

Advertising Ethics & Social Media



Web Solutions

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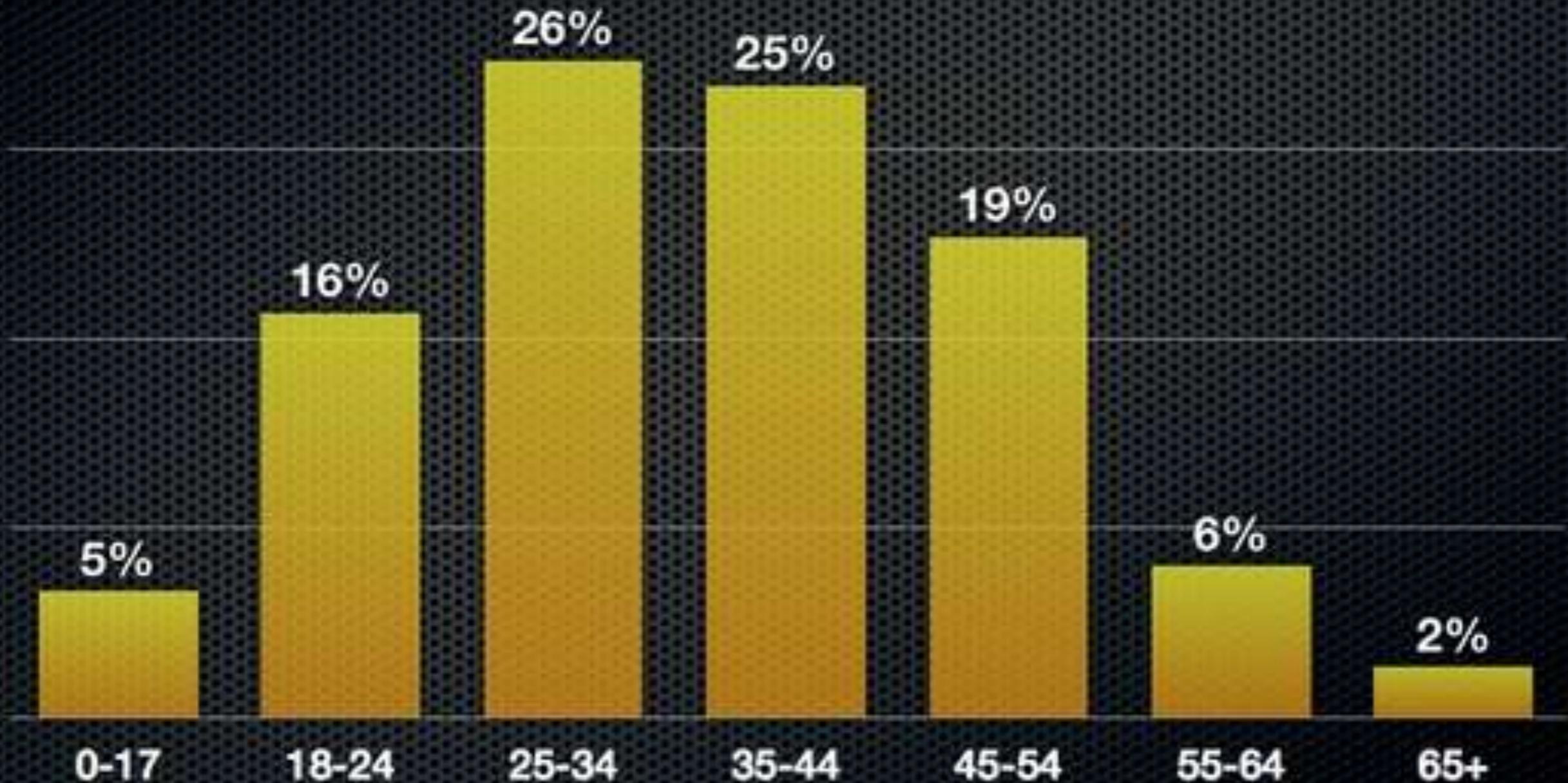
Introduction

- ❖ Internet is how you are going to build business
- ❖ Many types of internet marketing campaigns
 - ❖ Websites & SEO
 - ❖ Pay per click (PPC)
 - ❖ Social media



Age distribution on social networks & online communities

Average based on the 24 sites included in this survey.

