

IBA International Principles on Social Media Conduct for the Legal Profession

Adopted on 24 May 2014 by the
International Bar Association



the global voice of
the legal profession

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Introduction

The purpose of this statement of principles is to assist bar associations and attorney regulatory bodies around the world to promote social media¹ conduct within the legal profession that conforms to relevant rules of professional responsibility as well as considerations of civility. These considerations are significant because social media provides a platform for legal professionals to promote the administration of justice, by engaging the public in legal practice and debate. It offers access to a vast audience and resources such as real-time legal updates and the ability to discuss these with legal practitioners internationally. These are qualities that show that social media can also be misused giving

1 Social media are web-based and mobile technologies that turn text communication into active dialogue. The label 'social media' may be misleading: activity in social media can permeate professional contexts and relationships. Social media is pervasive and blurs the boundaries between 'cyber space' and the 'real world'. Online activity is a facet of one's entire life and it is, therefore, important to observe the same professional and ethical codes.

rise to conduct capable of eliciting disciplinary concerns as well. Social media should be used at all times in a manner that is consistent with the lawyer's obligations under the rules of professional responsibility, as well as broader considerations of the administration of justice.

In February 2012, the International Bar Association Legal Projects Team (IBA LPT) published a report entitled 'The Impact of Online Social Networking on the Legal Profession and Practice', following an extensive international survey of member bar associations. The final report is available at the following link :<http://tinyurl.com/nzpj8lc>. Over 90 per cent of respondents identified a need for bar associations, law societies and councils,² or, alternatively, the IBA, to develop guidelines regarding the use of online social networking sites in the legal profession.

In response, the IBA LPT and representatives from the Bar Issues Commission (BIC) Policy Committee formed a Working Group³ to develop a set of principles, to be applied by the legal profession when using social media. At their core lies the responsibility to apply the same high standards of conduct (with which lawyers are familiar) to online activity by acting professionally to maintain public confidence in legal practitioners.

2 For ease of reference in this guidance, 'bar associations, law societies and councils' are collectively referred to as the 'bar associations'

3 Members of the Working Group: Anurag Bana (IBA LPT, Working Group Chair); Máximo Luis Bomchil (Argentina); Simone Cuomo (CCBE, Europe); Alice Hawker (IBA LPT); Robert Heslett (England); Tatsu Katayama (Japan); and Steven M Richman (USA).

Guidance for bar associations and regulatory bodies

General commentary: social media presents both opportunities and challenges for legal practitioners. This guidance aims to alert bar associations and regulatory bodies of the challenges in order to promote and encourage professionally responsible social media usage within the legal profession. The IBA appreciates that individual bar associations and regulatory bodies will be best placed to assess the needs of their own jurisdictions, while balancing these needs with their capacity and available resources. Therefore, a set of six principles has been outlined that bar associations and regulatory bodies should focus on to combat the issues that social media can pose to the legal profession.

1 Independence

Professional independence is integral to legal practice. It is important that bar associations and regulatory bodies ensure that their lawyers are not subject to external pressures so that they are impartial in providing advice and representation.

Social media creates a context in which lawyers may form visible links to clients, judges and other lawyers. Before entering into an online 'relationship', lawyers should reflect upon the professional implications of being linked publicly. Comments and content posted online ought to project the same professional independence and the appearance of independence that is required in practice.

2 Integrity

Legal professionals are expected to maintain the highest standards of integrity in all dealings, including those conducted over social media. Bar associations and regulatory bodies should consider

encouraging their members to think about the impact social media could have on a lawyer's professional reputation. In addition, online activity is hard to control. For example where something is posted that is damaging to a practitioner's reputation goes 'viral' over the internet, it may be difficult to subsequently repair the harm to the practitioner's professional standing and reputation. Comments or content that are unprofessional or unethical could damage public confidence, even if they were originally made in a 'private' context.

3 Responsibility

To understand use: most social media websites have specific privacy settings that apply to users of the website. Bar associations and regulatory bodies should encourage their members to assess these privacy settings of any social media account, be it personal and/or professional. It should be noted that adopting privacy settings does not necessarily mean the information posted on the social media sites will be protected. In addition, legal professionals should be reminded to maintain responsible use of social media based on a full understanding of the implications (noting that information published on social media is not easily removable) and, at the same time, monitor and regularly review their use of and content on social media. If any mistakes arise, these should be immediately rectified. Legal professionals should be reminded that information on social media sites could be produced by either side in litigation.

