

# Practice Safe Social Networking To Avoid Conflicts



by Alan Goldfarb

**A**ttorneys using blogs, [Facebook](#), and [Twitter](#) clearly face new ethical challenges. A Hennepin County, MN, prosecutor posted derogatory comments on her Facebook site during a man's attempted murder trial. Her professional work in court led to his conviction, but her private posting supported his successful motion for a new trial. Private conversations, whether appropriate or not, are now being relayed to a much broader audience, leaving a digital trail for ethics investigations.

Lawyers increasingly use social networking sites to promote their practice, to research and gather evidence, and to communicate with clients. These different purposes inevitably lead to conflicts of interest. The American Bar Association's (ABA) Commission on Ethics 20/20 emphasized the challenge of maintaining personal and professional boundaries when using internet-based marketing tools. "Because lawyers frequently use these websites and services for both personal and professional reasons, the legal ethics issues in this context are more complicated than they have been for more traditional client development tools." ABA Issues Paper Concerning Lawyers' Use of Internet Based Client Dev. Tools (Sept. 20, 2010).

## Connecting with Clients

Lawyers should think carefully before connecting with

clients through social networking sites. ABA Model Rule 1.6(a) prohibits the lawyer from revealing information related to the representation of a client. The attorney-client relationship is not for the attorney to disclose. On a LinkedIn profile, for instance, lawyers who simply let the public see their contacts would be disclosing a confidential relationship.

Lawyers still have valid reasons to connect with past, present, or potential clients, and to maintain ongoing relationships with clients. For immigration lawyers, clients keep coming back as they go through the process of adjusting status, removing conditions on permanent residence, naturalizing, and petitioning for family.

Some lawyers may decide to use social media sites for strictly personal reasons, but are likely to find it difficult to keep separate personal and professional contacts. Other lawyers adopt a practice of waiting for clients to contact them with friend requests. Even then, they would be prudent to advise clients who make the request that merely listing them as friends on their social media sites might give away information that would otherwise be confidential. Some lawyers avoid using Facebook with clients, steering them instead to their more professional LinkedIn profiles.

## Learning Too Much About Clients

Whatever approach they follow, lawyers who access

their client's personal profiles should be prepared for the consequences. They may discover information that directly contradicts their client's case.

Immigration lawyers representing two clients in a marriage-based petition could easily face an ethical dilemma triggered by the norm of reduced personal boundaries online. In one hypothetical example, a petitioning spouse not only discovers her husband's infidelity by accessing his Facebook profile, she finds out that he is still seeing ex-wife from his home country who is also married to a U.S. citizen. The jointly represented clients are now in direct conflict under circumstances that raise concerns about marriage fraud, which may trigger a duty of candor to the tribunal under ABA Model Rule 3.3. The attorney's duty of confidentiality is qualified by the duty of candor. Under these circumstances, the attorney may not be able to solve this challenge by simply withdrawing from the representation.

Formal guidance has not yet been established. In the meantime, lawyers need to understand potential ethics traps and to temper their use of social media with an understanding that anything is potentially accessible.

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