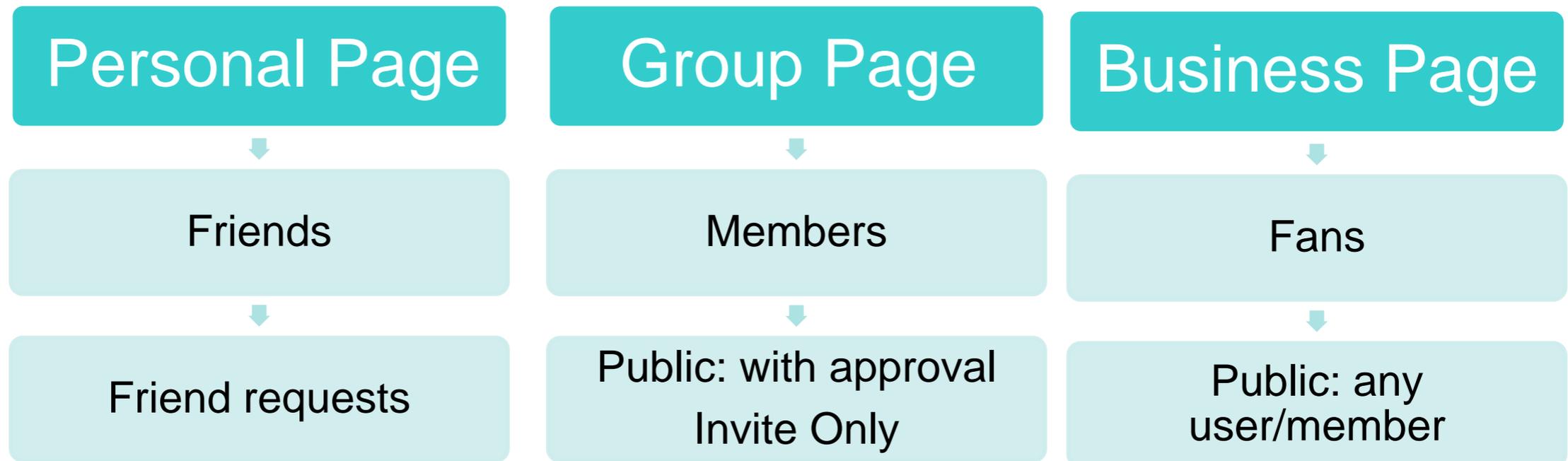


*Data source: DoubleClick Ad Planner (Google), U.S. demographics, June 2012



Facebook

- ❖ Types of profile: business/service, group, personal





How does it work?

- ❖ Security Settings: group/personal profiles

The screenshot shows the Facebook status update interface. At the top, there are buttons for "Update Status" and "Add Photos/Video". Below these is a text input field with the placeholder "What's on your mind?". A tip bar below the input field reads "Tip: You can also tag friends of your friends". Underneath is a section titled "Who are you with?" with a location tag for "Philadelphia" and a "Post" button. A dropdown menu is open over the "Friends" privacy setting, showing options: "Public", "Friends" (selected with a checkmark), "Only Me", "Custom", "Close Friends", "Work", and "See all lists...". A large red arrow points to the "Friends" option in the dropdown menu. Below the status update area, a post from the "Pennsylvania Bar Association" is visible, featuring their logo and a link to an e-brief.



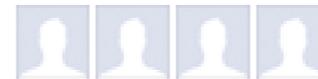
Organize “friends” via lists

What Are Lists?

