

Chapter 4

THE PRACTICAL CASE FOR CIVILITY

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I. Introduction

Some lawyers believe that their duties to clients require an absolutely no-holds-barred approach meant to make life as unpleasant as possible for the clients' legal adversaries. Truth be told, some clients want this kind of lawyer. Whether described as Rambo lawyers, pit bulls, avenging angels, or an opponent's worst nightmare, these lawyers seem to believe that anything less will fail to maximize client objectives.

In this chapter, we do not assert that such an approach, whether within or outside of ethical bounds, can never, in fact, serve a client's interest. The argument is simpler: regardless of how often this may be true, client interests are far more often better served when lawyers behave civilly.

The focus here is not manners or social etiquette as ends in and of themselves, or virtue as its own reward. Nor is it the general moral or philosophical benefits of harmony over disharmony. What we mean to say is that very often the best way forward for even the most egotistical,

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self-interested, and self-absorbed lawyers and their egotistical, self-interested, and self-absorbed clients is through, rather than around, civility. Stated another way, this chapter makes the practical case for civility on its objective merits.

In this chapter, we will first define what we mean by “civility,” then turn to what we see as the principal benefits of civility in a lawyer-client context, and finally examine specific uses of civility in potentially difficult circumstances.

II. Defining Civility

For our purposes, “civility” includes but is not limited to treating others with courtesy and respect. It also extends to the avoidance of unnecessary rhetorical excesses, gratuitous insults, quarrels for the sake of quarrels, creating additional work for an adversary just because it is possible to do so, and intimidation for the sake of intimidation. Civility requires self-restraint and, at times, a willingness to make an extra effort to address or even calm the concerns of others who may be behaving uncivilly. On many occasions, the cause of civility compels a search for common interests with an adversary rather than an emphasis on the usually more evident areas of disagreement. And civility often requires clear, active reflection on one’s own contributions to difficult situations, rather than just those of others, and the capacity to find humor rather than outrage when a problem arises.

Importantly, to act civilly is not to abandon key client objectives or to give in to bullies. Civility is focused not so much on the “what,” or objectives, of lawyering as on the “how.” One can be civil or uncivil in any line of practice. As the Supreme Court noted many years ago, civility allows the striking of hard blows, but not the striking of foul ones. *Berger v. United States*, 295 U.S. 78, 88 (1935).

III. The Benefits of Civility

Civility has at least six practical benefits.

First, most lawyers—and, we submit, most human beings—do not do their best work when they are angry or irate. Even if one leaves aside the personal health benefits of limiting or avoiding prolonged and extreme emotional states, a lawyer consumed with ostensibly righteous zeal may

consequently fail to see one or more better ways to pursue client or lawyer objectives. Most of us have experienced personal situations outside of the practice of law in which our anger toward a friend, relative, or situation has caused us to say things we later regret and has at least temporarily blinded us to better problem-solving. It is so in the practice of law as well.

Second, most lawyers—again like most human beings—don't do their best *listening* when they are angry or irate. Thus, the opportunity for successful resolution of a matter may be lost if counsel for the parties are not listening to each other or if, in a fit of pique, they intentionally or unintentionally fail to suggest potential resolutions.

Third, while uncivil behavior sometimes is the squeaky wheel that gets the grease, what goes around generally does come around. Experience teaches us that if it has any effects at all, uncivil behavior is likely to backfire and invite an equal or greater measure of uncivil behavior in return. For every cowardly lawyer who will turn tail and run at the first sign of trouble, there are far more who will dig in their heels and push back as hard or harder. It is very easy to sin in haste by dashing off an offensive email, only to repent in the fullness of time when the other side replies in kind or ups the ante. Moreover, although a client's appetite for litigation or for protracted business negotiations may decrease over time, the resolution of such matters on favorable and acceptable terms may be far more difficult to achieve with an opponent who feels disrespect.

A fourth and no less significant benefit concerns respect for client resources. Clients are the entities and individuals whom we expect to pay our bills and who, in turn, expect us to serve their interests rather than the other way around. Being in "confrontation mode" all the time is not just wearing upon the confronters and the confronted; it also takes a lot of time and costs a lot of money. Consider, for example, the time that can be spent in an email or letter-writing campaign or on a series of sanctions motions detailing every conceivable misstep an opponent may have made. Many lawyers charge for their time in six-minute increments, and the increments add up. In depositions, clients not only pay the attorney for asking or listening to questions and answers but also for counsel quarrels and for each page or electronic recording of the transcript. A fifteen-minute argument between counsel costs as much as fifteen minutes

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of probing testimony and likely does nothing to advance client objectives. Few clients will care even a fraction as much about wounded legal egos as their lawyers do, and clients can and will refuse to pay legal bills that reflect unnecessary diatribes and wasted time and effort. Bickering over items that, in the grand scheme of things, should have been resolved between lawyers may even lead clients to choose new counsel altogether.

A fifth benefit of civility has to do with the effects that uncivil behavior may have on third parties—including judges. On the whole, judges do not appreciate having to spend time refereeing what they see as personality spats or minor issues that counsel could have worked out for themselves. Adding to a judge’s workload is a good way to alienate a judge, and sufficiently uncivil behavior can even lead to sanctions. But behaving badly before a judge poses an even greater danger. Imagine two cases raising the same legal issue before two different judges at the same time. In one case, counsel for both parties have engaged in extreme rhetorical excesses, misstatements of the opposing party’s position, etc. In the other case, one side has engaged in such behavior, but every word from the other side, while firm, is also calm and rational. Other things equal, the lawyer who appears to have kept his or her head is more likely to emerge the winner. As one judge stated, “You spent two pages telling me you don’t like this guy? Get to what you want me to do.” Newhouse, *Lawyers Learn How Not To Behave*, *Brooklyn Daily Bulletin* (Mar. 10, 2011).

In short, conducting oneself civilly is, entirely as a matter of lawyer and client self-interest, an excellent way to build a positive record that will improve the odds of winning over judges, juries, and others who may subsequently review the lawyer’s conduct (including disciplinarians and plaintiff-side legal malpractice lawyers). One also cannot assume that ostensibly private but hostile and intemperate communications will remain private. A string of civil emails, letters, or moving papers can go a long way toward getting the judge and others on a lawyer’s side. Tone, as well as content, matters. “Facts – not adjectives – will get you where you want to go.” Ponsor, *Effective Oral Argument*, 1 Fed. Civil Litig. In the First Circuit § 4.3.1, FCLI MA-CLE 4–1 (2011).

