

# THE DAILY RECORD

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## LegalCURRENTS

# Should lawyers offer prizes to use social media?

Over the last few years, social media platforms such as Facebook, LinkedIn and Twitter have become increasingly popular and the number of people using of these networks continues to rise. Facebook now has over 750 million users, Twitter has over 200 million users, LinkedIn has over 100 million users, and the fledging social network Google+, which is still invite-only and went live on June 28, already has over 25 million users.

Understandably, many lawyers are trying to find ways to take advantage the possibilities offered by these ever-growing social media platforms and are always looking for new ways to increase their online reach.

Recently, a New York attorney who was seeking to increase his law firm's social networking connections asked the New York State Bar Association's Committee on Professional Ethics whether it would be ethical to offer a prize as an incentive for people to connect with the firm on various social media platforms.

As explained in Opinion 873 (June 9): "The inquirer is considering offering the chance to win a prize (to be determined) for connecting to the inquirer on one of those sites. By building the inquirer's social network this way, the inquirer hopes to market the inquirer's legal services more effectively."

First, let's address the ethical issue, and then we'll turn to the efficacy of the attorney's proposed social media strategy.

After reviewing the applicable rules, the committee concluded that the proposed conduct was likely ethical, but depending on the attorney's intent, could be subject to the requirements of the rules relating to "advertising" and "solicitation":

*"[T]he prize offer will be an 'advertisement' and must comply with Rule 7.1 only if the inquirer's 'primary purpose' is the 'retention' of the inquirer or his law firm. Furthermore, the prize offer will be a 'solicitation' only if it is an 'advertisement' and is 'directed to, or targeted at, a specific recipient or group of recipients' (whether the recipients are already part of the offeror's own social network contacts or are outside the offeror's social network*

*contacts). If the prize offer is a 'solicitation,' it will be subject to the strictures of both Rules 7.1 and 7.3. No matter how the communication of the prize offer is labeled, it must be truthful per Rule 8.4(c)."*



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Daily Record  
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So, not surprisingly, just as is the case with offline conduct, the answer depends on the specific facts of the case and revolves around ascertaining how and why the attorney wants to engage in the proposed activity.

Now that we understand the ethical implications, the question remains: does the proposed conduct even make sense from a marketing perspective? In my opinion, it doesn't.

A successful social media presence is based on interaction. People follow you on Twitter or "like" your Facebook page because you provide them with value, whether it's interesting content, links to relevant information or engaging conversation.

Offering a "prize" to induce someone to connect with you online is a shallow gesture that will likely be ineffective in the long run. People may "like" your Facebook page just to get the prize, but they'll never come back to your page if you don't provide them with meaningful interaction. Gaining a handful of followers doesn't mean much if they're not giving you the time of day.

I get the sense that the attorney who made this inquiry of the committee doesn't understand social media in the slightest and will no doubt be one the many who takes an ineffectual stab at social media and then throws his or her hands in the air proclaiming that it was all just a waste of time. And, for this attorney, it will have been just that.

But, it didn't have to be. Had this attorney taken the time to learn about social media, the question asked of the committee might have been: "Would it be ethical to offer a monthly prize to followers who correctly answer a trivia question?" A question like that would have evidenced a true understanding of social

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media — i.e. a creative attempt to engage with followers and maintain their interest. Instead, the inquiring attorney simply showed an intent to bribe people to follow the firm for the hollow purpose of increasing the number of social media connections.

So, the lesson to be learned is that online interaction in the absence of understanding is like choosing a jury while blindfolded and wearing earplugs: frustrating and, ultimately, doomed to fail.

Speaking of social media, it was recently brought my our attention that the Yates County Sheriff's Office is considering, but has

not yet implemented, the policy of requiring that current employees or job applicants provide social media passwords. For the reasons stated in my previous column on this topic, let's hope the policy is not implemented.

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