

**I KNOW ALL THE RULES BUT
THE RULES DO NOT KNOW ME**

**ISSUES & TRENDS IN
PROFESSIONAL
RESPONSIBILITY**

Melissa A. Smart

Litigation Manager & Senior Counsel
Attorney Registration & Disciplinary Commission of the Supreme
Court of Illinois



ILLINOIS LOCAL
GOVERNMENT
LAWYERS
ASSOCIATION

FEBRUARY 18,
2019

*Greetings
from*

BLOOMINGTON

Illinois

"HUB OF THE CORN BELT"

IN RE
DREW
RANDOLPH
QUITSCHA
U





OUR PURPOSE ▾

GET EDUCATED ▾

OBESITY TREATMENTS ▾

ACTION THRU

Advocacy Through Action.

OBESITY ACTION COALITION

The Obesity Action Coalition (OAC) is a more than 58,000 member-strong 501(c)(3) National non-profit organization dedicated to giving a voice to the individual affected by the disease of obesity and helping individuals along their journey toward better health through education, advocacy and support.

Like 152K

Follow @DiabeticLiving

Follow Us

Welcome, Guest!

DIABETIC LIVING®



Diabetic Recipes

What to Eat

Newly Diagnosed

Blood Sugar

Medication

Lo



Get the Scale to Budge

Lose Weight, Eat Better, Feel Great!

Pig International

Nutrition and health for profitable pig production

Nutrition

- Boosting piglet immunity with colostrum
- How to train gilts for electronic sow feeding systems

Health

- Managing livestock antibiotic resistance with diagnostics
- 6 major piglet diarrhea causes and their management

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CONTINUE

ARDC



ATTORNEY
REGISTRATION
& DISCIPLINARY
COMMISSION

ARDC MISSION STATEMENT

The mission of the ARDC is to **promote and protect the integrity of the legal profession**, at the direction of the Supreme Court, through attorney registration, education, investigation, prosecution and remedial action.

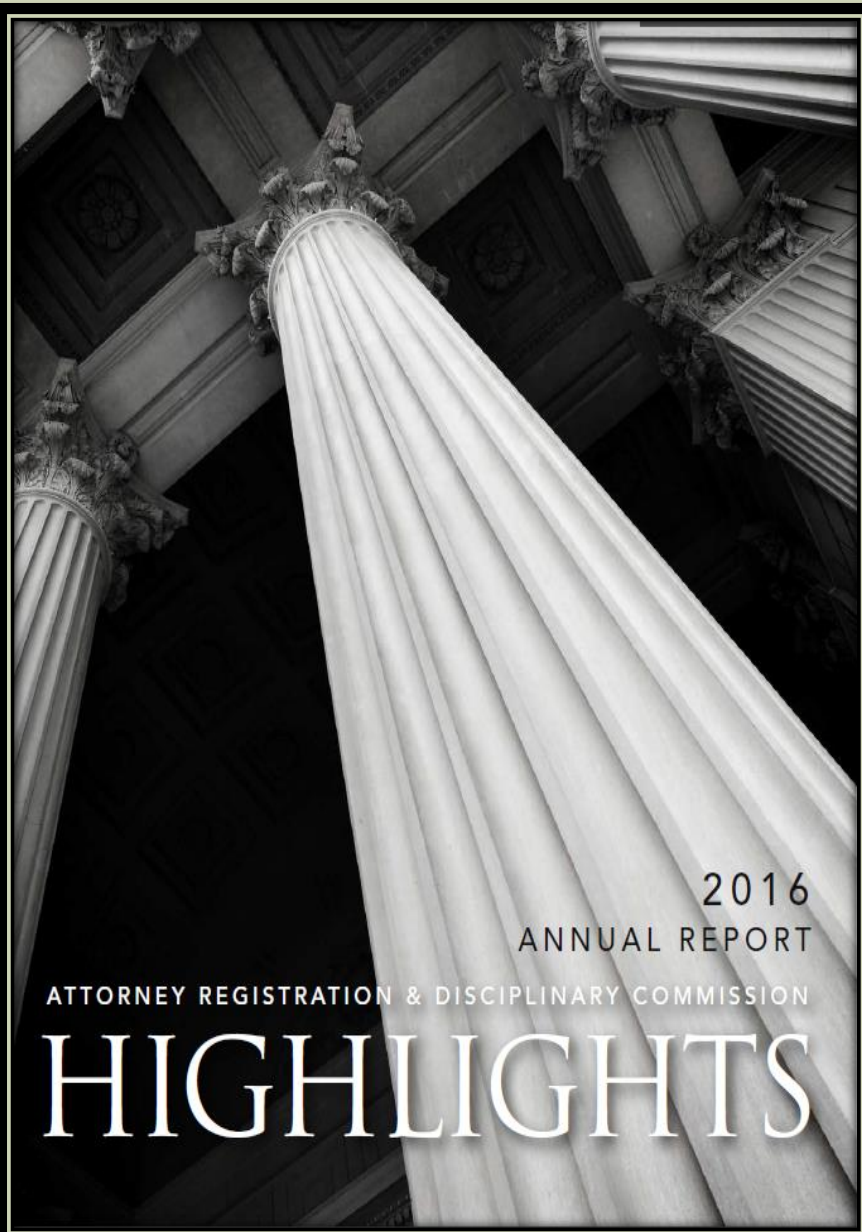
The [Ethics] Code is not a manual designed to instruct attorneys what to do in every conceivable situation...the Code's failure to detail...commonsense conduct is not a loophole which attorneys can use to evade discipline.