The first five benefits of civility all speak to situations in which lawyers must deal with adversaries. A sixth and final benefit concerns the

relationships between attorneys and clients. A surprisingly large number of bar complaints and legal malpractice claims can be traced to lawyers' failing to exhibit the common courtesy of returning client phone calls or responding to emails or letters on a timely basis. Some lawyers may attribute their non-responsiveness to benign forgetfulness, disorganization, or preoccupation with other matters. But to clients, such inattention is often seen as rude, insulting, unethical, and uncivil in the extreme. Ignoring one's clients is asking for trouble.

Formal complaints against lawyers also often arise from intemperate responses to clients. Even where a sharp response to an out-of-line client seems justified at the time, be assured there is no better way to turn a salvageable relationship or a friendly parting of the ways into a donnybrook. In one case, an entire law firm was publicly censured in part for "rude and uncivil conduct to a client." *In re Law Firm of Wilens and Baker*, 9 A.D.3d 213, 214, 777 N.Y.S.2d 116 (1st Dep't 2004). And at the risk of repetition, bar disciplinarians and plaintiffs' legal malpractice lawyers may attach great significance not only to what the lawyer said but also how the lawyer said it.

IV. Civility as a Strategy

Experience suggests that most lawyers recognize the practical benefits of civility and do act civilly most of the time. Yet all of us could benefit from thinking harder, and more strategically, about how and when specific civil conduct can advance the clients' interests, and our own. This section presents three not-so-hypothetical situations where a civil approach best serves the interest of client and lawyer. As the reader will note, these examples relate directly back to the benefits of civil conduct discussed above.

A. Lawyer receives what Lawyer perceives as an intemperate letter or email from Opposing Counsel that threatens motions for sanctions and other harms if Opposing Counsel's demands are not fully met by a date that Lawyer perceives to be unreasonable.

We start our analysis with the reminder that civility principles do not require Lawyer to sacrifice substantive client rights or objectives when efforts in support of the client may be unpleasant. If, in fact, Lawyer is

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not willing to serve client objectives because of a distaste either for the objectives of the representation or for the situations in which the lawyer may be placed, Lawyer should consider resignation (or, where appropriate, rejecting the matter in the first place). But suppose that none of these problems exists. In that case, a lawyer acting with civility in mind should ask herself at least the following questions before responding, because her answers to these questions may affect the tone and substance of any response:

1. Is it completely clear what Opposing Counsel is saying and why Opposing Counsel is saying it? For example, is it at least possible that Opposing Counsel may be operating on the basis of different factual or legal assumptions than Lawyer as a result of prior misunderstandings or miscommunications between the two? Alternatively, is Opposing Counsel's communication really as threatening as it first seemed or can it also be interpreted in a less threatening manner? And has Opposing Counsel been told why the proposed deadline or timeline is unworkable?
2. Is it at least possible that a face-to-face meeting with Opposing Counsel, rather than a written or telephonic shouting match, will enable the lawyers to understand each other and find common ground?
3. Is there someone else in Opposing Counsel's or Lawyer's firm whom Lawyer might consult in an attempt to lower rhetorical levels and move things forward?
4. To the extent that a written response must be sent, is it in the client's best interest (i) to respond with the same or even more strident tone and approach, or (ii) to at least appear to be rational, thoughtful and considerate?

As noted, a judge or others who may view both the rational and the irrational lawyer at a later time are more likely to be favorably inclined toward the rational. Moreover, alternative 4(ii) above is more likely to induce more civil behavior going forward by Opposing Counsel, who presumably also knows how judges tend to respond to strident lawyers. Upon reading Lawyer's civilized response and sensing a trap, Opposing

Counsel may well decide that it is best not to continue stridently but instead to try to work through problems on a constructive and less acrimonious basis. This result goes just as much into the “win” column as a successful judicial decision on the issue. Moreover, the expense to the client is likely to be far less.

B. Lawyer receives an intemperate and overbroad demand from Opposing Counsel for discovery to which Lawyer believes Opposing Counsel is probably not entitled. Lawyer is inclined to want to force Opposing Counsel to file a motion to compel in part in order to “educate the judge” about what lousy human beings Opposing Counsel and his client truly are. Lawyer takes an extremely aggressive position in response.

Like the prior example, this one implicates the benefits of better communication between counsel as a means to avoid costly and needless misunderstandings. And it introduces additional permutations to the civility analysis. Before deciding to act, Lawyer might ask the following:

1. To what extent, if any, are the issues raised in Opposing Counsel’s communication truly material and worth fighting over?
2. By her willingness to take an extremely aggressive stance, is Lawyer testing the boundaries of civility herself, while creating a risk that her client will be cast in a negative light and needlessly inviting additional client expense related to the anticipated motion that would follow her contemplated aggressive stance?
3. To what extent is there a possibility of win-win alternatives that would leave all parties and counsel just as well off or better off and at lower cost?
4. Even if Lawyer is absolutely morally convinced that the judge should see things her way, isn’t there also a risk that the judge may not do so?
5. Alternatively, how sure is Lawyer that the parties (or counsel) will not encounter future situations in which their roles may be reversed?

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C. Lawyer begins case with Opposing Counsel on a cordial basis. Early in the proceedings, however, Client tells Lawyer that Client does not want Lawyer extending any courtesies or making life any easier for Opposing Counsel or Adverse Party on any issues—large or small, material or immaterial—than is absolutely necessary.

This example raises questions both about the lawyer-client relationship and about relationships between counsel. At a minimum, we believe a civil approach would suggest the following:

1. Particularly if Lawyer has not already done so, this would be a good time for Lawyer to explain to Client how cooperation can be a two-way street, how non-cooperation can make things more expensive and take them longer to resolve, and how it is difficult to predict at that time which side may need additional “slack” in the future. Even if Client is not persuaded, Lawyer can at least document this advice as protection against future assertions by Client that Lawyer unnecessarily ran up the bills.
2. Lawyer may consider whether it is in Client’s interest for Lawyer to explain to Opposing Counsel at the time that Lawyer will be proceeding in this manner rather than leaving Opposing Counsel to conclude over time that Lawyer is just an incompetent jerk.

One of the authors of this chapter faced such a situation and chose to inform Opposing Counsel of the constraints under which that lawyer was operating. The result was that when the client finally decided to consider settlement negotiations, the relationship between counsel was positive and constructive, allowing a mutually favorable settlement to be reached in a fairly short time. Even if the case had not settled well or quickly, however, the author’s client would have been no worse off as a result of the early communications with Opposing Counsel.

V. Conclusion

Although this article contains only three examples, many more can easily be imagined. Our hope is that this discussion of the practical benefits of civility will encourage lawyers facing currently or potentially uncivil

situations to consider all options before heading down what may, with the benefit of 20/20 hindsight, prove to be an unnecessarily difficult path.

