



Editor's Note: This article was adapted from *The Lawyer's Guide to Social Media*, by **NICOLE BLACK** (nblack@nicoleblackesq.com) and **CAROLYN ELEFANT** (carolyn@carolynelefant.com) published by the American Bar Association Law Practice Management (available at <http://ababooks.org>), and included in Ms. Elefant's presentation on social media for solos and small firms at the New York State Bar Association's November 2010 Conference for Solo and Small Firm Lawyers. Although many of the observations apply to all lawyers, they are particularly apropos to practitioners in the solo and small firm environment.

Social Media for Solos and Small Firms: What It Is and Why It Matters

By Nicole Black and Carolyn Elefant

Let's face it, social media can be overwhelming. You've probably been inundated with articles, emails and free webinars from self-professed social media experts who rave about the magical power of social media to attract dozens of clients, invigorate your practice and transform a kid out of law school into an insta-expert on a specific legal topic in 60 days or less. On the other end of the spectrum are the naysayers, who, of course, warn that social media is at best a frivolous time sink and at worst a risky proposition that exposes lawyers to ethics violations and jeopardizes their privacy and reputations.

From our perspective, though, social media is neither inherently wondrous nor worthless, but rather it derives its value from what you make of it. We believe in lawyers using a practical, goal-centric approach to social media, with the goal of enabling lawyers to (1) identify the social media platforms and tools that fit their practices and (2) implement their use easily, efficiently and ethically.

With that in mind, here are three themes that lawyers must grasp in order to use social media effectively today and beyond:

- Social media is not a fad or frivolity, but a paradigm shift sweeping both the legal profession and society at large;
- A social media presence is a tool for achieving your goals and not, in itself, a goal;
- The use of social media does not transform otherwise appropriate conduct into something unethical.

If solo and small firm lawyers understand these three concepts, their use of social media and the results they achieve will prove more positive over time. We discuss these below.

Social Media Is Not a Fad

Many lawyers view social media either as a passing fad or a frivolity for those with too much time on their hands. But lawyers who dismiss social media do so at their peril. Not only is social media gaining traction within the public at large, but it is permanently altering the way that potential clients – from individual consumers to the in-house counsel of mega-corporations – evaluate their need

for legal services and identify and select the lawyer best suited to serve those needs.

There are several reasons why social media will continue to grow in prominence.

The Face of the New Generation

Social media is no longer just for kids. Consider Facebook, a top-three social media platform with more than 400 million users worldwide.¹ Facebook initially launched across college campuses in 2003 and its first generation of users are entering the workforce en masse, poised to become tomorrow's potential law firm clients, if they haven't already. Rather than abandoning Facebook after leaving campus, they are integrating Facebook into their professional lives, using it to stay in contact with friends and co-workers, network, make hiring decisions (or at least vet potential candidates) and promote their companies. Moreover, these early adopters are converting others; the fastest growing demographic on Facebook is 35 years old and older.

The Informed Consumer

When is the last time you called a travel agent for assistance in planning a trip or consulted the Yellow Pages to find a pet sitter or a music teacher? Chances are that you – and most other consumers – jump right online instead, not just to find hotels or service providers but also to see how they've been rated by other users.

Not surprisingly, this applies when individuals seek legal assistance. Gone are the days when consumer clients pick up the Yellow Pages to find a lawyer or that corporate counsel crack open a tome of Martindale-Hubbell to locate representation in another jurisdiction. Instead, empowered by the deep pool of resources available online, consumers and corporate counsel alike are inclined to educate themselves about various legal issues through blogs, online video and conversations in online community sites before they even compile a list of potential lawyers. Moreover, once prospective clients start to gather names of lawyers – either directly through Internet searches or via personal referrals – they then go back online to check out the lawyers' credentials, experience and testimonials and get feedback from other clients and colleagues.

Further, recent studies show that consumers trust the information they locate online. The Pew Report² found that nearly 40% of Americans doubted a medical professional's opinion or diagnosis because it conflicted with information they had found online. Likewise, consumers take peer reviews seriously, with 78% relying on ratings and reviews in making purchase decisions.³

Social media gives lawyers the tools to provide potential clients with the kind of in-depth information that they've come to expect to find online prior to making any kind of decision requiring a significant commitment of resources. Bottom line: If you're not using social media,

you can't deliver the kind of information that today's clients demand before they hire a lawyer.

The Need for Personal Connections

Even as we spend more time online, as humans we crave some form of personal connection. Even in business, personal connections matter because we're more likely to do business with people we enjoy spending time with.

