

“FRIENDING” YOUR LAW PRACTICE: HOW TO PUT SOCIAL MEDIA TO WORK FOR YOU

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Social media are literally changing the way we communicate. Lawyers are increasingly using social media for professional purposes. The American Bar Association's (ABA) 2010 Legal Technology Survey Report indicated that, as of 2010, 56 percent of attorneys in private practice had a presence online in a social network such as Facebook, LinkedIn, LawLink, or Legal OnRamp, which represented an increase from 43 percent in 2009 and 15 percent in 2008. The use of social media by lawyers means increased visibility, self-promotion, and marketing, which translates into increased client bases and revenues. This article discusses using different social media tools, distinguishing between personal and professional information while using technology intended to reduce personal boundaries, and using social media for legal marketing without compromising professionalism.

TWITTER, FACEBOOK, GOOGLE+, YOUTUBE, AND GROUPON—ESSENTIAL TOOLS FOR YOUR OFFICE?

Lawyers face daily challenges working in the constantly changing, ever-evolving field of immigration law. They must keep up with national and local policy changes, government memos, liaison meeting notes from national and local agency offices, service center operations, immigration court rules, and appeals to the Board of Immigration Appeals, the Administrative Appeals Office, and the federal circuit courts. They deal with a variety of federal government agencies, including U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement (Enforcement and Removal Operations, the Office of Investigations, and the Office of the Chief Counsel), the Executive Office for Immigration Review, the Office of Immigration Litigation of the civil division of the U.S. Department of Justice, U.S. Attorneys in the Department of Justice, the U.S. Department of Health and Human Services, and sometimes the FBI or the Joint Terrorism Task Force. They must keep up with a daily dose of immigration news, now one of the hottest news topics in America. Who has time to keep up with social media?

The reality is that lawyers need to be aware of and learn as much as possible about social media, or they risk the fate of dinosaurs, woolly mammoths, and, as recently as 2006, the West African black rhino. An appropriate analogy is to another extinct animal, the dodo, a flightless bird on the island of Mauritius that was wiped out after human settlers introduced dogs, pigs, and rats to the island in the 1600s. Those who ignore social media and do not take flight will be wiped out by human “techie” who are introducing social media into virtually every aspect of everyday life and business.

Twitter: 140 Characters That Can Help Immigration Attorneys

Twitter is a social networking service that allows its users to send and read text-based posts of up to 140 characters, known as “tweets.” Twitter was launched in 2006. As of September 2011, Twitter had more than

100 million active users, with more than 50 million users logging into Twitter each day to view the more than 230 million daily tweets. Another 200,000 or more users sign up for Twitter every day.

Twitter can be useful in several ways. Twitter can be used to get immigration news, to post immigration news for others, to connect with other immigration attorneys and businesses around the country, and to market a legal practice to the more than 100 million active users, including many users outside the United States.

Many immigration attorneys that are already on Twitter actively post immigration news when it comes to their attention. Links to immigration news articles are in the tweets, allowing users to go directly to the article if it sounds interesting. Twitter will keep those who want to be on the “bleeding edge” of immigration news informed.

Immigration attorneys who like keeping their current and former clients informed about what is going on in the world of immigration law, policy, and news can also post links to useful information in their tweets. This can have the side effect of saving the attorney’s time as well, as informational posts on a major immigration news item will provide information to clients before 20 or more clients call the immigration attorney to ask questions about the news item.

Immigration attorneys who are active on Twitter are all well connected as of this writing, because there are not that many yet. They re-tweet each others’ postings and articles occasionally, when they see or read something interesting. Re-tweeting gives the original “tweeter” credit for the post.

Another advantage of Twitter is that there are many small and large businesses on Twitter. Some of these businesses may need an immigration attorney at some point in the future. If business professionals read interesting tweets by a particular attorney—tweets that are related to their immigration needs, such as I-9 compliance issues—they may well remember this attorney’s name and possibly call him or her when they need an attorney.