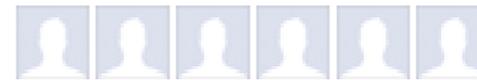
A quick, optional way to organize friends so you can control what you see in your News Feed and post updates to specific people. We won't tell your friends if you add them to these three new lists:



Close Friends: Your best friends, who should show up more in News Feed.



Acquaintances: Friends who should show up less in News Feed.



Restricted: Friends who can only see posts and profile info you make public.



Close



Next



- ❖ What is it?
 - ❖ A social networking website for people in professional occupations used for mostly professional networking
- ❖ Types of profiles:
 - ❖ Personal
 - ❖ Business
 - ❖ Groups
- ❖ Mostly men use LinkedIn

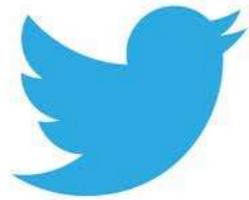
LinkedIn How does it work?

- ❖ Business company page:
 - ❖ Current company employee and position listed in the Experience section on profile
 - ❖ Have company email added and confirmed LinkedIn account
 - ❖ Must have several connections
 - ❖ http://help.linkedin.com/app/answers/detail/a_id/1594

LinkedIn. How does it work?

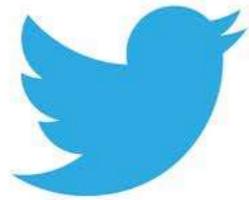
- ❖ Groups: open group or members only group
- ❖ Personal page: send out connections; introduce connections; search for people

The screenshot shows a LinkedIn profile for Louisa T. Chen. The profile includes a profile picture, name, title (Founder & Partner at LCL Web Solutions, LLC, Legal Content for Lawyers by Lawyers), location (Greater Philadelphia Area), and industry (Internet). It also lists her current employer (LCL Web Solutions, LLC, Legal Content for Lawyers by Lawyers, White and Williams LLP) and education (Temple University - James E. Beasley School of Law). The profile has 114 connections and buttons for 'Improve your profile' and 'Edit Profile'. The page also features a search bar, navigation tabs (Home, Profile, Network, Jobs, Interests), and a 'People You May Know' section with a 'Connect' button. A sponsored advertisement for Capital One is visible at the bottom right.



Twitter

- ❖ What is it?
 - ❖ Created in 2006
 - ❖ An online social networking service and microblogging allowing users to send and read text based messages known as “tweets”
- ❖ How many users
 - ❖ As of 2012, it has over 500 million registered users



How does it work?

- ❖ Send “tweets” of up to 140 characters
- ❖ Use of hashtags # to mark keywords or topics
 - ❖ Did you watch #breakingbad tonight?
 - ❖ Use it to find a conversation or topic to join
- ❖ Retweet someone’s tweet



Google Plus

- ❖ What is it?
 - ❖ 2nd largest social networking site in the world
 - ❖ Launched in June 2011
 - ❖ Surpassed Twitter in January 2013
- ❖ How many people use it?
 - ❖ 500 million users and 235 million people use it actively in a month



How does it work?

- ❖ Google has described Google+ as a "social layer" that enhances many of its online properties
- ❖ It integrates all the Google services available
 - ❖ Friends in circles
 - ❖ Video hangouts
 - ❖ Google pages
 - ❖ Google local
 - ❖ Youtube

Is Social Media Governed by the Rules of Professional Conduct?

- ❖ Lawyer advertising is a form of commercial speech and is entitled to 1st Amendment protection. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)
- ❖ That which beckons business or invites a transaction (directly/indirectly)
 - ❖ Contact me for a case evaluation...
- ❖ *Texans Against Censorship Inc. v. State Bar of Texas* (E.D.Tx, 1995, affirmed by 5th Circuit 1996)
 - ❖ Ex: Attorney Adler wants to hear what subscribers of Pasadena Citizen (magazine) think about reforming the judicial selection process in Texas [no inclusion of “hire me” language].
 - ❖ Ex: Personal injury attorney newsletter [inclusion of “hire me” language]...Not inextricably intertwined.