Before the age of comparative fault, there was a tort doctrine called “last clear chance” that sometimes placed responsibility on a party who was not initially at fault but who nonetheless had the last opportunity to avoid the harm that ultimately occurred. This chapter suggests a kind of “last clear chance” approach to lawyer-lawyer and lawyer-client relationships—not just because of whatever moral benefits civility may bring but also because of its often high potential for effectiveness. While fighting fire with fire is dramatic, fighting fire with a fire extinguisher may do more to save the lawyer’s (and his client’s) property. And avoiding fire altogether through the use of fire prevention techniques will most often, if not always, be better still.

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Chapter 12

REPUTATION

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I. Overview

As we venture down the road in life and in the law, we become more and more of who we are. What is that? What is my reputation? Will it survive me?

Reputable lawyers are known for being competent, conscientious, thorough and effective, of course—but they are known for more than that. They are reputed to be of good character. Most relate well to people of various stations and walks of life. Building and maintaining relationships matters to them. They possess enduring qualities that are easily articulated, timeless, even biblical: the reputable lawyer is good, worthy of respect, and sincere. She does not pursue dishonest gain. She speaks with temperance and is trustworthy in everything she does.

History teaches that most of the great ones have been loved by their families; they helped the needy, not just the greedy; they took on difficult causes; and they reached out whenever they could to those with no seat at the table.

Reputable lawyers know that what counts is not what they do for a living, it is what they do for the living. They perform simple acts of kindness;

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they help people they meet at the supermarket; they are not quick to sue for every unpaid fee; and they are a voice of reason for the client who is at a difficult crossroad.

Reputable lawyers are seen by their peers as caring, dependable, and solid. Colleagues are pleased, even honored, to welcome them onto their bar committees, legal teams, charitable boards, judicial review panels, and other collaborations because they can always be counted on to contribute. Just as importantly, they are welcomed because their mere presence reflects well on the undertaking, giving weight to its work and thereby advancing its mission.

A lawyer with an excellent reputation will have worked diligently to build and preserve it. For the new or aspiring lawyer, now is the time to think about an enduring reputation. As Dr. Stephen R. Covey wisely advised, one should “begin with the end in mind.” *See* STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE: POWERFUL LESSONS IN PERSONAL CHANGE* (1989).

A reputation isn’t made of hopes and dreams; it consists of deeds done, of established relationships, and of attainment. As Henry Ford put it, “You can’t build a reputation on what you are going to do.”

A reputation can be good or bad. Neither one is an accident. Both kinds can last a lifetime. The things you do now to distinguish yourself may stay with you until retirement and beyond. A good reputation built over a career can be lost in an indiscreet moment, through a single moral or ethical lapse or a too-public embarrassing incident. When there is a close question about a lawyer’s fitness, however, a stellar reputation will often provide the all-important benefit of the doubt.

A lawyer who has a reputation for taking on unpopular causes or challenging the establishment’s way of doing things may face disapproval or resistance from some legal quarters. The upstanding lawyer will distinguish the good, even great advocate from a lawyer acting badly. The discerning reputable lawyer will welcome that good lawyer into the fold and defend him in the community.

Reputations are perceptions that may not always reflect reality. They can be fiction as well as fact. If you ever find your reputation materially

smearred by insidious falsehoods, you should fight to protect it with everything you've got. Your reputation, after all, is all you have in the end.

II. Earned or Manufactured

A reputation can be earned or manufactured. Some believe it takes a lifetime to earn a reputation. Others would say that a reputation is earned day by day. For a lawyer, a reputation may begin to emerge from the start of law school, or even earlier. A reputation comes from relationships, experiences, and deeds. In law school, students forge relationships with classmates as well as with law school administrators, professors, and staff. Some of them may be future colleagues, judges on one's cases, opposing counsel, or even clients. Some could be cherished mentors and confidantes. It is never too early to earn an excellent reputation.

A lawyer's reputation begins with friends, family, and other close relationships. For some lawyers, their best referrals come from family and friends. In any event, potential clients would not look favorably on a lawyer whose competency and professionalism are not vouched for by family or friends.

But a lawyer's success depends on reputation-building beyond that cozy inner circle. It depends on outsiders who have heard and believe that the lawyer has the attributes of a high calling as well as a high degree of competency. Substantive excellence should be the target for those striving to make a mark. Beyond competency, the reputable lawyer will be known for going about his work in a *professional* way, by comporting himself civilly and in all ways honoring his duties to clients, opposing parties and their counsel, co-counsel, the profession, the public, and our systems of justice. (The duties of a professional lawyer are set forth in a number of states' lawyer creeds, including the Georgia Lawyer's Creed and Aspirational Statement, adopted by the Georgia Chief Justice's Commission on Professionalism and incorporated into the governing rules and regulations of the State Bar of Georgia.)

Lawyers build their reputations through interactions with their colleagues, clients, neighbors, friends, relatives, the judiciary, and others. A lawyer burnishes her reputation by showing concern for colleagues and nurturing professional relationships. The quality and the context of

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interactions with colleagues are important and include the ways a lawyer communicates with colleagues; acknowledges their life milestones (birthdays, anniversaries, family deaths and births, awards, major illnesses); deals with them in the course of representing clients (negotiations, discovery, and communications); and interacts with them in professional, civic and social organization work and at other gatherings and encounters.

A lawyer can strengthen her reputation by demonstrating proficiency before the bar and public. She can make a name by penning legal articles or authoring a legal blog for the legal or broader community. A lawyer may offer legal analysis and commentary online or on television or radio. She can show capable and committed leadership with—and make presentations before—the bench, the bar, the PTA, civic clubs, sororities, fraternities, and faith-based entities. In all that a lawyer does—24/7, near and far—her words and actions should demonstrate competence and professionalism, all serving to enhance her good reputation.

Any involvement by a lawyer outside of law practice or judicial service should reflect the same commitment to competence, excellence, and professionalism that is reflected in her daily work. If a lawyer finds she cannot competently and professionally perform volunteer and community commitments, she should decline or phase out those engagements.

A lawyer's reputation can be manufactured, as well as earned. A lawyer may employ social media, such as LinkedIn, Plaxo, or Facebook to create a snapshot of his professional competencies, relationships, and experiences. A lawyer can use television and Internet advertising with visual images, dialogue, and client testimonials to build a perception of his abilities and track record for legal success (all within the constraints of the jurisdiction's ethics rules on lawyer advertising). A lawyer may use peer ratings services such as AVVO, Martindale-Hubbell, and SuperLawyers, honors that boost one's reputation as perceived by clients, potential clients, lawyers who may refer cases, and the public.

