

# Ethics of Social Media – Tumblr, Snapchat, Reddit, Pinterest, Instagram

## 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 social media features as of January of 2019 and, therefore, may not reflect the ethical implications of any updates, modifications, or added features.]

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## Reminders:

### Lawyer Competence

A Lawyer 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 any social media platform the lawyer is using to determine whether adequate security measures are in place to maintain and protect client confidences and secrets. A lawyer should also discuss the security and confidentiality provisions of any social media used to communicate 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 Social Media Content

A lawyer is responsible for all content that appears on the lawyer's or law firm's social media account 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; delete it; or hide it if rejection or deletion is not an option. If needed, a lawyer should consider reviewing any account's privacy settings to prevent third parties from posting on the lawyer's account.

## Social Media: Frequently Asked Questions

### Social Media Platform Defined

#### **What makes something a social media platform?**

A social media platform is an application that enables its users to connect with friends, colleagues, acquaintances, and new people, while also creating and sharing a variety of content. This content includes, but is not limited to, written posts, photos, and videos. The primary purpose of social media is to connect and interact with other people, which distinguishes social media from print advertisements, firm websites, etc.

## Lawyer Advertising

### *Applicability of Rules*

#### **Business Account**

#### **Are business accounts subject to the advertising parameters of the MRPC?**

A lawyer posting information about the lawyer or legal services on social media must comply with [MRPC 7.1](#), [RI-276](#). Best practice is to assume that all lawyer communications on a business account 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. Business accounts are designed for marketing. A firm business account is, therefore, likely to be considered lawyer advertising.

### Hybrid Accounts

#### **Are personal 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](#).

Ethics authorities have cited a number of different factors to determine whether a lawyer's social media account 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 account 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.

### Personal Accounts

#### **Are personal 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.

### Protected / Private Accounts

#### **Are posts sent from protected /private accounts subject to the advertising parameters of the MRPC?**

Most Social media platforms allow (protected, private, secret, etc.) accounts which can only be seen by users who the account holder accepts as friends / connections / followers. Private accounts, just like 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 that can be read by the protected account holder's followers.

### Areas of Practice

#### **May my social media 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](#).

### *Personal Messages and Prospective Clients*

#### **May a lawyer communicate with prospective clients via personal messaging systems?**

Social media platforms generally have systems by which users can send private messages directly to one another (Facebook Messenger, Twitter direct messages, etc.). These messages, like instant messaging, are real-time, interactive communication and, when initiated by the lawyer or agent, are 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 personal 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 an attorney-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](#).

### *Adding Potential Clients*

#### **May an attorney add (friend, connect, follow, etc.) someone on social media who is outside of the attorney’s family and with whom there is no personal or professional relationship?**

Yes, because, like e-mail, adding someone on social media is not a real-time, interactive communication subject to [MRPC 7.3](#).

### *Paid Advertising on social media*

#### **May a lawyer participate in paid advertising on social media?**

Social media platforms offer 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 accounts*

#### **Must a lawyer maintain a copy of my social media posts?**

[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.” If an account is deactivated, the lawyer must maintain the required information in another format, such as PDF.

#### **Must a lawyer maintain a copy of disappearing social media posts?**

A number of social media platforms (particularly Snapchat, but also Facebook and Instagram) utilize a “story” function through which users may post a picture or message that stays online only for a brief time period, usually 24 hours and then disappears. When using the story function, a lawyer must maintain a copy for 2 years to comply with [MRPC 7.2\(b\)](#).

## Importing Contacts

### **Should a lawyer allow a social media account to import / access their contacts / address book?**

BEST PRACTICE: A lawyer should exercise caution in allowing a social media account to import or access their contacts or address book. Social media platforms may capture information such as names, birthdays, gender, locations, job titles, email addresses, phone numbers, websites, **and notes**, thus disclosing this information to the social media platform and its affiliates. They use this information to suggest new people for you and others to add, possibly exposing clients' names and other information to the platform that the lawyer is obligated to protect from disclosure under [MRPC 1.6](#).

Whether a lawyer may allow their social media account 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. [RI-77](#).

## Communicating with Current Clients

### **May a lawyer communicate with current clients via social media or personal messages?**

BEST PRACTICE: A lawyer should avoid communicating with a client about privileged information via social media to protect against inadvertent disclosure of confidential information. [MRPC 1.6](#).

Whether an attorney may ethically communicate via personal messages 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.

## Attorney-Client Relationship

### **Is it possible to form an attorney-client relationship via social media?**

An attorney-client relationship can be formed via social media and should be considered when posting or communicating through an account. Lawyers must exercise caution when entering into a dialogue with a prospective client who has posted questions or comments on social media to avoid the inadvertent formation of an attorney-client relationship. This is also a risk when interacting with commenters on a blog (or miniblog) post. "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, 1.10, 1.7](#).

## Legal Advice

### **May a lawyer answer legal questions posted on social media?**

A lawyer may provide general answers to legal questions or comments on social media 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 an attorney-client relationship or disclose confidential client information. [MRPC 1.0 Comment](#), [MRPC 1.6](#); [RI-350](#), [RI-048](#).

