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Legal LOOP

NYSBA issues updated social media guidelines for lawyers

I've always believed that social media use by lawyers should be treated no differently than any other type of communication by lawyers. After all, online interactions are simply an extension of offline interactions, and the medium doesn't change the message. For that reason, it has pained me to see so many ethics committees issuing so many opinions over the years on the many perceived nuances of online communication by lawyers.

Many of these opinions are simply unnecessary and constitute knee jerk reactions to a new way of interacting. And many are based on faulty reasoning grounded in the assumption that online communications are somehow different than those occurring offline and thus warrant the application of new, more stringent standards. Others, however, necessarily address issues that are unique to online communications. One good example is opinions that address the issue of whether the passive notifications received by LinkedIn users (who also happen to be jurors) which indicate that a lawyer has viewed their profile constitute impermissible juror contact.

Regardless of whether I agree with the sheer volume of opinions or their merit, the end result is that lawyers are left to their own devices when it comes to reviewing the many opinions and deciphering which types of online interactions are ethical. Navigating the maze of ethics opinions can be a difficult and overwhelming task and for that



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reason, some attorneys simply choose to forgo using social media altogether.

That's where the recently updated "Social Media Ethics Guidelines," issued by the Commercial and Federal Litigation Section of the New York State Bar Association, come in.

These guidelines were first released in 2014 with the intent to provide lawyers with guidance in navigating the many ethical issues encountered when using social media in a professional context. The guidelines were revised in 2015 and, then, just two weeks ago, a newly updated version of the guidelines was released (online: <http://www.nysba.org/SocialMediaGuidelines17/>).

Some of the more notable revisions include:

- Attorney Competence (§ 1.A) reflects that 27 states have adopted some duty of technical competence.
- Maintaining Client Confidences (§ 5.E) offers information on how an attorney can respond to online reviews as well as services that offer to import contacts.
- Positional Conflicts (§2.E) is new and discusses DC Bar Ethics Opinion 370 regarding whether social media posts adverse to a client's interest may present a conflict of interest.

- The revised appendix describes social media terminology and some of the more popular social media platforms.

The newly added social media definitions are particularly useful, and I have to admit that although I've always considered myself to be more social media-savvy than most lawyers (having written a book on lawyers using social media), even I learned a few things after reading through the definitions.

So, if you haven't yet read the updated guidelines, make sure to set aside some time in order to do so. They provide a very useful, extensive roundup of how ethics committees across the country have approached lawyers using social media. The guidelines are a great resource that will serve as a handy reference guide for your professional online social media activities.

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