

Ethics of Social Media – Facebook 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 Facebook features as of June 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 Facebook to determine whether adequate security measures are in place to maintain and protect client confidences and secrets. A lawyer should also discuss Facebook'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 Facebook Content

A lawyer is responsible for all content that appears on the lawyer's or law firm's Facebook page 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.

Facebook: Frequently Asked Questions

Lawyer Advertising

Applicability of Rules

Business Accounts

Are business Facebook accounts 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 Facebook business accounts 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. Business accounts are designed for marketing; a firm business page is, therefore, likely to be considered lawyer advertising.

Hybrid Accounts

Are personal Facebook accounts that I use to post information about a practice subject to the advertising parameters of the MRPC?

Hybrid accounts, ones that provide both personal information and are used to communicate regarding a lawyer's services, should be treated as advertising and follow the advertising rules, MRPC 7.1, 7.2, 7.3, 7.4, and 7.5. [RI-276](#).

Personal Accounts

Are personal Facebook accounts subject to the advertising parameters of the MRPC?

Personal accounts that do not provide "communications concerning a lawyer's services" are not advertising. MRPC 7.1. However, these accounts can easily become hybrid accounts that would fall within the ethics rules regarding advertising if used to communicate regarding a lawyer's services.

Facebook Messenger and Prospective Clients

May a lawyer communicate with prospective clients via Facebook Messenger?

Facebook messenger, 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 Facebook 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](#).

Friending Potential Clients

May an attorney send a Facebook "friend" request to someone who is outside of the attorney's family and with whom there is no personal or professional relationship?

Yes, because, like e-mail, sending a friend request is not a real-time, interactive communication subject to MRPC 7.3.

Paid Advertising on Facebook

May a lawyer participate in paid advertising on Facebook?

Facebook offers numerous paid advertising options. 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](#).

Copies of business or hybrid Facebook pages

Must a lawyer maintain a copy of my Facebook page?

MRPC 7.2(b) requires that “[a] copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.”

Communicating with Current Clients

May a lawyer communicate with current clients via Facebook or Facebook Messenger?

BEST PRACTICE: A lawyer should avoid communicating with a client about privileged information via Facebook, to protect against inadvertent disclosure of confidential information. MRPC 1.6.

Whether or not an attorney may ethically communicate via Facebook Messenger depends on the security of the application. A lawyer should review the terms of service and discuss security measures with the client to ensure that both understand the risks.

Lawyer-Client Relationship

Is it possible to form an attorney-client relationship via Facebook?

An attorney-client relationship can be formed via social media and should be considered when posting or communicating on Facebook. Lawyers must exercise caution when entering into a dialogue with a prospective client who has posted questions or comments on Facebook to avoid the inadvertent formation 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 posted on Facebook?

A lawyer may provide general answers to legal questions or comments on Facebook 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](#).

Friending Adverse Parties

May a lawyer send a friend request to an adverse party on Facebook?

BEST PRACTICE: Lawyers and their agents should avoid friending adverse parties, as MRPC 4.2 or 4.3 may be implicated. Also, a lawyer may not direct an agent to do what he or she cannot do. MRPC 5.3(c) and 8.4; [RI-205](#).

What if the adverse party sends a lawyer a Facebook request?

BEST PRACTICE: Lawyers should delete or ignore the friend request until the adverse proceeding is concluded as MRPC 4.2 or 4.3 may be implicated.

What if the adverse party and a lawyer are already friends on Facebook?

Although there is no ethical requirement to unfriend an adverse party as an existing Facebook friend, MRPC 4.2 and 4.3 may be implicated if there is direct 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 tagging the adverse party.

May a lawyer “like” an opposing party’s professional page?

A lawyer may “like” an opposing party’s professional page as long as the lawyer complies with MRPC 4.2, 4.3, and 8.4.

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. Also, a lawyer may not direct an agent to do what he or she cannot do. MRPC 5.3(c) and 8.4; [RI-205](#).

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.

Trial Publicity

May a lawyer post comments about a trial on Facebook?

Yes. However, lawyers should be aware of MRPC 3.6 regarding trial publicity, which is applicable to Facebook 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.

Judicial Officers

May a lawyer friend a judicial officer on Facebook?

Lawyers may be friends with judicial officers on Facebook. 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](#).

Publishing, Responding to, or Sharing Articles or Posts

If a lawyer publishes, responds to, or shares an article or post through Facebook, 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 Facebook?

MRPC 1.7(b) may be implicated if a lawyer publishes, responds to, or shares an article or a post on Facebook. 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 Facebook Group posts?

Facebook 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.

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