




*Social Media Inside and Outside the Workplace;
Social Media in Hiring*



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Social Media



Social Media Pros & Cons

- **Pros**
 - **Keep in touch with clients, colleagues, and potential employers**
 - **Monitor industry trends and news**
 - **Gold mines for discovery in litigation**
 - **Research clients, opposing parties, witnesses, judges, jurors, etc.**
- **Cons**
 - **Careless use could harm your reputation or worse**
 - **Data preservation risks**
 - **Requires regular monitoring and updating**

How Can Social Media Help You GET a Job?

- **Helps you to quickly reach potential employers**
- **Pre-packaged resume**
- **LinkedIn**
 - **Keep it current**
 - **Share articles, thoughts on professional topics**



How Can Social Media HURT Your Job Search or Your Job Security?

- **Avoid/remove inappropriate or offensive photos or posts**
- **Best to avoid politics, controversial topics**
- **Avoid being too informal**
- **Don't post about how much you hate your job**
- **Review your employer's Social Media Policy**

How Can Social Media Help You DO Your Job?

- **Information gathering tool**
 - **Adjust privacy settings if necessary to avoid digital footprint**
 - **Do not misrepresent your identity to “friend” or connect with a witness or adversary**
- **Document your work**
- **Preserve relevant evidence**
 - **Send litigation hold letters (your client, opposing party, third parties)**
- **Consult with attorney about how to gather and preserve social media information to ensure admissibility**
- **Consider using a third-party who can collect comprehensively, in a forensically defensible manner, especially if metadata will be important**

Massachusetts Rules of Professional Conduct

Govern attorneys directly, not paralegals BUT



Supervising attorneys must ensure that non-lawyer employees' conduct is compatible with the professional obligations of the lawyer (Rule 5.3)

Rules of Professional Conduct

Confidentiality (Rules 1.6, 1.9, 1.18)

Trial Publicity (Rule 3.6)

Communications with Non-Clients
Including Unrepresented Parties (Rules 4.1-4.4)

Advertising and Solicitation (Rules 7.1-7.5)

BBO Reprimand re: Facebook Post

Public reprimand for Facebook post which BBO concluded revealed confidential client information (Rule 1.6)

Attorney's original Facebook post identified:

- court where the care and protection of child hearing held
- age of the boy
- date of the court appearance
- number of times the child was in foster care

In response to comments, attorney revealed:

- DCF was opposing his client's guardianship petition because of concerns that she could not "control" her daughter (the boy's mother)

BUT the Facebook posts did not name the client or the boy

BBO Reprimand re: Facebook Post (cont.)

I am back in the Boston office after appearing in Berkshire Juvenile Court in Pittsfield on behalf of a grandmother who was seeking guardianship of her six year old grandson and was opposed by DCF yesterday. Next date – 10/23.

BBO Reprimand re: Facebook Post (cont.)

- FB friend 1 (attorney): “What were the grounds for opposing?”
- Attorney: “GM [grandmother] will not be able to ‘control’ her daughter, the biological mother, and DCF has ‘concerns.’ Unspecific.”
- FB friend 1: DCF does have a sterling record of controlling children and questionable mothers, after all.”
- Attorney: “Indeed.”

BBO Reprimand re: Facebook Post (cont.)

- FB friend 2 (non-lawyer): “So, what’s the preference... Foster care? What and I missing here?”
- Attorney: “The grandson is in his fourth placement in foster care since his removal from GM’s residence in late July. I will discover what DCF is doing or not doing as to why DCF opposes the GM as guardian. More to come.”

BBO Reprimand re: Facebook Post (cont.)

Lessons Learned:

- Think twice, and then think again, about posting anything online about a client's matter
- Obtain your client's consent before posting anything about a client matter on social media.
- If you need advice about a case, consider using a listserv or something similar and always use hypotheticals.
- Resist getting sucked into the back-and-forth of comments

NJ Attorney Disciplined for Instructing Paralegal to “Friend” Opposing Party on Facebook

- **New Jersey attorney discipline authority recently admonished an attorney for instructing his paralegal to “friend” the plaintiff on Facebook in a personal injury case**
- **Deemed surreptitious communication with a person attorney knew was represented by counsel, failing to supervise a nonlawyer assistant, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation**

Social Media Best Practices

- **Keep LinkedIn Current**
- **Review your existing social media accounts for content that may harm your professional reputation or contain client information and remove it**
 - **Review privacy settings and filters**
- **Don't rely on social media privacy settings and filters to keep embarrassing content from potential employers, clients and colleagues**
- **Keep in mind both your intended audience as well as your "unintended" audience**
 - **Clients, potential clients, jurors, judges, colleagues, supervisors**
- **Keep personal and professional views separate**

Social Media Best Practices (cont.)

- **Don't post anything that you wouldn't want a current or potential employer to see**
- **Don't post anything that you wouldn't want a current or potential client to see**
- **Don't post anything you wouldn't want to see on the front page of the Boston Globe**

Social Media Best Practices (cont.)


- **New York State Bar Association Commercial and Federal Litigation Section's *Social Media Ethics Guidelines***
 - <https://nysba.org/app/uploads/2020/02/NYSBA-Social-Media-Ethics-Guidelines-Final-6-20-19.pdf>



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