinion 2012-13/05, New Hampshire Bar Association, Ethics Comm.; Opinion 2011-2, San Diego County Bar Association Legal Ethics Comm.

²⁶ L.E.O. No. 2015-02, “Social Media and Attorneys”, West Virginia Lawyer Disciplinary Board; Formal Opinion 2014-300, “Ethical Obligations for Attorneys Using Social Media”, Pennsylvania Bar Association.

information about an unrepresented party to request access the party's personal website without disclosing that the requester is the lawyer for a potential plaintiff.²⁷

In Oregon, the lawyer must only provide additional information to identify the lawyer upon request by the unrepresented party. If the lawyer has reason to believe that the party misunderstands the lawyer's role, he must provide additional information to clarify that role or withdraw the request.²⁸ Meanwhile, in New York, an attorney is expressly not required to disclose the reasons for requesting to connect on a social networking site.²⁹

D. Attorney Advertising

The Louisiana Rules of Professional Conduct governing advertising (Rules 7.1-7.10) have undergone numerous revisions in recent years that make it (ironically) difficult to articulate guidelines, particularly with respect to social media.

1. Is Your Social Media Account "Advertising"?

The Rules do not expressly define "advertising"; but Rules 7.1-7.10 do uniformly refer to "communication conveying information about a lawyer, a lawyer's services or a law firm's services." The Rules also apply consistently to such communications when "pecuniary gain" is the "motive" for the communication.³⁰

Rule 7.1(a) sets out the permissible forms of advertising, including "computer-accessed communications." This term is defined and governed by Rule 7.6. Again, it is not clear precisely how social media is defined under the Rules, but a seemingly logical interpretation of Rule 7.6 would include social media as "computer-accessed communications":

Rule of Professional Conduct 7.6(a): For purposes of these Rules, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-access communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on World Wide Web search engine screens and elsewhere.

2. If Social Media is "Advertising," What Rules Apply?

However, if social media is governed by Rule 7.6, we are actually left with even less guidance than the Rules provide, as Rule 7.6(d) was suspended by the Supreme Court in 2009. That provision subjected all computer-accessed communications concerning a lawyer's or law firm's

²⁷ Opinion 2014-5, Massachusetts Bar Association Comm. On Prof. Ethics.

²⁸ Opinion 2013-189, Oregon State Bar, Legal Ethics Comm.

²⁹ Formal Opinion 2010-2, New York City Bar Association; "Social Media Ethics Guidelines", New York State Bar Association (update June 9, 2015).

³⁰ *Cf.* Rule 7.1(c) ("... communications by lawyers on behalf of non-profit organizations that are not motivated by pecuniary gain are not advertisements or unsolicited written communications within the meaning of these Rules.")

services to Rule 7.2 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

For the sake of discussion (and just in case Rule 7.6(d) is ever reinstated), the following are a few social media pitfalls identified by other jurisdictions that Louisiana lawyers should also consider for purposes of compliance with Rule 7.2:

Rule of Professional Conduct 7.2(a): Required Content of Advertisements and Unsolicited Written Communications.

- The name of at least one lawyer responsible for the content AND the location of practice.
 - *Example:* If your “tweets” on Twitter are advertising, is it feasible to comply with this requirement within the character limitation?

Rule of Professional Conduct 7.2(c): Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

- False, misleading or deceptive communications
 - *Example:* A lawyer may accept third-party endorsement, recommendations or on-line reviews posted to the attorney's social media profile as long as the attorney (1) monitors his social networking websites; (2) verifies the accuracy of any information posted; and (3) removes or corrects any inaccurate endorsements.³¹
- Communications that state or imply that the lawyer is “certified”, “board certified”, an “expert” or a “specialist” unless actually certified by the Louisiana Board of Legal Specialization, other organization or state bar.
 - The New York State Bar Association and the Florida Bar Standing Committee on Advertising have determined that lawyers shall not advertise areas of practice under headings in social media platforms that include the terms “specialist” unless the lawyer is certified by the appropriate accrediting body in the particular area. Because certification is specific to individual lawyers, and a law firm cannot be certified, a law firm cannot claim specialization or expertise in an area of practice.
 - *Example:* With respect to skills or practice areas on lawyers' LinkedIn profiles under a heading, such as “Experience” or “Skills,” the New York County Lawyers Association (NYCLA) Professional Ethics Committee determined last year that such information does not constitute a claim to be a specialist under New York's comparable rule of professional conduct.³²

