February Solomon Inn Presentation:

TikTok on the Clock

The Ethical Pitfalls of TikTok Lawyering

1. **Introduction (6 minutes)**

* Angela Overview (~2 minutes)
  + Procedurally unusual meeting of the Oregon State Bar’s State Professional Responsibility Board.
  + At this *ad hoc* meeting
    - We’ll screen some initial ethical complaints to decide whether further investigation is warranted.
    - Several disciplinary hearings are scheduled, we’ll also tune into those.
  + Social Media Prevalence – Now used by Lawyers – Pitfalls (Angela drafting)
* First Screening TikTok (4 minutes)

Kendra: Okay, so let’s screen a TikTok. What are some of the things we are looking for?

Lauren: Well, lawyers need to watch out for RPC 1.6 and ORS 9.460, both of which relate to our obligations to maintain our client’s confidences and secrets.

Angela: And lawyers must watch out for inadvertently creating an implied attorney-client relationship.

Kendra: TikTok doesn’t stop at the state line, so a lawyer could face a double whammy by being charged with Unlawful Practice in a different jurisdiction.

Lauren: If the Tiktok is considered a solicitation for clients, lawyers need to follow the rules regarding solicitations. RPC 7.1 to 7.3.

Angela: Plus, people do a lot of crazy things online these days. We should just watch for good old misconduct, Rule 8.4. Conduct that is dishonest or fraudulent. Or is prejudicial to the administration of justice.

Kendra: Sheesh. There is a lot to watch out for. Okay, let’s screen our first TikTok. This is an Oregon lawyer known as It’sDaniGirl. She has over 47,000 Followers and more than 87,000 Likes on her videos. We’ll look at two of her TikToks

* + - (Lauren play mp4 version.)

<https://www.tiktok.com/t/ZTRndmyha/>

<https://www.tiktok.com/t/ZTRndMygB/>

Lauren:          #1: she’s directing people to legal resources. My website does that. She’s doing it more creatively than my website.

Kendra: #2: Interacting with another person on TikTok She says at the outset she is not anyone’s attorney; she says where she is licensed. Her caption also says it is for educational purposes only.

Angela:  Sorry to interrupt, but I think we have a hearing that is getting underway, shall we break to check it out?

Kendra: Sure. I don’t think we need to poll. It’s Dani’s Girls’ TikToks are different than us traditionalists are used to, but they are not raising ethical red flags. Still—everyone who is at this meeting is a member of the SPRB—feel free to put your comments, questions and thoughts in the chat throughout the meeting. Other SPRB members can reply and, time permitting, we’ll discuss it at the end.

Lauren: My understanding is that with each hearing we get to watch the social media post and then we’ll see the hearing?

Angela:   That’s right. This first hearing involves Loren the Litigator. Loren is an attorney and a TikTok creator with a large following. He is also a big fan of live streaming. It was actually his habit of livestreaming that caught our eye.

Kendra:        So he was live streaming himself creating Tiktoks?

Angela:  Among other things. Let’s take a look.

1. **Loren the Litigator (~10 minutes)**

* Full Video Presentation

1. **Screening (Live) (~4 minutes)**

Angela: It’s hard to believe that anyone would post that kind of video.

Kendra: Yes. But where social media is concerned, the lines get blurred. Especially when people are drinking.

Lauren: A woman in Florida actually did exactly the same as Loren the Litigator. She was arrested while she was broadcasting a live stream of herself drunk driving on Periscope. She said, during the broadcast, “I’m driving home drunk, let’s see if I get a DUI.” Many people watching called 911 and she did.

Angela: I also heard about an Ohio man who posted a 12 second video of himself drinking while driving on Facebook. The man was arrested hours later for DUI. I guess that, like them, Loren the lawyer lost sight of what he was doing and where he was doing it.

Lauren: I can see that the matter of Althea Cullen is about to start. Before we tune in, let’s screen a few TikToks.

Kendra: Sounds good. Rather than discuss each TikTok, we’re going to assess each of these TikToks using a poll. Everyone at the meeting--even if you do not have video or a mic—is a voting member of the SPRB. Essentially, we are deciding whether to investigate this—presume Oregon lawyer—further. Let’s see the first one, by Burreuzolaw2. They have 1,764 Followers.

<https://www.tiktok.com/@burruezolaw2/video/7200771137360383275>

Kendra: [Results of Poll.]

Angela: Now, “The Law Says What.” – they have 999,600 followers and over 33 million likes on their videos.

<https://www.tiktok.com/@the.law.says.what/video/7143395981478939950>

Kendra: [Results of Poll.]

Lauren: Okay, let’s see what happens in the hearing that is about to start.

1. **Unauthorized Practice (Althea / Ashley / Bruce)**

***11 minutes – All Video***

1. **Screening (Live) (~ 4 minutes)**

Lauren: Wow. Even being well-intentioned, you can run into some issues.

Angela: Let’s jump into a few more screening TikToks. This is LawByMike, who has 7 million followers and over 133.3 million liked videos.

<https://www.tiktok.com/@lawbymike/video/7144393324755963178>

(41 seconds)

Kendra [Results of Poll.]

Angela: This is Erika Kullberg, who has 9.2 million followers and over 65.6 million likes on her videos.

<https://www.tiktok.com/@erikakullberg/video/7089080120845143297>

(46 seconds)

Kendra: [Results of Poll.]

Lauren: And finally, we have: Beach Lawyer Paul, who has 156,300 followers and over 851,000 likes.

<https://www.tiktok.com/@beachlawyerpaul/video/6991224977047506181>

(31 seconds)

Kendra: [Results of Poll.] Okay, let’s quickly turn to the hearing of Larry Livingston.

1. **Larry Livingston (Marc, Michelle and Carlie)**

* Video
* Live Presentation

1. **Screening Committee (~3 minutes**

Lauren: Let’s screen our last two TikToks before we turn to our final hearing of the meeting. This first one is by a lawyer who posts a ton of videos similar to what we are about to see. He has almost 53,000 followers and over 700,000 likes:

<https://www.tiktok.com/t/ZTRnR8CJm/>

(1:14 seconds)

Kendra: [Results of Poll.] And this next attorney has over 145,000 followers and 1.8 million likes.

<https://www.tiktok.com/t/ZTRndTvKr/>

(15 seconds)

Angela: Let’s get to our final hearing of the meeting.

1. **Mr. Taraleski (Karaoke Confidences) (Lewis, Jo, Campbell**)
2. **Wrap Up.**

Angela: Court adjourned, indeed. [Questions from Chat– Time Permitting.]