Twitter is a useful marketing tool for immigration attorneys to use in keeping their names in front of potential future clients. If an attorney uses Twitter to advertise his or her services, instead of to provide information, the business will fail miserably on Twitter. But providing information makes the attorney look like an expert in immigration law. An attorney can write articles and post links to them, or link to immigration news articles and quickly comment on them.

Setting up a Twitter account is very easy. Do not worry about Twitter vocabulary at first; it does not take long when using Twitter to learn about hashtags, direct messages, and avatars. Twitter allows you to use up to 160 characters for your biography. A Twitter biography should be interesting—and a purely professional one is not interesting! Once your Twitter account is set up, you can start following people and businesses on Twitter. Feel free to follow one of the authors of this article at @randallcaudle.

Facebook: Personal and Professional

Some interesting statistics on Facebook became publicly available in early 2012 as the company prepares for its initial public offering:

- Facebook gets 9 percent of all Internet visits online,
- Facebook gets 20 percent of all page views online,
- Facebook has more than 845 million monthly active users,
- Facebook has more than 2.7 billion “likes” and comments each day,
- Facebook has more than 250 million photos uploaded every day, and
- Facebook has more than 100 billion friendships.
- In 2011, advertising accounted for 85% of Facebook’s revenue,
- In 2011, Zynga accounted for 12% of Facebook’s revenue, and
- Facebook became the #1 ranked website in March 2010.

Internationally, Facebook ranks in the top two websites in every market except China. North and South America combined have approximately 910 million people. Facebook will have more than 910 million active users by the end of 2012.

Facebook can be used in many of the same ways as Twitter. One major advantage of Facebook over Twitter is that there is no 140-character limit for comments and posts. Users can add photos easily in Facebook to go with their postings.

Many AILA members are connected on Facebook. Some are connected because they are real-life friends, or they are comfortable having colleagues see what they post on Facebook. They share immigration news and articles and make each other laugh with comments that only immigration attorneys would fully comprehend.

There are various perspectives on "friending" current clients, former clients, and prospective clients. For those weary of mixing personal and professional lives on Facebook, there is a simple solution. The solution is to set up a Facebook page for a law firm or a professional profile (make sure it complies with Facebook's terms of service).

It is easy to set up a page for a firm or office and does not take a lot of time. Once the page is set up, clients, former clients, and prospective clients can all "like" the firm page. Attorneys can post links to their own articles or to news articles on their Facebook page and comment on them as well. They can post as many photos of their offices, co-workers, real paper immigration books, and the sports stadium down the street as they want. Feel free to "like" one of the authors' firm's Facebook page (Caudle Immigration). The stadium photos on his firm's Facebook page are where the San Francisco Giants play, down the street from his office.

Google+, YouTube, and Groupon: New Frontiers for Attorneys

Google+

Google+ is still relatively new in the social media landscape. Expect Google+ to be another critical component of an attorney's social media strategy in the near future.

Potential advantages of Google+ over Facebook include:

- Integration with Google services, including Google documents, contacts, calendar, Gmail, search, and hangouts;
- Better friends management using circles (immigration attorneys could more easily separate close friends, colleagues, former clients, and possibly current clients);
- Better integration with Android phones;
- Google+ Sparks feature to find sharable content;
- Photo tagging that warns people who are tagged;
- Easy group chat using Google hangouts feature (immigration attorneys could use it to discuss particular niche areas of immigration law or policy or ask questions of other immigration attorneys);
- Safer content sharing and better privacy controls; and
- Google's "Don't Be Evil" slogan.

Google+ may be a great way for immigration attorneys who are weary of Facebook to enter into the social media realm beyond LinkedIn.

YouTube

Some attorneys have ventured into the realm of YouTube videos, both to provide informational videos and to promote their practices. Although videos can make attorneys seem like experts, they can also make them look boring, arrogant, or worse to prospective clients. A good practice is to use high-quality videos and ask for input from people who are not attorneys before posting videos on a website or social media sites.

Groupon

The use of Groupon for legal marketing poses several potential ethical issues that are beyond the scope of this article. Groupon keeps a high percentage of the amount paid by prospective clients, so be aware of this. Also, clients who are looking for deals are not usually ideal clients.

