

#### IV. SOCIAL MEDIA AND RELATED ISSUES

Regardless of your practice area, online connections are fraught with the same ethical pitfalls as in-person interaction with potential clients and others. With the volume of communication made possible by social networking sites, these ethical risks are only magnified:

- Commenting on pending trials or revealing specific case results without a disclaimer.
- Recklessly criticizing judges or other attorneys, or giving that impression.
- Revealing privileged or confidential information.
- Exposing the law firm to claims of defamation or harassment.
- Sending messages that appear to be legal advice, which can create unintended attorney-client relationships.
- Violating ethics rules against solicitation of legal work.
- Practicing law in a jurisdiction where you are not licensed.
- Receiving messages that contain malware or illegal materials.

A. Diligence and competence (Rule 1.1 and 1.4) require the lawyer to:

1. Understand if/how clients are using social networking,
2. Advise clients as to their further use of social networking to their best advantage, and
3. Use social networking sites as investigative tools (opposing party, witnesses, jurors)

B. Confidentiality (Rule 1.6):

1. Messages via Twitter or other social networks must be treated with the same degree of reasonable care as messages via e-mail or other traditional communications.
2. Discussion about pending legal matters raises problems, and generally should be left to traditional e-mail format.

C. Lawyer Advertising and Marketing (Rule 7.1-7.5):

- a. Statements made on social networks about a lawyer's services may be subject to the advertising rules.
- b. Name and address of responsible lawyer. Rule 7.2(e).
- c. Disclaimers required for specific case results [Rule 7.2(a)(3)] and specialization claims [Rule 7.4(d)]
- d. Linked In allows you to ask for and receive "recommendations" from clients, colleagues, etc.
- e. Client recommendations are analogous to client testimonials, so:
  - i. You can't have your client say things about you that you can't say,
    1. Rule 8.4(a)
  - ii. You probably have a duty to monitor your social network sites and blogs for comments and recommendations that may require revision or deletion.