-In re Gerard, 132 Ill.2d 507, 538 (Ill 1989)

RULES OF REASON

“The Rules of Professional Conduct are rules of reason...whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.”

-IRCP Scope at 14, 19



- **Speaking Engagements** — over 290 in-person presentations made by ARDC staff lawyers to bar associations, government agencies, law firms, law schools, public interest groups and other organizations, at no charge.
- **MCLE Accredited Seminars** — over 24,000 hours of CLE credit earned by lawyers from ten ARDC-produced accredited webcasts in 2016.
- **Ethics Inquiry Program** — more than 4,200 calls received from lawyers to the ARDC Ethics Inquiry Program, a telephone inquiry resource for attorneys seeking help in resolving hypothetical, ethical dilemmas.



**Where are
we now?**



Moving forward in







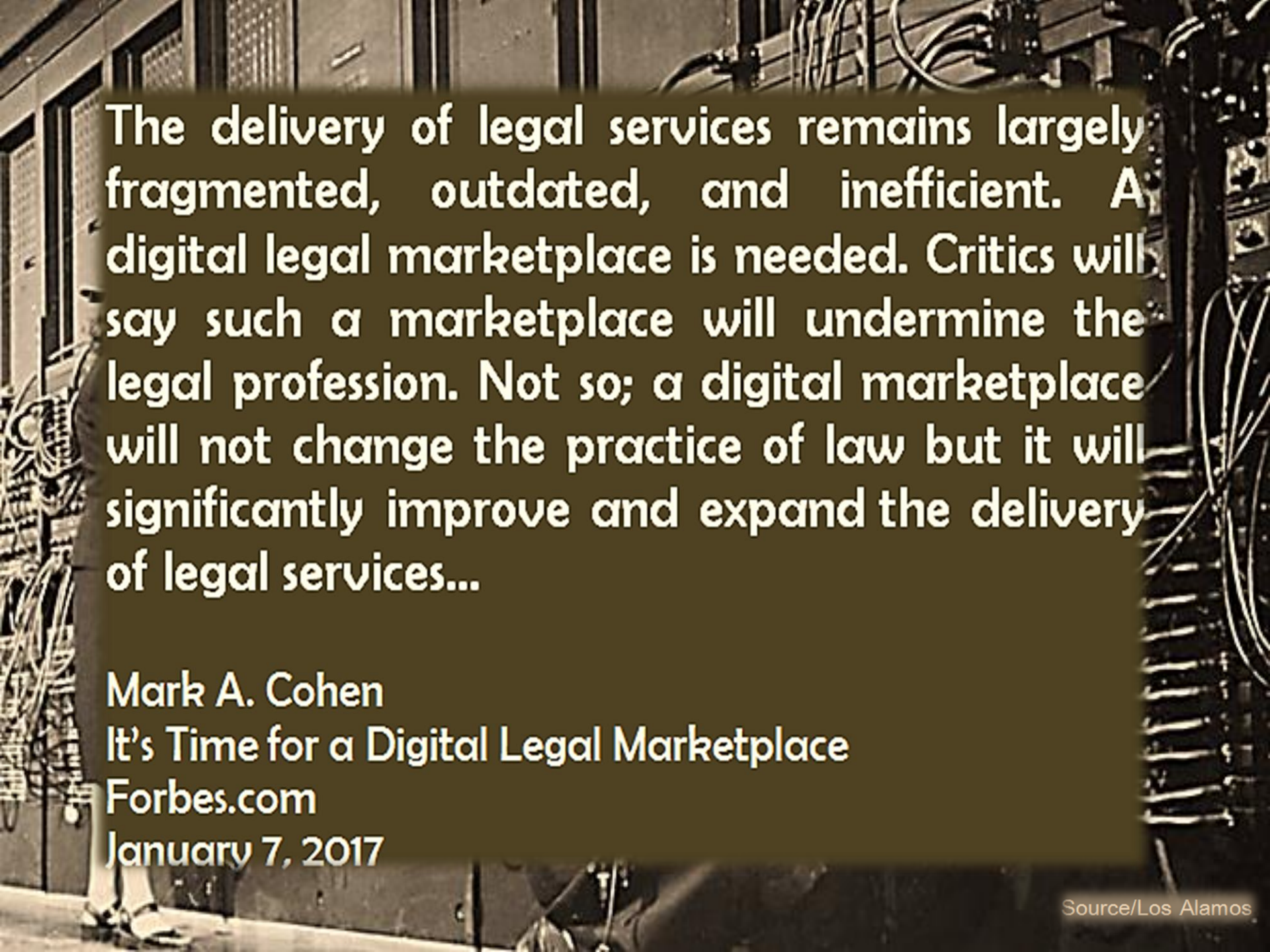
**Can an Exploration of
Trends Inform Us on the
Perceived Rise in Lack of
Civility/Professionalism**

