The Law and Ethics of Social Networking & Online Activity

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The Internet, mobile telephony, and the apparently constant connectedness of business professionals and their clients and colleagues raise a variety of issues in the modern professional world. Of these, new technologies often raise ethical issues, often simply because we are unaware of the technology's true impact on our lives and our practice. These materials will look at how connectedness in many of its forms implicates ethical concerns.

I. Introduction: The Internet Changes Nothing, the Internet Changes Everything

The Internet is essentially a series of inter-connected computers. At each end of any particular connection established over the Internet are computers, and in between are all the networking elements that allow the Internet to function. Networking works by providing standardized ways to transmit information from one location to another, and involves a transmission medium (such as fiber optic cable) and routers that know where the information needs to go. The "under the hood" elements are not particularly important for us here, though some of the workings of the network itself are relevant to inquiries regarding things like cloud computing and E-mail usage, and where that is the case we will delve lightly into them.

In the opening days of the Internet there was a scholarly debate between Judge Frank Easterbrook and other scholars (most notably Larry Lessig) as to whether there should be a legal field known as "Cyberspace Law." While the debate took turns not relevant to us here, one advantage of its having taken place is that it helped develop the analytical tools we need to ask whether the Internet changes anything when it comes to legal relations among people. In some cases, the Internet changes nothing. The doctrinal analysis we undertake is "the same" as it was before the Internet, and the Internet's involvement in the scenario is at best a red herring, and at worst a fatal distraction. In other cases, the Internet does change something, either by amplifying the effects of actions that existed in the past, by changing how those actions are perceived, or by making new aspects of them salient to our legal analysis.

The Internet is sometimes called "The Big Equalizer;" it allows everyone who wants to to publish whatever they want to publish. A variety of ways to publish are available, and in each case they offer various advantages and disadvantages. Building your own Web site takes time, some design sense, and an ability to understand how other people will use your site. Websites are also often time-consuming to update manually. This has lead to a plethora of online options for people to not only publish entire websites, but also options to publish in more limited ways, or to more limited groups of people. These include blogging platforms such as Wordpress and Blogger (the latter now owned by Google) that allow you to publish rather quickly and without much knowledge of how the Web works. These sites are indexed by the search engines and all the maintenance is done by the host site, streamlining the online presence problem.

Social networking sites play a different and larger role, but include publishing abilities within their structures. These sites, such as myspace and Facebook, allow much more than publishing, but publishing – whether to the world or to a group of "friends" that can be upwards of 1,000 or more people – is a key ingredient to what the sites hope to accomplish. Add to these Twitter, a "micro-publishing" site that allows users to post short messages of up to 140 characters and in which people can "follow" and "be followed" by

other Twitter users, and you have but a few of the ways in which content can be added by Internet users to the Web.

Each of these methods of online exchange contains pitfalls that must be considered by those who take them up. One woman lost her position in a teaching school because she posted a picture on Facebook of herself, holding a cup of what appeared to be beer. Her school kicked her out of the program and she lost her opportunity to finish the program and become a school teacher (she has rather infamously become known as the "drunk pirate" as that is what she captioned the image). Others have, for example, been "caught" cheating on disability claims, posting how active they have been while collecting disability benefits.

For attorneys, the potential pitfalls of both publishing online and of connecting online are multiplied by their interaction with the Rules of Professional Conduct. The complexity of the ethical analysis increases when we talk about using online resources in the practice of law itself (ie, as a component of practice, such as in seeking information about other parties, connecting with the judiciary, or soliciting business online), as opposed to more straightforwardly engaging in online speech.

II. Ethics Rules and the Internet

It is often said that the Internet is a lawless space, the wild wild west of the new millennium. Yet, as we shall see, rules are often applied to communications and transactions that occur on the Internet, and legal ethics rules are no exception. This section briefly outlines some of the provisions of the Rules of Professional Conduct that may become relevant to our discussion later of ethics and the Internet.

Rule 1.1: Duty of competence: requires knowing the law and acting appropriately

Rule 1.3: Due diligence: requires pursuing leads and searching out information and legal precedent

Rule 1.4: Communication: Requires appropriate communication with clients.

Rule 1.6: Confidentiality of information: forbids a lawyer from knowingly revealing confidential information.

Rule 3.3: Conduct before a tribunal: sets standards for conduct before a tribunal.

Rule 3.4: Fairness to opposing party and counsel: sets standards for the treatment of opposing party and counsel.

Rule 3.5: Maintaining and Preserving the Impartiality of Tribunals and Jurors: forbids actions that are prejudicial to the tribunals and jurors.

Rule 3.6: Trial Publicity: prohibits extrajudicial prejudicial statements by lawyers.

Rule 4.1: Truthfulness: forbids false statements by lawyers

Rule 4.2: Communication with Person Represented by Counsel: forbids contact by a lawyer with a party represented by counsel.

Rule 4.3: Communicating with Unrepresented Persons: forbids a lawyer from implying impartiality or representation when dealing with unrepresented persons.

Rule 4.4: Third Persons: requires notification of information received in error and forbids intentional embarrassment, harm to third persons and illegal methods of obtaining information

Rule 5.3: Responsibility for non-lawyers: forbids having a non-lawyer do what a lawyer is forbidden from doing

Rule 7.1: Advertising: sets rules for lawyer advertising.

Rule 7:2: Payment for Referrals: forbids payments for referrals (with exceptions).

Rule 7.3: Solicitation and Recommendation of Professional Employment: regulates solicitation of clients.

Rule 7.4: Identification of Practice and Specialty: allows identification of practice area and specialty (with requirements).

Rule 7.5: Professional Notices, Letterheads and Signs: sets standards for how lawyers represent themselves to the public, including prohibiting lawyers from practicing under trade names.

Rule 8.2: Judicial Officers and Candidates: forbids false statements about judges

Rule 8.4: Misconduct (catch-all): forbids violation of the rules, illegal conduct, dishonest or fraudulent conduct, conduct prejudicial to the administration of justice, imply improper influence, assist judges in violating judicial conduct rules, discrimination, and other conduct that reflects adversely on lawyer's fitness to practice law.

