

## Ethics Questions for New Lawyers

### Re: Technology

1. HYPO: If counsel for the defendant, an insurance company, is browsing Facebook and learns that the plaintiff, the injured motorist who complains of debilitating neck and back pain who does not restrict his page to friends for viewing, recently went parasailing in Hawaii, is he able to introduce this evidence at trial in order to refute the plaintiff's claim that he needs significant compensation as a result of the accident?
    - i. What are the ethical parameters of using information found on social networking sites in litigation/legal actions concerning opposing counsel, opposing parties, potential witnesses, etc?
    - ii. What if the lawyer himself attempts to "friend" the plaintiff?
  - b. Follow up HYPO: What if the plaintiff does restrict viewing his personal Facebook page to friends and counsel for the defendant convinced a friend, who is an actual friend of the plaintiff, to look at plaintiff's Facebook page to check up on what he'd been doing? What if the friend tried to get the defendant to say something incriminating in a facebook message and then turned it over to counsel?
    - i. What if the counsel for the defendant had a third party that the injured person would not recognize as involved in the litigation "friend" the person? Or joined a common network with Plaintiff to gain greater access to their profile?
    - ii. If you are allowed to use this information to gain an advantage, what are the discovery obligations and in what format (CD, Email, print-outs) should discovery be given to the other parties?
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2. HYPO: Sara loves to BLOG. She has been blogging for many years and has a handful of faithful followers. She is also a well-known attorney in town and often blogs about practice tips, strategies other lawyers in town use in their cases and new case law and her opinion on it's effect. She is involved in a high-profile case with lots of media attention. It is discovered that she is blogging each day about events in the courtroom and giving her opinion on how the case is progressing. Can Sara be sanctioned for these actions?
    - a. What about her prior blogging regarding practice tips and other attorneys?
    - b. What about if a juror reads her blog one night and is swayed by her discussions, is that a basis for a mistrial?
    - c. What if she waited until the end of trial to blog about what occurred? Same outcome?
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3. HYPO: Susan, a new attorney, is tech savvy and enjoys the occasional blog discussion. She frequently goes to legal blogs where participants pose hypothetical factual patterns and sort through potential legal remedies. Recently, though, Susan logged on to her favorite blog and offered advice to a fellow blogger who was having issues with his landlord. She cited statutes in the blogger's state and suggested the blogger file a lawsuit for the return of his deposit. Has Susan entered into an attorney-client relationship?

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- a. When posting comments to blogs or other networking sites, where is the legal advice line? More clearly, if you are responding online to a forum discussion regarding a question posed by a person with a legal problem, at what point, if ever, would your post be considered legal advice or would your post establish an attorney-client relationship?
4. John and James have been friends for 20 years, starting their first year of law school. They have practiced in the same town for a number of years and following the trends created facebook pages and became facebook "friends". They would often post on each other's public pages and leave messages for each other about activities they were engaged in outside of work. Recently, James accepted a position as a superior court judge in their town. Can James and John continue to be facebook "friends"?
  - a. If so, are there limits to the interactions they can have on their publicly viewed sites? How would this impact ex parte communication rules if the lawyer has a pending case before that judge? Would the analysis change if it was the Judge's clerk?
  - b. Are there other limitations between judges and lawyers interacting online?
5. George is a young attorney who is opening a solo practice. He is trying to work on getting his name out to people and work on networking with other attorneys. He decides to join LinkedIn, and fills out a profile about his practice with links to his website. He also asks friends to provide professional "references" on the site, even though some of them have not actually had legal services provided to them by George.
  - a. Do these actions raise concerns about attorney advertisement? Would such a profile, that includes a description of the type of work you handle, require disclaimers for advertisement?
  - b. What about ethical issues of providing testimonials? If an attorney writes another a professional reference, does this raise any issues about providing testimonials/advertisement? Would the analysis change if it was an actual client who provided the professional reference?
6. HYPOTHESIS: Counsel for plaintiff in a divorce action is seeking information about the defendant, the party whom plaintiff seeks to divorce. Plaintiff believes that defendant is dating an unsavory character and wishes to limit their children's visitation with the defendant due to this relationship. May counsel for plaintiff seek discovery of defendant's Facebook page and "friends" as part of discovery to learn whether defendant is dating?
  - a. Is information posted on social networking sites, but restricted to access by "friends," discoverable by parties to a lawsuit?