A reputation can be created consciously and deliberately. By employing legal strategies before certain tribunals or with certain clients or types of clients, a lawyer can create a reputation for doing legal work in a specific or notable way that may be attractive to other potential clients. A lawyer may deliberately stake out certain "trademark" practice strategies or types

of clients as his turf, all part and parcel of an emerging and distinctive reputation. See Fred C. Zacharias, *Effects of Reputation on the Legal Profession*, 65 Wash. & Lee L. Rev. 173 (2008).

A lawyer's reputation may matter more to clients of greater means and sophistication who may have access to more information about the lawyer. Such clients may seek out a lawyer with a reputation for a particular legal strategy or track record. A client, having researched a lawyer's reputation, may try to use it to advance the client's interests and causes. A high profile lawyer can elevate public awareness of a client's cause. On the other hand, a less sophisticated client or one of modest means may not have the opportunity or the wherewithal to select a lawyer on the basis of reputation or professional attributes. Persons of limited means are more vulnerable to less qualified or reputable counsel. In either case, the lawyer's reputation would be relevant to clients.

III. Asset or Liability

A lawyer's reputation can be an asset and a liability—even at the same time. A lawyer's reputation can be positive, negative, or mixed. Reputation matters in all a lawyer does—whether representing clients, performing community and public service activities, or seeking jobs or other positions. Doing a good job for a client may lead to more work for that client and to new clients. Quality of work may be as important to one's reputation as results. Existing clients will evaluate the lawyer on her competence, ethics, and professionalism in handling their matters. A lawyer's reputation will soar when the client is offered faithfulness, competence, diligence, good judgment, and when the lawyer treats the client the way the lawyer herself would want to be treated. In an era when many clients can look up the law on the Internet, a lawyer who effectively counsels the client and employs sound judgment will boost her reputation for competence and professionalism.

When a lawyer seeks a new position and must provide references, he should consider what his references will say about him—his reputation. A job interviewer will evaluate or perhaps have personal knowledge of the lawyer's community service, public service, or bar work, as well as any work in support of a legal reform or social initiative. The evaluator

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may have observed or have knowledge of how the applicant has treated and spoken with clients, colleagues, and people in the community. In a global practice environment, interviewers increasingly are focused on lawyers' ability to get along with, and adapt to, different types of people and their cultures.

Most lawyers strive to be competent at all times, yet lawyers do make mistakes in their practice, occasionally with the result that they are called on the carpet by disciplinary authorities. When the matter proceeds past the complaint stage and an ethics violation is found, there is an opportunity to consider the lawyer's past acts and reputation before any discipline is imposed. In a disciplinary setting, particularly in a close call, the strength of the lawyer's reputation and the identity of the people who will vouch for the lawyer in question may be decisive.

IV. When Reputation Matters

Whether a lawyer hopes to get or keep a client, to take the lead in an important engagement, to pursue elective office or appointment to a public or private entity, to be named to a significant bar committee, or to be elected or appointed a judge, her reputation is put on display. For high-profile appointments, reputation is usually a paramount consideration, and may be determinative of whether the appointment will be secured.

A lawyer may seek a judicial or other public appointment, or may be sought out. In either case, reputation will be under close review. If that lawyer has a reputation for competence, honesty, trustworthiness, and preparedness, she will gain further support for her application or appointment. A reputable candidate will most likely receive recommendations from colleagues—those in the best position to assess the candidate's abilities, experience, and professionalism. Colleagues evaluating lawyers for judicial or administrative appointment look for some of the same qualities that clients value, but may also consider other factors. Colleagues will consider whether the candidate is known for fairness, probity, integrity, and civility, as well as for seeking reconciliation while working to make dispute resolution dignified.

Lawyers running for public office or seeking appointments face committees comprised of lawyers and lay persons that vet candidate qualifications.

Most but not all lawyers reviewed by these panels will satisfy the objective criteria—factors such as education, years of practice, subject matter knowledge, age, and residency. The threshold question, however, is whether those position seekers will pass the reputation test—that is, what others say about the candidates in their recommendations and appearances before appointing authorities.

When a lawyer needs support in a tough situation, such as when his qualifications or character are questioned, a solid reputation can deliver that support. If negative information about a lawyer is circulating, the professional peers who know him best are likely to speak out. They can attest that the negative (or insufficiently positive) information is uncharacteristic for that lawyer, or that the information appears inaccurate, untrue or doubtful as it relates to that candidate.

Whether a lawyer regularly or sporadically appears before courts or other tribunals, it is important to exhibit attributes that reinforce the lawyer's reputation for professionalism. In dealings with judges, arbitrators, jurors, mediators and others in decision-making positions, a lawyer should at all times show respect, act with candor, and speak with courtesy. When a lawyer's reputation is uniformly good, she almost always receives the benefit of the doubt.

A lawyer's reputation matters to the firm—whether a solo, small, or large practice. A positive or negative reputation will be a firm asset or liability, in the eyes of those both within and outside the firm. It will cast the firm itself in a light more or less favorable, from the perspective of potential clients, judges, and even adversaries. In most communities, there is a lawyer with a reputation for being exceptionally difficult and unprofessional. Accounts of the lawyer's disreputable conduct make their way around the courthouse, to firms, and even to local bar associations, often with the help of courthouse and firm staff. That kind of reputation will do real damage to the lawyer's practice—deservedly so—and to the firm.

A lawyer's reputation may affect fees earned and charged. Because the legal profession is a field in which tangible goods or readily-quantifiable services are not produced, a lawyer's reputation may be factored into his fees. Many judges and lawyers can relate a story about a lawyer in their community who has a reputation for being extremely difficult to

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deal with, rude, unprepared, scatter-brained, and unnecessarily demanding. When taking on a difficult adversary, opposing counsel may impose a premium fee on their clients—a form of combat pay. While lawyers, judges, and their staffs know him by his reputation, the difficult lawyer is not always avoidable. All should recognize that the reputation of the local bar, and the legal profession itself, is harmed by the disreputable lawyer’s bad conduct and tendency to drag out disputes, making litigation more costly for all concerned.

V. Maintaining a Reputation

The era of instant electronic communications, with potentially unlimited distribution of messaging, brings with it an enhanced risk of harm to a lawyer’s good reputation. If the lawyer’s reputation is substantial enough, it likely will take more than one ill-conceived tweet or regrettable email to do lasting harm. But if the misstep is egregious enough, such as a criminal act or publicized sexual indiscretion, even the lawyer with a large amount of reputation points “in the bank” can quickly go bankrupt. Rebuilding one’s reputation after such an event, if even feasible, may be problematic at best.

VI. Conclusion

A lawyer’s reputation is an asset, derived from experiences and relationships, that grows into a public persona. A lawyer’s reputation is largely about relationships, which can be developed and nurtured, and should always be protected.