III. Online Speech, Legal and Otherwise

A. Publishing Online: Blogging, Facebook, Twitter and More

There are a variety of ways to publish online. One is simply to develop a Web page. This was the earliest of the ways in which people published online, but it required (and to a certain degree still requires) skills in web page coding (known as HTML, now in its fifth iteration), and it can be labor and time intensive. In place of developing a Web page or site, a variety of opportunities for easier online publishing exist, including blogging platforms such as Blogger[1] and Typepad.[2] A ready-made blogging platform allows the user to choose a design for their page, choose various elements of the page, and integrate them into the final blog – a blog being little more than a web page that allows for interactive publishing, including comments and links from other blogs that reference a post. Many lawyers blog, and there are a great many law related blogs to choose from.[3]

[1] http://www.blogger.com/

[2] http://www.typepad.com/

[3] Legal or "Law Blogs" are sometimes referred to as Blawgs. For a thorough and up to date list, s*ee*, Blawg Directory, ABA Journal (with ability to search by category, region, and author type): http://www.abajournal.com/blawgs/

In addition to blogging, lawyers may publish through social networking platforms such as Facebook,[4] Google+,[5]LinkedIn,[6] and Twitter.[7] These platforms enable publishing in different ways, oftentimes integrated with tools to connect the user to friends, acquaintances, and perhaps even strangers.[8] Twitter, for example, requires posts to be short: no longer than 140 characters. Facebook allows users to "friend" each other and to control the extent to which their information and posts are shared with others, but a large part of the Facebook experience involves a user posting information as a "status update." This information is then automatically placed into the user's friend's wall, where they can scroll their friends' updates and see what they have been up to. LinkedIn uses a similar newsfeed model, though LinkedIn is more focused on professional information and less on personal updates.

With all of these (and even more) outlets for online expression, it is not surprising that lawyers have been crossing the line when it comes to information posted online.

1. Identifying clients online

Illinois Assistant Public Defender Kristine Peshek was suspended from the practice of law in the spring of 2010 for content she posted on her blog, which was entitled, "The Bardd Before the Bar—Irreverant Adventures in Life, Law, and Indigent Defense." Her blog included stories of her defense activities, but she included clients in her posts, using either names or jail numbers that would have allowed them to be identified. She also admitted that one of her clients had lied to a court and she had not brought the lie to the Court's attention. Finally, she referred to one judge as an a**hole, and another as "clueless." She lost her job and was suspended from the practice of law for 60 days.

2. Trying to Influence Public Perception by Posting Criminal Discovery Video Online

A lawyer in Illinois tried to convince the public that his client had been framed, with police planting drugs on his client. The video, which the attorney received during discovery, was posted to YouTube and then linked from Facebook, where it received more than 2,000 views before a judge ordered it removed. The complaint alleged that the attorney violated rules relating to discovery materials. That the attorney took all of the relevant actions without informing the client, let alone obtaining the client's permission, was also noted in the complaint.[9]

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[4] http://www.facebook.com/

[5] http://plus.google.com/

[6] http://www.linkedin.com/

[7] http://www.twitter.com/

[8] MySpace is another social networking site, but it is not often used by lawyers.

[9] http://www.abajournal.com/news/article/ethics_complaint_claims_lawyer_tried_to_sway_potential_jurors_by_posting_di/; https://www.iardc.org/12PR0006CM.html; http://lawprofessors.typepad.com/legal_profession/2012/02/the-illinois-administerator-has-filed-a-complaint-allegingmisconduct-byan-attorney-who-represented-a-drug-defendant-the-com.html

3. Florida lawyer disciplined for calling a judge names on a blog

Sean Conway was upset with Judge Cheryl Aleman for using procedural rules he thought deprived his clients of the right to a speedy trial. After filing complaints with the judicial watchdog agency without any observable results, he posted about his experiences on his blog.[10] Included in his posting were the following quotations:

> Recently, in an attempt to make defendants waive their rights to a speedy trial, Judge Cheryl Aleman has decided to set trials about 1-2 weeks after arraignment, hoping that defendants will move for a continuance, thereby waiving their right to a natural speedy trial.
>
> Today, Oct. 30th, I along with several other attorneys, had to endure her ugly, condescending attitude . . . Every atty tried their best to bring reason to that ctroom, but, as anyone who has been in there knows, she is clearly unfit for her position and knows not what it means to be a neutral arbiter.
>
> * * *
>
> As my case was on recall for 2 hours, I watched this seemingly mentally ill judge condescend each previous attorney.
>
> * * *
>
> ME: "Judge (not your honor b/c there's nothing honorable about that malcontent) ... there seems to be a mistake in this case."
>
> EVIL, UNFAIR WITCH ("hereinafter "EUW"): "and what is that?"

The Florida Bar found that Conway's post violated five ethics rules. Included were alleged violations of Florida Rules 4-8.2(a) ("A lawyer shall not knowingly make a false statement of fact concerning the qualifications, conduct or integrity of a judge" – New York's rule is the same, N.Y. R. Prof'l. Conduct 8.2(a)) and 4-8.4(d) ("A lawyer or law firm shall not . . . engage in conduct that is prejudicial to the administration of justice"). Conway initially defended himself on free speech grounds, but after the Florida Supreme Court rejected his argument, he eventually agreed to a public reprimand and a fine.

4. Texas lawyer gets in trouble for asking for continuance for funeral then partying

In another case a Texas lawyer asked a judge for a continuance so that she could attend a funeral. She seemed to have forgotten, however, that she and the judge were "Facebook friends." While she really was attending a funeral, she also posted many times about going to parties, drinking, and generally having a good time. When she returned, she asked the judge for another continuance, which the judge denied.

[10] http://jaablog.jaablaw.com/2006/10/30/judge-alemans-new-illegal-oneweek-to-prepare-policy.aspx

5. Posting False Negative Review Earns Reprimand

In a case in Minnesota, an attorney was publicly reprimanded (and paid costs) for "falsely posing as a former client of opposing counsel and posting a negative review about opposing counsel on a website."[11]

6. Posting Fake Dating Ad for College Acquaintance Yields Suspension

A New York attorney who created a fake lesbian dating profile for a woman he knew in college years before was suspended by the Appellate Division, Second Department. According to the Court, "respondent's conduct was highly inappropriate and adversely reflects on the legal profession."[12]

7. More problems with E-mail

In two separate cases, attorneys sent photos via E-mail or posted them on Facebook (thinking they were limited to just friends). In the first case, an attorney handling a wrongful death case sent a picture of the dead body to a friend and included disparaging remarks. As the firm monitored E-mail, the message was seen and his firm reported him to the disciplinary authorities.

