

## Social Media and Legal Ethics

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Don't Photoshop yourself into pictures with celebrities and then post them on your law firm website.



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**NEWS**

**Nashville lawyer suspended after posting advice on how to make murder look like self-defense**

**Brinley Hineman** Nashville Tennessean  
Published 6:05 a.m. CT Jan. 23, 2021 | Updated 3:27 p.m. CT Jan. 26, 2021

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**LEGAL ETHICS**

**Lawyer is disbarred for 'social media blitz' intended to influence custody case and top state court**

BY DEBRA CASSENS WEISS

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**JULY 8, 2015, 5:45** **Facebook Post Earns Atty A DQ Bid In Cruise Injury Suit**

By Joyce Hanson (May 31, 2016, 12:21 PM EDT) -- Carnival Corp. on Monday demanded the removal of a lawyer from a personal injury suit in federal court, charging that he posted

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**Top Social Network Sites Used by Law Firms:**

(Among the 81% of law firms that maintain a presence on social networks)

	76% (down from 79% in 2019)
	60% (up from 54% in 2019)
	37% (up from 21% in 2019)
	35% (down from 38% in 2019)
	22% (down from 23% in 2019)

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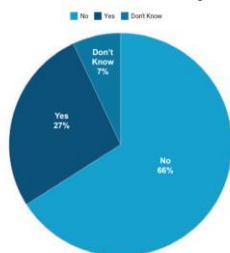
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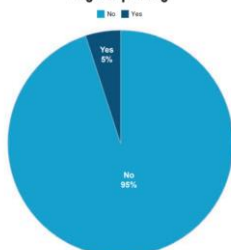
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Does Your Law Firm Have a Blog?



Do You Personally Maintain a Legal Topic Blog?




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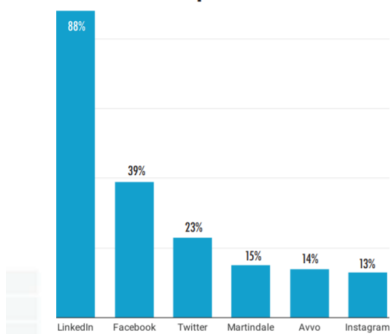
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Social Networks Individual Lawyers Use for Professional Purposes



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### No Specific Rules for the Internet

- Rule 1.6 (confidentiality)
- Rule 4.1 (truthfulness to others)
- Rule 4.2 (communicating with persons represented by counsel)
- Rule 4.3 (unrepresented persons)
- Rule 8.4 (dishonesty)



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2018 FORMAL ETHICS OPINION 5

ACCESSING SOCIAL NETWORK PRESENCE OF REPRESENTED OR UNREPRESENTED PERSONS  
Adopted: July 16, 2018

2019 FORMAL ETHICS OPINION 6

OFFERING INCENTIVE TO ENGAGE WITH LAW PRACTICE'S SOCIAL NETWORKING SITES  
Adopted: October 29, 2019

2020 FORMAL ETHICS OPINION 1

RESPONDING TO NEGATIVE ONLINE REVIEWS  
Adopted: July 16, 2020

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Thanks, Captain Obvious.

2019 FORMAL ETHICS OPINION 3

ENGAGING IN INTIMATE RELATIONSHIP WITH OPPOSING COUNSEL  
Adopted: April 26, 2019

Opinion rules that an ongoing sexual relationship between opposing counsel creates a conflict of interest in violation of Rule 1.7(a).

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Social Media and Litigation

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When poll is active, respond at [pollev.com/sogchris](https://pollev.com/sogchris)  
 Text **SOGCHRIS** to **22333** once to join

**May you send a Facebook friend request to a potential litigation witness?**

No. Don't be such a creep.

Yes. Lawyers can be friendly, right?

Yes, but only if you identify yourself and the party is not represented.



Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

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## 2018 FEO 5 (NC)



- Okay to view public portion of any person's social media sites
- Okay to request access to private portion of a person's social media sites if:
  - Person is not represented
  - Attorney self-identifies, no deception

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Cuyahoga County prosecutor fired after posing as an accused killer's girlfriend on Facebook to try to get alibi witnesses to change their testimony

Updated Jun 7 2013; Posted Jun 7 2013



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### Centre County DA: I 'made a Facebook page that is fake to snoop,' email confirms

The admission from Stacy Parks Miller comes in a court filing by Bernard Cantorna, who's running against her.



Stacy Parks Miller, left, and a profile photo of "Britney Bella." DAN GRISWOLD/THE DAILY COLLEGIAN/SCREENSHOT -- JAYNA WALLACE / BILLY PENN

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“Law enforcement, including prosecutors, have long engaged in the practice of using a ruse to obtain the truth. I think the public is better off for what I did.”

