

## Legal Ethics and Social Media: What Attorneys Need to Know



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# **Legal Ethics and Social Media: What Attorneys Need to Know**

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## LEGAL ETHICS AND SOCIAL MEDIA: WHAT ATTORNEYS NEED TO KNOW

By: Steven B. Vinick

### I. Advertising and Solicitation Rules in Social Media

#### A. ABA Guidance

In August 2012, the ABA Commission on Ethics 20/20, a specially convened group, proposed amendments to the Model Rules of Professional Conduct against the backdrop of technological advances of legal practice. The amendments were unique in that they took into account all manner of electronic communication, including social media.<sup>1</sup> The Commission proposed amendments to the following rules concerning the use of technology and client development: Model Rules 1.8 (Duties to a Prospective Client); 5.5 (Unauthorized Practice of Law); 7.1 (Communications Concerning a Lawyer's Services); 7.2 (Advertising); and 7.3 (Direct Contact with Prospective Clients). In amending Rule 7.2, the ABA reinforced the idea that misrepresenting oneself to the public "would be just as subject to ethical approbation if the acts or statements took place in letters or print media as if they happened on Facebook or Twitter."<sup>2</sup>

#### B. What's Considered Impermissible Puffery? What's Considered Advertising?

In determining what is considered impermissible puffery or what is considered advertising, start with your state bar's professional conduct rules. Generally, in social media, the distinction between what is impermissible puffing and advertising will be the same as the rules for communications in print or media. On a basic level, posting on social media in a manner used to "promote the lawyer or law firm's practice" is advertising and covered by Rule 7.2 of the

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<sup>1</sup> Cynthia Laury Dahl, *Making "Friends" with the #Ethics Rules: Avoiding Pitfalls in Professional Social Media Use*, 43 AIPLA Q.J. 155, 156 (Winter 2015). As of January 24, 2015, Arkansas, Connecticut, Delaware, Idaho, Iowa, Kansas, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, West Virginia, and Wyoming had adopted at least part of the amendments. *Id.*

<sup>2</sup> John G. Browning, *Facebook, Twitter, and LinkedIn – Oh My! The ABA Ethics Commission and Evolving Ethical Issues in the Use of Social Media*, 40 N. Ky. L. Rev. 255 (2013).

Model Rule of Professional Conduct.<sup>3</sup> If a posting on social media qualifies as an advertisement, then the Model Rules apply. Model Rule 4.1, for instance, prohibits “puffery” or “mak[ing] a false statement of material fact or law to a third person.”<sup>4</sup> “Puffery” is often defined as “publicity or acclaim that is full of undue or exaggerated praise.”<sup>5</sup>

Rule 7.1 directly addresses communications about lawyer services, stating “[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 misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.” For example, under Arkansas’s version of Model Rule 7.1, a personal injury lawyer that uses the nickname “The Hammer” would violate the rule against puffery because it is likely to make potential clients believe every case is a winner with a lawyer who will hammer the insurance companies.<sup>6</sup> Minor puffery, however, is still accepted in advertising. For example, statements such as “we care” are generally considered non-material, not likely to mislead, and ethical.<sup>7</sup>

Model Rule 7.2, Comment 1 provides that a communication is an advertisement if it “invites an active quest for clients.” Posting an article or blog post about the law is usually not considered advertising, as such postings are usually considered educational in purpose.<sup>8</sup>

### **C. Professional vs. Personal Accounts - Do Different Rules Apply?**

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<sup>3</sup> Dahl, *Making "Friends" with the #Ethics Rule*, at 159.

<sup>4</sup> Michael Lackey Jr. and Joseph Minta, *Lawyers and Social Media: The Legal Ethics of Tweeting, Facebooking and Blogging*, 28 *Touro L. Rev.* 149, 159 (2012).

<sup>5</sup> Abhishek K. Gurnani and Ashish R. Talati, “‘The World’s Most Trusted Article on Puffery’: Non-Actionable Puffery or Misleading?” *Food and Drug Law Institute, Update Magazine* (

<sup>6</sup> David Bailey, *Ethical Advertising for Lawyers: Is it time to update your ads?*, *Arkansas Law Notes* 3-4 (2010), <http://baileylawfirm.com/wp-content/uploads/2011/04/bailey-D-Law-Notes-2010-article1.pdf>.

