Legal Ethics and Social Media

Presented by: SCOTT WEATHERFORD
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
sweatherford@jw.com
WHAT IS SOCIAL MEDIA?

• Social media is any technology that uses the internet to facilitate conversation

• Roadmap:
  • Dangers of Social Media Use
  • How to Protect Yourself
  • Specific Application to Disciplinary Rules of Professional Conduct

Source: Ryan Garcia, Social Media Attorney for Dell and Professor of Law & Social Media at University of Texas School of Law
THE SOCIAL MEDIA EXPLOSION
DANGERS OF SOCIAL MEDIA
SOCIAL MEDIA DANGER: CONNECTIONS

- Everybody knows everybody!
- Transparency is key
- Exposure will happen before you know it
SOCIAL MEDIA DANGER: SPEED

• The world will discover your mistake before you do
SOCIAL MEDIA DANGER: INFORMAL TONE

- Typing behind a computer does not equal heightened protection
- Informal nature of social media does not always equal informal tone
SOCIAL MEDIA DANGER: PLATFORM

- Must know how to use the platform!
- Be aware of updates
$JPM VC Jimmy Lee is taking over @JPMorgan on 11/14 at 1pm ET. Tweet Qs using #AskJPM & learn more about him here: jpm.com/x/a/NFPV4Fj
SOCIAL MEDIA DANGER: UNINTENDED CONSEQUENCES

Tim Donovan
@tadonovan

As a young person, I know the dangers of social media. It’s important to be deliberate and thoughtful when using it.

J.P. Morgan
@jpmorgan

Tomorrow’s Q&A is cancelled. Bad Idea. Back to the drawing board.

6:29 PM - 13 Nov 2013

1,688 RETWEETS 964 FAVORITES

3:54 PM - 13 Nov 2013

318 RETWEETS 220 FAVORITES
 SOCIAL MEDIA DANGER: ACCOUNT OWNERSHIP

• PhoneDog v. Noah

• How much are your followers worth?

• Who owns the account?
SOCIAL MEDIA DANGER: TRUST

Who are you handing the keys to?

Ryan found two more 4 bottle packs of Dogfish Head's Midas Touch beer.... when we drink we do it right #getngslizzerd

HootSuite • 2/15/11 11:24 PM
SOCIAL MEDIA DANGER: COVER UP IS WORSE THAN THE CRIME

We've deleted the rogue tweet but rest assured the Red Cross is sober and we've confiscated the keys.

about 11 hours ago via ÜberTwitter
Retweeted by 86 people
SOCIAL MEDIA DANGER: COVER UP IS WORSE THAN THE CRIME

- Streisand Effect: the phenomenon whereby an attempt to hide, remove or censor a piece of information has the unintended consequences of publicizing the information more widely.
HOW TO PROTECT YOURSELF
SOCIAL MEDIA PRINCIPLES

The Five Principles + One Extra

1. Protect Information
2. Be Transparent and Disclose
3. Follow the Law, Follow the Code
4. Be Responsible
5. Be Nice, Have Fun and Connect
6. Account Ownership

Source: Ryan Garcia, Social Media Attorney for Dell and Professor of Law & Social Media at University of Texas School of Law
TACO BELL (OF ALL COMPANIES...)

Old Spice @OldSpice

Why is it that "fire sauce" isn't made with any real fire? Seems like false advertising.

234 RETWEETS 71 FAVORITES

12:24 PM - 9 Jul 12 via web

christine teigen @chrissyteigen · Feb 24
My last 100 mentions are people telling me about the new @tacobell breakfast menu. You get me.

White Castle @WhiteCastle · Feb 24
@chrissyteigen Yet you neglect our tweets about delicious sliders. We see where we rank. :)

christine teigen @chrissyteigen · Feb 24
Well well well it’s a good ol’ fashioned showdown. RT @WhiteCastle Yet you neglect our tweets about delicious sliders. We see where we rank.

White Castle @WhiteCastle · Feb 24
@chrissyteigen All we have to say is, your an original cover model. We’re an original slider. It's a match made in heaven.

Taco Bell @TacoBell

@WhiteCastle @chrissyteigen
You're*

1,462 RETWEETS 3,118 FAVORITES

4:34 PM - 24 Feb 2014
APPLICATION TO TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT
• Rules only apply to “commercial speech.”