As a lawyer proceeds on the journey of her professional life, she should listen to the voices of dissent, which are often the conscience of society, and cultivate an unshakable sense of fairness and commitment to justice, which will inform and grow her good reputation.

A lawyer may consider whether her actions, decisions and life relationships will build a reputation of mediocrity or one that is memorable and important. A lawyer may act in a manner that primarily helps herself, or may pursue a course of action that also betters her community, the nation, and the world. A lawyer can be known for doing well and doing good. Those who do well and good have the best reputations of all.

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Chapter 15

*e*PROFESSIONALISM

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I. Overview

In their personal lives, lawyers are engaging in more online social networking activities than ever before. Many are adapting skills learned through interacting with friends and family online to create a web presence. As of 2012, virtually half (49.1 percent) of all lawyers responding to an ABA Legal Technology Resources Center survey were with law firms with a presence on LinkedIn. The firms of nearly a third (30.3 percent) of those lawyer-respondents had a Facebook presence, and only 29 percent of responding lawyers had no presence whatsoever on social networks, either personally or via a law firm.

Some lawyers have turned to the Internet for client and business development, and even more are now using it as a networking tool for engaging with other professionals and building a potential online referral network. Still, most of the lawyers engaging in social media today are doing so as individuals, rather than as a firm. They may find a personal presence more effective and engaging, but preservation of one's professional identity on a personal web page requires the lawyer to carefully balance, and keep separate, the personal and the professional.

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The legal profession's headlong dive into social media mimics the trend within the larger public, but unlike the average user, lawyers must take care to conform their online conduct to professional standards and ethical duties. At a time of accelerating change in online culture and capabilities, it is an ongoing struggle for the legal profession to preserve and adapt professional ideals and ethics to the world of Twitter and Facebook.

*e*Professionalism is the term we will use in this chapter to characterize the application of concepts of lawyer professionalism to a lawyer's Internet activities. Other chapters in this book examine different dimensions of lawyer professionalism in practice. This chapter will examine the difference between public and private communications online while providing guidance for a lawyer's online behavior, from a lawyer professionalism and ethics perspective. Different platforms and methods of engaging online will be reviewed, as well as best practices for maintaining *e*professionalism and developing appropriate lawyer "netiquette."

Although *e*professionalism does require a lawyer to be ever conscious of his or her professional identity while online and to draw appropriate boundaries between a professional and personal web presence, it does not require that a lawyer cease to be an engaged friend or family member. The point of social media is to share and to bring the human element into online interactions. It facilitates online conversation and builds trust and relationships. But *e*professionalism does require that the lawyer (1) educate herself regarding the most effective and safe privacy and security settings to protect her profile, (2) monitor her profile on a regular basis by setting up notifications and regularly checking the profile as an administrative function of the practice, and (3) show restraint regarding the posting of personal information that may cross the line and be seen as inappropriate within the larger professional community.

Among the applications used by lawyers as part of their online engagement are LinkedIn, Facebook, Twitter, and Google+. These models represent distinct platforms, each raising its own unique security, privacy, and confidentiality considerations. Many of the companies behind these free applications, with the exception of LinkedIn, initially developed them for use by the general public, rather than for professionals or business use.

The content generated by users of these platforms enables the companies to thrive financially. It follows that the platforms' usage rules are designed to maximize sharing and interaction among users. But the confidentiality, security, privacy, and similar concerns of lawyers registering on these platforms are very much secondary considerations for companies focused on ramping up the user base and resultant revenues. With that in mind, lawyers using social media should take particular care to understand the terms of use and policies of the companies and to maintain best practices of professionalism in the largely uncharted social territory.

As a lawyer increasingly uses online communications methods, it can become more difficult to separate personal use from professional use. A lawyer's ability to conduct himself professionally online will be a function of both his familiarity with the particular platforms and his comfort level with and knowledge of the underlying technology.

Many people know how to use common features of Facebook but may lack a deep appreciation of a technology that, for example, can preserve and spread photos and other personal data across the Internet for an indefinite period, absent adequate front-end controls.

Most law students have family members who are "friends" on Facebook, and they may have a Twitter account or post Instagram pictures of their travels to share with their closest friends. What happens when those law students pass the bar and must comport themselves as "professionals" in the public eye? Do they have to change the way they approach social media? Is it too late to suppress existing online content that does not reflect a professional image or professional values? Should law students consider such concerns long before they take the bar exam, and conduct themselves accordingly online? It would be difficult and some might argue detrimental to suddenly drop all online, personal communication with friends and family upon entering law school or passing the bar exam. But law students should be thinking about where and when to draw the line between the personal and the professional on social media. Moreover, while new law students and lawyers can change their approach to using social media, it may not be as simple to create change in how their "friends" and other online contacts interact with them so as to ensure an aura of professionalism.

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Given the difficulty and unnaturalness of separating the professional from the personal in the use of social media applications, why should lawyers bother to engage online at all? It is not within the scope of this chapter to examine all of the benefits of online engagement with the public or describe the growing impact of ecommerce on societal behaviors.

The chapter will, however, accept and proceed from the premise that those lawyers who do not learn how to use social media effectively in their practices, particularly those not in large law firms, may struggle professionally given pervasive, technology-driven change in the legal marketplace. (See, for example, the descriptions of the evolving legal marketplace in RICHARD SUSSKIND, *END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES*. (2010).) The public today searches online for legal assistance. Consumers use various online resources to rate and review lawyers. Recent investment in the growth of online legal service companies, such as Rocket Lawyer and LegalZoom, serve as evidence that the public is looking online for information about and delivery of legal services—particularly in certain areas of practice.

Those lawyers who have not developed an online presence will be largely invisible to the majority of their potential client base. Even lawyers who do not like to engage in more aggressive (but ethically permissible) forms of lawyer advertising should come to understand that traditional methods of marketing are no longer the most effective avenues of client development. Engaging online is a smart business decision, and as with any business decision a lawyer makes, it must comply with the rules of professional conduct as well as standards of professionalism.

But what does professionalism look like online? Failing to understand how traditional notions of professionalism transfer to online engagement may pose risks for the lawyer, not only from her own online activity but from that of clients, potential and prospective clients, and other professionals who may reach out to or mention the lawyer or law firm online through a website, forum, blog, tweet, post, or other digital method. Lawyers at every stage of their careers must learn how to behave as professionals when engaging online, or risk potentially serious consequences.

II. Private Versus Public Communications

The first step in analyzing the professionalism of online conduct is identifying the intended audience for the communication. The second step is deciding whether, in the context of that communication, a particular platform is an appropriate conduit for the message. If a lawyer is not familiar with how a certain online platform works, “lurking” might be the appropriate starting point for understanding how he or she will engage professionally online. “Lurking,” or joining an online community and watching the engagements of others for a few months without actively participating, can help lawyers grasp the “culture” of the network and how others communicate using it.

