

## YOUNG LAWYERS

Shannon P. Smith

Chairperson  
Young Lawyers Section  
The West Virginia State Bar



## GOOD MANNERS FOR “SOCIAL” BUTTERFLIES

The evolution of social media in our personal and professional lives is too great to ignore. There are countless news articles, law review articles, legal ethics opinions and cases discussing what not to do — do not contact a represented party through social media, do not trick unrepresented parties through social media, do not forget to monitor client reviews — that sometimes we forget what we are **allowed** to do. In today’s world, the attraction of using social media as a quick-vent tool is painfully obvious, especially for anyone with a Twitter account. But as professionals, should that outlet be used?

I once had an encounter with an opposing lawyer, which was so frustrating that I wanted to scream it to the world. Ten years ago, that would have meant telling everyone back at the office the audacious tale and, if I had not calmed down

once getting home, retelling to my husband. Now, however, with the advent of social media, the temptation is much more dangerous. I prefer to be direct in my communications and have never been much of a vaguebooker (*Urban Dictionary* defines “vaguebooker” as “someone who intentionally throws up a vague Facebook status update, that prompts friends to ask what’s going on, or is possibly a cry for help ... don’t be one”), so thinking about all of the possible posts was liberating. What I did, however, was post a picture of my dog or a funny quip from my son or some cute cat video. I cannot remember which, but those are the things I always post/share/like. I am acutely aware and annoyingly diligent about what can be seen from my Facebook, Twitter, Instagram, Snapchat, etc. accounts.

What if, instead, I had posted

something negative about the other lawyer — even if I left out or changed the name to protect the (not so) innocent? What if, instead of another lawyer, my beef was with a sitting judge?<sup>1</sup> Where is the line between my professional responsibilities and my personal rights?

As a country, we have gone far astray from what is right and what is good. We have become the most connected nation with our cell phones, smart phones, tablets, computers, and social media, while simultaneously becoming the most disconnected nation because of our cell phones, smart phones, tablets, computers, and social media. In trying to one up the next guy at his expense, we fail to realize that we harm ourselves in the pro-

*Lawyers' conduct should be characterized  
at all times by personal courtesy  
and professional integrity.*

cess. Once you hit "Send," it is out there forever, and you cannot take it back.<sup>2</sup>

A survey conducted on why we share what we share on Facebook found that the primary motivation was for pure entertainment purposes.<sup>3</sup> Hence, funny cat videos. In more general terms, findings revealed that people want to post something that gets a reaction or feeling (happiness, sadness, anger, etc.) from their friends.<sup>4</sup> On a darker side, this also creates the problem of the need for shock value, or the reaction you get from creating it. Hence, directly aggressive posts or vaguebooking.

In 2015, the West Virginia Lawyer Disciplinary Board issued a legal ethics opinion, titled, "Social Media and Attorneys" and stated definitively that "the West Virginia Rules of Professional Conduct apply to attorneys' use of social media."<sup>5</sup> Specifically, the L.E.O. states that "attorneys should be mindful to conduct themselves as professionals while using social media and social networking websites."<sup>6</sup> It continues, "Although comments concerning other attorneys or judges may not rise to the level of a violation of the West Virginia Rules of Professional Conduct, the Lawyer Disciplinary Board, nonetheless, finds that attorneys should be cautious when commenting about other attorneys or judges via social media and social networking websites, and further advises that a better practice is simply to refrain from making such comments."<sup>7</sup>

I once heard it explained that if you would not want your client to read it, then do not post it. I think the better standard is that if you would not want your judge to read it, then do not post it. It should not mat-

ter if the person to whom you are referring can see it: "Lawyers' conduct should be characterized at all times by personal courtesy and professional integrity."<sup>8</sup> With changes in technology, there should be no changes in common courtesies.

As practitioners, we have a responsibility to the public but also to each other. Pull out your rule book, browse through our *Standards of Professional Conduct*, and the next time you feel the need to vent on social media, post a video of a laughing baby instead.

"A lawyer should treat all counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications. A lawyer should not, even when called upon by a client to do so, abuse or indulge in offensive conduct, disparaging personal remarks or acrimony toward other counsel, parties or witnesses."<sup>9</sup>

It is so posted. **WVL**

### Endnotes

1. I have never had a beef with a sitting judge. Each is professional and judicious.
2. *In re: Callaghan*, 238 W. Va. 495, 532, 796 S.E.2d 604, 641 (Matish, J., concurring in part and dissenting in part, 2017).
3. FRACCTL, The Motivations for Sharing on Facebook: Why We Share Content on Facebook, at [http://research.frac.tl/facebook-sharing-motivations?hs\\_preview=XIKGgyJY-4162713661](http://research.frac.tl/facebook-sharing-motivations?hs_preview=XIKGgyJY-4162713661) (last accessed Oct. 2, 2017).
4. *Id.*
5. W.Va. L.E.O. No. 2015-02, p.2 (Sept. 18, 2015).
6. *Id.* at p.18.
7. *Id.*
8. W.Va. Standards of Prof. Conduct, *Preamble*.
9. W.Va. Standard of Prof. Conduct I.A.1.