Social Media a Legal and Ethical Perspective

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New Legal Problems

“The internet has opened new channels of communication and self-expression…Countless individuals use message boards, date matching sites, interactive social networks, blog hosting services and video sharing websites to make themselves and their ideas viable to the world. While such intermediaries enable the user driven digital age, they also create new legal problems.”

_Fair Housing Council of San Fernando Valley v. Roomates.com, LLC_, 489 F.3d 921, 924 (9th Cir. 2007)
Are we Ready?

• It should now be a matter of professional competence for attorneys to take the time to investigate social networking sites.

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Kyle A. Ferachi is the Managing Member of the firm’s Houston office and maintains a Louisiana practice as well. Kyle’s primary areas of focus include labor and employment law and commercial litigation. Kyle defends private employers against various allegations of violations of federal and state statutes governing discrimination, harassment, ERISA claims, whistleblower claims, OSHA complaints and post accident investigations, and non-compete agreements. Kyle also regularly advises employers on legal considerations when using social media in the workplace, including the creation and implementation of social media policies.

Kyle represents employers in responding to allegations brought before the United States Health and Occupational Review Commission, the Equal Employment Opportunity Commission and Louisiana Commission on Human Rights. He also works with clients to prevent employment claims by drafting policy manuals, conducting training seminars for managers and employees, and advising clients on employment decisions, such as hiring and

Education
By the Numbers

- 1.06
- 2
- 230,000/95,000/80,000/65,000
- 65%/38%
- 6h2m59s
- 19/275,000,000

- 3+ billion
- 30%/835,000,000
- 24/6/5/4
- 21.6/19/16.2/15.6/14.7 million
<table>
<thead>
<tr>
<th>Personal Information</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A portrait photo of myself</td>
<td>76%</td>
</tr>
<tr>
<td>My home town</td>
<td>74%</td>
</tr>
<tr>
<td>My high school</td>
<td>69%</td>
</tr>
<tr>
<td>My full real name</td>
<td>69%</td>
</tr>
<tr>
<td>A group photo that includes me in it</td>
<td>67%</td>
</tr>
<tr>
<td>My interests/hobbies</td>
<td>61%</td>
</tr>
<tr>
<td>My relationship status</td>
<td>60%</td>
</tr>
<tr>
<td>My favourite music, books or movies</td>
<td>59%</td>
</tr>
<tr>
<td>My dating interests</td>
<td>39%</td>
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<td>My employer</td>
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<td>Only part of my real name</td>
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<td>My relationship partner's name</td>
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<td>My political preferences</td>
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<tr>
<td>A joke/fake photo to represent me</td>
<td>14%</td>
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<td>My telephone number</td>
<td>14%</td>
</tr>
<tr>
<td>My class schedule</td>
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</tr>
<tr>
<td>Only my nickname</td>
<td>8%</td>
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<tr>
<td>My full address</td>
<td>7%</td>
</tr>
<tr>
<td>Only a fake/joke name</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>6%</td>
</tr>
</tbody>
</table>
• 140 characters to followers with 200 million users
Blogs

• Personally maintained
• Allows comments
Breaking News: The Second Time Around, the Eleventh Circuit Gets It Right: The Infamous Cappuccitti Decision Is Vacated and Reversed.

_Cappuccitti v. DirectTV, Inc.,_ No. 09-14107, --- F.3d ----, 2010 WL 4927719 (11th Cir. Oct. 15, 2010).

You have read about it. Pondered it. Questioned it. Scratched your head once or twice in confusion. Dreamed really weird dreams about it (well, I did at least, but that's for another post) – wondering what the class action landscape would come to if the Cappuccitti decision stood. Rest easy, CAFA Law Blog readers. On Friday, October 15, 2010, the Eleventh Circuit reconsidered the issue and vacated its earlier judgment.
Chubb Insurance

Heading to the 2013 PLUS (Professional Liability Underwriting Society) D&O Symposium? Don't forget to download the event app to your tablet or smartphone! http://ow.ly/hpv54

Like · Comment · Share · 👍 1 · 2 · 4 minutes ago ·

Kris Perret and 4 other friends wrote on Kristen Morgan Spring’s timeline for her birthday.

Kris Perret

Kristen Morgan Spring
Birthday: February 5

Write on Kristen’s Timeline
Important button!
Privacy Settings!
This agreement was written in English (US). To the extent any translated version of this agreement conflicts with the English version, the English version controls. Please note that Section 17 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: December 11, 2012.

Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement," "Terms," or "SRR") derives from the Facebook Principles, and is our terms of service that governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement, as updated from time to time in accordance with Section 14 below. Additionally, you will find resources at the end of this document that help you understand how Facebook works.

1. Privacy

Your privacy is very important to us. We designed our Data Use Policy to make important disclosures about how you can use Facebook to share with others and how we collect and can use your content and information. We encourage you to read the Data Use Policy, and to use it to help you make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:

1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.

2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backed up copies for a reasonable period of time (but will not be available to others).
How do you get in Trouble?

- FCRA
- FSCA/FWTA
- FLSA
- Title VII (no cool acronym)
Fired for Facebook?

• NLRA protects concerted activities regarding work conditions
• All employees, not just unionized.
Top 10 for Employers

- Blended lives
- Employees use
- Embrace it
- Recruit with it
- Off duty postings

- Pay overtime
- Police SM sites
- Don’t assume
- No privacy
- Consult professional
How do Lawyers Use?

• Lawyers help their clients
• No share pact
• Disengage
• Explicit terms in settlement agreement
Click this button, then select account settings, and download copy of information.
To Protect our Clients

• Information posted is evidence
• Review sites
• Change passwords
• Discontinue use
• If continue
  – Don’t use for emotional support
  – Don’t vent
  – Remember the judge and your child
What about Lawyers?

• 50,000 legal professionals are already blogging both personally and professionally
• Almost 1 million people in the legal professions are using social media
• 20,000 legal professionals are using Twitter
Why Should we use Social Media?

• Referrals and Clients
• Strengthening relationships
• Jury pools
• Investigative tools
• Hiring
Stay out of Trouble

- Have it in writing – nothing is private
- Don’t bury the policy
- Consistently enforce rules
- Know when to say when
- Know the foul lines
Cybersmears

- Toughen Up
- Make Contact
- Set the Record Straight
- Brace for Uphill Battle
- Consider Additional Claims
Headlines and Horizon

• NJ Social Media Bill Could Prompt Flurry of Employee Suits
• Sanctions for Deleted Facebook Give Employers a Boost
• Employment Pacts in the Social Media Era
• New Facebook Notification – “You’ve Been Served”
• SEC Support for Social Media Posts Has Attorneys Chirping
Complex Ethical Issues

• Competency
  – Rule 1.1

• Diligence
  – Rule 1.3

• Spoliation
  – Rule 3.4

• Relevancy
  – 4.4

• Supervising Others
  – Rules 5.1 and 5.3
Social Media Policy for Law Firms

• Today, social media encompasses a broad sweep of online activity, all of which is track-able and traceable. These networks include not only the blogs you write and those to which you comment, but social networks such as Facebook; professional networks such as LinkedIn and Legal OnRamp; the live-blogging tool, Twitter; and social bookmarking such as Digg and Delicious. Every day, it seems, new online tools and new advances introduce new opportunities to build your virtual footprint.

• As a firm, we believe that social media can drive business and support your professional development efforts. We are also aware that social media use will not be used exclusively for business.

• Keeping that in mind, we attempt here to provide reasonable guidelines for online behavior by members of our firm when participating online on behalf of our firm. As new tools on the Web are introduced, and new challenges emerge for all of us, this document will, of necessity, evolve.
Other Concerns

- Inadvertent attorney-client relationship
- May not be able to post sufficient disclaimers on social media sites
- Appearance of impropriety by being “friends” with judges
What is everyone else doing?

- Pennsylvania
- New York City Bar Association
- South Carolina
- Florida
- Ohio
- Kentucky
Can we Get in Trouble?

- Advertising Rules
- Practicing law without a license
- Lying to the court
- *Ex parte* communications
- Lack of Professionalism
- Improperly holding oneself out as an expert
LinkedIn Skills Endorsement Page: Does it violate Rule 7.2(c)(5)?
Disabling Skill Endorsement Feature

- Main Menu – Select Profile
- Edit Profile
  - Scroll down to Skills & Expertise section, and click the pencil icon display in blue
  - From drop-down menu under “Display your Endorsements,” select “No, do not show my endorsements.”
General Guidelines for Lawyers

• Website maintenance
• Know your reach
• Avoid unethical postings
• Avoid active pursuit of potential client online
• Refrain from on-line legal advice
• Express disclaimers
• Do no hold yourself out as an expert in fields in which you are not properly board certified
Questions?

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Connect on LinkedIn: www.linkedin.com/pub/kyle-a-ferachi/23/296/b6/