Is Social Media Governed by the Rules of Professional Conduct?

- ❖ If your social media profile/post contains a (direct/indirect) beckon for business, then it is commercial speech.
- ❖ In Pennsylvania, if your speech **contains information about your services**, then you must comply with the Pennsylvania Rules of Professional Conduct which relate to advertising.
- ❖ Hunter v. Virginia State Bar (Feb. 2013)
- ❖ Two issues:
 - 1. Blogged about past clients (public info)
 - 2. No disclaimer for discussion of results

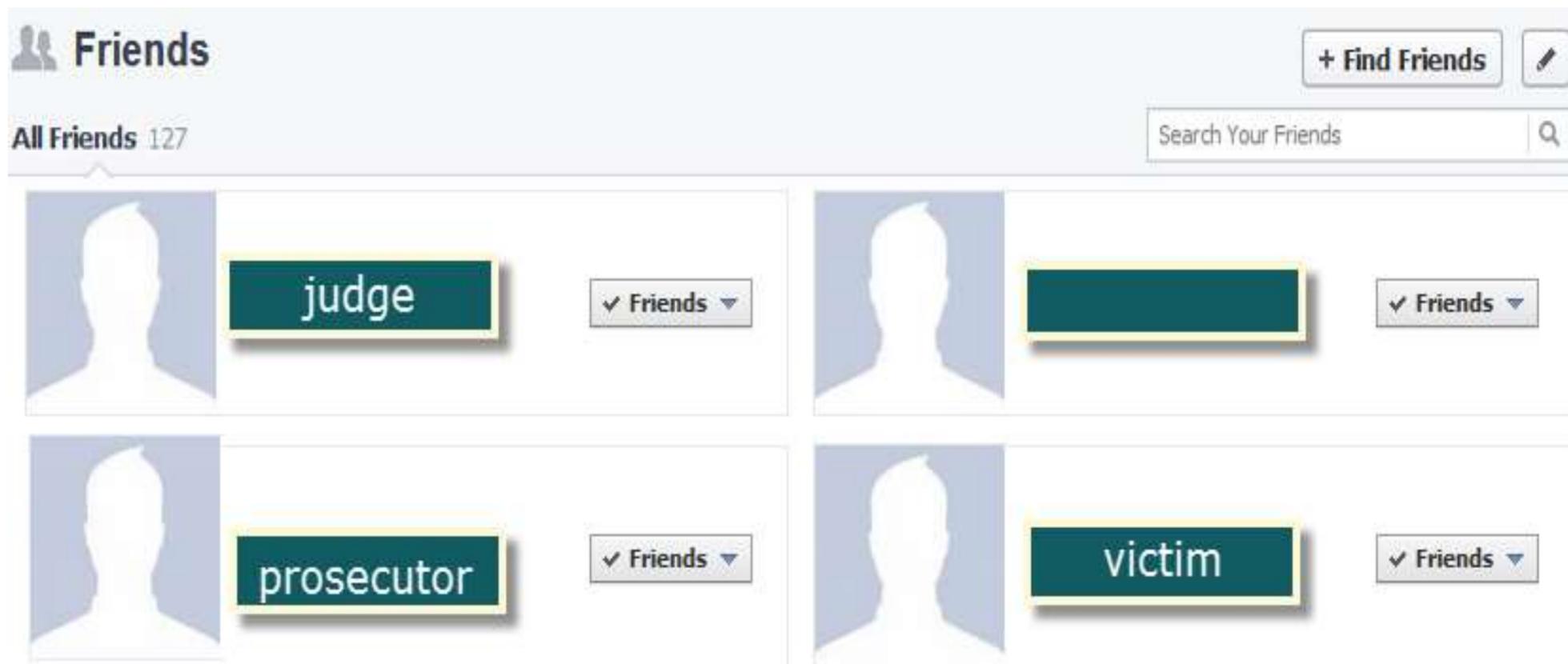
Social Media & Networking

- ❖ Who should you friend on social media such as Facebook?
- ❖ “Friend” opposing party?
 - 4.2 Communication with Person Represented by Counsel
- ❖ “Friend” current client?
- ❖ “Friend” judges appearing before (judicial staff)?
- ❖ “Friend” witness?

