Ethics of Social Media – LinkedIn Frequently Asked Questions

[These FAQS are neither legal advice nor an ethics opinion, and are not a substitute for your obligation to review and adhere to the requirements of the [Michigan Rules of Professional Conduct](#) (MRPC), ethics opinions, statutes, court rules, and/or case law. This document provides a review of LinkedIn features as of May of 2017 and, therefore, may not reflect the ethical implications of any updates, modifications, or added features.]

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Reminders:

Lawyer Competence

Lawyers must provide competent representation. MRPC 1.1. A general knowledge of social media is required to ensure competent representation. MRPC 1.1 Comment.

Terms of Service

A lawyer should review the terms of service offered by LinkedIn to determine whether adequate security measures are in place to maintain and protect client confidences and secrets. A lawyer should also discuss LinkedIn's security and confidentiality provisions with the client to ensure an understanding of the risks of use. MRPC 1.1, 1.4, 1.6.

Supervising Non-Lawyer Employees

A lawyer may not permit or encourage an agent to engage in ethically prohibited conduct. MRPC 5.3; RI-191, RI-205.

Duty to Monitor LinkedIn Content

A lawyer is responsible for all content that appears on the lawyer's or law firm's LinkedIn profile and must ensure that information regarding legal services is not false, fraudulent, or misleading. MRPC 7.1.

A lawyer must monitor and ensure that third-party endorsements, recommendations, and posts do not violate the MRPC and remove impermissible content. Best practice regarding impermissible content is not to accept it; to delete it; or hide it if rejection or deletion is not an option.

LinkedIn: Frequently Asked Questions

Lawyer Advertising

Applicability of Rules

Are LinkedIn profiles subject to the advertising parameters of the MRPC?
Generally, a lawyer posting information about the lawyer or legal services on social media must comply with MRPC 7.1. RI-276. Best practice would be to assume that all lawyer communications on LinkedIn are subject to MRPC 7.1 - 7.5, Information About Legal Services. As a reminder, MRPC 7.1 includes communications about the lawyer, the law firm, and any affiliated lawyers.

Ethics authorities have cited a number of different factors to determine whether a lawyer's social media profile constitutes advertising, including the degree of detail stated regarding the lawyer's services and qualifications. The more information about the lawyer's professional qualifications, the greater likelihood that the profile will be deemed advertising. If the account is established to market the lawyer's services, whether titled in the lawyer or the law firm's name, it will be subject to the ethics rules regarding advertising. LinkedIn is designed for professional networking; a lawyer's profile is, therefore, likely to be considered lawyer advertising.

May my LinkedIn profile include my areas of practice?
MRPC 7.4 allows a lawyer to indicate areas or fields of practice in communications about the lawyer's services. A lawyer should refrain from advertising as a "specialist" or "expert," unless the description is objectively verifiable. See RI-142. For example, a lawyer who is listed in a publication as a "Super Lawyer" or similar rating may refer to the designation in advertising that complies with MRPC 7.1. See RI-341.

May a lawyer communicate with prospective clients via LinkedIn Messaging?
LinkedIn Messaging, like instant messaging, is real-time, interactive communication and, when initiated by the lawyer or agent, is subject to MRPC 7.3(a), 7.3(b), and 7.1. A lawyer may not engage in solicitation of prospective clients unless the lawyer has a "family or prior professional relationship."

A lawyer may respond to LinkedIn Messages initiated by prospective clients. MRPC 7.3(a). When responding to prospective clients regarding their legal matter, the lawyer must be careful to ensure that the communication is confidential as required by MRPC 1.6. Similarly, as with all communications with prospective clients, the lawyer should be cautious about inadvertently creating a lawyer-client relationship and triggering other ethical duties to prospective clients, including those pertaining to conflicts of interest. MRPC 7.3; RI-276; RI-74; RI-48.

May a lawyer communicate with prospective clients via InMail?
InMail, like e-mail, is not a real-time, interactive communication. A lawyer may contact prospective clients via InMail as long as the communication complies with MRPC 7.3 and 7.1.

May a lawyer send a LinkedIn connection request to someone who is outside of the lawyer's family and with whom there is no personal or professional relationship?
Yes, because, like e-mail, sending a request to connect on LinkedIn is not a real-time, interactive communication subject to MRPC 7.3.

May a lawyer participate in paid advertising on LinkedIn?
LinkedIn offers numerous paid advertising options including targeted LinkedIn ads. MRPC 7.3 allows lawyers to send "truthful nondeceptive letters to potential clients." As such, lawyers may utilize targeted advertising as long as it complies with MRPC 7.1 – 7.4; RI-74; RI-147; RI-169.