A good first step for lawyers devising a system to professionally manage their online messaging is knowing when it is appropriate to expose a given communication to public access, without restriction, versus when a communication must be or should be private in nature. As a general proposition, subject to many variables of course, a lawyer’s communications are more likely to yield unwanted results—such as a perception of inappropriateness, or even potential malpractice exposure—if they are public and therefore visible to anyone with Internet access. Public exposure of a communication can be controlled to a degree if limited to a few hours duration online, rather than in the form of a permanent public post.

Public communications would include anything posted on a social media platform or other social networking application where the public is able to register to create an account. Private communications would include email, text messaging, private group posting, or any communication where the lawyer is able to limit the transmission of the message to a specific individual or group of individuals.

To illustrate how a lawyer might conduct himself online, using public forms of communication, let’s look at several of the most popular social media platforms: LinkedIn, Facebook and Twitter, as well as blogging. Lawyers should be aware of and conform to the unique culture and community that each application inhabits before creating an online profile to engage publicly within these online communities.

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III. Blogging

Lawyers may blog to communicate online either for their law firms or their personal use. They may also be guest authors for the blogs of other lawyers or law-related organizations or companies. Blogging can create valuable content related to the lawyer's practice area. A blog's target audience may be legal professionals with shared interests, or the lawyer's existing and target client base. The content produced on a blog is typically shared through other social media platforms, such as those discussed below.

Because the majority of the content shared through different forms of social media engagement lead back to the content of the lawyer's original post, sound professional conduct for the blogging lawyer should begin with close attention to the writing, content quality, and accuracy of the original post. Notwithstanding that law bloggers all hope to establish a unique voice and style, a serious blogger's posts will be written in a manner that conveys to the readers that the author is an educated professional. With respect to a law firm blog, the firm should develop a strategy and guidelines for how it will produce and manage the content of its blog to ensure that it is tailored to the intended audience and stays professional in tone. This strategy must also address the treatment of comments added on posts by readers. It reflects badly upon the firm to allow unprofessional comments from others to appear on its site. Only screened and approved comments should appear on the firm's blog page. Individual lawyers who maintain a blog may wish to pre-approve comments submitted by specific individuals or engage openly with readers in the comments section by closely monitoring and promptly responding to activity.

A good rule of thumb for maintaining professionalism when blogging is to think twice about the appropriateness of the content before hitting the publish button. The same standard applies when lawyers publish posts, comments, or responses on the many online legal forums and question-and-answer sites available to the public seeking free online legal assistance. As a rule, if the content is something you would not want to say in public or see splashed across the front page of the Wall Street Journal, and attributed to you, then you should not publish it online.

Blog post topics should cover only general or basic legal information and avoid hypotheticals of real client situations. Disclaimers stating that

the information on the blog is only intended to be general in nature, and that readers should consult a lawyer regarding specific personal situations, should be a highly visible fixture on any lawyer's blog. Different jurisdictions may have different rules on necessary and adequate elements of a lawyer's online disclaimers aimed at, among other things, avoiding inadvertent establishment of a client-attorney relationship.

A lawyer's personal profile on a blog should be factually accurate in every detail and should not exaggerate the lawyer's experience or qualifications. It would be wise to check any applicable disciplinary rules on advertising, in that jurisdiction, before posting a profile.

If the blog is a personal one that the lawyer writes on his or her own time, the lawyer presumably does not want that content shared with his or her professional social media contacts. But the lawyer should be aware that anything posted on a public blog has the potential to be found by a client or other party through keywords on a search engine. Even anonymous bloggers have been unmasked through the use of algorithms that search on the basis of writing styles and frequently used syntax of the author to discern the blog author's actual identity. If lawyers wish to have personal blogs that may contain information that would offend colleagues or clients, or not be appropriate for them to read, then the lawyer should consider creating a private blog or writing only within a private or closed community of friends or like-minded individuals. Doing so would permit the lawyer to maintain his or her interests outside of the profession with less risk of having any judgments about those interests extend into his or her professional life.

No matter how overextended lawyers may feel—or perhaps insecure about their own writing facility—they should be cautious about retaining the services of ghostwriters for their professional blogs. The task of maintaining a firm's blog and posting two or three times a week may seem daunting, but the downside of using a ghostwriter, especially one without any legal experience, might not be worth it. If a lawyer does retain a ghostwriter, whether inside or outside the firm, to write posts under the lawyer's name, the lawyer should give specific, clear guidance before the post is composed, then meticulously review the product before publication.

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IV. LinkedIn

Of all of the available social media applications, lawyers are generally most comfortable using LinkedIn because it focuses on professional networking, not the sharing of personal information with friends and family. Founded in 2003, LinkedIn had more than 100 million users ten years later. The 700,000 LinkedIn users in the legal sector comprise the fifth largest community on the network. Lawyers wishing to engage online create a LinkedIn profile that may include their resume, photo, information about the services they offer, and links to their law firm websites, blogs, or other online resources. Lawyers may list “skills and expertise” and receive recommendations from others. After setting up a LinkedIn profile, the lawyer then connects with others to create a list of contacts or “connections.”

LinkedIn also hosts many groups under the legal profession umbrella. Many lawyers who join LinkedIn join groups in their practice area or other professional interest area. While the invitation or request to join a specific group might be made privately, the rest of the information a lawyer provides on his or her profile is visible to the general public. Lawyers may make “status updates” and have their most recent blog posts showcased on their profile pages.

Because LinkedIn is firmly focused on professional networking, the engagement of others on the network tends not to cross over into personal comments or areas outside of educational background and work experience. The platform does enable lawyers to comment on any contact’s status updates and on posts within groups that the lawyer has joined.

Lawyers may also ask other professionals, colleagues, or former clients to provide professional recommendations of that lawyer that will appear on his or her LinkedIn profile. That practice can be problematic, however, as a number states have rules of professional conduct that limit the use of testimonials.

Lawyers may want to consider how their choice of hobbies or interests outside of the legal profession could be viewed by their colleagues, clients, and potential clients. There may be groups on LinkedIn whose very identity would be offensive to a segment of a lawyer’s client base, such as certain political groups. When a lawyer joins such a group, the affiliation shows up on the lawyer’s profile that he or she is a member. Even

a loose association raises a potential for misunderstanding by someone viewing the lawyer's profile.

To manage and minimize such problems, a lawyer may use the application's privacy settings to specify those items in his or her profile that will be publicly visible. Such settings are a valuable tool for any lawyer who wants to join a group with minimal risk of offending people viewing his profile. Privacy settings are also helpful to shield activity that simply relates more to a lawyer's personal life than his professional life.