DRAWING A LINE BETWEEN PERSONAL AND PROFESSIONAL INFORMATION

Social media gives users unprecedented ability to share information instantaneously and among large groups of people or followers. It also reduces the boundaries between a lawyer's professional and private lives. Lawyers need to decide whether to maintain a separation or to personalize their professional lives. Personalizing the professional can have a humanizing effect, allowing stereotypically stiff lawyers to come to life in a friendly and approachable manner.

Treating Your Personal and Professional Lives as One

Combining personal and professional lives online reduced the need for separate private and business accounts for social media. Lawyers should monitor their social media accounts, both for what others may post about them and for compromises to a site if an account is hacked, and delete inactive accounts.

Staying abreast of and connected to social media sites is especially important for business accounts where clients or the public at large can post comments. These comments can violate ethics rules, and they can also be negative in nature. The lawyer would want to address or, if possible, delete them. Sites that rate the performance of services, such as Avvo, and, less specific to the legal community, Yelp, exist whether or not the lawyer has created an account on those sites. A simple Google search by name and firm may generate a list of many sites where an attorney's profile appears. It would be good practice to make those sites part of the lawyer's online media portfolio, tracking their progress over time, and, again, purging those profiles that are no longer in use.

Combining personal and professional lives online also gives a lawyer the ability to have one face for family, friends, and colleagues. But it could likewise create an undesired level of access to private information and activities, especially to those groups of people whom you consider to be more part of your professional than of your personal network. At the same time, the lawyer risks over-exposing friends and family to immigration or other legal updates, news articles, or messages about the latest developments in the law.

The balancing issue in the messages you want to deliver through social media sites may have more to do with your target audience and less to do with privacy concerns raised by merging the personal with the professional. If you are not providing the information that your target audience seeks, especially in the business context, then your efforts to get their attention through blogs and other social media will be futile. Although followers on Twitter and other social networking sites may value your immigration updates, hearing about your child's first steps may not interest them.

Maintaining Separate Personal and Professional Lives

Lawyers should weigh the pros and cons of partaking in this optional technology. The positive effects from involvement are already known and they are continuing to be developed and discovered, both for personal and professional users. Those who seek privacy and separation of personal and professional lives must be ready to actively guard against the full distribution of information and may well be advised not to engage in social media activities at all. Although many sites, such as Facebook, allow users to manage privacy settings so that only certain people are authorized to see communications, other platforms have as their goal the distribution of information far and wide and it is less easy to control content.

Those seeking to safeguard private information while maintaining a presence in social media may lock down their sites so that only those whom they authorize have access. For instance, your Facebook account, left without any privacy settings, may be viewed in its entirety by anyone who comes across your profile or finds it by searching your name. For those who seek more privacy, it is possible to limit outsiders' ability to view pictures, feeds, and other information through the most restrictive privacy settings. Additionally, privacy setting options may be used to subject current "friends" or followers to additional privacy safeguards where all of your information may not be made available to them. Each social media site is different, so it is worth

the time to research how information is distributed and made available on the various platforms you choose to use. This way, you will continue to control the information instead of risking that the information will control or embarrass you.

"Friending" Your Current and Former Clients

Although there are no rules that prohibit "friending" clients at any stage of the attorney-client relationship, lawyers must use caution when adding client "friends." Sure, a more friendly connection to clients—current and past—can increase referral rates and access into your world. But that access can be a double-edged sword, especially if the site on which the client has become a friend is one the lawyer uses for personal content as well.

