The Challenges of Social Media for Tax Practitioners

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The use of social media both personally and professionally has dramatically increased in popularity over the last decade. Modernly, lawyers and tax practitioners use social media to advertise, network, and stay informed on the latest developments in their respective practice areas. While the utility of this transformative technology is evident, practitioners often face a number of ethical and practical challenges related to the use of social media which give rise to professional responsibility concerns.

This paper will briefly explore the ethical and practical challenges related to social media that tax practitioners should be aware of when they represent clients in the future.

The Benefits of Social Media

Social media can be a valuable tools for attorneys to contribute as subject-matter experts about important legal topics, share legal publications and articles, and market their expertise to potential clients. Twitter is a growing platform for lawyers who wish to connect with large target audiences across the country. Twitter’s restrictions to 280 characters makes sharing press releases, published articles, and important topics more informal. The by-product of this is attorneys become more approachable to potential clients in a modern world.¹

Facebook and Instagram give attorneys a way to reach potential new clients through social engagement and advertisement. Facebook content can dramatically increase online traffic and business to a law firm. Attorneys can create social communities that leave potential clients and legal colleagues more informed, involved, and inspired.²

Finally, LinkedIn is a great way for attorneys to learn about current events and publications.³ LinkedIn is a great forum for new and experienced attorneys to advertise about professional association meetings, and to build their own “brand” within their respective professional network.⁴ Social media is a very useful tool for attorneys if used within the proper ethical framework.

¹ https://www.disruptiveadvertising.com/social-media/lawyers-social-media
² Id.
³ Id.
⁴ Id.
Social Media’s Practical Challenges

While social media can be beneficial, it poses many practical challenges that attorneys should be aware of. For instance, attorneys should be cautious with who they decide to “friend” or “connect” with through social media. Social media connections may wrongly imply shared views or ethics on a certain topic, and may be outside of the ethical boundaries set forth by the American Bar Association or state bar associations. Attorneys should do their homework on people that wish to connect with them, and treat their own professional connection as valuable.

In addition, attorneys should be wary of mixing personal and professional social media networks. The overly political acquaintance an attorney has on Facebook may not be an appropriate connection on LinkedIn. Similarly, outspoken folks with polarizing views or less-than-stellar reputations may not be an asset in your professional network or to your law firm’s public reputation.

Finally, social media can be a useful tool for IRS investigators to learn more about taxpayers who are under audit or criminal investigation. Since 2011, the IRS has dramatically increased its use of artificial intelligence and big data. On December 18, 2018, the IRS issued a Request for Information regarding tools that could be used for social media research. The IRS states that it will only use the tool to “assist with previously identified tax compliance cases” and will not use the tool “to search internet or social media sites for purposes of initiating new tax audits.”

Attorneys should be wary about who they connect with through social media, they should be cautious about mixing personal and private networks, and they should advise clients about social media usage if the client is the subject of an ongoing audit or investigation.

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6 Id.
7 Id.
8 Id.
9 Id.
**Ethical Boundaries and Implications**

As a whole, attorneys need to understand the ethical issues and rules relating to social media usage. This especially rings true for judges or arbitrators. On March 06, 2018, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 480 to provide guidance to attorneys on the use of social media.

Opinion 480 states that lawyers who publically communicate using social media “must comply with the Model Rules of Professional Conduct, including the Rules regarding confidentiality of information relating to the representation of a client.” In addition, Opinion 480 analyzes a lawyer’s duty of confidentiality pursuant to Rule 1.6, and states that lawyers who use social media “must maintain the confidentiality of information relating to the representation of a client, unless that client has given informed consent to the disclosure..” Finally, Opinion 480 advises lawyers of the implications social media may have on the impartiality and decorum of a tribunal pursuant to Rule 3.5 and the rules about trial publicity pursuant to Rule 3.6.

**Conclusion**

While social media can be a valuable tool for attorneys, they are often faced with a number of ethical and practical challenges related to the use of social media which give rise to professional responsibility concerns. Attorneys should be cautious when they use social media, and advise clients to do the same. The American Bar Association and state bar associations have great resources for attorneys to educate themselves on the proper use of social media for now and in the foreseeable future.

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