LinkedIn may be the easiest of the major social media platforms for lawyers, in terms of ability to assess whether conduct within that community is professional. Some examples of unprofessional behavior on LinkedIn might include:

1. Posting an inappropriate photo on the lawyer's profile page rather than the customary professional headshot as is customary.
2. Posting unprofessional comments on the status updates of others within a group community.
3. Setting up other social media accounts from Twitter or Facebook to cross-post into LinkedIn when the messages posted on those other accounts would not be appropriate for the lawyer's profile page on LinkedIn.

V. Facebook

Facebook was created for sharing personal, largely informal, information between friends and family. Business "fan" pages on Facebook are an option for lawyers and law firms wishing to tap into the 900 million-plus user base of the application as a form of marketing. User content delivered to Facebook through individual profile pages drives the value and use of this application. More personal information shared through the application is visible publicly than the typical Facebook user may suspect, even if she pays careful attention to the security and privacy settings of the user's profile. Moreover, Facebook and other social media applications have a tendency to change their privacy and default settings with little or no notice. For the lawyer with a social media presence, practicing

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eprofessionalism means keeping up with these changes and adjusting one's page accordingly.

It is also vital for a lawyer with a Facebook presence to ensure that her profile is accurate in all professional aspects and does not contain puffery. Here again, it is a good practice to review the jurisdiction's lawyer advertising rules before posting Facebook content regarding one's work.

Many lawyers opened their current personal Facebook accounts before they attended law school and passed the bar. The "timeline" feature of the application allows "friends" and, potentially, acquaintances of those contacts to view the activities and postings of the user going back a number of years. A viewer may also be able to see who the other friends of a particular user are. Users may be "tagged" in photos identifying them as being present in the posted photo and comments, and status updates may reference the profile of another user and post a duplicate of that post on his or her wall. Accordingly, if the lawyer is not aware of ways to limit others from interacting on his or her profile page or timeline, the lawyer may not realize that his profile page is linked to content she would prefer that clients or others not see—or at least not associate with the lawyer.

For example, if a lawyer has not set the default in the privacy settings so that he or she may not be tagged in a post without his or her permission, a former college buddy could post and tag an old photo of the lawyer from their college days showing the lawyer in an inappropriate situation, perhaps with a rude comment. If the lawyer is tagged, the photo and comment will appear on the lawyer's public profile page for anyone to see. While it is possible for the lawyer to monitor his or her timeline and remove posts that are not professional, any member of the public may have viewed an offending item before the lawyer could detect and remove it. The safer option would be for the lawyer to have the privacy settings in place to prevent anyone from tagging the lawyer in any posted photos without his or her permission. Additionally, a lawyer who has had an account for years before entering the profession may wish to go back and "hide" posts from the public profile that he or she would now deem inappropriate for a professional to show on a public profile.

Law students and lawyers with friends who frequently engage with them via Facebook may wish to send a group message to all their Facebook

“friends” advising that any personal messages should be handled through other private online forms of communication—such as private Facebook messaging, chat or email—that will not become public knowledge. Facebook also allows the creation of private groups. Law students and lawyers wanting to maintain friendships with groups of individuals who may wish to discuss and post items that could be seen as unprofessional may wish to create a private group and invite those friends to communicate with each other that way.

Lawyers posting on their personal Facebook pages should be careful not to disclose client confidences or say anything that could be considered advertising of their services or soliciting business. That kind of communication should be done through law firm business pages, where the lawyer should be sure to comply with all rules of professional conduct in the set-up and maintenance of the page. Even on a firm web page, the lawyer must make sure that the posted content does not reveal information related to client matters without permission of the client and is related only to legal services the firm offers, firm news, or general information.

VI. Twitter

Maintaining eprofessionalism on Twitter can be very challenging because of the more rapid and impersonal nature of the platform’s culture. Not only must the communication be appropriate, it also must stay within a 140-character limitation. It is easy for comments on Twitter to be taken in the wrong context or misunderstood as a result of the content limit. There are a number of other drawbacks to clear, comprehensible, and responsible communication on Twitter, among them: (1) the message size is too small for a meaningful disclaimer, and links to disclaimers may be ignored; (2) elements of a conversation may not appear in a viewer’s public Twitter Stream in chronological order, giving the impression of a disjointed, hard-to-follow dialogue; (3) the absence of friend and group features on Twitter may pose risks for the lawyer user, because anyone may send a message to the account holder using the account holder’s handle; (4) it is difficult to formulate a meaningful bio for the Twitter profile, and given a bio size limitation of 160 characters, the bio size restraint discourages use of prudent disclaimers; and (5) there are privacy options on Twitter,

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but they are minimal: a user can designate her account as private, meaning only authorized followers may view her tweets, and a lawyer user may block an individual, meaning that individual may not direct tweets to the lawyer's user handle or send them direct messages.

Tweets made by the lawyer are retained on his or her account profile page. The lawyer is also able to compose direct messages, to other followers on Twitter. These are sent via email and privately to each user's account.

A heightened risk of unprofessional lawyer behavior on Twitter arises when the lawyer responds to other tweets or posts comments that may represent inappropriate advertising and solicitation. Lawyers wishing to use Twitter for professional networking may want to focus on the following tweeting practices: (1) send out useful law-related blog posts or links to other articles related to the lawyer's practice area; (2) take care not to tweet inappropriate photos from a service like Instagram; (3) retweet comments only from other lawyers or professionals whom the lawyer trusts and knows; (4) follow only those individuals who the lawyer believes would not make inappropriate posts containing the lawyer's handle; (5) avoid engagement on Twitter with other individuals or lawyers who do not conduct themselves in a professional manner; (6) notify clients that communicating online via Twitter is not secure and could be a confidentiality risk; (7) get over strict adherence to grammar and spelling norms—because of the 140-character limitation, abbreviations are part of the culture on this platform; and (8) follow Twitter etiquette, such as crediting the source when retweeting statements and links, or using "HT" (hat tip), "MT" (modified tweet), or sending out "Thx" for retweets. It can also be worthwhile to engage in community trends, such as #followfriday or # for specific legal events.

VII. Email

Email is now the older form of digital communication, but one still preferred and used by most law firms and their clients. As more lawyers have become comfortable with text messaging and other abbreviated communication forms using acronyms and other expressions that are not part of the lawyer's traditional lexicon, a similar informality has made its way into emails. Originally, many externally directed emails were drafted in

the same format as a traditional snail mail letter, with a formal heading, body of the communication, formal closing and then the law firm's disclaimer about the potential unsecure method of digital communications and unintended recipients. As firms depend on emails more for workflow as well as formal case-related communications with clients and opposing counsel, the standard business email format has evolved.

