

Social Media 101: The Rules of Engagement

By Andre J. Webb

Social media is a cluster of global Tweets, shares and content embedded in every corner of the web. No longer is it only used by the young and restless. Each day over 190 million Tweets are sent, while approximately 265 million people check their Facebook pages.¹ The dynamics of Social Media has changed everything, making it more imperative than ever that we use it properly. One mis-Tweet, mis-share or upload can cause you, your client or your firm tons of money and irreparable harm.

You are what you Tweet

Those words ring true now, more than ever. Despite this notion, the glaring social media gaffes of others continue to amaze. Social media titans such as Twitter, Facebook and Instagram grant us an immediate connection with the world — our own, readily available soapbox to project our voice for the world to hear. When used properly, they are amazing tools: a means to share opinions, personal experiences and information. However, it all comes at a great price of responsibility.

As the old adage goes, “to whom much is given, much is required.” Quick and convenient access to social media eliminates the filtering process that would naturally occur when publicizing one’s feelings. Therefore, it is important not to allow the relaxed forum to delude you. You are still responsible for your thoughts and actions, arguably to a higher degree when those thoughts are posted and made available for anyone to derive their own meaning.

As young attorneys, after hours or away from the office, our tendency is to think of ourselves as ordinary, private citizens, free from ridicule or outside judgment of our social media activity. Unfortunately, this is not the case. As members of the bar, any bar, we must

always hold ourselves to a higher standard, mindful of how someone may interpret our posts. They are, after all, subject to ethical scrutiny at all times. Stated simply by The Cyber Advocate, “The rules of social media really aren’t different from the rules you deal with every day. Whatever you post on social media, remember that whatever you post will be interpreted — by at least someone — as your opinion as a professional.”² For instance, take a post with simple exaggeration, “just saved my client a million dollars in fees,” when in reality you only saved them \$20,000. Huge accomplishment, sure, but this may be considered unethical because it is factually untrue. While we are well aware of these rules daily, it’s during our social media activity that we must be reminded most. Furthermore, we must understand that whether in the office or not, we are a representation of our legal employer and the legal profession at all times.

Your client has the right to remain silent, anything they Tweet can and will be used against them.

As an attorney it is imperative that you not only represent yourself well on social media networks, but also educate your client. Many individuals consider their social media accounts to be secure simply because they mark it private, requiring others to request to view their profile for access first. While this may be true, does your client know every follower that they accept? Are they sure that the individual they accepted, thinking they were a long-time friend, is really him or her? The following four steps can go a long way to



protecting your client from themselves: 1) know your friends and their connections; 2) take extreme care on what you post; 3) require review and approval on what is posted; and 4) never post about your case.³

Seemingly, every week in the news, we are confronted with a controversial post made on social media. Often, they are followed with regret and attempts to retract the statement, but unfortunately, once expressed, the damage stemming from the post is already done. Afterwards, water cooler conversations typically follow questioning how the offender could be so reckless.

It is always a terrible idea, from the outside looking in, so why does history continue to repeat itself? The examples are endless: “Teenager Threatens to Shoot up School on Twitter Arrested;”⁴ “Drug Dealers Use Instagram to Distribute;”⁵ or

“Partner Tweets Derogatory Language to Twitter Account He Believes to be That of the United States Supreme Court.”⁶ The story repeats itself more often than any of us care to highlight. In fact, so often that I have concluded it can happen to anyone. I am convinced of the existence of a social media troll who hijacks minds, peruses accounts and wreaks havoc. Perhaps not, but seriously, these transgressions must be addressed.

Going one step further, an individual’s social media profile is often where civil and criminal investigations begin today. These accounts possess an abundance of

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information: one's interests, whereabouts, inner-thoughts, perspective and future plans. A recent article written by Pennsylvania civil attorneys discussing strategies and tactics to incorporate social media evidence into case strategy states, "Consider performing social media searches as soon as you open a new file, and again at weekly or monthly intervals, depending on the volume of a litigant's posts."⁷ Moreover, tools such as BrightPlanet's BlueJay Law Enforcement Twitter Crime Scanner allow police departments to conduct pre-crime searches on Twitter. Invasive? Maybe, but the rationale is that it helps to prevent future acts of crime. Yes, our very own "Minority Report" exists - a very slippery slope indeed.

