are many reasons for hackers to target the information being held by *both* small *and* large law firms. Firms collect and store large amounts of data, including corporate documents, intellectual property, and records collected through e-discovery, as well as critical personal identifying information associated with identify theft, such as social security numbers, medical and tax records, and general background information on individuals.

It is important for all lawyers to understand that the relevant threats take varied forms, from malicious outsiders to insiders of all categories, including employees who intentionally steal data to those who innocently create data breaches despite their best efforts to the contrary. Detailed examples are beyond the scope of this article, but one should be aware that inadvertent breaches are as common, and damaging, as coordinated insider or outsider attacks.

In many cases, taking a preventative step as simple as enabling a four-digit passcode on a smartphone can not only save an attorney considerable stress and uncertainty if it is ever misplaced or stolen, but may also help to mitigate the potential ethical (or civil) exposure occasioned by jeopardizing clients' sensitive information. As the ABA and many bar associations begin to view features like basic encryption and secure electronic data storage as basic ethical components of the practice of law, the relative adequacy of a law firm's security protocols will undoubtedly take on added significance in the event of a security breach, regardless of whether that breach is accidental or malicious.

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Social Media, the First Amendment, and the Rules of Professional Conduct

By: Shannon C. Burr

A recent ruling by the Louisiana Supreme Court provides guidance as whether a lawyer's postings on social media pertaining to an ongoing judicial proceeding did fall within the category of First Amendment Free Speech. Specifically, the Louisiana Supreme Court ruled in 2015 that an attorney's online and social media activity violated numerous Rules of Professional Conduct and was not free speech protected by the First Amendment.[1] Joyce Nanine McCool, in what she proclaimed was an effort to protect two young girls from alleged abuse by their father, engaged in a social media campaign including Twitter, change.org, her blog site and online articles she authored criticizing the judges and expressing her opinions about cases pending before courts in Mississippi and Louisiana.

McCool then drafted an online petition, encouraged the public to sign the petition and posted contact information for the judges' offices and the Louisiana Supreme Court. In addition, she

[1] *In Re McCool*, 172 So.3d 1058 (2015).

posted comments encouraging others to contact the judges and the Court about the cases. McCool also used her personal Twitter account to post numerous messages criticizing the judges and encouraging the public to act. As a result, both judges received numerous communication from the public regarding the cases, and eventually recused themselves from the pending cases as well as others involving McCool.

The Louisiana Supreme Court held that McCool's conduct fell into three categories 1) improper ex parte communications; 2) dissemination of false and misleading information; and 3) conduct prejudicial to the administration of justice. The court held that use of social media and the internet to "marshal public opinion against these judges and attention from this Court" violated Rules 3.5(a) and (b) and 8.4(a) of the Rules of Professional Conduct.[2] Rule 3.5 prohibits a lawyer from seeking to influence a judge, . . .or other official by means prohibited by law and to communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order. Rule 8.4 (a) holds that it is professional misconduct for a lawyer to violate the RPC or knowingly assist or induce another to do so, or do so through the acts of another. The Court also found that McCool violated Rule 8.4(c) prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, largely due to the clear and admitted "mistakes" in her statement of the facts.[3] Finally the Court held that McCool had violated Rule 8.4 (d) prohibiting a lawyer from engaging in conduct prejudicial to the administration of justice.

McCool argued that her statements were free speech protected by the First Amendment. The Court held that attorneys in pending cases are subject to ethical restrictions on free speech not applicable to ordinary citizens.[4] The Court held that "By holding the privilege of a law license, respondent, along with all members of the bar, is expected to act accordingly. . . . Respondent in this instance 'is not merely a person and not even merely a lawyer. [She] is an intimate and trusted and essential part of the machinery of justice, an officer of the court' in the most compelling sense."[5] The court ultimately found that the online and social media campaign was intended to inflame the public sensibility and influence the Court and was not protected free speech.

For further discussions of the effect of social media on judicial proceedings, see *State v. Madden*, 2014 WL 931031, (not reported) concerning a criminal judge's Facebook activity noting that in spite of privacy settings, "[I]n today's world, posting information to Facebook is the very definition of making it public."[6] See also, *United States v. Bowen*, 969 F.Supp. 2d 546, 625-27 (E.D. La. 2013), granting motion for new trial on the grounds of prosecutors' misconduct in posting anonymous comments regarding the trial on nola.com; *Domville v. State*, 103 So.3d

[2] *Id*. at 1069. The Court also held that when the petition was printed and faxed to the court and judges' offices, with McCool as the first signatory, it was a direct communication with the court.

[3] The evidence Judge Gambrell was accused of "refusing to hear" was never offered into evidence.

[4] *Id*. at 1076, citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991).

[5] *Id*. at 1077, quoting *Gentile, supra*.

[6] *Id*. at *8.

184, 185-86 (Fla Dist. Ct. App. 2012), *rehearing denied*, 125 So.3d 178, (Fla.App. 4 Dist., Jan. 16, 2013), Judge disqualified after defendant alleged that the prosecutor handling the case and the trial judge are Facebook "friends." This relationship caused Domville to believe that the judge could not "be fair and impartial."[7]

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Ethical Concerns with Unbundling Legal Services

By: Siri Thanasombat

One of the continuing and significant challenges in the U.S. justice system is finding ways to increase public access to affordable legal services. However, recent research indicates that people with low income and moderate incomes increasingly are bypassing lawyers and turning to self-representation, often after referring to document preparation websites and other online companies serving the DIY market. One approach that could benefit both people with legal needs and lawyers, and that has gained more and more traction, is limited-scope representation or unbundling legal services.

In February 2013, the ABA House of Delegates adopted a resolution encouraging lawyers "to consider limiting the scope of their representation, including unbundling of legal services as a means of increasing access to legal services." In concept, unbundling works like this: A lawyer and client agree that both individuals will split the work in a case. Such an arrangement allows the client to receive some assistance directly from a lawyer while the lawyer's fee won't be as high as if she had handled the entire case herself.

The starting point for lawyers who are considering offering limited-scope representation is Rule 1.2(c) of the ABA Model Rules of Professional Conduct, which provides: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

But with changes come challenges, complications, and gray areas.

One major difficulty is getting clients to fully understand exactly what they are receiving. Aligning a client's expectations with the realities of an attorney representing them for a discrete task is one critical challenge. The client may believe that hiring a lawyer for a limited purpose will achieve a client's overall goals, but that may be unobtainable with the limited services provided by the attorney.

The growing demand for lawyers to offer unbundled legal services also raises another challenge: How should opposing counsel communicate with individuals who may or may not

[7] *Id*. at *185.