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## PROFESSIONAL CONDUCT

# Avoiding Ethical Pitfalls on Social Networking Sites

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*Special to the Legal*

As members of the online social networking generation, we know too well the tendency to overshare “private” exploits, but as new lawyers, we can’t ignore the benefits of professional development through Twitter, Facebook, LinkedIn, and blogs. In this article, we offer some advice on how to ethically and professionally take advantage of the benefits of online networking. Our advice is geared to those of you who have lots of legal experience but little social networking knowledge, and those of you who have lots of social networking knowledge but little legal experience.

First, we think more attorneys should be taking advantage of the benefits of online social networks. You can develop contacts through networking sites, market yourself to potential clients through authoritative blogs, reach out to colleagues for discussions about difficult legal issues through listservs or message boards, and Google your adversaries, potential clients, and witnesses. But while you surf, remember three things: 1) never betray client confidences; 2) be professional in the way you present yourself online, and avoid the temptation to overshare; and 3) when tapping into the vast resources of information and marketing



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tools available online, do so ethically.

Lawyers using social networking sites must preserve client confidences. As a lawyer, your duty of confidentiality does not vary depending on the audience — all information relating to client representation is always confidential, unless the client has given informed consent to disclosure. Although you may want to share your work experiences online, don’t put your career at risk by publishing traceable details about your clients.

For example, an Illinois lawyer lost her job and faced professional discipline after she allegedly posted statements on her blog about her clients, including: “This stupid kid is taking the rap for his drug dealing dirtbag of an older brother because ‘he’s no snitch.’” Omitting

her client’s name did not remedy the breach of confidentiality.

Keeping information confidential is especially challenging in discussions on invaluable resources like listservs where lawyers reach out to colleagues for assistance on particular legal issues. Lawyers who use these listservs keep client information confidential by limiting their descriptions of cases to only the essential facts — enabling them to enjoy the benefit of input from their colleagues while preventing those same colleagues from drawing any conclusions about who the client is. This is especially important in high profile cases.

In addition to maintaining client confidentiality, you should also ensure that any postings you make on social networking sites are professional in tone and substance. Online communication may be widely popular, but the platforms are constantly evolving. As a result, you cannot be certain whom online social networking posts will reach. To illustrate, a Texas attorney asked a judge for a continuance in a case, explaining that she had had a death in the family. The judge checked the lawyer’s Facebook page and found out that the lawyer had actually been engaging in a week of drinking and partying. Similarly, a Florida attorney received a public reprimand for blogging that a judge was an “Evil, Unfair Witch.” The lesson is simple: Be

careful and professional in what you post and remember that anyone can copy Web site content and forward it to an even broader audience.

You should always consider your intended online “audience” and whether anyone outside of it will be able to access your postings.

Facebook, the current king of online social networking, recently revamped its entire information privacy interface in response to users’ complaints of inability to hide “private” posts from curious online eyes — a reminder that contributions to social networks, blogs, Twitter, and message boards are frequently in the public domain. On any social networking site, your personal information should only be accessible to your “friends.” Someone searching for information about you should be required to receive your approval before your photos or posts appear as results. This way, the information you choose to share with your friends will remain hidden from clients, adversaries and employers. But no matter the privacy protections, be wary of posting personal information or photos that reflect on your integrity or fitness to practice law. And remember to choose your “friends” carefully; don’t friend or accept an invitation from someone you don’t know personally.

Finally, remember your ethical obligations when using online social networks for your professional benefit or to benefit your clients. The Philadelphia Bar Association professional guidance committee made clear in Advisory Opinion 2009-02 that a lawyer may not direct a third party to “friend” an adversary or a witness on Facebook when the lawyer’s sole purpose is to gain access to the person’s

Facebook page to find out if the person posted any information that may be used in an ongoing case. The guidance committee concluded that such a communication violates Pennsylvania Rule of Professional Conduct 8.4(c), the duty to refrain from engaging in dishonest, fraudulent or deceitful conduct, because it omits a material fact in the form of motive — “that the third party who asks to be allowed access to the witness’s pages is doing so only because he or she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit to impeach the testimony of the witness.”

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Similarly, the obvious benefits of marketing yourself online also carry potential ethical pitfalls. Lawyers can develop new business by keeping tabs on friends’ postings that raise potential legal issues. However, if you solicit business online, be cognizant of Rule of Professional Conduct 7.3, which prohibits real-time electronic solicitation (like chatting) of someone with whom the lawyer does not have a family or prior professional relationship. Direct written contact with a potential client through e-mail

is generally permitted, unless the attorney knows or should know that the person’s physical, emotional or mental state circumscribes the exercise of reasonable judgment, the person has asked the lawyer to refrain from contact, or the communication involves coercion, duress or harassment. You may also permissibly market yourself online by making public your employment with a particular law firm or government agency, so long as you protect your client’s confidences by not sharing the day-to-day nature of your work.

Social networking sites and blogging can be an invaluable tool for attorneys as long as you “think before you post.” Don’t post anything online that you would not say or publish in public because your contributions to online communities are public and potentially accessible by anyone in perpetuity. The Web makes it easy to be uninhibited in sharing information, but remember that a lawyer is always a lawyer, and subject to professional and ethical obligations. •