In the second case, a public defender in Florida posted a photo of a client's underwear on Facebook. According to the Miami Herald:

> *[Defendant's] family brought him a bag of fresh clothes to wear during trial. When Miami-Dade corrections officers lifted up the pieces for a routine inspection, Recalde's public defender Anya Cintron Stern snapped a photo of Recalde's briefs with her cellphone, witnesses said.*
>
> *While on a break, the 31-year-old lawyer posted the photo on her personal Facebook page with a caption suggesting the client's family believed the underwear was "proper attire for trial."*

The posting led to a mistrial in the case (and the attorney was fired, as well). [13]

In a similar vein, the attorney defending George Zimmerman in the Trayvon Martin shooting case in Florida was pictured eating ice cream on his daughter's Instagram page with a caption that read, ""We beat stupidity celebration cones." #zimmerman #defense #dadkilledit The attorney later apologized for the posting.[14]

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[11] In re Petition for Disciplinary Action against Allison Wiles Maxim Carlson, a Minnesota Attorney, Registration No. 353784, MN Supreme Court, July 11, 2013, http://mn.gov/lawlib/archive/supct/1307/ORA131091-071113.pdf (PDF)

[12] *In re O'Hare*, App. Div. 2nd Dept. (July 11, 2013), http://www.nycourts.gov/reporter/3dseries/2013/2013_05320.htm

[13] Lawyer's Facebook photo causes mistrial in Miami-Dade murder case, Miami Herald, Sept. 9, 2012, http://www.miamiherald.com/2012/09/12/2999630/lawyers-facebook-photo-causes.html

[14] Zimmerman attorney says daughter's Instagram post 'immature and insensitive,' apologizes, http://dailycaller.com/2013/06/29/zimmerman-attorney-says-daughters-instagram-post-immature-and-insensitive-apologizes/#ixzz2dyp4uFpT

8. Judges can get in trouble, too

There are a number of judges who have run into problems with their online interactions in recent years. One is Ninth Circuit Chief Judge Alex Kozinski, known for his decisions in Cyberlaw cases. Judge Kozinski maintained a web page on a private server and on which he shared what he thought was humorous material, but which content was also at times risqué or sexually oriented. Unfortunately for the judge, who thought the web page was private, the webpage was publicly available.[15] An external ethics investigation (conducted by the Judicial Conduct panel for the Third Circuit) called Kozinski's actions "imprudent" but concluded without any further action following the judge's acceptance of responsibility and corrective actions following disclosure of the site.[16]

Chief Judge Cebull of the Montana Federal District Court also ran into trouble, but in a different way. Earlier this year he sent out an E-mail that contained a racist joke about President Obama's mother (and, by implication, the president himself).[17] After Judge Cebull sent the message, one of the recipients forwarded it on to the press, at which point the Judge was subjected to numerous public calls for his resignation. He then asked for an ethics investigation into his own behavior, [18] but before the investigation concluded, the Judge retired from the Bench.[19]

Judge McCree of Michigan was publicly censured for taking a cell phone picture of himself naked from the waist up and sending it to a court officer, and then not taking media reports and inquiries about the matter seriously. He allegedly responded to a reporter's questions about the photos by saying, "Hot dog, yep, that's me. I've got no shame in my game". According to the Michigan Supreme Court, Judge McCree "conducted himself in a flippant manner and did not give the interview the seriousness he should have. As a result, he brought shame and obloquy to the judiciary."[20]

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[15] 9th Circuit's chief judge posted sexually explicit matter on his website, L.A. Times, June 11, 2008, http://www.latimes.com/news/local/la-me-kozinski12-2008jun12,0,6220192.story

[16] http://www.ca3.uscourts.gov/opinarch/089050p.pdf

[17] Montana Federal Judge Reports Himself for Ethics Review After Admitting He Sent a Racist Email, ABA Journal: Law News Now, March 2, 2012, http://www.abajournal.com/news/article/montana_federal_judge_reports_himself_for_ethics_review_after_admitting_he_/

[18] Montana Judge to be investigated over anti-Obama e-mail, USA Today, April 6, 2012, http://www.usatoday.com/news/washington/story/2012-04-06/judge-racist-email-montana/54076036/1

[19] Fmr. Chief District Judge Cebull Retires, Email Scandal Over? April 4, 2013, http://blogs.findlaw.com/strategist/2013/04/fmr-chief-district-judge-cebull-retires-email-scandal-over.html?

[20] In re: Hon. Wade H. McCree, SC: 145895, RFI Nos. 2012-19839 , 2012-19863, Michigan Supreme Court (2012).

In Texas, Judge Elizabeth Coker sent texts from the bench to an assistant district attorney who was observing a trial, instructing the ADA to pass the information to the ADA trying the case. Her actions eventually led to both a judicial commission investigation and an attempt to impeach her brought in the Texas House.[21]

B. Anonymity Online: A Warning

Anonymity online has a powerful draw for people from all walks of life and from all social strata. The ease of pretending to be someone other than yourself, either through pretending to be someone else or simply by disassociating yourself from your own name and history by using another name. It is often easy when signing up for a new discussion board, website or online service to choose a pseudonym instead of using a real name.

Adding to the "natural allure" of anonymity is that the Constitution protects anonymous speech.[22] These protections have been extended to Internet speech.[23] Yet, even if it is Constitutionally protected, anything you do online under another name – or under no name – can come back to haunt you. It is actually quite hard to be truly anonymous on the Internet. Because of the way the network functions, you need to "hide" not just behind a name, but also behind technology that keeps your network provider and network address secret. Forget one time to put these technological pieces in place and you can be quite easily identified (from a technological standpoint). Never use them and your identity is but a subpoena away (issued to your Internet Service Provider, or ISP, based on the Internet address [the "IP Address"] you were using when you posted the relevant comments or information).

In some cases, you can be identified simply from your IP address on its own by those with sufficient access and knowledge of Internet technology. You can also "give yourself away" by slipping up in your online persona or technologically (such as by posting an image with GPS data attached, by sending a message to the wrong person as a result of your E-mail program filling in the wrong address, or by referring to events or locations that can be used to identify you).