Social media satisfies our longing for human contact and provides a tool for building trusted, multidimensional relationships. Platforms like Twitter and Facebook give lawyers a chance to reveal a little piece of personality or share tidbits about their family, hobbies and quirky likes and dislikes. Meanwhile, for those uncomfortable mixing business with pleasure, there are other tools – like blogging – for expressing opinions and engaging in conversation about court cases or other legal matters. Whether it's a recipe exchange or a discussion about your favorite sports team on Twitter, or a heated exchange through blogging, the interactive nature of social media helps build deeper and more meaningful connections online, which eventually translate into offline business and friendship.

Social Media Is Fast and Cheap

In a society that's on the go 24-7, social media delivers the news at a record pace. In a few minutes a day on Twitter, participants can get the news more quickly than by scanning the newspaper. And as society continues to move at this pace, social media's currency will become even more valuable. What's more, social media is largely free, which makes it harder to ignore.

Social Media Is a Tool for Achieving Your Goals

You may be familiar with some of social media's power users owing to the media coverage that they've garnered: David Barrett, who describes himself as "the most linked in lawyer in the world" with over 12,000 connections on LinkedIn; solo lawyer Richard Vetsein, who gathered 600 fans for his law firm's Facebook Fan Page in a matter of weeks; or Rex Gradeless, a recent law grad who has over 73,000 followers on Twitter.

While these numbers are impressive, don't let them intimidate you about jumping on board with social media. We can't emphasize enough that social media is a tool to achieve your professional goals, not a goal in and of itself. In contrast to a frequent flier program where accumulated miles translate into a free trip, racking up friends, followers or blog visitors just for the sake of doing so won't necessarily confer rewards like more referrals or clients. Moreover, you're likely to annoy your colleagues and waste your time with obsessive efforts to gain more followers.

Actually, social media eliminates the need to generate presence through big numbers, which is a loser's game,

particularly for solo and small firm lawyers. Instead, social media gives you the ability to focus your message on your specific target audiences and develop a strategy tailored to carry out your goals.

Social Media Doesn't Make Ethical Conduct Unethical Appropriate Conduct

Many lawyers are hesitant to adopt social media, concerned that unresolved ethics issues could put them at risk of a grievance. What's important to understand, however, is that social media changes the medium, not the message. In other words, lawyers don't check their ethics obligations at the social media portal. Even in this new frontier, the same familiar ethics rules guide lawyers' conduct.

Gone are the days when consumer clients pick up the Yellow Pages to find a lawyer or corporate counsel crack open a tome of Martindale-Hubbell to locate representation in another jurisdiction.

For example, a communication that's inherently unethical – such as revealing a client confidence – doesn't become any more unacceptable when the information is disclosed in a 140-character tweet, e.g., "In NYC court. Client just told me that the heroin belonged to him! Ugh, case ruined." Conversely, a blog post analyzing a recent case or explaining how to file for bankruptcy isn't transformed into bar-regulated advertising merely because it's self-published online. It would be viewed as harmless if published in a law journal or as a newspaper column.

Once lawyers recognize that communications on social media don't differ much from those in other arenas, they can conform their use of social media tools to existing ethics requirements, just as they do for other areas of their practice. The ethics issues that relate to social media raise the broader question of whether some lawyers do not utilize many online tools because of concerns about violating ethics rules.

Are Ethics Rules Keeping Lawyers Offline?

The summary results of the ABA 2008 Technology Survey reveal a tremendous disconnect between lawyers' use of the Internet as a source of information as compared to their use of online tools for marketing. According to the survey, 79% of lawyers receive information through news websites, while 59% subscribe to email newsletters. By contrast, substantially fewer lawyers blog (just 2%) or participate in social networks (15%). In fact, barely more than half of solo and small firms – just 52% – even have a website.

On one level, the disparity between lawyers' use of the Internet as a source for news and for marketing and online relationship-building on the other might be attributed to lawyers' lack of time. After all, blogging or actively engaging in social networking consumes more time than scanning a few newspapers online. But increasingly, I'm convinced that fear of sanction for marketing conduct deters lawyers from truly exploiting the potential of online marketing.

In addition to the statistics, several anecdotes corroborate this theory. In a recent listserve discussion, several colleagues shared that they would not use Twitter because of concerns that their participation could inadvertently breach client confidences or expose them to a potential grievance or malpractice liability (for example, an offhand tweet reading, "The judge was really a jerk"

might lead a client to complain that the lawyer should have filed a motion to recuse the judge).