E. Maintaining the Integrity of the Profession

Rule of Professional Conduct 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

More wisdom (and common sense) from the Florida Bar:

³¹ “Social Media Ethics Guidelines”, New York State Bar Association (update June 9, 2015); Formal Opinion 2014-300, “Ethical Obligations for Attorneys Using Social Media”, Pennsylvania Bar Association; L.E.O. No. 2015-02, “Social Media and Attorneys”, West Virginia Lawyer Disciplinary Board.

³² Formal Opinion No. 748, New York County Lawyers' Association (2015).

- The Florida Supreme Court’s Civility Pledge added to the Oath of Admission in 2011 requires lawyers to promise fairness, integrity and civility, not only in court, but also in all written and oral communications. This includes emails, blogs and social medial sites.
 - The Louisiana Lawyer’s Oath: To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications . . .
- There is no expectation of privacy on the Internet. There is no such thing as a true delete of information. Privacy settings are not a safeguard to protect what you post, and information is stored forever.
- In general, if you would be ashamed to see it on a billboard, do not post it.
- Do not disparage or seek to humiliate the judicial system, judges, opposing counsel, clients or others via social media.
- Do not post inappropriate or unprofessional pictures.

In real life:

- *In re: Joyce Nanine McCool*, 15-0284 (La. June 30, 2015), 172 So.3d 1058. A Louisiana lawyer’s “Social Media Blitz” on two judges involved in a custody and visitation case cost her license (an increased discipline from the one year suspension recommended by ODC). Via an online petition and Twitter, Ms. McCool invited public criticism of judicial decisions and judges themselves and encouraged the public to individually contact the judges and the Supreme Court to overturn judicial decisions. The Supreme Court found these actions amounted to false and inflammatory statements and attempts to influence the outcome of cases and to incite the public. The Court noted that Ms. McCool claimed her actions were shielded by the First Amendment and that she expressed no remorse, even stating that she would continue to use social media in this manner.
- *In re Eric Michael Gamble*, No. 112,037 (Kan. Dec. 5, 2014). A Kansas attorney was suspended for six months for his inappropriate Facebook message to the unrepresented biological mother in a termination of parental rights case in which the lawyer represented the biological father. He urged the mother to reconsider her decision to relinquish her rights in a heavy-handed message that the hearing panel, recommending a 60-day suspension, characterized as “emotional blackmail” and a “bullying tactic” that directly reflected the attorney’s fitness to practice law. The court increased the discipline, noting the attorney’s “overreaching approach and failure to recognize reasonable boundaries.”
- *In re: Sarah Peterson Herr*, 2012 SC 94 (Kan. Jan. 13, 2014). A research attorney for the Kansas Court of Appeals made a series of tweets while (ironically) watching a disciplinary proceeding for former Kansas Attorney General Phil Kline. In a disciplinary action against Herr, a three-judge panel found that she misrepresented the law and facts; that she showed a general bias against Mr. Kline in the Judicial Center; and that the overall tone of her comments revealed a disrespect for a litigant before the appellate courts as well as a disrespect for the Supreme Court Panel hearing the case. The court gave Herr an informal admonition. She also was fired.
- *The Florida Bar v. Conway*, 996 So.2d 213 (Fla. 2008). The lawyer received a public reprimand for posting derogatory comments about a judge on a blog that included, “Evil Unfair Witch; seemingly mentally ill; ugly condescending attitude, she is clearly unfit for her position and knows not what it means to be a neutral arbiter, and there is nothing honorable about that malconent.” The referee found the statements not only undermined

public confidence in the administration of justice but also were prejudicial to the proper administration of justice.