



The Fundamentals of Loss Prevention for Lawyers

EXCERPT

► **CHAPTER 14:**
Social Media

Serving Illinois Lawyers

Chapter 14: Social Media

While many lawyers may use social media to market their practices or establish their expertise in a particular field, they get in trouble for not reviewing the [Illinois Rules of Professional Conduct](#) before they post.

Example

Lucy is a public defender who is often frustrated by her clients and the judges before whom she appears. To reduce her stress, she has started a blog. Initially, the blog discussed things that interested her like bird watching and cooking. Later, as she felt more pressure at work, she began to blog about how stupid her clients were and how incompetent the judges were in the criminal courts. She provided so much information (but not their names) that eventually her supervisor and her colleagues were able to figure out who she was talking about. She has breached her duty of confidentiality under [Illinois Rules of Professional Conduct Rule 1.6](#).

Just because everyone else seemingly posts anything they want about anything they want, doesn't mean that lawyers can too. The [Illinois Rules of Professional Conduct](#) still apply and lawyers must be mindful of their ethical obligations when they engage in social media.

Tips to Avoid Professional Liability While Using Social Media:

Don't give legal advice outside of your jurisdiction through social media.

It is easy to connect with readers and encounter inquiries on social media, especially if you have developed a continuous, reputable blog or following on a particular outlet. However, Rule 5.5 states "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." State lines can be easily crossed on social media platforms, and lawyers should avoid providing legal advice (offering recommendations tailored to the unique facts of a particular circumstance). While lawyers who provide legal information such as the discussion of trends, considerations, or summarizing a relevant case may not implicate a Rule 5.5 violation, lawyers should nevertheless be wary of crossing the line into 'legal advice' situations.

Avoid forming lawyer-client relationships on social media outlets

Rule 1.8 states "A person who discusses with a lawyer the possibility of forming a lawyer-client relationship with respect to a matter is a prospective client." A lawyer-client relationship could be accidentally formed if a client "reasonably relies" on what they believe to be the lawyer's legal advice through social media.

Don't divulge a client's personal information in connection with representation on social media

Lawyers should avoid recounting details about one's day at work on social media platforms, including seemingly innocent details about a "certain client" or ambiguous fact pattern. Even if a lawyer does not explicitly name the client being referred to, Rule 1.6, which prohibits a lawyer from revealing information relating to the representation of a client, may still be violated.

Social Media Do's and Don'ts

Do...

- ✓ Review your ethical obligations before posting anything on social media.
- ✓ Assume that anything on social media has the potential to become public.

Don't...

- ☹ Don't give legal advice online to avoid unintended lawyer-client relationships.
- ☹ Don't post angry.



ISBAMUTUAL.COM
(312) 379-2000