Maintaining professionalism in the use of email begins with a clear comprehension of the recipient or recipients, the professional standing or posture of the sender vis-à-vis the recipient(s), and the nature of what needs to be communicated. If an email is directed to a client to provide a status update on the client's case, the firm would want to use the traditional format. Many firms have a standard formal-email-format office policy. If the email is from one associate to another in the firm and it concerns the status of a deposition that afternoon, it does not require a heading or a closing. If the associates regularly work together and are aware of how each other works, it may be acceptable to use acronyms rather than complete sentences. If the associate is emailing a partner in the firm and knows the partner prefers the more traditional format, the associate will want to defer to the senior lawyer's concept of professionalism in the workplace and write the email with a more formal structure. As more "digital natives" enter the legal workplace, sensitivity to generation gaps in the use of technology and in how we communicate has emerged as a significant element of eprofessionalism. The need for such sensitivity applies to new and more seasoned lawyers when they are working together in a professional environment.

There are some instances when professionalism dictates that email or other forms of online communication would be inappropriate. For example, if the lawyer needs to communicate important news to the client, such as a loss or win in their case, the news is better conveyed through a phone call or in-person visit. The lawyer must make this determination on a case-by-case basis given the personality of his or her client and the nature of the message that needs to be conveyed.

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Pretexting—Don't Go There

What if you want to create an anonymous profile to blog and post comments online?

The lawyer should assume that anonymity online does not exist. Always assume that information posted online 1) is public, 2) can be found in a search, 3) will be attributed to you, 4) will be discovered by the person you least want to see it, 5) has the potential to be recirculated across multiple online channels, and 6) will live forever in a digital format.

Pretexting is also not professional online behavior for a lawyer. Pretexting is the creation of an anonymous or fake user account and profile on an online platform for the purpose of “following,” “friending,” or otherwise connecting with another individual without his or her knowledge of the pretexter’s identity. For example, some lawyers may attempt to use pretexting as a way to gain access to private social media account information that might be useful to them in a case. The pretexting lawyer may be concerned that the information would not become available during the discovery process or may be deleted by the user before the lawyer is able to review it for the case. All lawyers should know that pretexting in this manner is unprofessional, and a growing number of jurisdictions have issued ethics opinions that it is a violation of the lawyer’s duty of professional conduct.

VIII. Video/Web Conferencing

As more lawyers work remotely, they are relying on video and web conferencing tools to supplement email and voice communication with clients and colleagues. Lawyers who practice in virtual law offices and do not meet with clients face-to-face may find the use of video conferencing necessary to ascertain the competency of a client and to authenticate the client’s identity. Many lawyers are also working with virtual paralegals or assistants and using web conferencing to share their desktops remotely for purposes of training these employees on the use of practice management systems or to review and discuss client files in real time. From time to time, lawyers will also use these tools to negotiate and settle cases with opposing counsel.

In each situation, professionalism demands that the lawyer conduct himself as if he were meeting face-to-face with the individual on the

other end of the video feed. That not only means appropriate attire and grooming for a meeting of that nature, but ensuring the absence of background noise or other potential distractions. For lawyers working from home, ensuring a distraction-free environment may be a challenge. The visual background for the video should also be professional, allowing the viewer to easily see the speaker without being distracted by clutter or poor lighting. A best practice for using video conferencing would be to use the application's preview video tool before commencing the communication to make sure the image projected will be professional.

IX. Online Marketing Tools

Lawyers must rethink concepts of professionalism as they pertain to new methods of online advertising, including the opportunity for lawyers to work with online marketing tools, such as online Q & A forums, directories, video or real-time chat, and other services delivered directly to consumers by nonlawyer, for-profit companies through various technology platforms. (For example, as of 2013, some of the companies featuring online marketing platforms for lawyers to connect and communicate with the public were: SmartLegalForms.com, LawZam, AttorneyFee.com, LawGives, Lexspot, EagleFee, Law99, LegalSonar, MyLegalBriefCase.com, LawDingo, UpCounsel, LegalForce (Trademarkia), LawGuru, Fizzlaw, LawQA, Pearl.com (formerly JustAnswer), Virtual Law Direct, Yodlelaw.com, LegalReach, Tabulaw, ExpertHub, LegalMatch, MyLawSuit, Jurify, AttorneyBoost, Wirelawyer, Findlaw, Nolo, Total Attorney's Legal Leads, Ravel, Judicata, LawPal, Avvo, Justia, JDSupra, Docracy, Shpoonkle, and ExpertBids.)

While lawyer rules of advertising are clear that false or misleading communications are violations of the rules of professional conduct, the rules do not dictate such subjective factors as taste and quality of the communication. There are different philosophies of marketing a lawyer's services, from more aggressive and direct methods to merely introductory and informative approaches. The method of advertising that the lawyer chooses should depend on the practice area, target client base for the message, and whether that method will appeal to the target audience. For example, personal injury lawyer advertising tends to be more aggressive

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given the typical immediacy of the prospective clients' legal needs. In contrast, advertising for estate planning practices may be less aggressive and more consistent over a longer period of time because prospective clients for those services are typically not pressed to seek out assistance and may have more time to research and consider their options.

Regardless of the form of online marketing chosen, lawyers should be aware that, just because the method is handled online, it is not different in terms of professional behavior. As the number of online marketing tools grows, lawyers will be instrumental in crafting the tone of professionalism and etiquette required to work with nonprofessionals serving the public online.

X. Conclusion

eProfessionalism is something lawyers in all stages of their careers are learning to implement in their daily online interactions. Adherence to the following basic guidelines in the context of any online communication will help the lawyer maintain a strong online professional reputation:

1. When in doubt about posting something or how best to use a platform, find mentors, but don't limit it to a single mentor in a single generation. Get the advice of lawyers with years of professional experience and of younger lawyers who may have more experience with the online culture of the individual platforms. Combine the two.
2. Don't copy the behavior of the rogue lawyers you see online. Each online application has a handful of lawyers who have made a name for themselves by behaving in ways that are unprofessional. They may have large followings or fans online, but copying their outlandish behavior is not going to help your client development or ability to network with other professionals.
3. Yes, the First Amendment does apply to your online activities. As servants of the public, however, we lawyers should strive to limit ourselves to expressions that are going to be the most constructive and least harmful. Being professional in your online self-expression means making an intelligent benefit/harm analysis before publishing

and considering more than just the personal impact your message will have.

4. As a standard, if you would not want to see what you wrote splashed across the front page of the Wall Street Journal, do not publish it online.
5. If you would not say it in person, do not say it online.
6. Make an effort to stay updated on new online methods of communication, both from security and cultural standpoints. Stay aware of how eProfessionalism considerations evolve as lawyers integrate these online methods into their practices, and determine the best strategy for your own legal career.

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