

Lawyers can no longer be anti-social!

By Kurt D. Weaver, Esq., and Katherine Briel, *Womble Bond Dickinson (US) LLP*

NOVEMBER 27, 2018

Since at least 2014, Harvard Law School has offered a three-credit elective course titled "Understanding Law Firms as Businesses."¹ The course is designed to teach law students "the fundamental strategic, operational and human components of law firms, equipping them to face the demands of a rapidly changing legal arena."²

What were afterthoughts in the mid-1980s in law school education should now be deemed core elements: client development, understanding profitability, and how to hang your shingle as well as market it.

Even if incorporated as a sole practitioner, lawyers, like most other business entities, must understand that in order to be known and found today, especially on the internet, they must be adept at selling their brand, their people and their culture.

Moreover, lawyers and their firms should become accustomed to making clients and prospective clients feel like their histories and futures are aligned. Because of this need to promote and market, most law firms now deal with advertising and promotion on a regular, if not daily, basis.

More and more law firms are entering the competitive landscape, and economic pressure is causing consolidation within the profession. For law firms to survive, they must understand and be nimble enough to take advantage of the marketing opportunities that social media channels present.

Increased competition means lawyers must work harder and find more creative ways to be discovered. They must also make enough of a connection with end users to either have those end users find out more about them or take steps to engage with their brand.

Regardless of whether a lawyer plays an active role on any social media platform, today's common business practices suggest that they should have an up-to-date understanding of the breadth and impact of social media.

Forbes recently published an account of a marketing executive who stated, "To question the power of social media in society is to question the importance of sunlight on earth."³ Indeed, there are presently 4.02 billion internet users, which is 54 percent of the

world's population. Active social media users comprise 3.2 billion people, or 42 percent of the population,⁴ and their reach is only going to grow.

There are several corporate brands we can look at as examples of living and selling the brand. But if we had to study just one, the athletic apparel and equipment behemoth Nike stands out.

The swoosh-maker does not just sell products; it sells its brand and everything the brand embodies. It sells an emotional connection to the brand, its roots and its future. Nike understands that the "heart" of every successful business lies in marketing."⁵

No lawyer can ignore the mechanics, scope or impact of social media without risk.

Social media has proven its capacity to play a part in helping to sell a brand; it can generate instant access to a potential client who is looking for the modern-day equivalent of a relationship.

Based on time used, social media is the most widely used part of the internet.⁶ If social media were to disappear, or change drastically, many companies, law firms included, would be at a loss, especially since 44 percent of companies are seeing a positive return on investment from it (with another 38 percent unsure about their ROI).⁷

For lawyers, and in turn law firms, making a connection with the right online users through social media can require effort for the uninitiated. At some point, we may be tempted to say: "Ah, forget it. I'm not going to be bothered understanding what social media is all about. I'll never use it anyway!"

But ignoring the fact that social media may affect your practice is no solution because the practice and business of law are governed by stringent ethics rules.

According to the American Bar Association Model Rule of Professional Conduct 1.1, we have a duty of competence to our clients commencing the moment the engagement letter is signed. Of course, if you are Larry the Estate Lawyer, that just means a competence in estates, right?

For Christina the Mass Torts Maven, the scope of competence has some definable parameters, including proximate cause or the consumer expectation test; agreed? As college football TV analyst Lee Corso says, “Not so fast, my friend.”⁸

In August 2012, the ABA’s Committee on Ethics and Professional Responsibility amended the Comments to Rule 1.1 (Competence). Comment 8 to the Rule, discusses our duty to maintain our competence.

COMMENT 8 STATES:

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.⁹

Comment 8 expects lawyers to be aware of modern, relevant technology in order to provide competent representation. As of October 2018, 32 states have adopted the technology requirements of Model Rule 1.1’s Comment 8.¹⁰

Courts are beginning to rely on both the ABA’s Model Rule as well as parallel state versions to define a lawyer’s ethical obligation to stay abreast of technological changes.¹¹

Combined with today’s common business practices, Comment 8 compels the conclusion that no lawyer can ignore the mechanics, scope or impact of social media without risk. Consequently, it is not unreasonable to think that state bars and courts will soon uniformly hold attorneys responsible for knowing about all forms of technology that impact the practice of law — including both the conduct of lawyers when representing clients and their conduct in performing the business of law when informing clients and prospective clients.

