

**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

„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

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

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)

clients' testimonials sites problems

- ❑ 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, Germany, 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 accesible 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 recomendations:

- 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

www.profesjonalisci.pl;
www.cancelaria.pl;

www.zakladanie-

Further reading

- ❑ Carolyn Elefant, Nicole Black: **Social Media for Lawyers**, www.ababooks.org code: 5110710
- ❑ [http://www.abajournal.com/news/article/ethics 20 20 clarifications of existing rules are enough to accommodate](http://www.abajournal.com/news/article/ethics%20clarifications%20of%20existing%20rules%20are%20enough%20to%20accommodate)
- ❑ [http://www.abajournal.com/magazine/article/seduced for lawyers the appeal of social media is obvious dangerous/](http://www.abajournal.com/magazine/article/seduced%20for%20lawyers%20the%20appeal%20of%20social%20media%20is%20obvious%20dangerous/)

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