With the addition of a current client to your social media site comes the possibility of a breach of confidentiality or the uncovering of information that can be detrimental to the attorney-client relationship and to your ability to continue representation. The informality of social media also creates a certain level of false intimacy. Although it feels as if you may be posting information only to one intended person, or even to your own "private" site, everyone who has access to that site may be able to read the posted content. Thus, a client who is very excited to be able to communicate with you in a new forum, such as Facebook or Twitter, may divulge information that is best communicated in the safety of a private email or an in-person meeting in your office, not on a social media site. Additionally, your social media site may randomly provide the news feed of a current marriage-based immigration client's photographs of trips and family gatherings, all with a person who is not the spouse. Or the client might release information about marital troubles, changes in jobs, and other material information that could create an affirmative requirement by the lawyer to inquire more so as not to risk providing false information during representation of those clients or to perpetrate a fraud. The cautious approach would be to avoid "friending" current clients in order to avoid a potential obligation to investigate activities, actively or passively, for consistency purposes during representation.

Another concern in adding current clients to a friends or followers list is that the clients will be able to see posts or communications from your other friends, which could reveal information that you do not want to be made public, despite your own attempts to control your postings. Finally, social media sites also open up the potential for lawyers to cross the line of ethics concerning solicitation issues in "friending" individuals to whom they seek to offer legal services. Although social media can be a wonderful tool for a law practice, lawyers and firms must think strategically and be ever vigilant about the risks posed by using social media and the need to comply with ethics rules.

HOW TO MARKET AND PROMOTE ONLINE WITHOUT COMPROMISING YOUR PROFESSIONALISM

As this article emphasizes, lawyers increasingly understand the utility of social media for marketing. By using these new tools, they are able to share their expertise, discuss developments, and connect with colleagues and clients with a speed, flexibility, and ease of access impossible through more traditional approaches.

Some experts suggest that lawyers embrace social media without fear of repercussions. They emphasize that the same ethics rules apply to lawyer communications, whether they take place through social media or other modes. Still, the informality and speed of online communication may lead to inadvertent mistakes, and the consequences are amplified when such mistakes are published online to an unlimited number of users and then permanently archived. This section addresses ways for lawyers to limit their risk as they use social media.

Lawyers should review applicable ethics rules to determine how they apply online. The ABA Commission on Ethics 20/20 (Working Group on the Implications of New Technologies) decided against recommending any new restrictions on ethics rules for social media, since the rules are already broad enough to cover online activity. At the same time, the commission suggested additional guidance on specific rules related to prospective clients, advertising, and solicitation.

Unintended Attorney-Client Relationships

Lawyers participate in online legal forums through social media directory sites, such as Avvo and LinkedIn, because, as Avvo explains on its own site, "[o]ne of the most effective ways to get clients and show

off your expertise is to answer consumer questions posted to our Ask a Lawyer forum.” Participation provides helpful information to the public, and it gives lawyers the chance to promote their practice areas.

However, attorney-client relationships are easily created, and lawyers owe duties to prospective clients. Lawyers normally have confidentiality obligations only to individuals who are clients (ABA Model Rules of Professional Conduct: Model Rule 1.6), former clients (Model Rule 1.9), or prospective clients (Model Rule 1.18). Model Rule 1.18(a) specifically defines a prospective client as “a person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter.” For a discussion, there must be two-way communication. The attorney who answers a specific legal question would be engaged in a discussion. If a lawyer has engaged in a discussion with a prospective client, Model Rule 1.18(b) prohibits the use or disclosure of that information without the prospective client’s informed consent.

The ABA commission proposed amending Model Rule 1.18 to change the word “discusses” to “communicates,” because the change would more clearly cover electronic communications, thus more effectively alerting lawyers to possible concerns. The possibility of a conflict of interest stems from the anonymous nature of the online communication. In an extreme case, a lawyer posting answers online may unknowingly be communicating with an adverse party. Model Rule 1.18 and related ethics opinions offer practical guidance. [*Arizona Opinion 97-04*](#) (April 7, 1997) concluded that lawyers should avoid answering specific legal questions posed by lay persons in legal chat rooms because of their inability to screen for conflicts and the possibility of disclosing confidential information. Lawyers should give general information only and not answer specific legal questions. [*ABA Formal Opinion 10-457*](#) acknowledges that there is no exact line between legal information and legal advice, but the distinction can be made based on the context and content of the information. For instance, lawyers speaking to groups are generally considered to be providing legal information, while lawyers answering fact-specific questions may be providing legal advice, especially if their answers address a person’s individual circumstances. A lawyer who addresses a problem in a hypothetical question would generally be regarded as giving legal information, not legal advice.