The line between insight and advice, as well as the line between celebrating a victory and implying you’re a “specialist,” is not always plain or self-evident. Consequently, what information and technology should you know about to do your job properly in a world where social media is so prevalent? How can we use these tools to help our business and clients, not harm it?

Due to trends in the law and the strict ethical rules that govern our profession, on multiple levels — advocacy, business and common sense — social media best practices are a requirement for lawyers and their law firms in today’s world.

The number of social media platforms grows each day, and you may have your own opinion on which platform is the best

or most appropriate for you. Most law firms choose to use three to four main platforms: Facebook, Twitter, LinkedIn and on occasion Instagram. Each has its pros and cons, and each is geared to its own audience. This is important to note not only for building your social presence but for times when you need to utilize social media to do research.

Before the influx of visitors using Facebook as their primary news source and political pulpit, visitors would spend countless hours on this platform sharing images, personal stories and generally feel-good content. Many users between the ages of 30 and 65 would say that they primarily still use it this way.

Courts are beginning to rely on both the ABA’s Model Rule as well as parallel state versions to define a lawyer’s ethical obligation to stay abreast of technological changes.

From a law firm or promotion perspective, this is a great place to share news of awards, community service and events. Fact-finding on Facebook is easily facilitated by the site’s search functionality. You can quickly view groups and community pages as well as public profiles by typing in keywords or names of individuals of interest.

Twitter is said to be the global online newsstand. Feeds move quickly, and posts are pushed down within milliseconds of going live. It is an enormous source of information when used efficiently; it can also become an instant time suck if you allow yourself to stray too far from your desired results.

LinkedIn is the go-to for professionals and for specialized content. This is also the space that can more increasingly be attributed to building “thought leaders.” Niche or specialized professionals are becoming more vocal on this platform, and more professionals are searching here first.

LinkedIn also does an amazing job of providing useful tools for its members — most notably, the ability to post full articles and presentations.

Instagram is increasingly viewed as the singular platform to market your business (especially to millennials and younger groups). However, its photo format is hard to master as a marketing tool for those who do not sell tangible products.

For now, it is difficult to believe that the time and effort needed to sell professional services through pictures would produce the necessary return on investment required to sustain it. Keep your eye on this space though; in the near future, we will likely have to conquer this beast.

There is no shortage of social channels or tactics you can use to make an impact. But regardless of the platforms you choose, there are some general best practices that apply to all of them.

These basic rules of thumb will help you embrace social media practices and avoid basic ethical pitfalls. You will learn more and develop your skills over time, but you have to know where to start.

BE REALISTIC

Though many lawyers are fast learners, you won't be a social media guru automatically. Here are some important points to keep in mind:

- Understand the social media channel first. Don't open an account and just start talking to the world. As Comment 8 notes, understand "the benefits and the risks" while you are "engag[ing] in continuing study." Social media is a lot like driving a car — you have to know how everything works before you can go barreling down the road.
- Don't start an account unless you can commit to it. The worst thing you can do is open a bunch of social media accounts that sit there with no activity.
- Committing to social media of course also applies to the frequency of posting and time spent online. The easiest thing to do to start is to start by sharing content from reputable sources and give your opinion on why it is useful. Utilize some of the tools mentioned below to make this process more efficient.
- If you have to choose just one, LinkedIn may be your best option. With the number of members reaching well over 550 million professionals, a simple keyword search can produce a list of up to 40 million ready-to-connect decision-makers by title.

FIND YOUR VOICE

Social media provides a platform for online conversation. Use the same tone and humor you would if you were speaking to anyone you know or work with. No need for eloquent language or stressing over word choice. Just be yourself.

FIND YOUR AUDIENCE

Start by connecting to colleagues, professionals in your industry, past clients, or anyone who may know people that you want to know.

