

Social Media a Legal and Ethical Perspective

www.mcglinchey.com

Presented by Kyle A. Ferachi
@kferachi
@mcglinchey

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?

- [I]t should now be a matter of professional competence for attorneys to take the time to investigate social networking sites.

Griffin v. State, 192 Md. App. 518, 535 (2010),

Ferachi, Kyle A. | People | McGlinchey Stafford - McGlinchey Stafford, PLLC

http://www.mcglincley.com/Kyle-A-Ferachi/

File Edit View Favorites Tools Help

★ Favorites Facebook Ferachi, Kyle A. | People ...


Home RSS Print Page Safety Tools

McGLINCHEY STAFFORD

FIND AN ATTORNEY

SEARCH

+ People + Services + News & Resources + About + Careers WHERE BUSINESS & LAW INTERSECT



Kyle A. Ferachi
MEMBER

Profile Publications Presentations News

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Telephone

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, whistle-blower 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

Highlights



Related Services

- Admiralty & Maritime
- Admiralty & Maritime Litigation
- Appellate
- Commercial Litigation
- Insurance Defense and Coverage
- Labor and Employment
- Employment Litigation and Arbitration

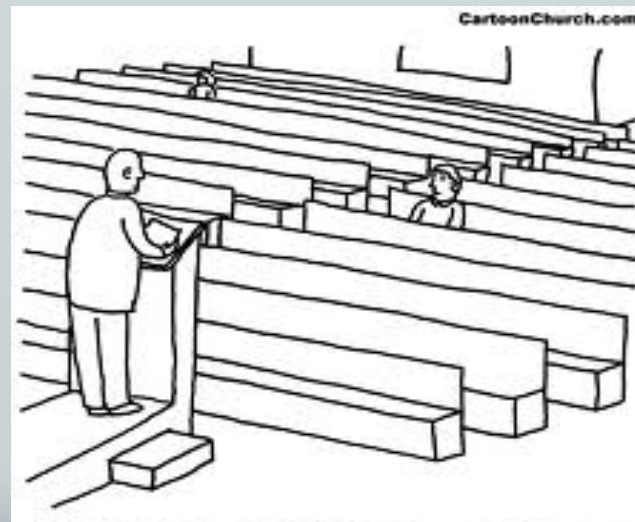
Education

Local intranet 100%

start Inbox - Microsof... timesheet.doc - ... HOUSTONDB-#4... HOUSTONDB-#4... Ferachi, Kyle A. ... 8:23 AM

