



---

---

---

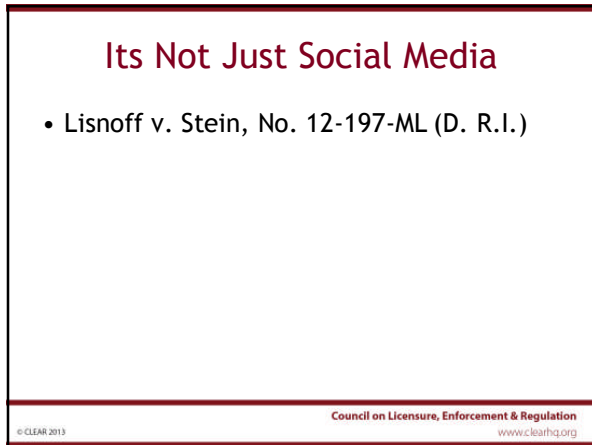
---

---

---

---

---



---

---

---

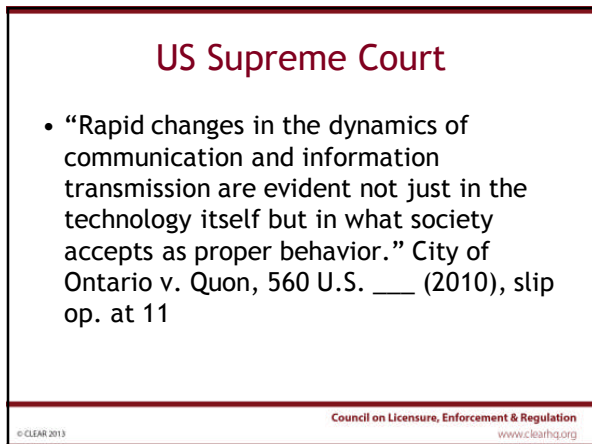
---

---

---

---

---



---

---

---

---

---

---

---

---

### Attorney Disciplined for Blog Posts

- Attorney Peshek's misconduct in Illinois consisted of publishing a blog with information related to her legal work . . . . The public blog contained confidential information about her clients and derogatory comments about judges. The blog had information sufficient to identify those clients and judges using public sources.

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Attorney Has First Amendment Right to Blog About Criminal Case Without Client Consent

- Blogged about cases he defended
- Used clients' names without consent
- "would have been protected speech had the news media or others disseminated it."

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Categories of Use in Cases

- Violation of law or ethics in itself
- Evidence of violation of other laws or ethical rules

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### ER Physician Disciplined for Facebook Post

- Emergency room physician posted “a few of her clinical experiences in the Hospital’s Emergency Department” on her Facebook Account.
- She “did not use patient names and had no intention to reveal any confidential patient information.”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### ER Physician Disciplined for Facebook Post

- “However, the nature of one person’s injury was such that the patient was identified by unauthorized third parties.”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### “Lying Down Game”



© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### AMA Policy

- No posting of identifiable patient information
- Guard your own privacy through settings
- Maintain appropriate boundaries, perhaps separating personal and professional content
- Watch each other's backs

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### How Do You Get It

- From the site
- From the member
- On your own
- Through others

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Facebook's Response to Subpoenas

- Get it from the user, not Facebook
- Stored Communication Act, 18 U.S.C § § 2702 and 2703
- Subpoenas must come from the federal court in the Northern District of California or a California state court
- Subpoenas must be personally served

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

**Facebook's Response to Subpoenas**

- Subpoenas must not be "Overly Broad, Unduly Burdensome or Vague"
- Subpoenas must not seek privileged or proprietary information
- Facebook will not testify as custodian or expert
- Facebook expects to be paid for its time

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

**Stored Communications Act**

- 18 U.S.C. § § 2701-2712
- 1986 law
- Cover
  - Electronic communication services
  - Remote computer services
- Social media not contemplated - "ill-suited to address modern forms of communication"

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

**Consider a Preservation Order**

- Users may deactivate or delete accounts
- Deleted accounts may nevertheless be recoverable
- Service's privacy policy may provide details

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Obtaining from Licensee

- Ask about social media use and user names in discovery
- Include information about blogs and Twitter
- Smart users will limit privacy
- Facebook lets users download their own information

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### *Romano v. Steelcase Inc.*

- Defendant in a personal injury case moved “for an Order granting said Defendant access to Plaintiff’s current and historical Facebook and MySpace pages and accounts, including all deleted pages and related information”
- 30 Misc. 3d 426, 427, 907 N.Y.S.2d 650, 651, 2010 N.Y. Slip Op. 20388, 2010 WL 3703242 (N.Y. Sup. Ct. 2010)

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### *Muniz v. United Parcel Serv., Inc.*

- “UPS contends that Jaffe’s electronic postings about the case will reveal relevant evidence of his time spent on this case, his market rates, and his skill in handling the instant litigation -- and that this information is necessary because Jaffe failed to provide such evidence in support of Plaintiff’s fee request.”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### *Muniz v. United Parcel Serv., Inc.*

- “In an attempt to demonstrate that its discovery demand would yield relevant information, UPS submitted some postings from Jaffe’s Facebook page, as well as three postings from one of the listservs at issue, that of the California Employment Lawyers Association (“CELA”).”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Obtaining on Your Own

- Ethics rules/opinions for attorneys
  - Available to public
  - Available to members
  - Available to friends

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Attorney Professional Responsibility

- May you advise a client to delete social media that might be evidence?

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

**Attorney Professional  
Responsibility**

- Model Rule 3.4 - “A lawyer shall not . . . Unlawfully alter, destroy or conceal a document or other material having potential evidentiary value [or counsel a client to do so.]”

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---

**Attorney Professional  
Responsibility**

- May you obtain publicly-available social media?

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---

**Attorney Professional  
Responsibility**

- What if the information is available only to “friends?”
  - May attorney ask to “friend” licensee?
  - May attorney ask another to do so?
  - What if true purpose is not revealed?
  - What if deception is used?
  - Does it matter if the licensee is represented?

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---



**Model Rule 8.4 (a)**

- May not violate the Rules of Professional Conduct “through the acts of another”

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---

**Model Rule 8.4 (c)**

- May not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation”

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---

**Model Rule 4.1 (a)**

- May not knowingly “make a false statement of material fact or law to a third person”

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

© CLEAR 2013

---

---

---

---

---

---

---

---

### Model Rule 4.2

- “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Model Rule 4.3

- “In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.”

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

### Attorney Professional Responsibility

- If a lawyer discovers he already knows a “friend,” may the lawyer use information accessible only to friends?
- If an investigator has already “friended” the licensee and gathered information, may the lawyer use it?

© CLEAR 2013

Council on Licensure, Enforcement & Regulation  
www.clearhq.org

---

---

---

---

---

---

---

---

Making the Most of the Media:  
The Regulator's Relationship with Social and  
Traditional Media

Raleigh, North Carolina  
April 25, 2013

JAMES A. WILSON, ATTORNEY AT  
LAW

5322 Highgate Drive, Suite 243  
Durham, North Carolina 27713  
Telephone 919-361-4300  
Facsimile 919-361-4305  
E-mail jim@jamesawilson.com  
www.jamesawilson.com

[www.WilsonsReporter.com](http://www.WilsonsReporter.com)

© CLEAR 2013 Council on Licensure, Enforcement & Regulation www.clearhq.org

---

---

---

---

---

---

---

---