<sup>7</sup> Alice Neece Mine, *Walking the Ethical Line with Lawyer Advertising*, *NC State Bar Journal*, [http://www.ncbar.com/ethics/eth\\_articles\\_10,4.asp](http://www.ncbar.com/ethics/eth_articles_10,4.asp).

<sup>8</sup> Dahl, *Making "Friends" with the #Ethics Rules*, at 162. *See* N.Y. State Bar Ass’n Comm. Prof’l Ethics, Formal Op. 967, 2 (2013).

Again, begin by looking at your state bar’s professional conduct rules. The ethical rules may differ depending on the states, but generally an attorney’s personal social media profile is not subject to the advertising rules if used solely for personal reasons. If, however, the attorney uses the personal profile for business purposes, the ethical rules will apply. Attorneys should guard against crossing over into the realm of professional accounts. One practice is to avoid using your law firm email addresses or commenting about legal matters on your personal accounts.<sup>9</sup>

**D. Is Using Social Media to Build Relationships and Engage in Discussions Considered Advertisement or Solicitation?**

“Advertising” informs the general public of available legal services the attorney offers, while “soliciting” is a directly targeted communication at a prospective client. Generally speaking, advertising is permitted but solicitation is not.<sup>10</sup>

Model Rule 7.3 governs attorney solicitations. The ethical rules over advertising and solicitation effectively require, before communicating over social media, that lawyers evaluate whom the intended recipient is and the purpose of contacting the recipient.<sup>11</sup>

It is generally thought to be easier to engage in improper solicitations over the Internet than in person. Rule 7.3(a) expressly prohibits a lawyers form soliciting by “in-person, live telephone or real-time electronic contact[.]” Many ethics opinions have expressed that the more similar the communication is to direct, in-person contact as prohibited by Rule 7.3(a), the stricter the rule becomes. For example, a state bar could find that a lawyer’s conversation in cyber chat

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<sup>9</sup> Joan C. Rogers, *Guidelines Explain How Ethics Rules Apply to Lawyers’ Use of Social Media Networks*, ABA/BNA Lawyers’ Manual on Professional Conduct (March 27, 2014), <http://www.bna.com/guidelines-explain-ethics-n17179889141/>.

<sup>10</sup> Katherine Erwin, *Lawyer Advertising and Solicitation 2.0*, 2Civility – Illinois Supreme Court Commission on Professionalism (September 2, 2014), <http://www.2civility.org/lawyer-advertising-and-solicitation/>.

<sup>11</sup> Christina Vassiliou Harvey et al., *10 Tips for Avoiding Ethical Lapses When Using Social Media*, ABA Business Law Today (Jan. 2010), [http://www.americanbar.org/publications/blt/2014/01/03\\_harvey.html](http://www.americanbar.org/publications/blt/2014/01/03_harvey.html).

room is similar to live, in-person solicitation because a chat is conducted in real time and there is potentially even more immediate and persuasive than other forms of writing, whereas email may be covered rules governing general or direct mail solicitation.<sup>12</sup>

The purpose of the communication is also important in determining whether it crosses the line into an impermissible solicitation. Rule 7.3(a) expressly mentions that a lawyer should not solicit professional employment if a significant reason for doing so is for the “lawyer’s pecuniary gain.” For example, a LinkedIn “invitation” that offers to provide *legal services* to a non-lawyer with whom the lawyer does not have a “family, close personal, or prior professional relationship” could be improper solicitation.<sup>13</sup>

Rule 7.3(a)(1) and (2) provides exceptions to the prohibition against solicitation for other lawyers and people with whom the soliciting-lawyer has family or close personal ties or prior professional relationships. Merely being Facebook friends with someone, however, does not satisfy this exception to the ethical rule.<sup>14</sup>