TREND ONE: THE CHANGING LEGAL LANDSCAPE

- The ABA reports there are 1,235,298 active law licenses in the U.S.
- Illinois now has ~95,000 attorneys;
- Dual state law license numbers are increasing. For example, in 2010, 25,050 Illinois lawyers had another state license, 30.35% of lawyer population. By 2013, 29,419 were licensed elsewhere, 34.18% of lawyer population.

**THE
CHANGING
LEGAL
MARKET-
PLACE**





The delivery of legal services remains largely fragmented, outdated, and inefficient. A digital legal marketplace is needed. Critics will say such a marketplace will undermine the legal profession. Not so; a digital marketplace will not change the practice of law but it will significantly improve and expand the delivery of legal services...

Mark A. Cohen

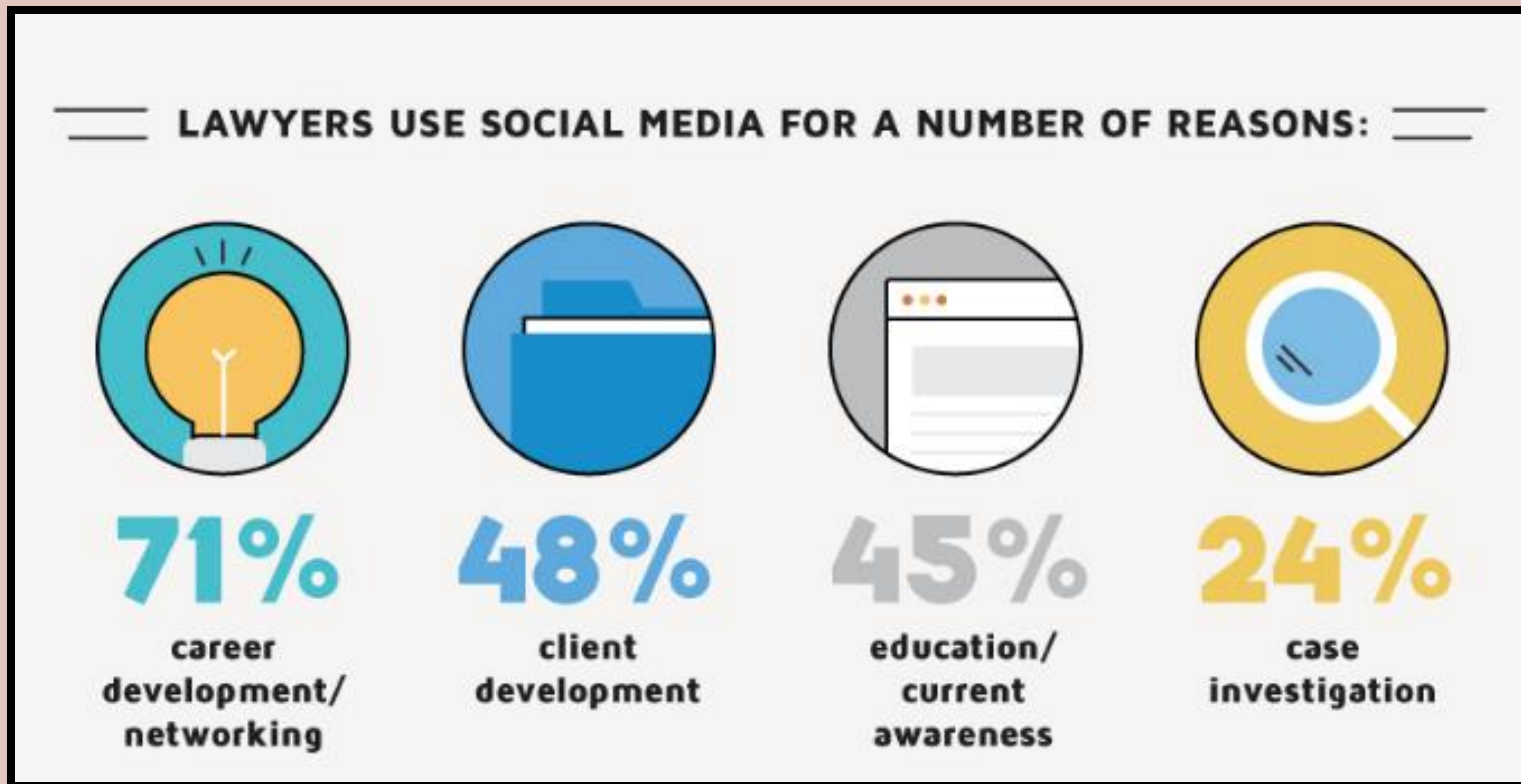
It's Time for a Digital Legal Marketplace

Forbes.com

January 7, 2017

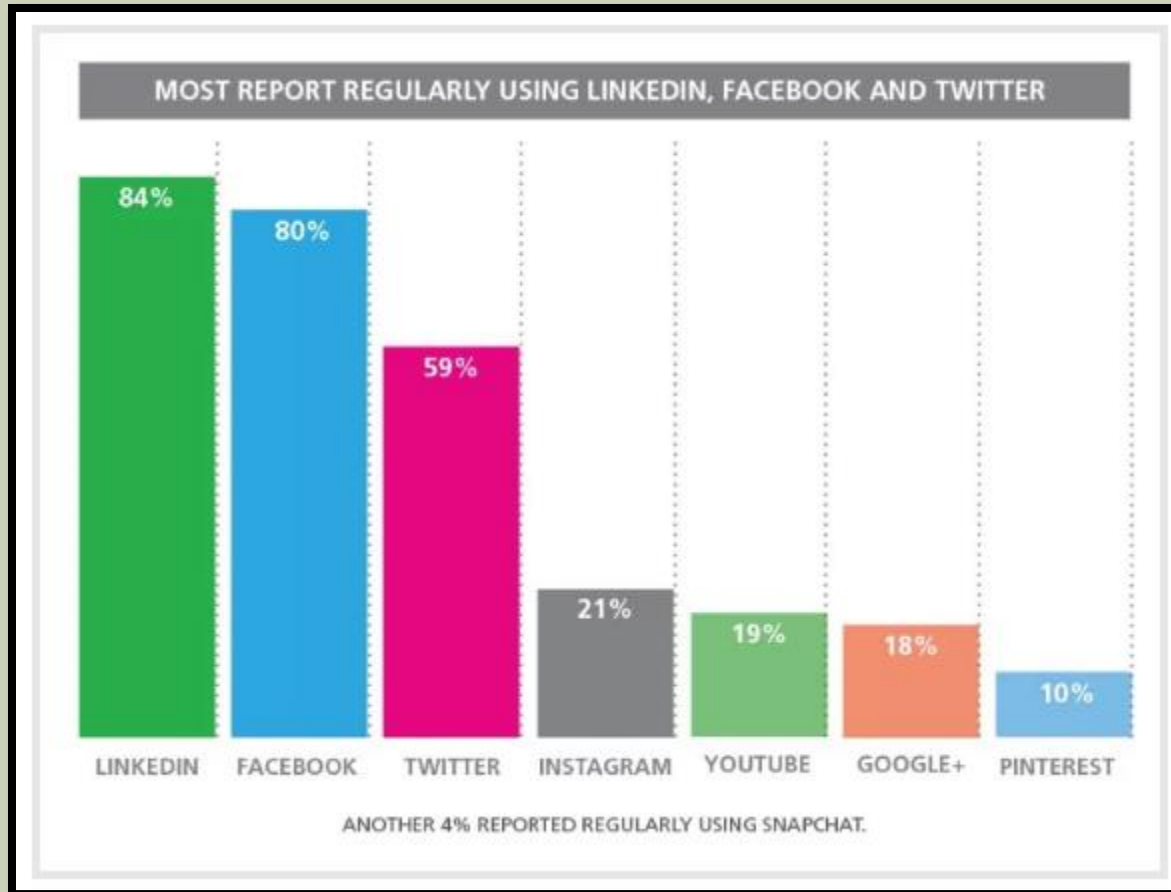
TREND TWO: THE RISE IN SOCIAL MEDIA USAGE

