

Ethics, the Internet and Social Networking Sites



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Ethics

Lawyer cannot ask Paralegal
to do something in violation
of Rule 4-5.3(b)

Paralegals & Facebook

- * Can a paralegal “friend”....
- * *Prospective juror*
- * *Witness*
- * *Judge*
- * *Judicial Candidate*
- * *Judicial Assistant*
- * *Opposing Party?*

Can a Paralegal “Friend” a Juror Before, During or After a Trial?

Rule 4-3.5(d)

- * (1) before trial... “communicate or cause another to communicate ... member of venire”
- * (2) during trial... any member of jury
- * (3) after trial... except to determine legal challenge to verdict or as authorized by court

HINT: forget Internet is even involved. Use ethical judgment as if your contact was in person.

Can a Paralegal “Friend” a Witness?

Rule 4-4 Transactions w Persons Other Than Clients

- * 4-4.1: Truthfulness in Statements to Others (false statement of material fact or law);
- * 4-4.2: Person Represented by Counsel;
- * 4-4.3: Unrepresented Persons: can't state or imply disinterested; reasonable effort to correct misunderstanding; no legal advice.

And...

Can a Paralegal “Friend” a Witness?

- * 4-4.4: Respect Rights Third Persons: not use means w/o substantial purpose to embarrass, delay or burden or obtain evidence in way which violates person’s legal rights.

HINT: Recognize there is a “transcript” of your communication (could be good/bad)

Can a Paralegal “Friend” a Judge?

- * JEAC 2009-20: Judges cannot add lawyers who may appear before them as “friends” or permit lawyers to add the judge as a friend (paralegals as extension)
- * Judges can have fan pages
- * Other states have varying rules. Ohio 2010-7 allowed with caution since “friend” not mean same in post-social media world.

NOTE: this appears to be prohibition for judge, not lawyer/paralegal, but don't do it.

Can a Paralegal “Friend” a Judicial Candidate?

Apparently “Yes”

Reportedly a candidate in Broward obtained a JEAC opinion holding that judicial candidates are free to accept friends who may subsequently appear in front of him if elected/appointed. Likely extends to paralegals.

Can a Paralegal “Friend” a Judicial Assistant?

- * JEAC 2010-04
- * Yes, but be careful. Judge does not need to require JA to refrain from adding appearing-lawyers “so long as the activity is conducted entirely independent of the judge and without reference to the judge or judge’s office.”

NOTE: use judgment as if there was no Internet and realize (a) there’s a “transcript” and (b) lawyer/paralegal is leaving good judgment in hands of another person.

Can a Paralegal “Friend” the Opposing Party?

- * No (Rule 4-4.2, Rule 4-3).
- * But a lawyer/paralegal probably can access publicly available portions of opponent’s Facebook page, see New York Bar Opinion 843 (Sept. 10, 2010).
- * Lawyer/paralegal cannot “friend” executives of opposing party's corporation represented by counsel since this is ex parte communication (San Diego Bar 2011-2) May 2011

Lawyer Asking Paralegal to “Friend” People?

- * See Philadelphia Bar Opinion 2009-02
- * May be deceptive under Rule 4-8.4 (FL equivalent)
- * Supervisory lawyer can't ask third party to do what lawyer cannot (Rule 4-5.1 and 4-5.3)

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 07-020592 CASE 003

SHELLEY BESWICK and CHRIS
BESWICK, individually and as parents and
natural guardians of KACIE BESWICK,
their minor daughter,
Plaintiffs,

vs

HON. MILEY RODRIGUEZ POWELL

NORTHWEST MEDICAL CENTER, INC.,
d/b/a NORTHWEST MEDICAL CENTER, a
Foreign corporation; DEBRA ALLEN, R.N.,
EYNEETHE M O'TOOLE, R.N.; FERN
TAISENCHOY-BENT, M.D. and FERN
TAISENCHOY-BENT, M.D., P.A.,
Defendants.

**ORDER ON DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' AMENDED
ANSWERS TO SOCIAL MEDIA INTERROGATORIES NUMBERS 1 AND 2 AND TO
COMPEL EXECUTION OF AUTHORIZATION FOR RELEASE OF RECORDS FROM
FACEBOOK**

THIS CAUSE came before the Court on Defendants' Motion to Compel Plaintiffs' Amended Answers to Social Media Interrogatories Numbers 1 and 2 and to Compel Execution of Authorization for Release of Records from Facebook. The Court having considered same, having heard arguments of counsel and being otherwise duly advised in the premises, finds and decides as follows:

Plaintiffs commenced the current suit alleging, *inter alia*, medical negligence. Plaintiffs allege that the Defendants' committed medical negligence during and after the delivery of their minor daughter, Kacie Beswick ("Kacie"). More specifically, Plaintiffs allege that the Defendants' negligence caused Kacie permanent brain injuries. Plaintiffs seek, *inter alia*, non-economic damages, including 1) mental pain and suffering; and 2) loss of Kacie's companionship, society, love, affection, and solace.

Facebook Interrogatories

INSTRUCTIONS/DEFINITIONS:

For downloading the content of a Facebook account, please see <https://www.facebook.com/video/video.php?v=10150292657680484>

INTERROGATORIES:

For each Plaintiff who has Internet social media website account(s), please provide your username and password or, alternatively, under Rule 1.340(c), please provide a copy of all non-privileged content/data shared on the account in the last five (5) years. In the event that you contend there is a privilege to assert, please provide a privilege log.

For any accounts identified in Answer to 1-7, please describe any content which you have deleted or erased on or after March 1, 2001.



Using Social Media during Voir Dire

Using Social Media during Voir Dire

As long as it is public, not deceptive, and not “contact,” a lawyer/paralegal likely can access information. Compare to surveillance or other real-life non-contact.

Carino v. Muenzen (NJ 2010): Non-disruptive use by one lawyer was not unfair to other party. “Playing field” was level since all sides can access Wi-Fi.

Johnson v. McCullough (MI 2010): litigants have greater burden to bring juror misconduct to light due to Internet accessibility (no such burden in FL).

Using Social Media during Voir Dire

spokeo

NAME EMAIL PHONE USERNAME FRIENDS

Enter a first and last name Example: John Doe or Jane Doe, Los Angeles, CA



Using Social Media during Voir Dire

- * Google: [name] + [town or business/job]
- * Google News: [name]
- * Palm Beach Post / Sun Sentinel
- * Facebook / LinkedIn / Twitter
- * YouTube, Photobucket, Shutterly, Flickr
- * Employer's website




Using Social Media during Voir Dire

- * Wink.com (catch-all)
- * Zoominfo.com (business search)
- * YoName.com
- * Blogsearch.google.com
- * PBSO booking blotter
- * Comp claims www.jcc.state.fl.us

The logo for Wink.com, featuring the word "wink" in a bold, blue, lowercase sans-serif font.The logo for Zoominfo.com, featuring a blue starburst icon to the left of the word "zoominfo" in a blue, lowercase sans-serif font.The logo for YoName.com, featuring a magnifying glass icon over three green human figures, with the word "yoName" in a green, lowercase sans-serif font below.

Using Social Media during Voir Dire

- * Political Contributions (county supervisor of elections)
- * Consumer Complaints (county consumer affair site)
- * Google Streetview
- * Sunbiz.org 

“Bonus” idea

Number Guru on web or Android / iPhone