If a lawyer offers legal advice to a Facebook “friend” who does not fall under the excepted relations in Rule 7.3(a), the communication could be deemed as a “real-time” electronic communication and the attorney could be subject to discipline for solicitation.<sup>15</sup> The attorney could, however, avoid discipline by adding the “Advertising Materials” notice as required under Rule 7.3(c).<sup>16</sup>

#### **E. Facebook Profiles and Advertising Rules**

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<sup>12</sup> Richard M. Goehler et al., *Ethical Considerations for Promoting Your Practice Online*, ABA Section of Litigation (Winter 2010), [https://apps.americanbar.org/litigation/litigationnews/trial\\_skills/070710-ethics-promoting-law-practice-online.html](https://apps.americanbar.org/litigation/litigationnews/trial_skills/070710-ethics-promoting-law-practice-online.html).

<sup>13</sup> Christina Vassiliou Harvey et. al., *10 Tips for Avoiding Ethical Lapses When Using Social Media*.

<sup>14</sup> G.M. Filisko, *The Ethics of Online Advertising*, ABA Student Lawyer (March 2013), [http://www.americanbar.org/publications/student\\_lawyer/2012-13/march/ethics\\_online\\_advertising.html](http://www.americanbar.org/publications/student_lawyer/2012-13/march/ethics_online_advertising.html).

<sup>15</sup> Erwin, *Lawyer Advertising and Solicitation 2.0*.

<sup>16</sup> Rule 7.3(c) provides that every written, recorded, or electronic communication from an attorney soliciting professional employment shall including the words “Advertising Material” at the beginning and ending of any recorded or electronic communication.



Most states consider a firm website as advertising but differ on an individual's blog, Facebook post, or LinkedIn profile. For example, in Texas, if all an attorney posts is an office location, phone number, and a description of the cases litigated on his firm's Facebook profile, that's not likely an advertisement. If, however, the attorney added "We have been successful in 90 percent of our Social Security disability cases," this would make the profile an advertisement.<sup>17</sup>

#### **F. LinkedIn - "Specialist" or "Expert" Designation Ramifications**

Rule 7.4 prohibits lawyers from classifying themselves as "specialists" in a particular area of law, unless they meet certain state specific criteria. Many states go further to restrict the use of terms like "expert" or "expertise."<sup>18</sup>

LinkedIn has eliminated its "Specialties" section for new users. It has also been eliminated for older users, however, the information previously in the "Specialties" section is now displayed as a part of the "Summary" section. It is recommended that lawyer LinkedIn users eliminate this section because it may pose potential problems in the jurisdictions where the rules prohibit lawyers from claiming they are specialists.<sup>19</sup>

LinkedIn allows for users to add particular skills to their own profile and to "endorse" other users for skills. These additions appear in the "Skills" section. Lawyers should ensure that they do not list skills they do not possess nor should they allow for endorsements to appear on their profile if they do not possess these skills.<sup>20</sup> Rule 7.1 prohibits "false or misleading communication" about the lawyer or lawyer's services; however, different jurisdictions have

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<sup>17</sup> G.M. Filisko, *The Ethics of Online Advertising*.

<sup>18</sup> Christina Vassiliou Harvey, et. al., "10 Tips for Avoiding Ethical Lapses When Using Social Media."

<sup>19</sup> Allison Shields, *Legal Ethics and Social Media*, ABA Law Technology Today (August 30, 2013), <http://www.lawtechnologytoday.org/2013/08/legal-ethics-and-social-media/>.

<sup>20</sup> Robert Ambrogi, *Do LinkedIn Endorsements Violate Legal Ethics?*, Law Sites Blog (May 13, 2013), <http://www.lawsitesblog.com/2013/05/do-linkedin-endorsements-violate-legal-ethics.html>.

different standards on what is considered “misleading.”<sup>21</sup> For example, in 2012, the Philadelphia Bar Association Guidance Committee issued an opinion that compared an attorney listing his practice areas under the Skills section on LinkedIn to attorneys listing their practice area on attorney websites and considered it acceptable under the state’s professional rules of conduct, as doing so does not convey that the attorney is a specialist. Anything more, however, such as discussing proficiency level in an area of law, would be unethical.<sup>22</sup> To avoid violations, LinkedIn user can manage which endorsements appear and hide any inappropriate endorsements of skills they do not possess.<sup>23</sup>