The spate of well-publicized lawsuits against commercial companies involved in lawyer marketing further fuels lawyers' fears. For example, earlier this year, a lawyer filed ethics complaints in 47 jurisdictions against Total Attorneys, arguing that the company's performance-based online marketing lead generation system was tantamount to an impermissible for-fee referral service. Likewise, Avvo and SuperLawyers, two companies that rate and list lawyers and allow lawyers to post the resulting ratings on their websites, were the subject of lawsuits or ethics complaints charging that these ratings systems are misleading to consumers and thus violate prescriptions on deceptive advertising. Though Avvo and SuperLawyers eventually prevailed, their victory offers little comfort to solo and small firm lawyers contemplating online marketing who lack the resources to serve as an ethics test case.

Still, lawyers must not allow the hype surrounding these isolated cases to deter them from engaging in online marketing. By familiarizing themselves with applicable ethics rules, understanding some of the best practices outlined below, and consulting with bar regulators when uncertain, lawyers can inoculate themselves against grievances and, more important, exploit the enormous marketing and relationship-building potential that the Internet offers.

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Best Practices

1. Read the Bar Rules.

It is absolutely imperative that you, personally, take the time to read and familiarize yourself with your jurisdiction's ethics rules governing advertising. All too frequently, lawyers will rely on rumors that certain conduct is not permitted, when in fact, the situations that were the basis for the rumors involved conduct in another jurisdiction, were distinguishable on their facts – or the rumors were just plain wrong. A recent ABA Teleconference on Ethics in Web 2.0 Marketing emphasized the importance of reviewing ethics rules since each jurisdiction takes a different approach. The ABA conveniently provides links to each state's advertising ethics rules to make it easy for lawyers, particularly those licensed in several jurisdictions, to check them.

2. Understand the Categories of Conduct That May Raise Red Flags.

You'd go crazy trying to memorize the specifics of every ethics rule. And the crazy-patchwork of ethics regulations for 50 different jurisdictions certainly can't be summarized in a blog post. As a first step, what's more important than the specifics is issue spotting – the ability to recognize those categories of conduct that may raise ethics red flags. Once you encounter an activity that you think may raise an ethics issue, you can review your ethics rules and any related ethics opinions to determine whether the activity is permissible. To help with the process, what follows are most of the most popular online marketing tools and the corresponding ethics issues that they may implicate:

- *Social Networking Sites.* Social networking sites like Facebook or MySpace allow users to upload photos and exchange personal information. Though there's certainly plenty of opportunity for stupidity in this regard (such as uploading photos of yourself drunk or wearing a skimpy swimsuit), stupidity alone won't necessarily trigger an ethics complaint. When it comes to social networking sites like Facebook, lawyers and even judges run into trouble when they attempt to use the site in a deceptive manner or engage in ex parte communications. In 2009, a North Carolina judge was reprimanded for "friending" one of the lawyers in a case before him. Also that year, the Philadelphia Bar Association ruled that a lawyer could not ask a third party to "friend" a potential witness in a case in order to gain access to the witness's Facebook page.
- *Websites.* In many jurisdictions, a law firm website is considered "advertising," just like a newspaper ad or a law firm brochure. As such, a website may be subject to certain bar regulations that govern print ads, such as prior review or a requirement that the

site contain a disclaimer or notice stating that the site constitutes advertising. Prohibited communications include the same types of communications prohibited in print ads or brochures such as: (1) deceptive and misleading statements (such as guaranteed results) or statements that cannot be factually substantiated (e.g., "We are the best lawyers in town!"), (2) claims of specialization may also be prohibited, and (3) use of monikers or prohibited logos (such as "The Heavy Hitter" or a pit bull logo, which isn't allowed in Florida).

In contrast to print ads or brochures, websites also present special ethics considerations. Because websites are viewable anywhere in the world rather than just a specific geographic location, they can give rise to potential claims of unauthorized practice of law (UPL). Accordingly, your website should specify the states where you are licensed to practice and can handle cases. Also in contrast to a brochure, a website opens the door for readers from anywhere to contact you by email, so be sure to include a disclaimer that sending an email does not trigger an attorney-client relationship. This prevents a user from claiming that you never responded to her email and caused her to miss the statute of limitations on her suit.

- *Blogs.* If you publish an article in a journal or newspaper, you typically aren't required to include a disclaimer that your article is advertising. That's because many bars treat articles as educational tools rather than communications intended to attract paying clients. Under some bar rules, this same reasoning might apply to blogs that merely provide commentary or discuss case law rather than solicit business, thus exempting blogs from regulation as lawyer advertising. Again, check your bar rules, because some specifically include blogs within the definition of "advertising" or define advertising in such a way that blogs fall within the scope of the definition.

So what types of issues do blogs raise? In addition to the considerations that apply to websites, one concern about blogs is that readers may rely on your advice and then try to hold you accountable if they relied on it to their detriment. Include a disclaimer on a blog that the posts address general matters and should not be relied on by readers or considered legal advice. Lawyers who blog should also avoid discussing "live" cases to avoid running afoul of court gag orders or inadvertently disclosing a strategy to opposing counsel. Finally, a recent law review article suggests that blogging can raise ex parte concerns, though others disagree (as do I).