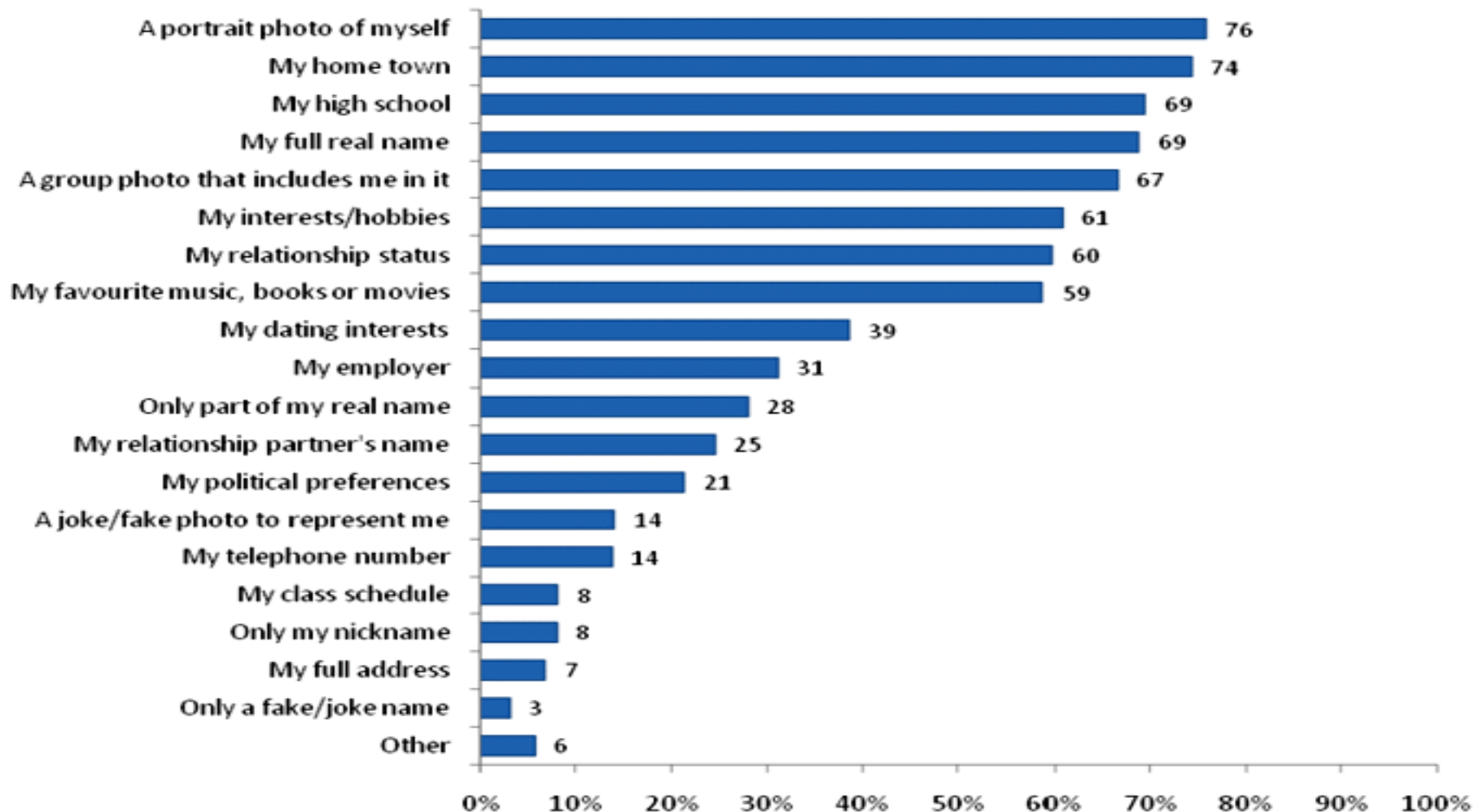
By the Numbers

- 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
- 21.6/19/16.2/15.6/14.7million



IT IS NOT ABOUT THE NUMBERS

facebook





- 140 characters to followers with 200 million

The Joy of Tech™

by Nitrozac & Snaggy



© 2009 Geek Culture

joyoftech.com

Blogs

- Personally maintained
- Allows comments



Facebook - McGlinchey Stafford, PLLC

https://www.facebook.com/home.php#!/

File Edit View Favorites Tools Help

★ Favorites

Baton Rouge Accountants - ... Facebook

Page Safety Tools

facebook Search for people, places and things

Kyle Ferachi Home

Kyle Ferachi

FAVORITES

- News Feed
- Messages
- Photos
- Events 7

ADS

- Ads Manager

PAGES

- Greater Baton Rouge Comm... 20+
- Pages Feed 20+
- Like Pages 20+

GROUPS

- Sienna Running and... 12
- Thank You Jarrett 2
- Baton Rouge Red Sti... 20+
- Kappa Alpha Order -... 3
- Create Group...

APPS

- App Center 5
- schoolFeed
- Games Feed 20+

Update Status Add Photos/Video

What's on your mind?

Tim Kelley likes a link.

Skilled pilot going crazy

Like · Comment · Share · 40 minutes ago ·

Write a comment...

Home Instead Senior Care Baton Rouge, LA

If you are a caregiver, you are dealing with stress. The question is, do you even realize how much stress your responsibilities are putting upon you? <http://ow.ly/fmxmn>

Nate Nixon's birthday is today

2 events this week

3 requests from Jim Stalls

1 other app request

Sponsored Create an Ad

Get a FREE Sticker

With EVERY ORDER in the Pleeplus Store, get a FREE Sticker!

366 people like Sheet It Forward.

Want to Upgrade Your MBA?

calssouthern.edu

Earn your Doctor of Business Administration degree all online will you continue to work!

Money Mailer of Fort Bend...

Daily Savings at Local Businesses! "Like" us when you find a great deal and share it.

Like · 271 people like this.

Be a C Chat (30)

start

Facebook - Mc... timesheet.doc ... Citrix XenApp ... McGlinchey Des...

Internet 100% 9:20 AM

Twitter - McGlinchey Stafford, PLLC

https://twitter.com/

File Edit View Favorites Tools Help

Favorites

Baton Rouge Accountants - ...

Twitter

Home Connect Discover Me

Kyle Ferachi
View my profile page

783 TWEETS 343 FOLLOWING 188 FOLLOWERS

Compose new Tweet...