Social Media & Lawyering

- ❖ The Philadelphia Bar Association Opinion 2009-2
 - ❖ Attorney deposed an 18 year old witness adverse to his client
 - ❖ Attorney wanted to ask 3rd person, unknown to witness, to “friend” witness via Facebook and Myspace
 - ❖ 3rd person use true name but not reveal affiliation to attorney
- ❖ Rule 5.3: Responsibilities Regarding Nonlawyer Assistants
- ❖ Rule 8.4: Misconduct
- ❖ Rule 4.1: Truthfulness in Statements to Others

Social Media & Networking



Social Media & Networking

- ❖ Friend/Add/Join
- ❖ Other lawyers, former clients, judges, judicial employees

ALLOWED	NOT ALLOWED
Kentucky (JE-119)	California (66)
Maryland (2012-07)	Florida (2009-20)
New York (08-176)	Massachusetts (2011-6)
Ohio (2010-7)	North Carolina (08-234)
South Carolina (17-2009)	Oklahoma (2011-3)
ABA Formal Ethics Opinion 462 (2013)	
PENNSYLVANIA?	PENNSYLVANIA?

TIP: Be selective about who you choose to friend/like/etc.

Social Media & Advertising

Rules 7.1 and 7.2

- ❖ **7.1 Communications Concerning a Lawyer's Service**
 - ❖ **TRUTHFUL & NOT MISLEADING**
 - ❖ Unsubstantiated comparisons
 - ❖ Results/Reviews
 - ❖ COMMENT 3: “*The inclusion of **an appropriate disclaimer or qualifying language** may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.*”

- ❖ **7.2 Advertising**
 - ❖ (b) 2 year rule
 - ❖ (i) geographic city/location
 - ❖ (k) don't advertise that you handle cases that you actually don't

Lessons Learned

Lawyers' Social Media Posts

- ❖ Lawyer who got caught lying to a judge about death in family to get a continuance and instead went partying and pictures of her partying posted to FB (3.3 Candor to Tribunal)
- ❖ “a total asshole”; “Judge Clueless”; “evil, unfair witch” (8.2 Statements Concerning Judges and Other Adjudicatory Officers)
- ❖ Don't violate the FRONT PAGE RULE

Lessons Learned Lawyers' Social Media Posts

- ❖ "Another great victory in court today! My client is delighted. Who wants to be next?"
- ❖ Violate Rules of Professional Conduct?
- ❖ The California State Bar certainly thinks so.
 - ❖ *The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2012-186.*

Lessons Learned

Lawyers' Social Media Posts

- ❖ Is it governed by Rules of Professional Conduct?
 - ❖ Yes, because it is communication
 - ❖ Rule 1-400, which defines communication as:
 - (A) ...means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited ...
- ❖ If the post was "Another great victory in court today," Rule 1-400 would not be applicable.
- ❖ It is the second part of the post that triggers the application of Rule 1-400.
 - ❖ "[my] client is delighted. Who wants to be next?"

Lessons Learned Lawyers' Social Media Posts

- ❖ The post violated rules concerning client testimonials; no express disclaimer.
- ❖ Post said “victory” which violates ethics rules because it “guarantees, warranties, or predictions regarding the result of the representation.”
- ❖ It could be interpreted as who wants to be the next **victorious** client.