Once you have some connections, you will start to see content in your news feed. Watch the kinds of content people post; the

people who like, comment and share that content; and times they are posting. This will give you a baseline of what people find useful and provide ideas on how you can contribute.

USE TOOLS

Marketers and business professionals don't have time to scour the internet for contacts or content. Instead, they hire smart people to make tools to do it for them. And most helpful tools are available for free.

Build out your social media tool belt with this one essential to start: a management dashboard.

A dashboard gives you the opportunity to aggregate multiple feeds, schedule posts for various times and run keyword searches. You can easily see how your posts are performing on multiple platforms and follow how industry-specific terms are being used. You can even set up searches for your name and/or law firm to find out what others are saying about you.

One popular tool used for all these items is Hootsuite. There are hundreds, if not thousands, to choose from; a little research will go a long way to help find the one that suits you or your law firm best.

SHARE INFORMATIVE CONTENT

There are easy ways to see all the content you will need to keep an active profile every month. Here are a few:

- Set up alerts or email notifications for industry-specific blogs that you follow, as well as general news sources or aggregates such as Google News and Google Alerts.
- Subscribe to RSS feeds from national organizations, courts, government agencies and/or regulatory bodies.
- Set up an intelligence services, such as Manzama, which are popular with law firms and easy to set up. They allow you to set up alerts for practices, industries, companies, competitors, etc.

TIMING IS EVERYTHING

If you Google "social media timing," you should get about 150 million opinions on best time and frequency for your social media posts. Regardless of those guidelines, start with what works best for you. You can fine-tune the best posting times by watching your audience as previously suggested.

You should also consider your own workday or the workday of other business professionals. When do you have time to read and/or peruse social media? Chances are it will be at one of three times during the day: before work, at lunchtime or after

work. Shooting for these windows will give your content the best chance of being seen and read by followers.

You should also consider the workweek when choosing which day to post. Are there days that are typically busier for you than others? Are you burned out by Friday and planning for the weekend? This works the same for all of us. Content engagement tends to be better between Tuesday and Thursday.

SHARE A BIT OF YOURSELF

Mix a smidge of your personal world into the content you share. Hobbies, events you attend, awards or community service are good places to start. You want to let people know you are a real person with real, relatable interests. After all, building connections and relationships is what makes social media special.

BE PATIENT

Nike, as a worldwide brand powerhouse, wasn't created overnight. It can easily take from a few months to over a year to build up a following. The value you add to your online connections in terms of content shared, quality engagements, feedback and interactions will ultimately provide you the best boost in social presence.

ALL ETHICS RULES STILL APPLY

This may be the most critical point on the list.

- When listing specific wins or achievements for clients, you'll want to add a disclaimer. Most firms have a preapproved disclaimer provided by their general counsel or anyone responsible for handling external content. It is also a good idea to get written consent before mentioning clients by name.
- Stay away from superlatives (particularly in the United States). We are all guilty of tooting our own horn on occasion, but you want to save the "I'm the king of the world" speech for friends and neighbors offline. Since most state bars place restrictions on holding oneself out as a "specialist" in a field, being careful when describing a victory (or even a loss) will help avoid an unintentional ethical violation of this type.
- Don't connect with anyone associated with active cases, including clients, judges or witnesses. Doing so can get sticky for many reasons.

The practice of law has changed dramatically in the last 30 years. Being a lawyer is much more complicated today.

Issues of economics, marketing, sales and branding can overwhelm us at times, especially since our various regulatory bodies are embracing social change of various types, and particularly social media.

One online writer projects that society's focus on social media will result in higher rates of engagement between brands and customers and, accordingly, "It's absolutely essential to keep your followers happy by providing a network where they can reach you."¹²

The dictionary says it best: Today's law firm is "a group of lawyers who work together as a business."¹³ As a business, we face new challenges every day — but social media, its mechanics, style, or substance, need not be one that frustrates us. If we continue following the rules when we use social media, whether they come from our ethical obligations, our colleagues, our own research or even our children (imagine a winking emoji here), we can find the same success in the business of law that we find in the practice of law.

NOTES

¹ See Derek Davis, Annual Report Academic Year 2014-2015, Harvard L. Sch., Ctr. on Legal Profession, at 22 at <https://bit.ly/2DOXUiY>.