That the law will step in to uncover a person who has stepped over a legal line is clear. In a case involving the law school admissions discussion board "Autoadmit" a number of posters were sued, and some "unmasked" (with some of those alleged to be law students or recently admitted lawyers). The case was described as follows:

> Two female Yale Law School students, captioned as Does I & II, sued Anthony Ciolli, the former chief education director of the popular law school admissions forum, AutoAdmit, and a host of pseudonymous users of the forum over vulgar, sexually explicit, and threatening comments posted about them on the forum. In addition to making numerous derogatory and sexually explicit statements about the two students, pseudonymous users of the site created another website, t14talent: The Most Appealing Women @ Top Law Schools (now defunct), and posted photographs of one of the students without her permission. (Although the complaint is not entirely clear on this point, the

[21] Texas House Considers Impeachment Proceedings Against Judge, July 19, 2013, http://gaveltogavel.us/site/2013/07/19/texas-house-considers-impeachment-proceedings-against-judge/

[22] *See, McIntyre v. Ohio Elections Commission,* 514 U.S. 334 (1995).

[23] *See, e.g., Reno v. ACLU,* 521 U.S. 844 (1997).

> student claims copyright ownership in these photographs in addition to publicity rights, indicating that she may have been the creator of the photos and posted them online.)[24]

Anonymity did not help the posters in this situation, and it is likely to be equally unavailing for lawyers trying to hide under the guise of online anonymity to publish unethical comments. Before a subpoena will issue, the speaker must have engaged in "actionable speech" (speech that is tortious or otherwise is itself central to a legal cause of action). The person or entity seeking to identify the source of an anonymous message must show they have given the anonymous poster an opportunity to defend against the attempt to identify them. They must then identify the "exact statements" alleged to constitute "actionable speech," whether there are alternative means of obtaining the subpoenaed information, and whether the need for the information is central to plaintiff's claims. The final steps before anonymity is breached involve determining the subpoenaed party's expectation of privacy when engaging in the challenged speech and whether the plaintiff has set out an adequate cause of action (which seems to be somewhat less than being able to survive a motion to dismiss).[25]

If the Committee on Professional Standards was to seek to unmask the anonymous writer of a comment that involves or implicates the Rules, they would first have to meet the above test. The untested element in the context of ethical proceedings is whether the Committee would first have to show that the poster was a lawyer before the subpoena would issue. The courts would have two contrary ways to resolve a dispute where it was not clear that the poster was a lawyer: first, allow the subpoena, but keep it confidential if the ultimate poster turns out not to be a lawyer (and thus is beyond the reach of the Committee); or, refuse to issue the subpoena until the Committee had more evidence of the poster's attorney status. In any event, any lawyer hanging his or her hat on anonymity when posting information or comments that violate the Rules should be wary of the Constitution's limitations in this context.

Even without direct ethics committee intervention, jobs can be at risk when attorneys try to hide behind anonymity, which can be removed even without legal intervention. In one example, two New Orleans federal prosecutors ran into difficulty after it was disclosed that they had posted hundreds of online comments using pseudonyms. In both cases the AUSAs were identified by a target of one of their investigations who hired a forensic language investigator to identify the posters. The investigator compared the writing in the posts to other available writing and in both cases identified the ADAs in question. In the first case, when the attorney he was identified, he was removed from the cases on which he had commented, and then later resigned. According to news reports, in addition to leveling criticism at the subject of a federal probe under his control:

> [The attorney] also used the handle to criticize federal judges, political figures and his boss. In one comment, Mencken1951 asserted that U.S. District Judge Helen "Ginger" Berrigan is someone who "loves killers." In another, the writer complained that Letten "is great for taking credit for other people's hard work. It is the assistants and agents who do the work and should be congratulated."[26]

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[24] Citizen Media Law Project, September 10, 2007 (http://www.citmedialaw.org/threats/autoadmit).

[25] *Doe I and Doe II v. Individuals, whose true names are unknown*, 561 F. Supp. 2d 249 (D. Conn. 2008).

[26] Federal Prosecutor Resigns After He Is Kicked Off Some Cases for Anonymous Online Comments, ABA Journal: Law News Now, March 16, 2012,

In the later case, the first US Assistant Attorney (essentially the number 2 attorney in the office) was demoted when she was also identified, by the same investigative target, posting online under an alias.[27]

The lesson here is clear: posting under a pseudonym may feel anonymous, but it is not a very secure anonymity, if it is truly any anonymity at all.

V. The Internet and Ethical Law Practice

A. The Firm Online

While we will not delve deeply into the specific rules for advertising and publicizing, there are some matters worth mentioning relating to oversight and involvement with law firm marketing. The first issue involves that identifier that is the new phone number: the domain name. A domain name is the "web address" or URL ("universal resource locator") used to identify websites. Must the web address match the firm name (with all of the limitations that matching would imply[28])? The answer comes directly from the rules themselves. RPC 7.5(e) provides:

> (e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:
>
> > (1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;
> >
> > (2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;
> >
> > (3) the domain name does not imply an ability to obtain results in a matter; and
> >
> > (4) the domain name does not otherwise violate these Rules.[29]

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http://www.abajournal.com/news/article/federal_prosecutor_kicked_off_some_cases_for_anonymous_online_comments/

[27] In New Orleans, Comments by Assistants Imperil Job of Federal Prosecutor, NY Times, Nov. 21, 2012. http://www.nytimes.com/2012/11/22/us/in-new-orleans-comments-by-assistants-imperil-job-of-federal-prosecutor.html?_r=0

[28] *See, e.g.*, New York State Bar Association Committee on Professional Ethics, Opinion 869 (May 31, 2011) ("A law firm may not include an area of law in the law firm name. A sole practitioner may use the terms "Firm" or "Law Firm" as part of the law firm name"). Note that this opinion specifically acknowledges that while under *Alexander v. Cahill*, 598 F.3d 79, 95 (2d Cir.), cert. denied, 131 S. Ct. 820 (2010), the ban on trade names as law firm names (as opposed to trade names as mottos) may be constitutionally suspect, the Committee will continue to apply it unless it is actually ruled unconstitutional.