### **G. YouTube Videos vs. Television Ads - What's the Difference?**

To many lawyers, YouTube videos functioning as advertisements are very appealing because they are less costly than traditional television advertisements.<sup>24</sup> Further, some lawyers may be under the impression that using YouTube videos would shield them from bar regulations. This is false, however, because in most jurisdictions, the same ethics rules that apply to television advertisements also apply to YouTube videos.<sup>25</sup>

With the popularity of YouTube has also come lawyers creating videos to educate potential clients on the law, rather than to solicit their business.<sup>26</sup> It is possible that in at least some jurisdictions, the professional conduct rules for advertising do not apply to YouTube videos that provide education.<sup>27</sup>

## **II. Proper Social Media Conduct**

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<sup>21</sup> Shields, *Legal Ethics and Social Media*.

<sup>22</sup> *Id.*

<sup>23</sup> Dennis Kennedy, *Is LinkedIn's endorsement feature ethical for lawyers?* ABA Journal (Dec. 2013), [http://www.abajournal.com/magazine/article/linkedin\\_endorsement\\_feature\\_draws\\_some\\_questions](http://www.abajournal.com/magazine/article/linkedin_endorsement_feature_draws_some_questions).

<sup>24</sup> Filisko, *The Ethics of Online Advertising*.

<sup>25</sup> Carolyn Elefant and Nicole Black, *Social Media for Lawyers, The Next Frontier* 179 (2010)

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

## **A. Setting up and Managing Ethical Professional and Personal Facebook Accounts**

### **1. Key Steps to Creating Company Facebook Accounts**

Before actually creating the Facebook page, create a company social media policy to give guidance to anyone in the firm in control of the page.<sup>28</sup> When creating the Facebook Company page, select the appropriate category, “Legal/Law.”<sup>29</sup> You must ensure that client confidential information is not revealed in violation of Rule 1.6. If the page will have an area for client reviews, it is possible that the attorney could receive a bad review from a former client. It is best not to respond to such reviews to avoid getting into a dispute on a public forum because doing so could raise client confidentiality issues.<sup>30</sup>

### **2. Enabling Proper Account and Privacy Settings**

Before starting, it is important to review all of Facebook’s privacy settings to understand what information will be visible under each particular option.<sup>31</sup> The default privacy setting for Facebook is public, which means it is viewable to everyone and must be changed to ensure some type of privacy. An attorney or firm’s LinkedIn contact list or Facebook “friends” should be made private. If publicly viewable, it creates the risk of disclosing a confidential relationship.<sup>32</sup>

### **3. Personal Facebook Accounts - Is it Safe for an Attorney to Have One? Safety Steps to Put in Place to Protect Yourself**

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<sup>28</sup> Atwell, *10 Common Mistakes Law Firms Make with Facebook Pages*.

<sup>29</sup> Stacey Burke, *Social Media For Lawyers: Facebook 101, Setting Up A Law Firm Facebook Page*, Stacey E. Burke, P.C. Blog (October 10, 2013), <http://www.staceyeburke.com/blog/social-media-for-lawyers-facebook-101-setting-up-a-law-firm-facebook-page>.

<sup>30</sup> Kellie Pantekoek, *Nine times Facebook Can Get You In Ethical Trouble*, Thomas Reuters Legal Solutions Blog (December 31, 2014), <http://blog.legalsolutions.thomsonreuters.com/practice-of-law/nine-times-facebook-can-get-ethical-trouble-2/><http://blog.legalsolutions.thomsonreuters.com/practice-of-law/nine-times-facebook-can-get-ethical-trouble-2/>.

<sup>31</sup> Michele R.J. Allinotte, *Finding Friends (and clients) on Facebook*, ABA Law Practice Magazine, [http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/january\\_february/finding-friends-and-clients-on-facebook.html](http://www.americanbar.org/publications/law_practice_magazine/2012/january_february/finding-friends-and-clients-on-facebook.html).

