

Making Better Use of LinkedIn (Part 2)

Business Intelligence and Technology Competence

By Dennis Kennedy and Allison C. Shields

In the first part of this article in the February *Bar Journal*, we provided an action plan to improve your outreach on LinkedIn.¹ In this part, we focus on some often overlooked or underutilized applications of LinkedIn as a research tool for business/competitive intelligence and as a tool for network/relationship analytics. We end with a discussion of the relatively new notion of a lawyer's duty of technology competence (adopted by Michigan in 2019 and effective January 1, 2020) and use LinkedIn as an example for thinking about how that duty might come into play.

Using LinkedIn as a research tool for business intelligence

Although most of us tend to mainly think about the messages concerning ourselves that we send through LinkedIn, as you begin to use the platform, you'll start to see how much you can learn about others. Many years ago, a lawyer might have consulted the big Martindale-Hubbell book to find biographical information about an opposing counsel. The information was limited and, in retrospect, quite narrow compared to what can be learned today through LinkedIn.

For example, looking at shared connections on opposing counsel's LinkedIn profile can reveal common acquaintances; one

of those shared connections could be someone you could talk to about opposing counsel. Or seeing shared interests on opposing counsel's LinkedIn profile might provide information that would help improve the working relationship.

Similarly, you can look at LinkedIn Company Pages to find out more about companies or law firms or to identify whom you might know at a company or firm. Viewing a company's list of employees can help identify who at that company holds a specific position—information that might be impossible to obtain on the company's website or elsewhere on the internet. While working in-house, Dennis often used LinkedIn to find and reach out to other in-house lawyers to identify the right person at the start of negotiations.

LinkedIn also provides ways to search for and evaluate experts, consultants, and many others. You're probably not using those tools as well as you could be.

LinkedIn as a tool for network/relationship analytics

When you learn to use LinkedIn effectively—by taking advantage of features that show shared connections, suggest similar connections, and reveal other networked relationships—you can obtain important insights into the relationships and dynamics of opposing counsel, deal partners, experts, and many others.

Consider the following:

- Potential conflicts of interest could be revealed by looking at profiles or shared connections.
- A shared interest (such as love of the same breed of dog) can get a working relationship off to a great start or seal the deal with a new client.
- An opposing expert might not have the topic on which they are testifying listed

as a skill or in their About or Experience sections on their LinkedIn profile, providing a way to challenge the expert.

- Company pages listing employees and their job titles might reveal additional witnesses you should evaluate.
- Common connections within an industry or community (e.g., the startup community) might help you identify “super-connectors” and advisors you should reach out to.

You're probably already thinking of additional ways in which these features could be useful to your practice. And there are even more opportunities if you have one of LinkedIn's premium accounts. For example, the Sales Navigator account (currently \$65/month on an annual plan for individuals) provides granular search tools, including geography, job title, and more to help you find specific individuals and search their connections.

In addition to your action plan for the three essential building blocks of LinkedIn (profiles, connections, and participation) that we discussed in Part 1 of this article, we encourage you to add another small section to experiment with using LinkedIn for intelligence and analytics.

Technology competence

In 2019, Michigan joined the growing number of states (38 at the time this article was written) that have adopted what has become popularly known as the “duty of technology competence” or the “technology competency requirement.”² There is some debate whether this is a new requirement or whether it simply highlights a duty that has long existed under the general notion of competence; either way, it's as relevant to LinkedIn as it is to other technologies.

ABA Model Rule 1.1 states: “A lawyer shall provide competent representation to

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a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Comment 8 to this rule adds the clarification: “To maintain the requisite knowledge and skill, a lawyer *should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” (Emphasis added.) The words about relevant technology were added to the comment in 2012. The Michigan Supreme Court adopted slightly different language: “including the knowledge and skills regarding existing and developing technology that are reasonably necessary to provide competent representation for the client in a particular matter.”³

In simplest terms, the ABA requirement, which will presumably guide interpretation of the Michigan language, is to “keep abreast of changes” in “relevant technology.” It’s possible to do hour-long continuing legal education programs on technology competence (and both of us have done so). As of the time of this writing, we have not been able to locate a published disciplinary opinion where a lawyer was disciplined solely for failure to meet the duty of technology competence. In opinions where the duty is mentioned, there were other issues (such as stealing from clients, neglect of work, failure to communicate) that more than justified the discipline, and technology competence was mentioned only in passing.

In much the same way, it’s likely that any disciplinary issues arising out of LinkedIn will stem from violations of other rules, such as advertising rules or rules about communication, rather than directly or solely from a failure to meet the duty of technology competence.

However, we want to use LinkedIn as a model of how to think about the duty of technology competence.

The core question under Comment 8 is: “Is LinkedIn a ‘relevant technology’ for which a lawyer should keep abreast of changes in the law or its practice?” At this point, it’s difficult to argue that LinkedIn is not relevant to the practice of law, for the many reasons we’ve discussed in this article and because it’s a technology that is likely being used by

many clients in ways that might affect their legal matters.

Whether something is a relevant technology is a sliding standard that necessarily changes as our use of technology evolves and new technologies are created. If a lawyer is advising a client on social media matters, it will be difficult to argue that knowing the social media platforms is not a relevant technology. It can be argued that cybersecurity has become important enough that it’s a relevant technology. Most of the time, the question will fall in a gray area. While a small-business lawyer might not generally consider social media a relevant technology, in the case of malicious reviews, spoofing of websites, and even online stalking of business owners, knowledge of social media technology becomes highly relevant.

We expect that in most cases LinkedIn will fall within the gray area, but in certain cases, it could become highly relevant, especially as a part of doing due diligence. LinkedIn has also become an essential tool for obtaining biographical backgrounds on opposing counsel, expert witnesses, and many others, and for mapping the web of their connections. In some matters, analyzing LinkedIn usage might also be important in cross-examination or establishing damages in an employment case. It’s also easy to imagine an issue arising out of a conflict of interest that could have been spotted quickly on LinkedIn.

Realistically, the practical risk that a lawyer will be disbarred or suspended for failing to meet the technology competence requirement with respect to LinkedIn is quite low. The greater risk will be in malpractice, when a client believes that a lawyer missed important facts available through LinkedIn (although the duty of technology competence may come into play when assessing whether malpractice was, in fact, committed) and in the general risk of losing clients and becoming irrelevant or invisible because you’re not perceived to exist in a meaningful way on LinkedIn.

Conclusion

LinkedIn can be an enormously powerful tool for lawyers. It’s also a tool that you can get much better at using over time with a little focused effort. We encourage you to

take our recommended steps to create an action plan for this year, measure your results, and keep improving your network. We also think you should be mindful of ways in which the duty of technology competence might apply to LinkedIn, and recommend that you make it a technology you become proficient at using. ■



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ENDNOTES

1. Kennedy & Shields, *Making Better Use of LinkedIn (Part 1)*, 99 Mich B J 54 (February 2020) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3882.pdf>>. All websites cited in this article were accessed February 11, 2020.
2. *Tech Competence: 38 States Have Adopted the Duty of Technology Competence*, LawSites <<https://www.lawsitesblog.com/tech-competence>>.
3. Administrative Order No 2018-11 (2019), available at <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2018-11_2019-09-18_FormattedOrder_AmendOfMRPC1.1-1.6.pdf>.