While the Pennsylvania Supreme Court has not yet opined on the admissibility of social media evidence, the nearby Delaware Supreme Court recently ruled on the matter by adopting the Texas approach. The Texas approach requires the proponent of the social media evidence to make some proffer of authenticity. Stated specifically, *Parker v. State*, where a proponent seeks to introduce social-media evidence, he or she may use any form of verification available under the Rules of Evidence.⁸ Thus, the proponent does not need to prove the authenticity of the social-media evidence, so long as a jury could reasonably find the evidence to be authentic. This ruling is very important and it will be interesting to see if this is the prevailing rule of law that evolves.

For now, whether an attorney or not, if you are an active 'social networker' it is important to take your posts seriously. Expect the world to have access to your post forever! Consequently, post only those things that you are comfortable with anyone seeing, taking into consideration that your feelings about any given topic may not always be as flagrant as they are now. The post or Tweet should be something that, with reasonable deference, you are OK

with 30 years from now because as long as the internet is around, it will be too.

Summary

The original version of this article was published on my blog, The Burgeoning Young Attorney, in February 2014 (<http://burgeoningattorney.com/2014/02/25/watch-what-you-post/>). This piece is an updated version of that post, geared more toward young attorneys and their clients, further highlighting the importance of proper use of social media. ■



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¹ Jeff Bullas, Social Media Facts and Statistics You Should Know (2014), <http://www.jeffbullas.com/2014/01/17/20-social-media-facts-and-statistics-you-should-know-in-2014/>.

² The Cyber Advocate, Ethics of Social Media part3 (2014), <http://www.thecyberadvocate.com/2014/05/27/ethics-of-social-media-part3/>

³ Julie Brook, Watch What You Post: 4 Ways to Protect Your Client From Themselves (2014), <http://blog.ceb.com/2014/01/24/watch-what-you-post-4-ways-to-protect-your-clients-from-themselves/>

⁴ NBC News.com, <http://www.nbcnews.com/news/other/texas-15-year-old-arrested-hours-after-twitter-threats-shoot-f2D11598629>

⁵ Elisha Rader Mannering, Instagram Drug Sales Can They be Stopped (2013), <http://www.webpronews.com/instagram-drug-sales-can-they-be-stopped-2013-11>

⁶ Staci Zaretsky, A Biglaw Partner's Big Twitter Meltdown (2013), Above The Law.com, <http://abovethelaw.com/2013/10/a-biglaw-partners-big-twitter-meltdown/>

⁷ Donald L. Carmelite and Allison M. Domday, Discovering, Authenticating & Utilizing Social Media in Litigation: Strategy Considerations (2014), Defense Digest, <http://www.marshall Dennehey.com/defense-digest-articles/discovering-authenticating-utilizing-social-media-litigation-strategy>

⁸ *Parker v. State of Delaware*, No. 38, 2013 (Del. Feb. 5, 2014)

⁹ Molly DiBanca, Delaware Supreme Court Rules on Admissibility of Facebook Evidence (2014), The Delaware Employment Law Blog, <http://www.delawareemploymentlawblog.com/2014/02/delaware-supreme-court-rules-on-admissibility-of-facebook-evidence.html>

Simple Tips...

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pretty sure this will be a standard application and you've quoted a flat fee. If you're concerned about the trademark office needing additional information from you, build in an additional flat or hourly fee for any correspondence with the trademark office. Your client is likely to be willing to accept that future risk in exchange for knowing upfront what the regular fee is.

Bringing in business doesn't have to be hard if you learn how to maximize the likable aspects of your personality. Be yourself, be a bit different and don't be afraid to go against some of the conventional wisdom. ■



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