<sup>32</sup> John Browning, *Facebook, Twitter, and LinkedIn - Oh My! The ABA Ethics 20/20 Commission and Evolving Ethical Issues in the Use of Social Media*, 40 N. Ky. L. Rev. 255, 265 (2013).

Yes, it is safe to have a personal Facebook account so long as the attorney follows the ethical rules. An attorney should not attempt to get around the rules by instructing another to do something he or she cannot, such as sending a “friend” request to an opposing party.<sup>33</sup> This would be an ethical violation of Rule 5.3(c) for responsibility regarding non-lawyers and violation of Rule 8.4(c) for conduct involving dishonesty, fraud, deceit, or misrepresentation.<sup>34</sup>

#### **4. Whom Can You "Friend" on Facebook without Putting Yourself in Ethical Danger?**

An attorney should not send a “friend” request to an opposing party, judge, or potential juror because that would be an ethical violation.<sup>35</sup> It could be considered an ex parte communication in violation of Model Rule 3.5 or a communication with a represented party in violation of Rule 4.2.<sup>36</sup> Although an attorney should not friend request an opposing party, if the person’s page is viewable to the public, it is acceptable to view the page’s contents.<sup>37</sup> The safest practice is to only “friend” request your actual friends.<sup>38</sup>

If you want access to information that is on the opposing party’s Facebook you can seek to access the site through discovery requests and seek usernames and passwords through interrogatories, specific information through depositions, and printout of posts through document requests.<sup>39</sup>

#### **5. Facebook Status Updates - Can You Post Any Information about Clients, Opposing Counsel, Cases, or the Court?**

Lawyers should be cautious how they use their Facebook statuses. If a lawyer were to post a status about a client, he or she must make certain it does not contain confidential

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<sup>33</sup> Kelly Anthony and Andrew Jones, *To “Friend” or “Unfriend?” 3 Simple Ways for Attorneys to Ethically use Facebook*, Counsel Financial, <http://attorneylending.com/facebook-ethics/#fn1>.

<sup>34</sup> Pantekoek, *Nine times Facebook Can Get You In Ethical Trouble*.

<sup>35</sup> Allinotte, *Finding Friends (and clients) on Facebook*.

<sup>36</sup> Anthony, et. al., *To “Friend” or “Unfriend?” 3 Simple Ways for Attorneys to Ethically use Facebook*.

<sup>37</sup> Pantekoek, *Nine times Facebook Can Get You In Ethical Trouble*.

<sup>38</sup> Anthony, et. al., *To “Friend” or “Unfriend?” 3 Simple Ways for Attorneys to Ethically use Facebook*.

<sup>39</sup> #ethics at 174.

information in violation of Rule 1.6. Similarly, if a posting about a client is used for self-promotion, it should be accompanied by the appropriate advertising disclaimers.<sup>40</sup> Lawyers can post general status about cases or court such as “I won a case today,” however, nothing more without possibly getting into the area of advertising or solicitation. Lawyers should not post statuses harshly criticizing courts or decisions. Indeed, freedom of speech exists for all, but in some jurisdictions, lawyers can be disciplined for such social media posts. For example, a Florida attorney was reprimanded and fined for a blog post where he called a judge “evil” and a “witch.”<sup>41</sup>

## **B. Setting up and Managing Ethical Professional and Personal Twitter Accounts**

### **1. Media Policy**

It is a good idea for firms to create a firm social media policy. If setting up a personal Twitter account, set guidelines to follow for tweeting to ensure you do not overstep the boundaries and your personal account becomes perceived as a business account. Make sure all are represented in creating the policy. The committee that creates the policy should include people from the firm’s rainmaking lawyers, senior managers, IT experts, marketers, and members of generation Y to devise your specific firm strategy.<sup>42</sup>

Professional accounts should be kept strictly professional, and you should consider using a disclaimer. The standard disclaimer used oftentimes is “all opinions are my own” in the

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<sup>40</sup> Julie Langdon, *Question No. 1 for the Lawyer on Social Media: What Not to Share?*, Corporate Counsel (October 1, 2015), <http://www.corpcounsel.com/id=1202738703474/Question-No-1-for-the-Lawyer-on-Social-Media-What-Not-to-Share>.