[29] This last provision duplicates the introductory provision to this Rule found in Rule 7.5(a): "A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs,

Thus domain names fit within the "motto" rule rather than the name rule for purposes of the Rules, and a firm can use a motto/trade name rather than the firm's precise practice name as its domain name.

The next issue involves responsibility for what the firm puts on the Web. Rule 7.1 prohibits lawyers from engaging in false advertising and in making false claims in their advertising, and as such forbids a lawyer "in the use or dissemination of any advertisement that: (1) contains statements or claims that are false, deceptive or misleading; or (2) violates a Rule." In addition, firms are required by Rule 5.3 to properly supervise non-lawyers in their employ. When a non-law employee at a firm in Louisiana "implied" on the firm's website that a former Louisiana governor was "a member of the firm, a governmental relations specialist, and a partner when in fact the former governor is not now nor has he ever been a licensed Louisiana attorney[,]" the firm's managing partner was disciplined for failing to oversee the non-law employee.[30]

A South Carolina practitioner also went astray of the rules when he misstated his qualifications (year of bar admission, experience in federal court) on his web page, and then continued those misrepresentations on sites such as LinkedIn and lawyers.com.[31]

Other things that are likely raise ethical concerns include the kinds of content that is permitted on a law firm website. Biographical data has been specifically approved, including past positions (with other law firms, for example). Favorable quotations from publications are also allowed, so long as they are not false, deceptive or misleading, and the required disclosures are present. [32]

Within the otherwise broader category of allowable content are links posted on a firm website. Recently the N.Y. Bar Association has concluded that, "A lawyer may include links to other businesses on the lawyer's web site provided neither the link nor the linked material involves misrepresentation or causes confusion."[33] Generally, links are allowed to offsite resources not under the control of the lawyer, but the purpose of the link, the nature of the linked site, and the relationship of the lawyer to the owner of the linked site are all relevant to any ethical inquiry. Informational sites are acceptable, but reciprocal links raise additional

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letterheads or similar professional notices or devices, provided the same do not violate any statute or court rule and are in accordance with Rule 7.1[.]"

[30] *In re Murphy J. Foster, III*, Supreme Court of Louisiana, Attorney Disciplinary Proceedings No. 10-B-2118 (Oct. 15, 2010).

[31] Newly Licensed Solo Reprimanded for Exaggerating Experience in Online Profiles, ABA Journal: Law News Now, February 1, 2012, http://www.abajournal.com/news/article/newly_licensed_solo_reprimanded_for_exaggerating_experience_in_online_profi/

[32] See, N.Y.S. Bar Association, Committee on Professional Ethics, Opinion 877 (September 12, 2011); note that the requirements of Rule 7.1 will apply when the maker of the quotation is paid, and that, in addition, the rules of the Federal Trade Commission on online disclosures will also be likely to apply (these require disclosure of payment for advertising or for a variety of other situations where payment may imply an undisclosed conflict of interest. *See,* 16 C.F.R. Title 16: Commercial Practices).

[33] NYS Bar Association, Committee on Professional Ethics, Opinion 888 (November 15, 2011).

concerns. Where the reciprocal link constitutes advertising, the link is subject to Rule 7.1's advertising provisions and a link that is part of a cooperative business arrangement subjects the link to rule 5.8(a).

In addition, use of online discounters such as GroupOn and LivingSocial have been approved in a New York State Bar Association Committee on Professional Ethics,[34] citing with general approval a South Carolina ethics opinion that reached the same conclusion.[35] Such uses are subject to the standard attorney advertising requirements (such as labeling as attorney advertising and not being disceptive), as well as additional concerns regarding when a lawyer can keep the payment without actually rendering services (issues that the attorney should make sure are covered by the advertising agreement, a point not explicitly noted in the NYSBA Ethics Committee opinion).

B. Electronic Errors Are Bound to Happen

Misdirected E-mail is a fact of life in the information age. What happens when one lawyer receives a message clearly intended for an opposing party or attorney? In *Terraphase Engineering, Inc. v. Arcadis*, No. C 10-04647 JSW (N.D. Ca. 2010), the plaintiff's attorney mistakenly sent confidential information to an inside counsel for the defendants (due to not catching an improperly completed "autocomplete" address on the E-mail prior to sending it). Defendant used the information to form a counterclaim in the litigation, and plaintiff moved for a protective order, seeking to disqualify various lawyers involved in the action from continuing. Judge Jeffrey White granted the motion and issued an order disqualifying a defendant's inside, associate corporate counsel, along with the law firm currently representing the client, due to their reading of E-mail messages clearly intended for the opposing parties in the litigation. The Judge also removed the defendant's General Counsel from overseeing the litigation.[36]

The resulting message is clear: errors happen, but judges are unlikely to allow clients to benefit from reasonable errors made by the attorneys on the other side.

C. E-mail is not a Phone Call

Where two attorneys engaged in inappropriate and abusive E-mail exchanges during the course of litiation, those E-mail messages were not only used in their disciplinary proceeding, but were attached to the complaint filed with the disciplinary board. In this particular situation, the lawyers were allegedly attempting to schedule various aspects of an ongoing litigation matter, but were having what might be rather charitably defined as "difficulties." Short-tempers turned to snark, and snark turned to insults and exchanges including the following took place (among others). Defendant's attorney addressed Plaintiff's attorney as "Sparky" and Plaintiff's attorney responded by referring to defendant's attorney as "Corky."

[34] NYS Bar Association, Committee on Professional Ethics, Opinion 897 (December 13, 2011).

[35] South Carolina Bar, Ethics Advisory Opinion 11-05 (2011).

[36] *See*, Beware the Evolving Ethics of Reviewing E-mails, edd blog online (March 8, 2011); http://eddblogonline.blogspot.com/2011/03/beware-evolving-ethics-of-reviewing-e.html

Plaintiff's attorney also wrote the following to Defendant's attorney: "You are an ass clown and absolutely an ass clown. Shouldn't you be tending to your retarded son and his 600th surgery or something instead of sending useless E-mails. [sic] In fact, I think I hear the little retards [sic] monosyllabic grunts now; Yep, I can just barely make it out; he is calling for his ass clown. How sweet." This message followed an earlier one from the Defendant's attorney that included the following: "If you need to find indications of the 'retardism' that you seek, I suggest you look in the mirror, and then look at your wife . . . she has to be a retard to marry such a loser like you" and "Unfortunately, it looks like the better part of you was the sperm cells left on the back seat of the Ford Pinto."