LAWYERS & SOCIAL MEDIA



How Are Lawyers Using Social Media In 2016? By: Nicole Black, February 2, 2016, [MyCase Blog Home](https://www.mycase.com/blog/2016/02/how-are-lawyers-using-social-media-in-2016-infographic/) » <https://www.mycase.com/blog/2016/02/how-are-lawyers-using-social-media-in-2016-infographic/>

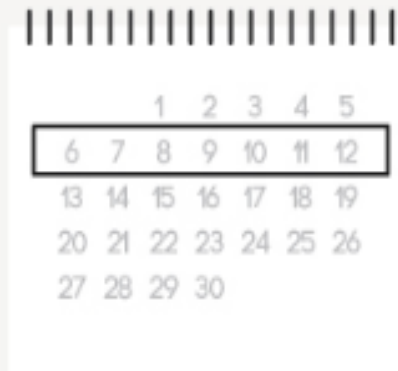
LAWYERS & SOCIAL MEDIA



2017 Survey Results: Lawyers' Use of Social Media for Marketing

March 15, 2017, Editorial [Daily Dispatch](#), [Digital Marketing](#), [Legal Marketing](#), [Social Media](#)
<https://www.attorneyatwork.com/2017-survey-results-lawyers-use-of-social-media-marketing/>

LAWYERS & SOCIAL MEDIA



Lawyers spend

1.9 HOURS

PER WEEK

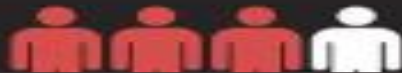
updating/maintaining their personal legal blog.

39%

**have been
retained by a
client because of
their blogging.**

ANTI SOCIAL NETWORKS

Hostility is rising
on social media
and spilling over into
REAL LIFE



3 in 4 have

**WITNESSED AN
ARGUMENT ON**

An increase in social media usage is nothing ground-breaking; but the rise in hostility on social media is troublesome!