Who to follow · Refresh · View all

American Express @Americ...
Promoted · Follow

Curbside Truck @curbsidetruck
Follow

WAFB @WAFB
Follow

Browse categories · Find friends

Trends · Change

#ILoveMyPhone Promoted

#YouCantBeTakenSeriouslyIf

#ddsum12

#MentionATwitterBestFriend

Tweets

Wine Enthusiast @WineEnthusiast 20h
Our Favorite 100 Wines of 2012: THE ENTHUSIAST 100
enth.to/Udd9iB #WETOP2012
Promoted by Wine Enthusiast
Followed by Silver Oak TowerTour, Tallulah Food/Wine and Daily Grape.
Expand

Daily Kingfish @DailyKingfish 4m
Jindal Already On The Adelson Take wp.me/p2dbYy-95
Retweeted by skooks
View media

StateDept @StateDept 41s
.@TeomConner71 Be curious. Read a lot. Travel abroad. Stay connected. Follow my twitter @tsonenshine. #AskState
Expand

Cardinal Dolan @CardinalDolan 50s
To be drawn up to Jesus through sanctity goes against all the heavy forces of nature that are there to drag us down.
Expand

Pork n Whisk(e)y @porknwhiskey 55s
Jack Cobb & Son BBQ instagr.am/p/S3AzBuk5RR/
View photo

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Twitter - McGlin...

timesheet.doc ...

Citrix XenApp - ...

McGlinchey Des...

9:18 AM

CAFA Lawyer & Attorney : McGlinchey Stafford Law Firm : Class Action Fairness Act Blog - McGlinchey Stafford, PLLC

http://www.cafalawblog.com/

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CAFA Lawyer & Attorney... lawyers on facebook - Googl...

PUBLISHED BY
McGLINCHEY STAFFORD PLLC

CAFA LAW BLOG

Information, cases and insights regarding the
Class Action Fairness Act of 2005



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**Breaking News: The Second Time
Around, the Eleventh Circuit Gets
It Right: The Infamous Cappuccitti Decision Is Vacated
and Reversed.**

10 | 18 | 2010
Posted By McGlinchey Stafford

Cappuccitti v. DirectTV, Inc., No. 09-14107, --- F.3d ----, 2010 WL 4027719 (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.

CAFA TOPICS

- > Case Summaries
- > Events
- > Resources
- > The Act - Full Text
- > Around the Blogosphere
- > CAFA Marketplace
- > CAFA Twitter
- > Jurisdictional Burden of Proof
- > Legal Publications and Articles

Local intranet 100%

start Inbox... HOUS... CAFA ... RE: - ... Micros...

10:16 AM



Search for people, places and things



Kyle Ferachi

Home



Update Status
 Add Photos/Video

How are you doing, Kyle?

SORT: MOST RECENT

**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>

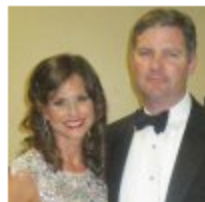

PLUSweb -
plusweb.org

Professional Liability Underwriting Society

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



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

**Kristen Morgan Spring**

Birthday: February 5

Write on Kristen's Timeline



Kristen Morgan Spring's birthday is today



Endymion Party on February 9



1 request from Casey Dalbor



2 other app requests

Games You May Like**Texas HoldEm Poker**

3 of your friends play Texas HoldEm Poker.

Sponsored

Create an Ad



Ronnie Carlson likes IF marketing & advertising.



IF marketing & advertising

Like

Special GEICO Discountgeico.com

Find your member organization and see how much more you could save on car insurance.

Hello, Sienna!houstonfirst.org

Houston's First Baptist Church is launching a new campus on Easter



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Scott

Search



Search for people, places and things



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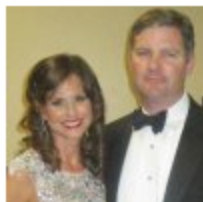
PLUSweb -
plusweb.org

Professional Liability Underwriting Society

Like · Comment · Share



Kris Perret and 4 others
celebrated her birthday.



Kristen Morgan

Birthday: February 5

Write on Kristen's Timeline



Kristen Morgan Spring's birthday is
today



Endymion Party on February 9



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Games You May Like



Texas HoldEm Poker

3 of your friends play Texas HoldEm
Poker.