<sup>41</sup> Merri Baldwin, *Ethical and Liability Risks Posed by Lawyers' Use of Social Media*, ABA Section of Litigation (July 28, 2011), <http://apps.americanbar.org/litigation/committees/professional/articles/summer2011-liability-social-media.html>.

<sup>42</sup> Simon Chester and Daniel Del Gobbo, *How to Create a Law Firm Social Media Policy*, ABA Law Practice Magazine (Jan./Feb. 2012), [http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/january\\_february/how-to-create-a-law-firm-social-media-policy.html](http://www.americanbar.org/publications/law_practice_magazine/2012/january_february/how-to-create-a-law-firm-social-media-policy.html).

biography section of Twitter. This does not address ethical concerns, only the attribution of inappropriate comments to the employer. Many attorney Twitter accounts or their individual tweets contain disclaimers that they are not giving legal advice or they are not creating an attorney-client relationships.<sup>43</sup> For example, the New York State Bar Association recommends attorney tweets dedicate about 90 or more characters of the 140 allotted characters to the use this disclaimer when advertising: "This tweet contains attorney advertising. Prior results do not guarantee similar outcome."<sup>44</sup>

### **C. Keeping Your "Tweeting" Ethical - Examples of Good/Bad "Tweets"**

#### **1. Ethical Tweet**

*"Case finally over. Unanimous verdict! Celebrating tonight."*

- In a California State Bar ethics opinion, this example tweet was not considered a "communication" with a former, present, or prospective client about the availability for professional employment and was therefore ethical.<sup>45</sup>

#### **2. Unethical Tweet**

*"Won a million dollar verdict. Tell your friends to check out my website."*

- According to the California State Bar ethics opinion, the last sentence of the post would make it a "communication" because it suggests availability for professional employment and did not contain the word "Advertisement."<sup>46</sup> It was therefore unethical.

### **D. LinkedIn Accounts - Top 5 Things You Must Avoid**

#### **1. Avoid ignorance of State Bar's Endorsement Rules**

- a.** In general, it would be unethical for a lawyer to display an endorsement for a skill that he or she does not possess. Some

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<sup>43</sup> Casey C. Sullivan, *Do Lawyers Need a Disclaimer on Their Twitter Accounts?*, Strategist – The FindLaw Law Firm Business Blog (May 11, 2015), <http://blogs.findlaw.com/strategist/2015/05/do-lawyers-need-a-disclaimer-on-their-twitter-accounts.html>.

<sup>44</sup> *Id.*

<sup>45</sup> The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2012-186.

<sup>46</sup> *Id.*

states, such as South Carolina, do not allow for endorsements at all.<sup>47</sup>

**2. Avoid not identifying the jurisdiction(s) you are licensed in.**

- a. This protects lawyers from claims of unauthorized practice of law.

**3. Avoid not using a disclaimer in the Summary Section (depending on your state's rules)**

- a. Example: "DISCLAIMER: This material may be considered attorney advertising under certain rules of professional attorney conduct."
- b. Example: "DISCLAIMER: Any endorsement or testimonial does not constitute a guarantee, warranty, or prediction on the outcome of your legal matter."
- c. Example: "DISCLAIMER: No attorney-client relationship is created when you contact me. Please do not include any confidential information in your communications. I encourage you to visit my website {www.lawfirm.com} or call me at (phone number) for a free consultation of your case."

**4. Avoid listing practice areas in a section titled "specialties" or in a manner that would imply they are specialties.<sup>48</sup>**

**5. Avoid posting information that would allow viewer to identify a current or former client in violation of Rule 1.6 for confidentiality.<sup>49</sup>**

**III. Client Confidentiality Breaches**

**A. Putting Proactive Steps in Place to Avoid Being Hacked**

Rule 1.6 imposes on the attorney the obligation to take reasonable efforts to prevent the disclosure of confidential client information. Law firms should possibly form IT committees that

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<sup>47</sup> Dahl, "Making "Friends" with the #Ethics Rules: Avoiding Pitfalls in Professional Social Media Use."