## Adding Adverse Parties

### **May a lawyer add the public account of an adverse party or witness on social media?**

A lawyer may add an opposing party's public account, whether personal or professional, as long as the lawyer complies with [MRPC 4.2, 4.3, and 8.4](#). [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 add an adverse party on social media who has a private account?**

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

### **What if the adverse party sends a lawyer with a private account a request to add the lawyer?**

BEST PRACTICE: Lawyers should delete or ignore the 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 have already added each other on a given social media platform?**

Although there is no ethical requirement to delete an adverse party as an existing friend /follower / connection, [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 have a third party send a request to add the protected account of a witness for the undisclosed purpose of gathering evidence?**

Generally no. 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 they cannot do. [MRPC 5.3\(c\) and 8.4](#); [RI-205](#).

## Trial Publicity

### **May a lawyer post or blog about a trial?**

Yes. However, lawyers should be aware of [MRPC 3.6](#) regarding trial publicity, which is applicable to all forms of social media including Facebook statuses, blogs, Tumblr, Reddit, tweets, etc. If a lawyer posts 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.

## Photos

### **May a lawyer post photos of proceedings on Instagram or other photo sharing sites?**

Yes, unless there are statutes, court orders, or other legal authority that prevents taking and posting photos. Lawyers should still be cautious of photos that may be considered extrajudicial statements under [MRPC 3.6](#).

### **Should a lawyer be concerned about memes?**

Creation or dissemination of modified photos generally for comedic purposes, such as memes, should not be created by lawyers using photos of judges, clients, opposing parties, or witnesses. [MRPC 3.6, 4.4, 6.5\(a\)](#).

## Judicial Officers

### **May a lawyer add a judicial officer on social media?**

A lawyer may add a judicial officer on social media. However, a lawyer should not attempt to influence a judicial officer regarding matters related to their judicial position. A lawyer must also avoid *ex parte* communication with a judicial officer regarding pending matters. [MRPC 8.2, and 8.4](#); [Michigan Code of Judicial Conduct Canon 2\(A\) and \(C\)](#); [Canon 3\(A\)\(4\)](#); [RI-243, JI-44](#).

## Mentions and Publishing, Responding to, or Reposting Articles or Posts

### **If a lawyer publishes, responds to, or reposts (shares, retweets, etc.) an article or post through social media, 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 reposts an article or post through social media?**

[MRPC 1.7\(b\)](#) may be implicated if a lawyer publishes, responds to, or reposts an article or a post on social media. 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.

### **If a Lawyer is mentioned or tagged in a post is there an obligation to respond, correct, or acknowledge the post?**

Generally no, as long as the sender of the post was not acting as an agent or on behalf of the lawyer. However, if the lawyer who is mentioned is a follower / friend / connection of the sender so that the mention appears on the lawyer's home timeline, the lawyer may have to delete the senders (see *Duty to Monitor Social Media Content* above).

**Can an ill-advised post be removed?**

Not necessarily. Lawyers may not be able to delete an ill-advised post due to reposts, screenshots, and third-party websites. It is recommended that a lawyer carefully think through every post prior to sending it. If there is any doubt as to whether the post is appropriate, it is better to be safe and not post.

**What should lawyers consider when creating or responding to group posts?**

A number of social media platforms allow users to communicate with other members in a semi-private format, usually called “groups.” Nonetheless, lawyers should refrain from disclosing privileged or confidential information 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 an attorney-client relationship, is not intended to convey legal or ethics advice, and does not guarantee the same or similar results in all cases.

Confidentiality

**Is it a violation of confidentiality to discuss a case in a blog post?**

Generally, yes. Confidentiality creates a very broad blanket of protection and as such lawyers should avoid revealing any information relating to their representation of a client in a blog. This is true even if the information is available to the public through other means such as media, court orders, or public records. Even dressing the case as a hypothetical does not insulate the attorney if the real person / situation could reasonably be deduced. However, it is perfectly acceptable for a blog post to discuss lessons learned about the law during the course of a particular representation. These guidelines apply with equal force in the miniblogging context of programs such as Tumblr. [MRPC 1.6\(b\)](#); [ABA Formal Op. 18-480](#).

**Can posting a photo on Instagram, Pinterest, or other form of social media breach confidentiality?**

Yes. Confidentiality under [MRPC 1.6](#) extends beyond attorney-client privileged communication and protects a client’s secrets. If an image, of a client or something related to the client’s case, depicts a secret, the lawyer must not post. BEST PRACTICE: Obtain written consent from a client before posting anything related to their matter.

Endorsements and Recommendations

**May a lawyer accept recommendations?**

A lawyer may accept a truthful, non-deceptive recommendation on the lawyer’s profile. [MRPC 7.1](#). If possible, the lawyer should 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 a lawyer request recommendations?**

Generally yes. However, a lawyer should “not give anything of value to a person for recommending the lawyer’s services.” [MRPC 7.2\(c\)](#).

**May a lawyer recommend other lawyers?**

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

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