

SOCIAL MEDIA PRACTICE NOTE

“Social media” is a term commonly used to describe a broad array of online media and web-based portals designed to create dialogue, share content, publish materials and allow live discussion between participants around the world. Basically, social media allows us to share our lives, ideas, creations and communications on the Internet.

Various types of social media include social networks; professional networks; forums and weblogs (or blogs); and content sharing sites.

The use of social media by lawyers is gaining popularity. Lawyers today use social media for marketing purposes, for recruitment, for advertising and to communicate with clients.

Whilst the use of social media can provide lawyers with new opportunities to conduct their practice, the services offered can compromise a lawyer’s professional and ethical obligations if not implemented carefully. Social media service providers often hold data and operate servers overseas, sometimes in varying locations depending on cost, resource availability and time zone requirements. Breaches of confidentiality and security, for example, can occur where client information is stored by third parties.

This practice note is designed to assist by setting out guidance for lawyers when using social media in their legal practice.

This practice note should be considered in light of the legislation, Rules and common law. The practice note is intended to be read in conjunction with the relevant practice rules and statements of ethics in the *Legal Profession Uniform Law (NSW)*, the *Legal Profession Regulation* and the *Solicitors Rules*. Since the practice note is not part of the Solicitors Rules its contents are not binding.

Practice Note

The Solicitors’ Rules apply to lawyers practising as solicitors or as barristers and solicitors, including those who use social media services in their legal practice.

Lawyers cannot contract out of their professional obligations owed to the Court or their client or delegate them to another person.

In all of their dealings, be it with clients, other lawyers, courts or third parties, lawyers are expected to behave professionally and with appropriate courtesy.

Rules dealing with Courtesy, Competence and diligence, Confidentiality, File Retention and Conflicts are particularly relevant to the use of social media services by lawyers.

A lawyer's fiduciary obligations to their client inherently require maintenance of confidentiality of client information unless otherwise authorised.

A lawyer must obtain consent from their client before disclosing the client's confidential information to a person other than a principal or employee of the legal practice, or another person to whom disclosure is authorised by law, such as an auditor or professional indemnity insurer.

The use of social media by a lawyer may, if not carefully managed, reveal client confidential information inadvertently. For example, if a lawyer tweets that s/he is in a certain location, s/he may unintentionally disclose that s/he is working with an identifiable client and thereby breach the duty of confidentiality.

Lawyers should take particular care to avoid creating unintended solicitor-client relationships on social medial channels.

Contemplation: When contemplating using social media services in their legal practice a lawyer should:

1. Consider whether the use of social media services will benefit the lawyer's clients;
2. Consider whether the use of social media services will benefit the lawyer's practice;
3. Ensure they are able to comply with their professional/ethical obligations';
4. Appreciate and appropriately manage the risks that may arise with the use of social media services.

Practice management: When using social media services it would be prudent for a lawyer to:

1. Put in place a Policy on Use of Social Media Services to document appropriate requirements for the use of social media services to the lawyer's practice;
2. Seek to keep up to date on technological changes as they impact the lawyer's practice of law;
3. Have procedures and systems to ensure the lawyer's staff and other resources (including non-legal staff and outsource provided staff) are competent in their understanding and use of social media services in the legal practice, use those services appropriately and are appropriately supervised;
4. Take care with access settings for staff of the lawyer's legal practice to ensure social media services are only available to appropriate contacts and that

inadvertent access or disclosure of confidential client information cannot occur;

5. Ensure communications with clients through social media service providers are clear and communication benefits do not suffer adversely through change of medium. Maintain management of client expectation through advice on matter developments, explanation of legal processes and outcomes as you would through communications provided by more traditional medium;
6. Be mindful about providing information that could be construed as legal advice. It is essential to make it clear to the reader that any information provided is not legal advice and cannot be relied upon for that purpose.