Importing Contacts

Should a lawyer allow LinkedIn to import/access my contacts/address book?
BEST PRACTICE: A lawyer should exercise caution in allowing LinkedIn to import or access their contacts or address book. LinkedIn captures information from the contacts/address book such as names, birthdays, gender, locations, job titles, email addresses, phone numbers, websites, **and notes**, thus disclosing this information to LinkedIn and its affiliates. LinkedIn uses this information to suggest connections for you

and others who may or may not be members of LinkedIn, possibly exposing client's names and other information that the lawyer is obligated to protect from disclosure under MRPC 1.6. Whether a lawyer may allow LinkedIn to import or access their contacts/address book depends upon the content of their contacts/address book. A lawyer should review the terms of service and the information stored in their contacts/address book to ensure that the lawyer understands the risks.

Communicating with Current Clients

May a lawyer communicate with current clients via LinkedIn?
BEST PRACTICE: A lawyer should avoid communicating with a client about privileged information via LinkedIn, to protect against inadvertent disclosure of confidential information. MRPC 1.6.[1]

A lawyer can post articles or "share" professional updates on LinkedIn and these communications are distributed to all persons connected to the attorney, and can thereafter be shared by any one of these connections. The non-premium LinkedIn accounts do not allow for a limited distribution of posted information. A lawyer must exercise caution when posting any communications on LinkedIn to avoid the inadvertent disclosure of confidential information in violation of MRPC 1.6.

Lawyer-Client Relationship

Is it possible to form a lawyer-client relationship via LinkedIn?
A lawyer-client relationship can be formed via social media and should be considered when posting or communicating on LinkedIn. Lawyers must exercise caution when entering into a dialogue with a prospective client who has posted questions or comments on LinkedIn to avoid the inadvertent forming of a lawyer-client relationship. "Whether a client-lawyer relationship was established may depend on how *specifically* the case was discussed during consultation. If confidences were imparted in good faith, a client-lawyer relationship existed for purposes of applying Rule 1.9." RI-048, RI-350; MRPC 1.9; MRPC 1.10; MRPC 1.7.

Legal Advice

May a lawyer answer legal questions on LinkedIn?
A lawyer may provide general answers to legal questions or comments on LinkedIn in the same way in which the lawyer would provide general legal advice to those attending a seminar. RI-141, RI-081, RI-099. However, the lawyer must be careful not to create a lawyer-client relationship or disclose confidential client information. MRPC 1.0 Comment. MRPC 1.6. RI-350, RI-048.

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[1] In May of 2017, LinkedIn Terms of Service stated: "We use automatic scanning technology to help protect you and other Members. Such technology checks links and other content in your InMails, network updates and Group contributions to help us identify and block malicious links and malware, reduce spam and optimize the delivery of our Services."

Connecting with Adverse Parties

May a lawyer send a connection request to an adverse party on LinkedIn?
BEST PRACTICE: Lawyers and their agents should avoid connecting with adverse parties, as MRPC 4.2 or MRPC 4.3 may be implicated. Also, a lawyer may not direct an agent to engage in conduct from which the lawyer is ethically prohibited. MRPC 5.3(c) and 8.4; RI-205.

What if an adverse party sends a lawyer a LinkedIn request?
BEST PRACTICE: Lawyers should ignore the connection request until the adverse proceeding is concluded as MRPC 4.2 or MRPC 4.3 may be implicated.

What if the adverse party and a lawyer are already connected on LinkedIn?
Although there is no ethical requirement to remove the connection to an adverse party, MRPC 4.2 and MRPC 4.3 may be implicated if there is communication about the subject matter of the representation, either through posts, replies to posts of other persons that may be viewed by both parties, or by mentioning the adverse party.

May a lawyer have a third party send a request to connect to a witness for the undisclosed purpose of gathering evidence?
Lawyers are responsible for the actions of their agents consistent with the requirements of MRPC 5.3. A lawyer's conduct of asking a third party to send a request to connect to a witness for the undisclosed purpose of gathering evidence implicates MRPC 8.4, 4.1, and 4.2.

May a lawyer "follow" an opposing party's personal or professional page?
A lawyer may "follow" an opposing party's personal professional page as long as the lawyer complies with MRPC 4.2, 4.3, and 8.4.

Judicial Officers

May a lawyer connect with judicial officers on LinkedIn?
Lawyers may connect with judicial officers on LinkedIn. However, lawyers should not attempt to influence a judicial officer regarding matters related to their judicial position. Lawyers should also avoid *ex parte* communication with judicial officers regarding pending matters. MRPC 3.5, 8.2, and 8.4; Michigan Code of Judicial Conduct Canon 2(A) and (C); Canon 3(A)(4); RI-243, JI-44.

Endorsements

Does inclusion of "skills" and "endorsements" on a LinkedIn profile create any risk of violation of the MRPC?
Yes. LinkedIn members can add "skills" to their profiles from a list of choices maintained by LinkedIn (e.g., "Civil Litigation," "Divorce Law," "Trademark Infringement"). In addition, other LinkedIn members can give an "endorsement" to a LinkedIn member to whom they are connected from the same list maintained by LinkedIn. These features of LinkedIn implicate MRPC 7.1, and create the potential for violations relating to the Rule's prohibition against any form of public communication that is not false, fraudulent, misleading, or deceptive. MRPC 7.4; RI-142; RI-341.