• **Rule 7.03(a):** Prohibited Solicitations & Payments. Prohibits a lawyer from seeking professional employment by “other electronic contact” under the following circumstances:
  
  – If the contact concerns a matter arising out of a particular occurrence or event, or series of occurrences or events;

  – From a prospective client or non-client who has not sought the lawyer’s advice and with whom the lawyer has no familial, past or present attorney-client relationship; and

  – When a significant motive is the lawyer’s pecuniary gain.
• **Rule 7.04**: Advertisements in the Public Media

  – Lawyers may advertise on the internet or electronic or digital media (7.4(d));

  – If you do, must display the statements and disclosures required for traditional print advertising (7.4(r));

  – A copy of each advertisement must be kept by four years after the last dissemination (7.4(f));
• Rule 7.05: Prohibited Written, Electronic, or Digital Solicitations

  – Regulates solicitation by written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment.

  – Comment 5: These solicitations “must comply with all of the substantive requirements applicable to written solicitations that are comparable with the different forms of media involved, as well as all requirements related to approval of the communications retention of records concerning them.”
• **Rule 7.07: Filing Requirements**

  – Unless exempted, a lawyer must file the following with the State Bar of Texas’s Advertising Review Committee:

    • Solicitations;
    • Advertisements in the public media;
    • A copy of the lawyer’s website.

  – Exemptions (7.07(e)): “Tombstone Information”

    • Contact information;
    • Dates of admission;
    • Areas of practice;
    • Languages spoken, etc.
• **Rule 7.07**: Non-Solicitation Defense
  
  – Comment 6: Communications listed in Rule 7.07 “need not be filed at all if they were not prepared to secure paid professional employment.”

• **Penalty for Non-Compliance**
  
  – $300
  
  – If unsure, file an application for review and confirm compliance with the appropriate rules.
WEBSITES

• Must be filed with the ARC, unless the website is limited to the exempt information listed in 7.07(e).

• “Website” means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm’s practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL).

• Only the “intended initial access page” needs to be filed, and must include certain information.
• Not commercial speech if educational, information, editorial, or political in nature.

• However, attorneys should be careful to ensure that such postings do not meet the definition of an advertisement subject to the filing requirements.
• Landing pages such as those on Facebook, Twitter, LinkedIn, etc. where the landing page is generally available to the public are advertisements.

• Same exemption rules for websites protect these social media profiles.
  – Where access is limited to existing clients and personal friends, filing with the Advertising Review Department is not required.
  – Public directories.
If you present information regarding prior successes and professional history, this information is not exempted and must be filed.

“Specialties” should be left blank unless you are board certified by the Texas Board of Legal Specialization.

“Answers” section should be avoided.

Screen all testimonials.
Emails and Newsletters

- Same general rules as blogs. If informational or educational, no need to file with ARC.
- If message contains both educational information and commercial speech, then the entire message will be subject to review.
- If advertising by email, must comply with 7.05 (include ADVERTISEMENT in the subject line and at the beginning of the email’s content).
**Banner Ads & Pop Up Ads**

- An image or images displayed through the vehicle of an electronic communication is an advertisement in the public media if the ad describes a lawyer or law firm’s practice or qualifications.
- The content of a web-based display or banner ad will be viewed in conjunction with the target page.
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Ten Takeaways...

1. When in doubt... FILE anything that can be construed as advertising with the ARC.

2. Websites must generally be filed with the ARC. Rule 7.07(c) requires a lawyer’s website to be filed unless it meets the exceptions set forth in 7.07(e). Rule 7.04 sets forth what must be included in your website.

3. Advertising emails must meet specific requirements (Rule 7.05) and must state that the email is an “ADVERTISEMENT.”

4. Banner ads and pop up ads are advertisements that may have to be filed.

5. Unless you are board certified by the Texas Board of Legal Specialization, you cannot say that you have a “specialty or specialize in a particular area of law.” Be careful of being designated an “expert” on professional networking websites.

Source: Texas Young Lawyers Association Pocket Guide: Social Media 101
Ten Takeaways...

6. It is prudent to include a disclaimer that your website or social media profile or other activity is intended solely for residents of Texas or persons seeking representation in Texas.

7. Status updates or blog posts do not need to be filed so as long as they are solely educational or informational in nature.

8. A lawyer is prohibited from initiating contact with a prospective client (who has not sought the lawyer’s legal advice) through any live interactive manner online. TDRPC 7.03.

9. Be careful of friend requests accompanied by a message that could be considered a request for legal services.

10. Though not required explicitly by the TDRPC, it is also wise to include a clear statement that the attorney does not intend to form a lawyer-client relationship when interacting with others on the internet and in social media outlets.

Source: Texas Young Lawyers Association Pocket Guide: Social Media 101