² See Harvard L. Sch. Course Catalog, "Understanding Law Firms as Businesses" <https://bit.ly/2FwXejL>.

³ Atanu Shaw, *How Social Media Can Move Your Business Forward*, FORBES, May 11, 2018, at 1, <https://bit.ly/2PWc6wV>.

⁴ *Id.*

⁵ AltusHost BV, *Why Marketing is Important for a Successful Business*, at 1, <https://bit.ly/2GBxn1W>.

⁶ Micah Buchdahl, *LPT: What's New in Social Media Marketing for Lawyers?* MKTG. ATTY. (Mar. 15, 2018), <https://bit.ly/2r79UnL>.

⁷ Jayson DeMers, *Are We Headed for a Dark Age of Social Media?*, FORBES, Apr. 20, 2018, <https://bit.ly/2AaX5fW>.

⁸ Tristan Thornburgh, *Lee Corso's 'Not so Fast' Gets Autotuned by ESPN*, BLEACHER REP. (Sept. 23, 2013), <https://bit.ly/2BIANKr>.

⁹ Model Rules of Prof'l Conduct r. 1.1 cmt. [8] (Am. Bar Ass'n 2012) (emphasis added); see also Debra Cassens Weiss, *Lawyers Have Duty to Stay Current on Technology's Risks and Benefits*, *New Model Ethics Comment Says*, ABA J. (Aug. 6, 2012), <https://bit.ly/2JIGtwc>.

¹⁰ Robert J. Ambrogi, *Tech Competence*, LAWSITES, <https://bit.ly/2FKPHY6>. California, while not having formally adopted the change to its rules of professional conduct, has issued an ethics opinion that expressly acknowledges a duty of lawyers to be competent in technology. Of note is North Carolina's adoption of a slightly changed yet substantively different wording: "including the benefits and risks associated with the technology relevant to the lawyer's practice" (emphasis added). The linkage to an attorney's specific practice significantly narrows the thrust of Comment 8 as applied in North Carolina.

¹¹ See, e.g., *City of Rockford v. Mallinckrodt ARD Inc.*, 326 F.R.D. 489, 496, n.2 (N.D. Ill. 2018) ("[T]he ethical rules now require attorneys to be competent with technologies such as [electronic stored information]."); *State v. Ratliff*, 849 N.W.2d 183, 195 (N.D. 2014) (comparing the

introduction of a DVD's video and audio to an electronic document and its metadata and noting the importance of a lawyer's understanding of the extent of evidence available in a social media post and emails; *James v. Nat'l Fin. LLC*, No. 8931, 2014 WL 6845560, at *12 (Del. Ch. Dec. 5, 2014) (citing to the Delaware equivalent of Model Rule 1.1, "Professed technological incompetence is not an excuse for discovery misconduct.").

¹² Alex York, *6 Social Media Trends that Will Take Over 2018*, SPROUT SOCIAL, Feb. 6, 2018, <https://bit.ly/2q2tTRj>.

¹³ *Law firm*, Merriam-Webster Online Dictionary, <https://bit.ly/2ApWLu0>.

This article was originally published on the Practitioner Insights Commentaries web page on November 27, 2018.

ABOUT THE AUTHORS



Kurt D. Weaver (L) is a partner and trial lawyer at **Womble Bond Dickinson (US) LLP** in Raleigh, North Carolina, and he defends consumer product manufacturers. He is a member of the International Association of Defense Counsel and graduated law school in 1987, only shortly after lawyers stopped walking uphill, both ways, in the snow to school. He can be reached at kurt.weaver@wbd-us.com.

Katherine Briel (R) is a digital marketing manager with over 15 years of experience in integrated marketing. She is diligently working to redefine what digital innovation means to Womble and has accepted the title of "change agent for the firm" given to her by the lawyers she works with every day. She can be reached at katie.briel@wbd-us.com.

Thomson Reuters develops and delivers intelligent information and solutions for professionals, connecting and empowering global markets. We enable professionals to make the decisions that matter most, all powered by the world's most trusted news organization.