

- Law not immune from social media
 - 40% of lawyers and judges use Facebook or LinkedIn – comparable to general population
 - 85% of law firms use web-based networking tools such as LinkedIn, Facebook, and Twitter
 - 41% of law firms report that social media has brought in new clients

Use of Social Media

- Lawyers using social media for discovery and to obtain information about opposing witnesses
- Trial lawyers using Facebook to help with juror selection
- One judge requires all juveniles appearing before her to “Friend” her so she can monitor activities
- Jurors tweeting during trials

Various Uses of Social Media

- Nevada judge removed for MySpace post wanting to “Break my foot off in a prosecutor's a**”
- North Carolina judge disciplined after “Friending” attorney in child custody case and discussing case through public posts
- Kansas judicial candidate sent text messages seeking donations: “If you are truly my friend then you would cut a check to the campaign! If you do not then its time I checked you. Either you are with me or against me!”

Disciplinary Actions

- Established in 2010 to address the ethical issues relating to new technology
- Recommending two primary changes to model rules addressing social media and other forms of electronic communication

ABA Commission on Ethics 20/20

- Revise rule to encompass all forms of communication, including electronic media
- Clarify that attorneys need to guard against three distinct problems:
 - Inadvertent disclosures
 - Lawyer sends email to wrong recipient
 - Unauthorized disclosures
 - Paralegal reveals confidential info on social media
 - Unauthorized access
 - Hacker gains access to firm's network

Duty of Confidentiality

Model Rule 1.6

- Comment to Rule 1.6: Disclosure, by itself, does not constitute a violation “if a lawyer took reasonable precautions to guard against it”
- Attorneys must be aware of all electronic content, aware of policies and privacy controls, and be prudent in all interactions

Duty of Confidentiality

Model Rule 1.6

- A prospective relationship can arise when a lawyer initiates contact
 - Websites or emails that may cause a person to respond and share confidential information
- Communications regarding services clarified to apply to all possible future clients – not just “prospective clients”

Prospective Clients

Model Rules 1.18 and 7.1