A lawyer who maintains a LinkedIn profile generally is engaging in a form of public communication. Although it is possible to limit one's profile to a private circle of individuals of the LinkedIn member's choosing, most LinkedIn members utilize the service as a means of communicating and/or advertising their services. MRPC 7.1 and 7.2 allow lawyers to communicate publicly and to advertise subject to certain limitations.

Because MRPC 7.1(a) provides that a public communication shall not contain a material misrepresentation of fact or law or omit a fact necessary to make the statement considered as a whole not materially misleading, the "skills" and "endorsements" features of LinkedIn profiles create the potential for ethical violations relating to statements about the lawyer's experience and expertise. *See In re Dickey,* 722 S.E.2d 522 (S.C. 2012) (lawyer violated ethics rules by, *inter alia*, listing approximately 50 practice areas on website in which he had little or no experience). For example, a lawyer might be inclined to list as a "skill" an area of law in which he aspires to develop business– "Juvenile Law" or "Mediation" – without the LinkedIn profile disclosing that he actually has no demonstrated skill or experience in the area. Similarly, a lawyer may receive an "endorsement" from another LinkedIn member, including non-lawyers, with regard to a "skill" in an area of law– e.g., "Real Estate Transactions" – in which the LinkedIn member does not actually participate or no longer participates. Because endorsements given by a fellow LinkedIn member do not always need to be approved to appear as a skill on a LinkedIn member's profile, there is a risk that one's LinkedIn profile may contain misrepresentations that implicate MRPC 7.1(a) even when the content has not been created by the lawyer.

The potential for a lawyer's LinkedIn member profile to contain "skills" and "endorsements" that violate MRPC 7.1 exists. Lawyers seeking to engage in the permissible use of LinkedIn as a form of advertising and public communication can minimize the risk by closely monitoring at reasonable intervals the skills and endorsements appearing on their profile for accuracy, editing one's profile to delete skills and endorsements that are not accurate and/or, in an abundance of caution, turning off the skills and endorsement features on one's LinkedIn profile. Additionally, a lawyer may opt out of seeing and receiving endorsements.

Recommendations

May I accept LinkedIn recommendations?
A lawyer may accept a truthful, non-deceptive recommendation on the lawyer's LinkedIn profile. MRPC 7.1. LinkedIn requires that members accept recommendations, which provides the lawyer the opportunity to review and approve each recommendation before it is made public. Additionally, the lawyer may hide posted recommendations.
A lawyer may also opt out of seeing and receiving recommendations.

May I request recommendations?
Generally yes. LinkedIn encourages members to request recommendations from their network. In all cases, a lawyer should "not give anything of value to a person for recommending the lawyer's services," MRPC 7.2(c).

May I recommend other lawyers?
There is no prohibition on recommending other lawyers as long as the recommendation complies with the MRPC.

Publishing, Responding to, or Sharing Articles or Posts

If a lawyer publishes, responds to, or shares an article or post through LinkedIn, is this advertising?
A lawyer or law firm's published posts or articles that contain promotions or highlights of recent successes, accomplishments, or achievements constitute lawyer communications about services, and must comply with MRPC 7.1 and 7.3. Additionally, lawyers should be cautious to avoid revealing confidences or the identity of clients without obtaining client consent. Lawyers are strongly encouraged to provide the entirety of the proposed text to any client whose cases will be featured in a blog post or article in advance of publication, to demonstrate informed consent. (MRPC 1.6; RI-72; RI-77.)

Is there a potential conflict of interest if a lawyer publishes, responds to, or shares an article or post through LinkedIn?
MRPC 1.7(b) may be implicated if a lawyer publishes, responds to, or shares an article or a post on LinkedIn, Pulse, or other similar social media platforms. A lawyer's own interest in publishing and promoting legal advice may materially limit the lawyer's ability to represent a current or prospective client whose position requires an argument contrary to the lawyer's published article or blog post.

What should lawyers consider when creating or responding to LinkedIn Group posts?
LinkedIn Groups allow lawyers to communicate with other members in a semi-private format. Nonetheless, lawyers should refrain from disclosing privileged or confidential about client representation. MRPC 1.6.

Should a lawyer have a disclaimer when publishing articles or posts?
Lawyers are strongly encouraged to post disclaimers on social media publications to clearly indicate that the material does not create a lawyer-client relationship, is not intended to convey legal or ethics advice, and does not guarantee the same or similar results in all cases.

Trial Publicity

May a lawyer post comments about a trial on LinkedIn?
Yes. However, lawyers should be aware of MRPC 3.6 regarding trial publicity, which is applicable to LinkedIn and other forms of social media. If a lawyer posts comments about a trial, the lawyer may violate the ethics rules depending on the statements made, the statement's impact on the trial, and the lawyer's involvement in the case. MRPC 3.6 prohibits a lawyer from making extrajudicial statements the lawyer knows or should know will be disseminated publicly and will have a substantial likelihood of materially prejudicing the judicial proceeding. The rule applies to lawyers who participate in or have participated in the investigation or litigation.

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