<sup>48</sup> Eva Hibnick, *LinkedIn for Lawyers – Some Ethical Considerations*, Solo Practice University Blog (Sep 9, 2014), <http://solopracticeuniversity.com/2014/09/09/linkedin-for-lawyers-some-ethical-considerations/>.

<sup>49</sup> Dean Dietrich, *Ethics: Social Media Ethics Etiquette*, Wisconsin Lawyer (June 2010), <http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=83&Issue=6&ArticleID=1920>.



include firm leadership, such as partners, so everyone, top to bottom, is aware of the risks.<sup>50</sup>

Proactive steps that attorneys may want to consider include:

1. Install antivirus programs and update spam filters.
2. Encrypt computers and devices so that if a device is lost or stolen, the information will not be accessible.
3. Run Host-Intrusion Protection (HIP) program that detects unusual behaviors, activities, or programs in the system.
4. If using the Cloud to store firm and client information, exercise due diligence in selecting a cloud provider. For example, some cloud providers store information in another country and could be subject to international search and seizure laws.
5. Create a plan for in the event the firm's systems get hacked.
6. Implement ongoing training for attorneys and staff.
7. Exercise caution with wireless Internet technology when working remotely. The most common types of wireless connections are Wired Equivalent Privacy ("WEP"), Wi-fi Protected Access ("WPA"), and Wi-fi Protected Access Version 2 ("WPA2"). Generally, WEP is considered the weakest security protocol and WPA2 is considered the strongest.
8. Avoid using unsecure open networks such as the ones found at coffee shops or airports.
9. Implement a password policy that requires lawyers and staff to use complex passwords that consist of a minimum of 12 characters and contains upper and lower case letters and numbers.<sup>51</sup>

## **B. Communication on Smartphones, iPads and Other Mobile Devices**

Lawyers should encrypt and password protect mobile devices, and avoid using unsecure open networks such as the ones found at coffee shops or airports.<sup>52</sup>

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<sup>50</sup> PricewaterhouseCoopers, *Safeguarding your firm from cyber attacks* 6 (2012), <https://www.pwc.com/us/en/law-firms/assets/pwc-safeguarding-your-firm-from-cyber-attacks.pdf>.

<sup>51</sup> CNA Professional Counsel, *Safe and Secure: Cyber Security Practices for Law Firms* 4 (March 2015), [https://www.cna.com/web/wcm/connect/61aec549-ac28-457b-8626-aa791c782459/Safe\\_Secure\\_Cyber\\_Security\\_Practices.pdf?MOD=AJPERES](https://www.cna.com/web/wcm/connect/61aec549-ac28-457b-8626-aa791c782459/Safe_Secure_Cyber_Security_Practices.pdf?MOD=AJPERES); PricewaterhouseCoopers, *Safeguarding your firm from cyber attacks* 6 (2012), <https://www.pwc.com/us/en/law-firms/assets/pwc-safeguarding-your-firm-from-cyber-attacks.pdf>.



### **C. What to Do if Your Social Media Account Has Been Hacked? Mitigating the Damage**

Given the possibility of being hacked, firms should consider cyber liability insurance coverage. A data breach can be very costly considering privacy breach notifications, litigation, loss of incomes, fines, and other expenses. The firm should change passwords immediately. If you used the old password for any other account (not recommended,) you should change that password also. You should understand your state's breach notification laws and notify clients whose information may have been accessed.<sup>53</sup> You should also make a record of when and how the breach was contained.<sup>54</sup>

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<sup>52</sup> PricewaterhouseCoopers, *Safeguarding your firm from cyber attacks* 6 (2012), <https://www.pwc.com/us/en/law-firms/assets/pwc-safeguarding-your-firm-from-cyber-attacks.pdf>.

<sup>53</sup> Deborah Gonzalez, *Essential Steps to Take After Your Law Firm Has Been Hacked*, LegalInk Magazine, <http://www.legalinkmagazine.com/2015/07/essential-steps-to-take-after-your-law-firm-has-been-hacked/>.

<sup>54</sup> CNA Professional Counsel, *Safe and Secure: Cyber Security Practices for Law Firms* 7.

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