

TO FACEBOOK OR NOT TO FACEBOOK, THAT IS THE QUESTION

BY DEBBIE HARRIS

I have no doubt that you have been bombarded with information about utilizing Facebook in your practice. Professional Facebook pages are becoming essential as social media becomes more entwined in the way we engage with products and services. Transparency is key and many people want to be able to reach out to their attorneys through this medium. In addition, attorneys are utilizing Facebook pages to gather evidence for a variety of legal issues.

Providing educational material and information about your practice can engage readers and provide a forum for them to ask questions. I highly recommend that you keep your Facebook postings in-house. While you may not want to spend billable hours posting on a Facebook page, someone in your office can be given that task, or it can be shared among several staff members. In order to keep strict control over the posts and responses, it is vital that you be aware of what is going on with your Facebook page. Make sure that you are an administrator for the page and that you are getting notifications regarding all activity on the page.

Facebook is still the social media site where people are spending the most time. According to All Twitter, in January of 2012, people spent an average of 6.75 hours per month on Facebook.¹ Many people do not understand “filters” when posting on sites such as Facebook and it is important to be aware of what your clients may be discussing on your page. If a client posts information about a legal matter you are engaged in with them, you have the ability to delete the post. You may have to educate your clients, and a great way to do that is through your Facebook page. Post information on Facebook that lets them know they should never make a post about any of their legal matters. I recommend posting this information in your office, on e-mails and direct mail correspondence. You can say something like: “Please respect our attorney/client relationship and be respectful of the privacy of others when posting information to our Facebook page.”

Letting your clients know that you have a Facebook page will encourage them to connect with it and use it as a reference. The goal is to have people engage with the page. Please



remember that the Internet is eternal. When dealing with any information on your website, Facebook, a blog site, etc., be mindful that whatever you say will remain accessible forever.

Your Facebook Business Page

I am assuming you already have a personal Facebook profile page, which you will need to set up a Facebook page for your business. A business page can have additional sub-pages or apps on it. These are similar to pages on your website and can offer clients and potential clients information such as “Frequently Asked Questions” and “Services You Provide.” Your business page can also have a capture form inserted to collect e-mail addresses from people who may want to keep up with your monthly newsletter. It’s a good idea to collect e-mail addresses off of Facebook so you have a connection to people outside of Facebook. I highly recommend that you put a disclaimer in the information section of your Facebook page, as well as on your additional pages. The disclaimer reinforces the fact that an attorney/client relationship is not being created via the postings on Facebook. Here is a sample disclaimer we have used:

The information and discussions contained on this page are for the general information of our readers and do not constitute legal advice regarding the particular legal issues or needs of any reader. We are neither creating nor accepting an attorney/client relationship. An attorney/client relationship may be established only by arranging an individual consultation.

You will want to fill in all the descriptions when setting up the business page. Use keywords that coincide with your practice. A great tool for checking out keywords is the Google Keyword Tool. Set the profanity setting to “strong” and decide on a minimum age for viewing your page.

Advertising on Facebook

Facebook allows you to create ads targeted toward specific demographics. Advertising on Facebook can be effective if you do it right; ads should be visually striking, have a call to

action and target the audience you want to reach. It will take time, and it's a good idea to vary your ads and be as specific as possible with your demographics. Please remember to adhere to all State Bar of Nevada regulations regarding advertising and submit your ad for approval prior to its use.²

Staying Compliant

Social media is creating havoc with compliance issues. As I previously mentioned, it is advisable to put a disclaimer on your Facebook business page. Never discuss a client's personal situation on Facebook or disclose confidential information. Clients will post testimonials and this issue continues to be controversial. The bottom line is; how do you regulate the public and their ability to communicate? Negative comments should be responded to quickly and appropriately. Take the discussion offline but don't just delete it.

A Facebook business page does not have the ability to directly interact with Facebook profiles. You can keep your personal profile completely separate from your business page.

As long as there is a "share" button on an article, it is okay to post without infringing on a copyright. Always read an article before posting it and include a comment about why you are recommending it. YouTube videos are OK to share.

You should have a social media policy as an addendum to your Internet policy. Make sure your policy conforms to current labor laws regarding employees and social media. Communicate the policy and have everyone acknowledge receipt of it.

Use a program such as Social Safe to backup and save your Facebook business page and your personal profile posts, pictures, etc. This way you have a record of everything that has transpired on your Facebook Pages.

Using Facebook for Evidence

Having a Facebook page that allows you to build a community and provide education is only part of the equation for attorneys utilizing Facebook. Attorneys are looking to Facebook to gather information and scope out witnesses in legal cases. A social media profile such as Facebook can give an attorney insight into a person's state of mind and health, their habits, their location at specific times, their lifestyle and any day-to-day activities. This information is showing up in divorce cases, drunken driving sentencing and insurance fraud.³ Evidence for criminal cases is also

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being gathered from Facebook profiles. Questions of First, Fourth and Fifth Amendment protections are being challenged as social media invades all aspects of our lives.

Facebook has recently taken action to argue free speech associated with “liking” a page on Facebook.⁴ Many of these issues have yet to be determined. As I work with attorneys in this new medium, I caution them to not become overzealous when faced with the temptation to get potentially valuable information from Facebook or any other social media site. While the information gleaned from Facebook posts may prove to be the deciding factor in a legal dispute, caution must be exercised as to how the information is obtained from Facebook. Using a third party, a false identity or individuals not properly identifying themselves can get you into trouble with Rule 4.1 and Rule 4.3 of the Model Rules of Professional Conduct. I would caution all attorneys to revisit those rules before reaching out to anyone on Facebook for the purpose of evidence.

Conclusion

The world of social media is not going away. It has forever changed the way we communicate, view privacy and relate to products and services we use. The legal profession has begun to recognize the value of Facebook from a marketing standpoint and also from the standpoint of gathering evidence. The temptation to “find something” on Facebook should never overstep the bounds of ethical conduct. ■

- 1 Bennett, S. (2012). Twitter, Facebook, Pinterest - how much time do we spend on social media sites [infographic]. Retrieved from [media-minutes_b19034](#).
- 2 Effective Sept. 1, 2007 Lawyer advertising initiative: new rules. Retrieved from http://nvbar.org/sites/default/files/lawyer_advertising_rules.pdf.
- 3 Neubauer, M. (2012). How lawyers use social media. Retrieved from <http://blogs.globeuniversity.edu/2012/06/20/how-lawyers-use-social-media/>.
- 4 *Bland v. Roberts*, –F. Supp. 2d–, 2012 WL1429198, *4(E.D. Va. 2012).



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