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### Third Parties?



- Tina Tarheel is a potential witness against your client in pending litigation.
- Your paralegal Susan has been “friends” with Tina on Facebook for years.
- May you obtain access to Tina’s private Facebook posts thru Susan?

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**Can you look at Susan's Facebook account to see Tina's private posts?**

No.

Yes, assuming there was no deception involved.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [poll.eu.com/app](https://poll.eu.com/app)

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### Social Media and Litigation

- A child has been injured on a play structure in a city park.
- You are informed that the city's Facebook page has photos of the park in question showing the play structure was in poor condition.

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**What may you do about the photos on the city's Facebook page?**

Nothing.

Recommend that the city delete them. No copies needed if litigation is not pending.

Recommend that the city delete them but retain copies of the posts.

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# VA "I ♥ Hot Moms" case

## NC 2014 FEO 5

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## Social Media & Jurors

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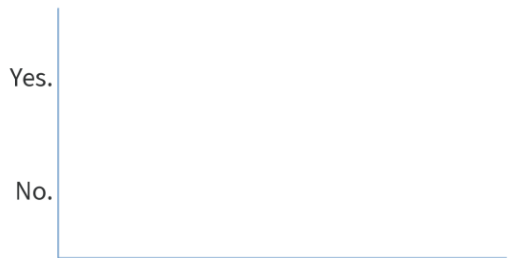
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**May you view the Facebook page of a jury member before or during a trial?**




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## Social Media and Jurors

- Rule 3.5 prohibits a lawyer from communicating ex parte with a juror or prospective juror unless authorized to do so by law or court order
- **ABA Formal Opinion 466:**
  - Okay to look at public pages; NO FRIEND REQUESTS
- **NYSBA 2015 Social Media Ethics Guidelines**
  - Not permitted if juror will learn of viewing
- *Could you view a juror's private posts thru a third-party?*

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**Can I FB friends or an Insta follower of a judge in front of whom I regularly appear?**

No.

Yes so long as I avoid ex parte contact during trials.

Start the presentation to see live content. Still no live content? install the app or get help at PALEX.com/app

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## Judges and Facebook/LinkedIn

- **NC 2014 Formal Ethics Opinion 8**
- *Be careful with endorsements!*

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## Social Media in the Workplace

Your boss asks you to help interview employment candidates.

Should you Google them?

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### Should you Google employment candidates?

“Good idea. That will help weed out the crazies.”

“Absolutely not. That is way too Big Brother for me.”

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## Social Media in the Hiring Process

- Internet searches may give employers information that could increase their risk of liability under federal laws that prohibit discrimination in hiring.

– Diane M. Juffras, *Using the Internet to Conduct Background Checks on Applicants for Employment*, Public Employment Law Bulletin No. 38 (UNC School of Government October 2010)

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## Responding to On-Line Reviews

★ ★ ★ ★ ★ 4/4/2016

I have never had to deal with an attorney until now. These people came recommend from a friend, who is now herself kicking herself for using them.  
You send emails and get no response. I did all the work for them I provided them with every document. I never spoke to my attorney just his new guy in training Marc, who is more concerned about his looks, then checking emails.  
Stay far away even if recommend by someone they are the worst by far with no compassion for thire clients. P.S. Due to being told to not return to work they will get my salary paid for me. I lost my job.  
STAY AWAY FROM THESE CREEPS.



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## Responding to On-Line Reviews

 **Comment from Antonio M. of Monaco & Monaco**  
Business Owner

5/26/2016 - We are sorry you feel this way. Unfortunately the information you are using to review our business in the public light is false. If you check your email correspondence dated Fri, Nov 7, 2014 at 12:24 PM, you will see that I advised you not to lose your job 3 times in the single email. "I would advise you to go back to work" & "However!....do not lose your job. Insurance does not pay for lost health insurance or termination of employment" & lastly "but again, I advise that you do not lose your job!". We recovered the maximum amount that was available on the insurance policy. [Read less](#)



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**Is the attorney's response permitted under NC State Bar ethics rules?**

No.

Yes.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [polllev.com/app](#)

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## Responding to On-Line Reviews

- 2020 FEO 1:  
*“Lawyer may deny the veracity of the review, but lawyer may not use confidential client information to contradict specific facts set out therein.”*

- Rule 1.6: lawyer v. client “controversy”?
- Prospective clients?

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## Responding to On-Line Reviews

- How about this waiver?

*“Client agrees that confidential information may be revealed by Lawyer in the event Client publishes or causes the publication of a claim on the internet that Client’s representation by Lawyer was deficient in some respect, but only to the extent reasonably necessary to directly rebut such a claim.”*

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## Responding to On-Line Reviews

*“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.”*

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