Lessons Learned Lawyers' Social Media Posts

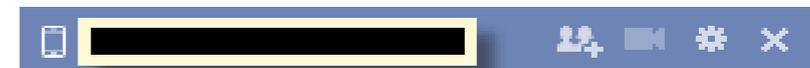
1. “Case finally over. Unanimous verdict! Celebrating tonight.”
2. “Won a million dollar verdict. Tell your friends and check out my website.”
3. “Won another personal injury case. Call me for a free consultation.”
4. “Just published an article on wage and hour breaks. Let me know if you would like a copy.”

Lessons Learned Lawyers' Social Media Posts

- ❖ What about in PA?
- ❖ If post is commercial speech; therefore, needs to comply with Rules 7.1-7.7
- ❖ “Another great victory in court today! My client is delighted. Who wants to be next?”
- ❖ Commercial speech? Yes, because it beckons for business by saying “who wants to be next.”

Social Media & A-C Relationship

- ❖ R. 1.18 Duties to Prospective Clients
- ❖ Comment 2: “without any reasonable expectation that a client-lawyer relationship will be established is not a “prospective client”
- ❖ Representing different sides
 - ❖ Family law
 - ❖ Business/commercial
 - ❖ Estate



22 minutes ago

My husband filed for divorce in PA. I moved to NY last year. We have shared custody of our teenager who is now in the hospital. I can't get any information from my husband or my son. What can I do?



Social Media Posts & Disclaimers

- ❖ RPC 1.18
 - ❖ “No attorney-client relationship is created by this exchange.”
 - ❖ “Do not discuss confidential information.”
 - ❖ “See disclaimer.”

- ❖ RPC 7.1 - Disclaimers for results
 - ❖ “Results vary with each case.”

LinkedIn Endorsements

❖ Endorsements introduced in September 2012

Skills & Expertise

Litigation Civil Litigation Legal Research Arbitration Legal Writing Courts
Product Liability Trials Mediation Personal Injury Torts Insurance Law
Trial Practice Dispute Resolution

Your connections Frank, William and 3 others have endorsed you for new skills and expertise!



Automobile Accidents x SEO x Public Liability x
Arbitration x Litigation x Legal Writing x
Legal Research x Civil Litigation x

Add to profile

Skip

See endorsements

Skills & Expertise

Edit | ↑

+ Add skills & expertise

Display your endorsements? 

Yes, show my endorsements.

No, do not show my endorsements.

What are your areas of expertise?

