Ethical concerns connected with the use of social media by lawyers – is American experience useful for an European Union lawyer?”. 

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Do lawyers run into ethics problems because they use social media?

- attorney blogs about a judge: „is unfit for his position and seemingly mentally ill, evil witch”
- judge friend in Facebook attorney appearing in a case before him and exchanging comments regarding the proceeding
- legal assistant reveals confidential information in a blog about the cases she works on
Do lawyers run into ethics problems because they use social media?

No!

Social media is only a new form of communication.

It is the message (content) which may sometimes cause ethical problems.
Most common ethics problems of USA attorneys using social media:

- violation of confidentiality
- false or misleading information
- clients’ testimonials
- advocates’ ratings
- specialization
- improper contact with the opposing party
- advertising and client solicitation
- creating advocate – client relationship

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„Dangerous” social media activity

- blogs
- rating sites
- clients’ testimonials sites
- advocates’ directories
- Facebook
- Twitter
- You Tube
Blogs problems

- risk of violation of confidentiality
- a tool for client solicitation: does it create advocate – client relationship?
- is a post a legal advice?
- if considered to be advertising:
  - deceptive or misleading statements are prohibited
  - statements that can not be factually substantiated are prohibited
  - claims of specialization may be prohibited

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Rating sites problems

- disciplinary boards can not prohibit an independent publication or site from rating advocates

- can advocate’s web page link to rating site?
  - in New Jersey initially forbidden, now allowed with the disclaimer that rating is outside Bar control
  - advocate may explain reasons for his selection for inclusion in a rating

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clients’ testimonials sites problems

- testimonials often can not be factually verified („My advocate was the best in town !)
- Bar does not have the jurisdiction when a third party outside advocate’s control posts a testimonial
- some Bars prohibit posting clients’ testimonials on law firms websites (Arkansas, Nevada)
Bar may require that an advocate monitors the testimonials over which he has control to ensure compliance, revise or remove them whenever necessary.

Advocates who link to testimonials or solicit comments are responsible for conformity with ethics rules (South Carolina Bar).
advocates’ directories problems:

- LinkedIn invites advocates to list their „specialties”
- most Bars do not permit lawyers to hold themselves out as experts or specialists if their specialization in a given branch of law can not be proven
- only 7 Bars in European Union recognize specialization (Belgium, England and Wales, France, Scotland, Slovenia, and Switzerland)
advocates’ directories problems:

- a disclaimer is necessary in LinkedIn entry that the practice areas listed are areas of focus but not specialization (North Carolina)
Facebook problems

- judge reprimanded for „friending” one of the advocates appearing in a case before him and exchanging some comments with him
- „friending” any lawyers on Facebook is forbidden for judges in Florida
- direct communication with a person represented by another advocate
Facebook as a research tool problems

- can an advocate use information from opposing party or a potential witness Facebook page which is publicly available?
- can an advocate ask opposing party or a potential witness to friend him in order to gain access to the party’s (witness’s) profile private content accessible only for friends?
- can an advocate ask somebody to friend opposing party or a potential witness?
**Twitter problems:**

- twitting is not generally prohibited
- all twitts about current cases (and the chances to win) which may be read by opposing party are forbidden
- can an advocate ask his follower who twitted about a car accident if he needs a lawyer?
You Tube videos problems:

- is a video advertising or educational?
- videos which contain information about the law are the same as articles in newspapers and should be exempted from rules on advertising
Is it necessary to amend ethics:

- **No** because social media is only a new form of communication. The same rules apply as in newspapers or on web pages.

- **Yes** because lawyers would benefit from more guidance on how to use new client development tools in a manner that is consistent with the profession’s ethics.
American Bar Association Commission on Ethics recommendations:

- To amend rule 1.18 so that confidentiality shall cover also documents and information given by prospective client who has a reasonable expectation that the lawyer is willing to consider forming a client-lawyer relationship
American Bar Association
Commission on Ethics
recommendations:

2. To amend rule 7.2 on advertising so that a lawyer can pay a fee to a third party for each client lead that the third party generates (as an exception to prohibition of fee-sharing with non-lawyers – see art. 3.6 of CCBE Code of Ethics)

e. g. Legal Match, Total Attorneys, Groupon, Martindale-Hubbell’s Lawyers.com

Further reading

- http://www.abajournal.com/magazine/article/seduced_for_lawyers_the_appeal_of_social_media_is_obvious_dangerous/
Thank you for your attention

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