Lawyers should take steps to reduce the risk of inadvertently creating duties to potential clients, including by:

- Limiting their content to general information;
- Clearly stating that the information they provide is not to be relied upon as legal advice;
- Directing users to seek the advice of a licensed attorney; and
- Emphasizing that legal advice cannot be given without full consideration of all relevant information about the person’s individual situation.

They should use disclaimers that the information being provided is not legal advice but only legal information; that the information is not a substitute for hiring a lawyer; that the person should consult with a lawyer if he or she has a legal problem; and that no lawyer-client relationship has been created.

Online Recommendations and Fields of Practice

LinkedIn and Avvo each allow lawyers to create profiles with sections for recommendations or endorsements from colleagues or clients. Model Rule 7.1 governs attorney advertising: “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material representation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

According to the South Carolina Ethics Advisory Committee, a lawyer is responsible for ensuring that all comments on a claimed listing that includes recommendations or endorsements comply with all rules of professional conduct. If there is an improper comment that cannot be changed, the lawyer needs to remove the entire listing and stop participating in the service.

This opinion applies only in South Carolina, but the conclusion is still noteworthy that recommendations and endorsements on a social media profile are both communications under Rule 7.1 and advertisements under Rule 7.2. A lawyer who maintains his or her Avvo profile is responsible for ensuring that all endorse-

ments and recommendations it contains comply with the lawyer advertising rules. Many states prohibit advertisements that compare the services of lawyers or create unjustified expectations.

LinkedIn has a specialties section that, if used to designate the lawyer's practice area, may improperly imply that a lawyer is a certified specialist in the particular field of law. The lawyer could include an additional statement or disclaimer that these specialties are areas of focus, and that listing them on the site does not suggest certification as a specialist.

Prospective Client Interaction: Does It Violate the Rule Governing Solicitation?

Lawyers interact with potential clients through blogs, by answering questions in an online legal forum, or by inviting someone to be a Facebook friend. Online communication with a potential client may be considered improper solicitation.

The ABA Commission concluded that lawyers would benefit from guidance on what constitutes a solicitation within the scope of Rule 7.3, which provides that "[a] lawyer shall not by in-person, live telephone or real time electronic contact solicit professional employment from a prospective client when the significant motive for the lawyer's doing so is the lawyer's pecuniary gain," unless the person being contacted is a lawyer or has a family or other close personal relationship with the lawyer. The commission suggests clarifying that solicitation is a "targeted communication initiated by the lawyer that is directed to a specific potential client and that offers to provide, or can reasonably be understood as offering to provide, legal services." Accordingly, responses to requests for information and advertisements that are not directed to specific people are not solicitations.

Lawyers need to think about whether LinkedIn or Facebook invitations from a lawyer to a prospective client fall within the rule and to exercise caution because of the substantial variation in lawyer solicitation rules among the states. It may be helpful to consider that the rule's purpose is to protect against the potential for abuse from direct solicitation and pressure to engage the lawyer. According to the Philadelphia Bar Association's Professional Guidance Committee, this potential for abuse is not a concern with real-time electronic communication, since "everyone realizes that emails, blogs, and chat room comments can be readily ignored." [*Phil. Bar Assn Opin. 2010-6.*](#)

CONCLUSION

Social media present an evolving medium for lawyers to be aware of and use to their advantage. A lawyer can create a strong online presence using the platforms discussed here. Social media provide instant news updates, marketing opportunities and challenges, and ways to find information about clients or prospective clients. Lawyers also need to know about social media because clients can post information that may harm their legal interests; for example, USCIS has been known to search Facebook and other sites for evidence of a sham marriage. Social media can also have a powerful impact on policy. It has been used effectively by various Dream Act organizations to advocate the stopping of deportations of Dreamers and to get their message out to the masses. Lawyers need to be familiar with these powerful tools. Those who take the time to understand and connect through social media will be better able to serve both their clients and the profession.