You can still add: 50

Save

Cancel

LinkedIn Endorsements

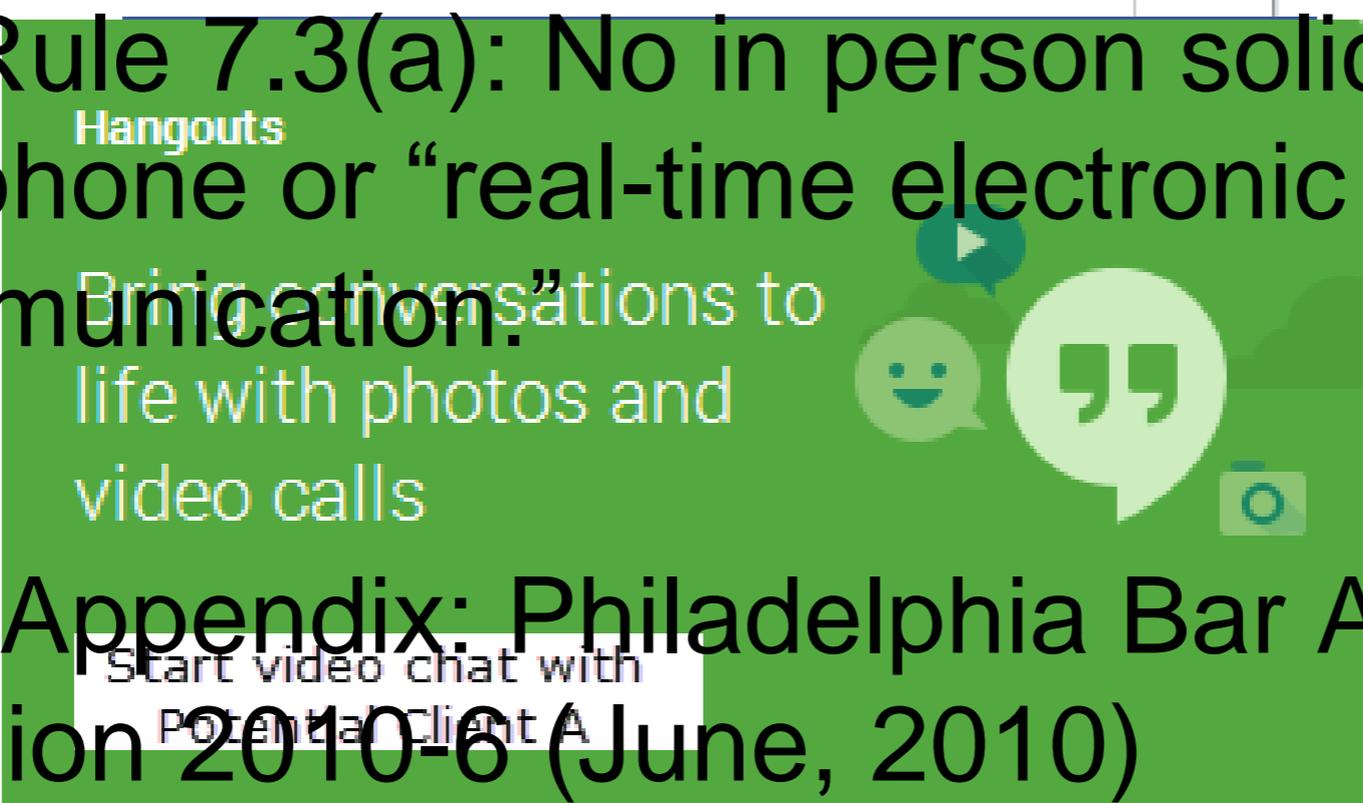
- ❖ Phila. Bar Association Opinion 2012-8
 - ❖ R. 7.1: Communication Concerning a Lawyer's Service
 - ❖ Must be truthful and not mislead the public, and convey objective verifiable information
 - ❖ R. 7.4: Communication of Fields of Practice and Specialization
 - ❖ Can say he does or does not practice in an area
 - ❖ Prohibited from stating he is a specialist unless has been certified as a specialist by an organization that has been approved by PA Supreme Court
 - ❖ Just a listing, so okay in PA, but can't say 'expert'

Rule 7.2 & Endorsements

- ❖ Paying for Endorsements
 - ❖ 7.2(c): A lawyer shall **not give anything of value...for recommending** the lawyer's services...
 - ❖ 7.2(e): An advertisement or public communication that contains a **paid endorsement shall disclose** [such]
 - ❖ Compare ABA Amendment to Rule 7.2 COMMENT 5: "*lawyers are not permitted to pay others for recommending the lawyer's services...A communication contains a **recommendation** if it **endorses** or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.*"
- ❖ Other issues: Reciprocal endorsements, endorsements from public figures (7.2(d))

Rule 7.3 – Solicitation & Social Media

- ❖ PA Rule 7.3(a): No in person solicitation, telephone or “real-time electronic communication.”



- ❖ See Appendix: Philadelphia Bar Association Opinion 2010-6 (June, 2010)

- ❖ Pennsylvania Bar Association Opinion 2008-055 (Emailing potential clients is allowed)

Tips to Stay Compliant with RPC When Using Social Media

- ❖ Post only truthful, not misleading communications
- ❖ Do not friend current clients
- ❖ Be cautious of friending judges (judicial employees)
- ❖ Do not discuss specific case information
- ❖ Do not discuss ongoing cases
- ❖ Get client permission to discuss past cases/results
- ❖ Use disclaimers (results, A-C relationship)
- ❖ Assume that your communication can be public information.

Have More Questions? Contact Us



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