The lawyers were both disciplined; the Defendant's lawyer received a public reprimand and was required to take a class in professionalism, while Plaintiff's attorney was suspended for 10 days and required to take an anger management class.[37]

In another case, a Texas lawyer referred to his opponent's attorney as a pansy and threatened him using vulgar language, again during scheduling of a deposition and various discovery disputes. The Texas lawyer lost his position as a partner at the firm and a sanctions motion was brought against him by opposing council.[38]

Finally, a Virginia lawyer was ordered to attend a "non-internet" anger-management course after sending an E-mail to a counsel who had been opposing counsel in an earlier case after that counsel was later indicted on an unrelated matter. The E-mail included suggestions that the attorney would comfort the receiver's wife while he was in prison, and that he (the indicted attorney) should look forward to being victimized in prison.[39]

The lesson here is that while exchanges such as these may have taken place between lawyers in the past, they were far more likely to have been part of an in-person or telephone conversation. As we move to more use of electronic communications, lawyers should be aware that E-mail is written, potentially permanent, and easily shared. An E-mail is not a phone call, and appropriate levels of decorum and professionalism must be shown by lawyers engaged in using electronic communications technologies.

As an aside, note that if addressed to the substance of an argument, rather than framed as a personal attack, such comments and "name calling" may be acceptable given current norms in U.S. Supreme Court Practice.[40]

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[37] Note that this can happen in person, as well. *See*, Complaint in the Matter of David Alan Novoselsky, Before the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission, Commission No. 2011PR00043 (September 2012), where the respondent was charged with calling opposing counsel and "bitch" and a "slut" while in a courtroom and during legal negotiations.

[38] Sanctions Motion Accuses Ex-Cozen Partner of Taunting 'Pansy' Opposing Counsel in Abusive Emails, ABA Journal: Law News Now, May 17, 2012, http://www.abajournal.com/news/article/sanctions_motion_accuses_ex-cozen_partner_of_taunting_counsel/

[39] Lawyers ordered to anger management, July 5, 2013, http://valawyersweekly.com/vlwblog/2013/07/05/lawyers-ordered-to-anger-management/

[40] For example, Justice Scalia, in his dissenting opinion in *Sykes v. United States*, wrote: "That incompatible variation has been neither overlooked nor renounced in today's tutti-frutti opinion." *Sykes v. United States*,

D. Encryption and Electronic Transactions

While some messages may be misdirected or mislaid, others may fall into the hands of hackers or others who "overhear" the electronic communications. Lawyers are required to maintain client confidentiality, but to date ethics committees have not required lawyers to use encryption technology – technology that "locks up" messages and only allows unlocking with a key – while engaging in electronic communications. In 2010, the NYS Bar Association Committee on Professional Ethics issued its opinion that "A lawyer may use an online data storage system to store and back up client confidential information provided that the lawyer takes reasonable care to ensure that confidentiality will be maintained in a manner consistent with the lawyer's obligations under Rule 1.6."[41] The opinion also imposes a duty on the lawyer to follow current technology to ensure confidentiality is retained in the face of technological change. The opinion is consistent with other state bar opinions, such as those of California[42] and Alabama.[43]

The NYS Bar opinion sets out four elements that are relevant to making the determination of whether confidentiality is reasonably assured:

> 1. Ensuring that the online data storage provider has an enforceable obligation to preserve confidentiality and security, and that the provider will notify the lawyer if served with process requiring the production of client information;
>
> 2. Investigating the online data storage provider's security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances;
>
> 3. Employing available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored; and/or
>
> 4. Investigating the storage provider's ability to purge and wipe any copies of the data, and to move the data to a different host, if the lawyer becomes dissatisfied with the storage provider or for other reasons changes storage providers.

The rules thus would seem to require a storage provider that provides confidentiality and that also provides portable data rather than proprietary data storage solutions. Other jurisdictions have reached similar results, though at times with subtle differences in articulation and detail.[44]

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slip op., Dissenting Opinion of Justice Scalia, p. 3. If calling majority opinions "tutti-frutti" is acceptable for a sitting Supreme Court Justice, it is hard not to argue that professional norms of civility have shifted away from politeness in recent years.

[41] NYS Bar Association, Committee on Professional Ethics, Opinion 842 (September 10, 2010).

[42] State Bar of California, Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2010-179 (2010).

[43] Alabama Ethics Opinion 2010-2 (2010).

[44] *See, e.g.,* Professional Ethics Committee of the Florida Bar Op. 10-2 (2011); Pennsylvania Bar Association Ethics Opinion No. 2010-060 (2010); Iowa State Bar Association Committee on Practice Ethics and Guidelines, Ethics Opinion 11-01 (2011).

These opinions are consistent with earlier opinions that did not require encryption in E-mail use, but still required the lawyer to follow practices intended to safeguard confidentiality.[45] Note that after the ABA Commission on Ethics 20/20 proposed changes to the Model Rules of Professional Conduct intended to further alter the duties placed on lawyers in relation to electronic communications emphasizing that lawyers must be aware of, understand, and make reasonable decisions about the technologies they use.[46] The rule was adopted, with new Model Rule 1.1 reading:

> *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

And an amended comment 8 to Model Rule 1.1 reading:

> *To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.*

In addition to being competent when it comes to technology, a lawyer may have to help clients maintain competence, as well. When working with a client who is using employer provided E-mail, a lawyer may have an obligation (especially if the matter involves the employer) to notify the employee that E-mail communications may not be private and that they attorney client privilege may be waived when using employer provided E-mail.[47]

E. Admission Denied for Online Crime

Other online troubles can arise when people do things online that they may have never tried offline for fear of getting caught. In one case, a recent law school graduate waiting to take the bar exam was arrested for sexual solicitation of an underage girl online. He was unable to take the bar, but after completing a diversion program, the charges were dropped. He then applied to take the bar and was allowed, subsequently passing, but was then denied admission to practice. The Supreme Court of Louisiana stated:

> "[I]t is ordered that the petition for admission to the bar of Louisiana filed by petitioner, Philip R. Pilie, be and hereby is denied. It is further ordered that no applications for admission shall be accepted from petitioner in the future."[48]

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[45] *See, e.g.,* NYS Bar Ass'n, Committee on Professional Ethics, Opinion 709 (Sept. 16, 1998); *see also,* Assn'of the Bar of the City of New York Opinion 1998-2 (December 21, 1998).