Play Now

Sponsored

Create an Ad



Ronnie Carlson likes IF marketing &
advertising.

IF marketing &
advertising

Like

GEICO Discount



Find your member
organization and see how
much more you could
save on car insurance.

Hello, Sienna!
houstonfirst.org

Houston's First Baptist
Church is launching a new
campus on Easter

Important button!



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Jane



Kade



Kara



Micha



Scott

Search

Search for people, places and things



Kyle Ferachi

Home



Update Status Add Photos/Video

How are you doing, Kyle?

SORT: MOST RECENT

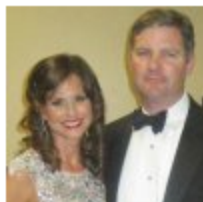
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**PLUSweb -**
plusweb.org

Professional Liability Underwriting Society

Like · Comment · Share

**Kris Perret** and
timeline for her birthday

Birthday

Write on Kristen's Timeline

Privacy Shortcuts

Who can see my stuff?



Who can contact me?



How do I stop someone from bothering me?

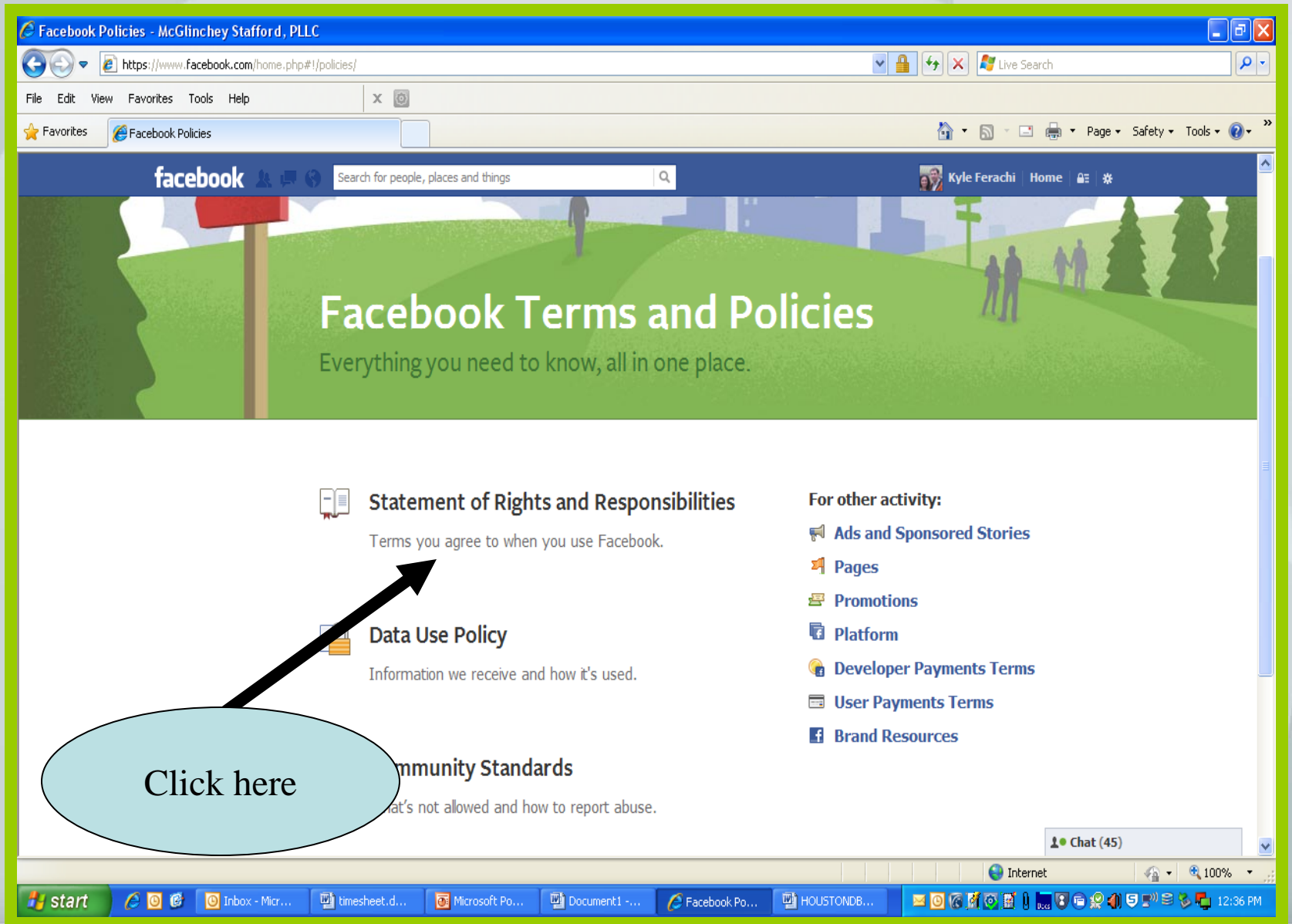
[See More Settings](#)**Sponsored**[Create an Ad](#)**Ronnie Carlson** likes IF marketing & advertising.**IF marketing & advertising**
Like**Special GEICO Discount**geico.com