To clarify use: when lawyers present themselves online as legal professionals, it is possible that their statements may be relied upon as legal advice and for retainers to be inadvertently created. In this case, individual lawyers or law firms could assume

liability to unknown third parties and/or engage in the unauthorised practice of law in jurisdictions where the lawyer is not licensed to practise. Bar associations and regulatory bodies should remind their members about the ramifications of posting content online, and they should encourage lawyers to clarify their capacity and whether the content is intended to be relied upon as professional advice. More specifically, bar associations and regulatory bodies should call attention to the relevant rules of professional conduct in their respective jurisdictions.

To use appropriately: bar associations and regulatory bodies should remind lawyers to consider whether a particular medium is an appropriate forum for their intended output based on its popular use and the likely audience. As with all printed text, tone is difficult to convey online. Social media provides a platform for quick, short messages to be disseminated widely. What was intended to be humorous or frivolous may be received as a serious declaration. Bar associations and regulatory bodies should remind legal practitioners to consider the context, the potential audience and whether the comment is clear and unambiguous. As a general guidance, legal practitioners ought not to do or say something online that they would not do or say in front of a crowd. Lawyers should also be reminded that inappropriate use of social media can also lead to exposure to discrimination, harassment and invasion of privacy claims as well as exposure to claims for defamation, libel and other torts.

To adhere to practice promotion, advertising and solicitation rules, codes and legislation in use: practice promotion, advertising and solicitation rules, codes and legislation may affect social media use. Where there are such restrictions applicable, these must be adhered to online.

Conflicts of interest: conflicts of interest are not always limited to party representation. Issue conflicts may also arise and create political, if not ethical, issues with clients. Lawyers must be sensitive to postings and use of social media that may reveal a position that is contrary to that taken by their clients and may impact on particular matters.

4 Confidentiality

It is important that lawyers can be trusted with private and confidential information, and that the public perceive this. Bar associations and regulatory bodies should remind lawyers that social media platforms are not appropriate for dealing with client data or other confidential information unless they are fully satisfied that they can protect such data in accordance with their professional, ethical and legal obligations.

In addition, bar associations and regulatory bodies should encourage lawyers to consider client confidentiality more generally when using social media. For example, information that locates a lawyer geographically and temporally could be used to show professional involvement with a client who does not wish to publicise that he or she is seeking legal advice. Even the use of hypothetical questions or anonymous fact patterns may inadvertently reveal confidential information. More specifically, they should call attention to the relevant rules of professional conduct in their jurisdiction.

5 Maintaining public confidence

Legal practitioners should be encouraged to monitor their online and offline conduct in the same way. Restraint should be exercised so that online conduct adheres to the same standard as it would offline in order to maintain a reputation demonstrating

characteristics essential to a trusted lawyer, such as independence and integrity. Statements should be true and not misleading.

As with offline activity, lawyers have personal autonomy over their private affairs. The difference with online social media is that a lawyer's life and activities may be exposed more widely to public gaze, which may have the effect of highlighting the key characteristics of the lawyer. It is essential that bar associations and regulatory bodies ensure that lawyers appreciate these key characteristics and risks when pursuing their personal social life online. In addition, because it is common to use a variety of social media, bar associations and regulatory bodies should remind lawyers to consider whether the sum total of their social media activity portrays a legal professional with whom clients can entrust their affairs.

6 Policy

When a legal practice engages in the use of social media, employees of the practice should be given clear guidance and instructions on their correct use. Bar associations and regulatory bodies should encourage law firms to consider how to develop clear and coherent policies and guidelines on social media use. These policies and guidelines could be incorporated in letters of employment and induction training and supplemented by regular training to educate employees on new and emerging risks in this area. Bar associations and regulatory bodies should consider appropriate rules or commentary to inform and complement existing rules.

Bar associations and regulatory bodies should specifically advocate for clear parameters by law firms on whether and how employees are allowed to use social media on the firm's behalf or otherwise

in a work related capacity. An effective social media policy will ensure that firms project a considered, consistent image online, as well as help comply with laws and regulations pertaining to them. Moreover, if employees are permitted to contribute, bar associations and regulatory bodies should encourage law firms to suggest ways that lawyers can differentiate whether they are uploading content in a personal or work-related capacity.

Other IBA Legal Instruments available:

IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

IBA Policy Guidelines for Training and Education of the Legal Profession Part - II (2014)

Anti-Corruption Guidance for Bar Associations (2013)

IBA Guidelines on Party Representation in International Arbitration (2013)

IBA Revised Handbook on the General Agreement on Trade in Services (2013)

IBA International Principles on Conduct for the Legal Profession (2011)

IBA Policy Guidelines for Training and Education of the Legal Profession Part - I (2011)

IBA Guidelines for Drafting International Arbitration Clauses (2010)

IBA Rules on the Taking of Evidence in International Arbitration (2010)

Developing, Implementing and Maintaining a Young Lawyers' Organisation (2008)

Guide for Establishing and Maintaining Complaints and Discipline Procedures (2007)

Notes



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