[46] ABA Commission on Ethics 20/20 Initial Draft Proposals – Technology and Confidentiality (May 2, 2011) [see appendix for text of the proposed changes]

[47] American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 11-459 (August 4, 2011).

[48] In re: Philip R. Pilie, On Application For Admission To The Bar, NO. 12-OB-1846, Louisiana Supreme Court (2012). *See also,* In re Kenneth Alan Goldman, Commission No. 201PR00028 (August 2012) (regarding internet solicitation and chatting with minors).

F. Being in Two Places at Once

A lawyer from Ohio established "a relationship" with a law firm in Florida that worked on cases involving consumer debt. As part of the relationship, the Ohio lawyer provided the Florida firm with his Ohio bar registration number and his electronic signature. The Florida firm used these details in cases without the lawyer's permission. The Ohio lawyer was suspended from practice for six months, but the suspension was stayed so long as he did not engage in further misconduct.[49]

G. Being in One Place and not Another

We all know that technology can be a distraction in modern life, but sometimes it can also lead to ethical violations. An attorney who was trying to arrange a settlement but who had not been able to reach his client about the matter went to court on the return date to appear. While outside the court room on his cell phone trying to reach his client, the attorney missed the case being called on the docket. The opposing attorney responded to the call and a default judgment was entered against the attorney's client. While the attorney argued he was trying to sort the matter out while he was out of the courtroom, by failing to check the status of the case with the clerk and to follow-up with the clerk before he left the courtroom he committed misconduct and was suspended from the practice of law for 60 days.[50]

H. Working Two Places at Once

In another case that would have been nearly impossible to imagine before the Internet arrived on the scene, an attorney working for the State of Kentucky was disciplined when he used State resources – time and the office's Westlaw account – to earn money by posting answers to legal questions on JustAnswer.com, an online question and answer forum. The Supreme Court of Kentucky publicly reprimanded the respondent for his actions. [51]

I. Westlaw Access Not Allowed After Leaving Position

An attorney had helped his legal employer enter into an agreement with Thomspon-Reuters for the use of Westlaw. On leaving his position, the attorney tried to cancel the arrangement, but Westlaw would not allow cancellation of the contract, so the old office maintained payments on the contract. The attorney, who retained his Westlaw ID, began using the account when he took up his new legal position. His use was discovered and an ethical complaint was filed. The Supreme Court of Oregon, in reviewing a claim for

[49] Disciplinary Counsel v. Lorenzon, Slip Opinion No. 2012-Ohio-4713

[50] Attorney Grievance Commission of Maryland v. John Wayne Walker-Turner, Misc. Docket, AG No. 16, September Term, 2011 (this was Walker-Turner's second brush with discipline; he had earlier received a 30 day suspension for unrelated conduct).

[51] Matthew Scott Finley Movant v. Kentucky Bar Association, Supreme Court of Kentucky, 2012-SC-000465-KB (October 2, 2012)

reciprocal discipline (the misconduct occurred in Hawaii, and respondent was admitted in both Hawaii and Oregon), publicly reprimanded the responded for his actions.[52]

J. With Computers You Can Make Stuff Up (but shouldn't)

An attorney who was involved in a proceeding related to her children forged, in the words of the Court, "from whole cloth," an order of a court in New Jersey to show to authorities in Colorado. In discovering the forgery, ethics charges were brought and the respondent was publicly reprimanded for her actions.[53]

K. What's on the Web Can Be Found

When an attorney who was suspended from the practice of law continued to practice, it didn't take long before a magistrate found the listing of his suspension on the Supreme Court's website. A client also found the listing. Both the magistrate and the client notified the disciplinary authorities, and the attorney was suspended from the practice of law for two years (one year stayed if the attorney followed the required course of action outlined by the Court).[54]

In another case, an attorney who failed to take any action on a case while continually assuring the client that the case was underway – even after it was dismissed – was indefinitely suspended by the Maryland Court of Appeals for his actions. The client found out about the true status of the case when she searched for the case on the Maryland case search website.[55]

L. You Can't Get Rid of What's on Facebook, But You Can Try (Though Maybe You Shouldn't)

An ethics opinion from the New York County Lawyers Association provides guidance for counseling clients on social media content. The opinion addresses the following:

> *It is the Committee's opinion that New York attorneys may advise clients as to (1) what they should/should not post on social media, (2) what existing postings they may or may not remove,*

[52] In re The Reciprocal Discipline of EVERETT WALTON, Accused, OSB 12-70; SC S060606, Supreme Court Of The State Of Oregon (October 11, 2012).

[53] In The Matter Of Mara Yoelson, A/K/A Mara Yoelson Olmstead, Supreme Court Of New Jersey, Disciplinary Review Board, Docket No. DRB 12-018, District Docket No. XIV-2010-0296E, and VII-2011-0900E (April 19, 2012) (filed Sept. 5, 2012)

[54] Disciplinary Counsel v. Seabrook, 133 Ohio St.3d 97, 2012-Ohio-3933 (2012).

[55] Client Learns Case Dismissed Through Online Search, July 5, 2013, http://lawprofessors.typepad.com/legal_profession/2013/07/client-learns-case-dismissed-through-online-search.html

and (3) the particular implications of social media posts, subject to the same rules, concerns, and principles that apply to giving a client legal advice in other areas

While the answer to each is yes, it is a very soft, qualified yes, with quite a few caveats. Attorneys may not participate in the creation of false evidence, cannot suppress evidence, and cannot destroy evidence (evidence being material related to litigation). That said, the overall conclusion is that social media is part of the litigation strategy of the modern age, and lawyers can and should deal with it explicitly, though ethically.[56]

A Virginia lawyer could have been aided by the NYCLA's qualms, but confronted the issue of Facebook deletions prior to the opinion's issuance. The lawyer counseled his client to delete Facebook posts and content while the client was involved in litigation to which the Facebook content was relevant. Considered spoliation of evidence, the court reduced a wrongful death jury award and the lawyer was subsequently suspended from the practice of law for five years.[57]