Find your member organization and see how much more you could save on car insurance.

Hello, Sienna!houstonfirst.org

Houston's First Baptist Church is launching a new campus on Easter

Privacy Settings!



Facebook - McGlinchey Stafford, PLLC

https://www.facebook.com/home.php#!/legal/terms

File Edit View Favorites Tools Help

Facebook

facebook Search for people, places and things

Kyle Ferachi Home

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:

- 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.
- 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 backup copies for a reasonable period of time (but will not be available to others).

Ned Fasullo
http://www.youtube.com/watch?v=yphO... - Makes me want to play video games again...
Aliens: Colonial Marines...

Larry McAlpine was tagged in Aimee Ellender Stewart's photo. — with Kelly DeWeese at Manuel Antonio National Park, Costa Rica.

Cortney King likes Jerry Wood's status.

Cortney King likes Judith Graham Breslin's photo.

Baton Rouge Uncorked

Brian Mooney

Hunter Cazes

Jason Cline

Kelly Edwards

Leslie King

Marianne Sulser

Matt Baltz

Progress Is

Sarah Murphy Barro

Search

Done

start

Inbox - Micr...

timesheet.d...

Microsoft Po...

Document1 -...

Facebook - ...

HOUSTONDB...

Internet

100%

12:39 PM

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

Search for people, places and things



Kyle Ferachi

Home



Download Your Information

Get a copy of what you've shared on Facebook.

Download and browse through a personal archive of your Facebook photos, posts and messages. You can also download a copy of your information.

[Start My Archive](#)

What's in your archive?

Photos or videos you've shared on Facebook
Your Wall posts, messages and chat conversations
Your friends' names and some of their email addresses
(We'll only include email addresses for friends who've allowed this in their account settings.)

What's not in your archive?

Other people's photos and status updates
Other people's personal info
Comments you've made on other people's posts

You can also download an [expanded archive](#) to see more about your account history. [Learn what's included.](#)

Important: Protect your archive

Your Facebook archive includes sensitive info like your private Wall posts, photos and profile information. Please keep it safe in mind before storing or sending your archive.

Click this button, then select
account settings, and
download copy of information



Michael
on his
think



Amy
some
India
Taz



Jerome
Logu



Tiffa
Jones



Bar
Noah
photo



Aliso



Bato



Bill B



Bran



Kade



Kara



Maria



Michael



Scott



Yvon

Search

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)?

×

Add a few skills you have:

Add

Save

Skip

I've added all my skills

You can add 50 more skill(s) to your profile

×

Do you have the following skills or expertise?

Employment Law ×

Litigation ×

Legal Research ×

Legal Writing ×

Mediation ×

Commercial Litigation ×

Civil Litigation ×

Corporate Law ×

Westlaw ×

Arbitration ×

Courts ×

Appeals ×

Legal Assistance ×

Labor Relations ×

Trials ×

Intellectual Property ×

Personal Injury ×

Bankruptcy ×

Litigation Support ×

Employee Relations ×

Yes

No

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.”



SKILLS & EXPERTISE



Add & Remove

Manage Endorsements

Display your endorsements?



Yes, show my endorsements.

No, do not show my endorsements.

What are your areas of expertise?

You can still add: 30

- 37 Retirement Planning X
- 35 Strategic Financial... X
- 12 Investment Advisory X
- 12 Investments X
- 4 Investment Management X
- 3 Alternative Investments X
- 2 Real Estate X
- 1 Asset Protection X
- 1 Small Business X
- 1 Public Speaking X
- 1 Published Author X
- 1 Financial Therapy X

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 not hold yourself out as an expert in fields in which you are not properly board certified

Questions?

Follow me on Twitter: @kferachi

Friend me on Facebook:
facebook.com/kyleferachi

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