

Lawyers Can't Afford to Be Behind the Curve When It Comes to Social Media

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For seasoned lawyers who have been practicing for years, social media isn't necessarily second nature. In fact, some don't know the difference between tagging and tweeting.

However, Pew Research estimates that 65 percent of adults log into social media every day. Therefore, like it or not, [New Jersey lawyers](#) need to understand the basics of sites like [Twitter](#), [Facebook](#), and [LinkedIn](#) simply to represent their clients effectively.

First, social media posts and pictures are increasingly being requested as part of the discovery process. Information gleaned from Facebook, Twitter, and other similar sites has the power to influence criminal matters, employment lawsuits, insurance claims/personal injury, family law and even [general business litigation](#). Last month, a Georgia woman's damage award in a car accident lawsuit was cut in half, in large part due to Twitter posts appearing to show that she was enjoying a full life after the crash. However, social media information is of no use to lawyers unless they understand how to collect, preserve, and authenticate it.

Second, social media can be a substantive legal issue. The number of cases involving sites like Facebook, Twitter, and LinkedIn has climbed in the past several years. For example, a California federal court was asked to consider whether Twitter followers could be classified as proprietary business information. Similarly, a Pennsylvania court was asked to determine what should happen to an employee's LinkedIn account when he or she leaves the company. The actual social media companies have also become the subject of lawsuits, with several class-action lawsuits challenging their privacy policies and data collection procedures.

Third, attorneys are often called upon to advise their clients about their use of social media. For instance, companies need to understand what information can and should be shared via sites like Twitter and Facebook. Mistakes are easy to make as the ground rules are still being established. Netflix recently announced that it received a Wells Notice from the Securities and Exchange Commission in connection with a seemingly innocuous social media post made by its CEO, Reed Hastings.

Employers can also violate state and federal employment laws when using Facebook and other social media platforms to screen applicants. Crafting an enforceable employee social media policy can also be difficult. The National Labor Review Board has found that employee policies that restrict employees' use of social media can violate federal labor laws, particularly when they are so broad that they prohibit the discussion of wages or working conditions among employees.

Finally, lawyers should learn the ins and outs of social media so they don't land in hot water themselves. This past year, a [New Jersey lawyer](#) was hit with a defamation suit after using his

blog to post unflattering commentary about a defendant, and a New York state was disciplined for “friending” lawyers on social media.