M. Friends, Following, and Linking-in: Connections in a Connected World

There are a variety of ways in which connecting to others online may implicate ethical requirements. Ethics opinions are split, for example, as to whether judges can friend lawyers who appear in their courts, with Florida deciding against[58] and New York allowing judges to join social networks and make such contacts where otherwise within the rules.[59] Note that at least one judge in North Carolina has been reprimanded for exchanging *ex parte* messages on Facebook concerning an ongoing case with an attorney on the case.[60]

As for attorneys, the questions that arise tend to be concerned more with whether information can be ethically gleaned from public web pages and public areas of social networking sites (NY has concluded it can)[61] and whether a lawyer or a lawyer's agent/employee can seek to "friend" a witness or other interested

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[56] NYCLA Ethics Opinion 745 (July 2, 2013) [pdf], http://www.nycla.org/siteFiles/Publications/Publications1630_0.pdf; New York Ethics Opinion: Lawyers May Advise Clients to Delete Social Media Content, Legal Ethics Forum, July 19, 2013, http://www.legalethicsforum.com/blog/2013/07/new-york-ethics-opinion-lawyers-may-advise-clients-to-delete-social-media-content.html

[57] 5-Year Suspension For Telling Client To Delete Facebook Information, SBMBlog, August 12, 2013, http://sbmblog.typepad.com/sbm-blog/2013/08/5-year-suspension-for-telling-client-to-delete-facebook-information.html#sthash.FpLUzyis.dpuf

[58] Florida Supreme Court, Judicial Ethics Advisory Committee, Opinion Number 2009-20 (Nov. 17, 2009).

[59] New York State Judicial Ethics Commission, Opinion 08-176 (Jan. 29, 2009).

[60] *See*, Judge Reprimanded for Friending Lawyer and Googling Client, ABA Journal Law News (June 1, 2009); http://www.abajournal.com/news/article/judge_reprimanded_for_friending_lawyer_and_googling_litigant/

[61] New York State Bar Association, Committee on Professional Ethics , Opinion 843 (September 10, 2010); note that this opinion applies only to *publicly available* information. The NYS Bar Association has not weighed in on the discussion regarding friending, below.

party who is unrepresented by a lawyer (friending someone represented by a lawyer would violate rules requiring that a lawyer avoid communicating directly with someone who is represented by a lawyer).

On this latter point, the Philadelphia Bar Association has issued an opinion that prohibits the practice of friending someone to gain information about them or matters related to litigation. The Bar Association opinion finds that seeking to friend someone while omitting the critical information as to why that friend request is being sent is deceptive in violation of Rule 4.2.[62] The NYC Bar Association, on the other hand, has issued a contrary opinion, and argues that the situation is like one that arises when a person sitting in a bar is approached by a lawyer's investigator. The investigator has no obligation to immediately disclose he or she is an investigator, but rather may engage the person in conversation hoping to uncover relevant information (so long as the investigator is not deceptive). In the same regard, the opinion opines, so may a person send a "blank" friend request to an unrepresented person as the blank request is not itself deceptive, and the person accepting that friend request and opening up their social networking activities to the investigator is the person taking the risk that the stranger asking to friend them does not have their best interests at heart.[63]

Another social networking issue to consider is the extent to which lawyers can interact with jurors via social networking or other communications technologies. The New York County Bar Association Committee on Professional Ethics has approved searching publicly available information on prospective jurors both prior to and during a trial.[64] Analogizing the situation to that which confronts lawyers who might wish to investigate other parties in litigation, the Committee concluded, "we conclude that passive monitoring of jurors, such as viewing a publicly available blog or Facebook page, may be permissible." That conclusion does not change for searching for information about jurors during trial, but notes that in this case, as lawyers are prohibited from talking to jurors during the pendency of litigation, the lawyer must take extra precautions to ensure that the juror does not become aware of the attorney's efforts. [65]

In this respect, fully understanding how a particular technology platform works is critical to the situation. Despite repeated appearances of claims to the contrary on Facebook, Facebook users are not aware when someone has viewed their public profile pages.[66] LinkedIn, however, allows you to see not only that "someone" has viewed your LinkedIn profile, but who that person is (if that person was LinkedIn member signed in at the time they viewed the profile). Checking a juror's public Facebook page would be allowed under the County Bar's opinion, checking a juror's LinkedIn profile while logged in to LinkedIn would not.

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[62] Philadelphia Bar Association, Professional Guidance Committee, Opinion 2009- 02 (2009); *see also*, San Diego County Bar Association, SDCBA Legal Ethics Opinion 2011-2, agreeing with the Philadelphia opinion, but based on a different provision, as California has not adopted the relevant ABA Model Rules as part of its ethics framework.

[63] Ass'n of the Bar of the City of New York, Committee on Professional Ethics, Formal Opinion 2010-2 (2010). Note that the opinion does not allow for any deception in seeking information in this regard.

[64] NYCLA Committee on Professional Ethics, Formal Opinion No. 743 (May 18, 2011).

[65] *Id.,* at page 3.

[66] *See, e.g.*, Cluley, Want to see who has viewed your Facebook Profile? Take Care…, Sophos "NakedSecurity Blog" July 23, 2010 [http://nakedsecurity.sophos.com/2010/07/23/viewed-facebook-profile-care/]

As a final, and closing, note, online social networking sites are opening new opportunities that may implicate the rules in new and unique ways. For example, in an opinion from June of last year (2011), the New York State Bar Association, Committee on Professional Ethics, concluded that an attorney can offer a prize as an incentive for others to join the attorney's social network (with caveats, of course, such as that the lawyer not require the prize seeker to retain the lawyer, and that the lawyer award the prize randomly, among others).[67]

This is the kind of situation that likely would have never arisen before the Internet became a part of everyday legal practice. No one would have had an opportunity to give a prize to others for "connecting" with them. Today, however, those opportunities are prevalent, and benefits of pursuing them – such as having an established network of people with whom to communicate legal practice news and events – are becoming clearer. The ethics committees have so far done a good job keeping up with technological changes and whether/how they affect law practice (the uncertainty of "friending" non-party witnesses aside), and it is important to keep up with developments in this area of professional conduct as technology and the law march forward.

[67] NYS Bar Association, Committee on Professional Ethics, Opinion 873 (June 9, 2011).