Though not necessarily an ethics issue, for the sake of transparency, lawyers who blog should disclose whether they have a personal interest in one side of

an issue or another (e.g., if you blog about a client that your firm represents, you ought to disclose that to readers). And if lawyers make recommendations about a product where they retain a financial interest (such as affiliate fees), they should be wary of proposed Federal Trade Commission rules which may crack down on undisclosed blogger endorsements.

- **URLs.** A website's URL, or Web address, can raise ethics issues in some jurisdictions. For example, some states that prohibit use of phrases like "State X Law Clinic" or "Jones Legal Aid" because of the potential for confusion with bonafide legal aid organizations likewise prohibit use of these names for a website address, e.g., statelawclinic.com. However, don't assume that all states apply the same rules to law firm names and website URLs. In New York, law firms are barred from using trade names (e.g., BlueSky Law Firm) but may use a trade name for a website or blog (so BlueSky Law Firm as a firm name is prohibited, but www.blueskylawfirm.com as a website name is not). Many states also allow lawyers to use descriptive names for websites – such as NewYorkCollectionsLawyer.com or MadisonWisconsinTrustsAttorney.com – so long as the names are not deceptive or misleading.

Most state ethics codes offer fairly clear guidance on trade names and website names. Take the time to review them or you could potentially miss out on a desirable name because you mistakenly assumed that your ethics rules wouldn't allow it.

- **Rating Sites.** As already mentioned, sites like Avvo and SuperLawyers rate lawyers. While lawyers won't be subject to an ethics complaint when a rating is performed by a third party, lawyers may, in some jurisdictions, be prohibited from using those ratings in ads and on websites.
- **Testimonial Sites.** Testimonials and endorsements are ethical red flags in advertising because they can create an expectation of success or discuss matters that cannot be factually verified (e.g., "My lawyer was the best!"). Websites like Avvo or LinkedIn allow clients and lawyers to post endorsements or testimonials and where a third party outside the lawyer's control posts the testimonial (as opposed to the lawyer himself), it's doubtful that the bar would have the jurisdiction to require a take-down.

The real ethics question arises where lawyers want to link to testimonials posted at a third-party site or put those testimonials up at their websites. Check whether your bar's rules permit use of testimonials in advertising; but again, read the rules carefully. Some states ban testimonials by clients, but still allow endorsements from lawyers or colleagues.

- **Twitter.** At first blush, Twitter, a micro-blogging tool which allows users to exchange 140 character sound-bites seems harmless enough. After all, how many ethics rules can you violate in just 140 characters?

Plenty, if you're not careful. A lawyer who tweets about a bad day in court ("Bad day. Case is a dud and we will lose.") may inadvertently convey client confidences or private deliberative work product to opposing counsel. Similarly, a lawyer who asks a follower who tweeted about a car accident whether she needs a lawyer may run afoul of bar rules prohibiting solicitation. Ethics rules don't prohibit lawyers from participating in Twitter, but neither does the limited scope of a tweet absolve lawyers from adhering to ethics requirements.

- **Listserve, Chat Rooms and Q&A Fora.** The Internet affords lawyers many opportunities to interact with lawyers and non-lawyers in a variety of settings. When participating in chat rooms or responding to questions, lawyers should avoid giving specific advice or they run the risk of potential UPL claims or exposure to liability where another party relies on the advice.

3. *Serving Consumers of Legal Services.*

State bars developed ethics rules to protect the public from predatory lawyers who engage in deceptive advertising. Unfortunately, stringent regulation of online lawyer marketing has the unintended consequence of deterring lawyers from using online tools like websites or blogs, which can provide valuable information to consumers, or engaging in social networking sites where clients can learn more about lawyers whom they might want to hire. Ultimately, instead of protecting the public, strict oversight of online advertising has left consumers with fewer options and less information about lawyers and the law. Not only do we lawyers owe it to ourselves to engage in as much online marketing activity as is ethically permissible to build profitable practices, but we owe it to the public to disseminate as much information about our practices as possible so that consumers can make informed decisions when they hire a lawyer.

Conclusion

We end this article with a reminder: Social media is neither inherently wondrous nor worthless. It is a tool. Its value is derived from what you make of it, and its value will increase along with your skills in using it. ■

1. <http://www.facebook.com/press/info.php?statistics>.
2. <http://hbr.harvardbusiness.org/2009/11/community-relations-20/ar/1>.
3. <http://itpromarketer.com/2009/11/social-media-revolution>.