

Oregon Law Practice Management

Practice Management Tips for Oregon Lawyers



The Ethics of Social Media

In her column, [A Word of Caution: Social Media for Lawyers](#), Oregon State Bar Deputy General Counsel [Helen Hirschbiel](#) shares six cardinal rules for lawyers using social media. The advice is spot-on. If you or your clients are using [Facebook](#), [LinkedIn](#), [MySpace](#), [Twitter](#), or any other social networking site, be sure you understand the ethical implications of your online activity:

Rule 1 – Don't Unwittingly Disclose Client Confidences

Seems obvious, doesn't it? Evidently not. Three years ago, an Oregon lawyer stipulated to a 90-day suspension for posting confidential personal and medical information about a former client on a listserv. *In re Qullinan*, 20 DB Rptr 288 (2006). More recently, an [Illinois attorney was disciplined](#) for referring to clients by first names or by jail identification numbers in her blog.

Rule 2 – Avoid Inadvertent ExParte Contact

Exparte communications are prohibited by ORPC 3.5. In her column, Helen relates the story of a North Carolina judge who was reprimanded for communicating exparte with a lawyer regarding a pending trial. The morale – always be mindful of the exparte prohibition, even when online.

Rule 3 – Is the Opposing Party Represented?

If so, don't attempt to contact him (or her) via a social networking site. [OSB Formal Ethics Opinion 2005-164](#) permits lawyers to visit an opposing party's public Web site, but suggests that interacting with the Web site would be problematic. If you know the other party is represented, avoid all contact.

Rule 4 – What are Your Clients Posting?

What clients post on [Facebook](#) or [MySpace](#) can definitely come back to haunt them. Due diligence may require you to ask clients if they use social networking sites, then verify their answers by conducting an appropriate Internet search.

Rule 5 – Social Media as an Investigative Tool

Due diligence may play a role here as well – as Helen suggests, “The flipside of lawyers needing to be careful about what they and their clients post on the Internet, is needing to be cognizant of the abundance of information available online about others. In fact, some might argue that competent representation these days requires investigation of any Internet presence or personae for parties and witnesses.”

Rule 6 – Avoid Deception

ORCP 8.4(a) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. [OSB Formal Ethics Opinion 2005-173](#) makes it clear that covert activity (deceptive posts or personae) are not allowed under this rule when there are no “violations of civil law, criminal law, or constitutional rights” to investigate. Helen notes, “An Oregon lawyer learned this lesson the hard way when he created an Internet bulletin board account in the name of a high school teacher and posted a message purportedly written by the teacher, implying that the teacher had engaged in sexual relations with his students. Although the lawyer intended the ruse to be a practical joke, the lawyer ultimately was reprimanded for violating (the rule).” *In re Carpenter*, 337 Or 226 (2004).

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