2 in 5 have

**UNSUBSCRIBED
OR UNFRIENDED**
someone as a result

**1 in 5 reduced in-person
contact with someone
over a cyber argument**



88% believe that **PEOPLE ARE
LESS POLITE**
on social media than in person



say emotional conversations held on social media are most often **UNRESOLVED**

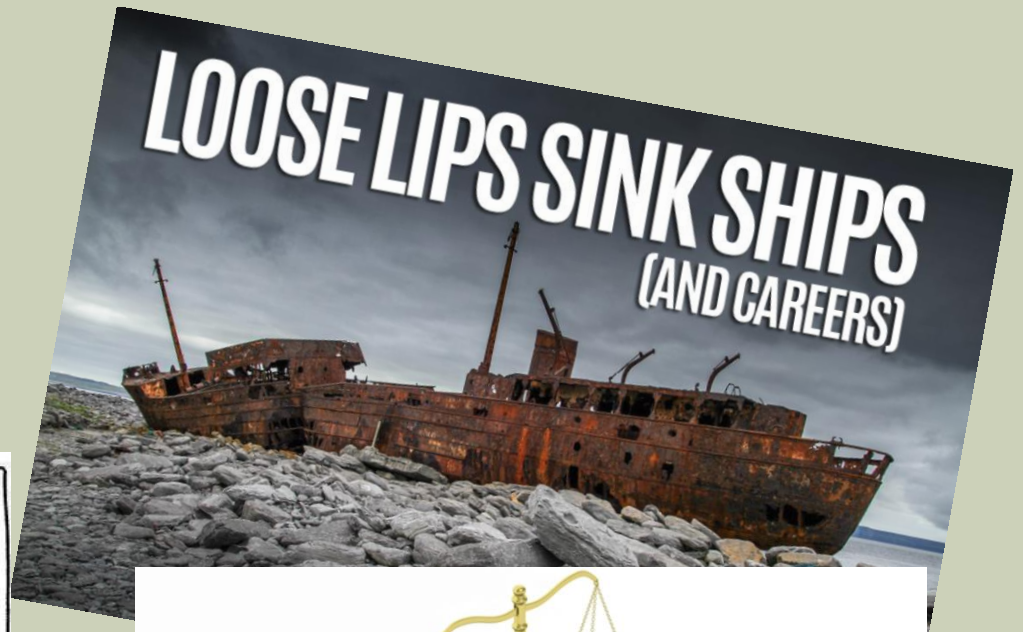
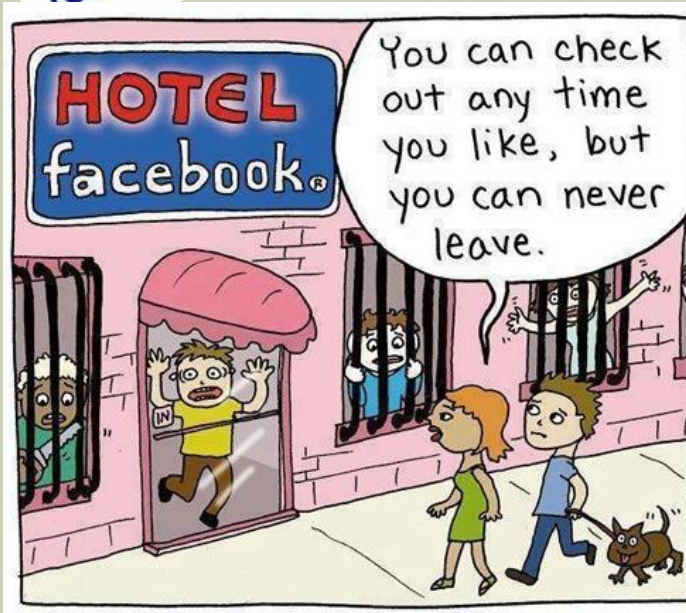
A FRIENDLY REMINDER



BECAUSE...

Once it's out...

you can't put the
toothpaste back in



TREND THREE:

IS IT EVEN A “TREND”?



June 2017 CBS poll

A Recently Filed ARDC Complaint...

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINE BOARD

12 answer

13 Q. Will you answer the question?

14 A. No.

Mr. Y: At this point in time, a man who
insults on a daily basis everybody he does business
with has now been elected President of the United
State. The standards have changed. I'll say
whatever I want.

A Pending Disciplinary Matter...

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

JASON ROBERT CRADDOCK,

Attorney-Respondent,

No. 6242722.

)
)
)
)
)
)
)

Commission No. 2017PR00115

FILED – December 1, 2017

COMPLAINT

Respondent filed with the
Court for the State of Illinois

Respondent began his correspondence by addressing Lindbert as “Cuntney Lindbitch.”

Lindbert asked Respondent if Respondent heard her, “Cuntney.” Lindbert responded “Excuse me,” to which Respondent replied, “Cuntney.”

5. On December 3, 2016, while both the Wyman and Knapp cases were pending, Respondent sent an email from his law firm email address to Lindbert at her law firm email address at approximately 10:46 p.m. regarding the parties’ ongoing litigation. In his email, Respondent began his correspondence by addressing Lindbert as “Cuntney Lindbitch.”

A Concluded Disciplinary Matter...

The attorney allegedly launched a series of abusive voicemails, telling his client's father:

- You are a piece of garbage. All black people are alike. You're slovenly, ignorant.
- You better give me my money or your son's case is going to be delayed.

I'm sick of you, you piece of s—.

• I don't know who's the biggest bitch. You or (your family). I'm going to look you

Embattled Attorney: I'm Supposed to Allow Him to Disrespect Me with Impunity? Bulls—!*

*<http://patch.com/illinois/orlandpark/embattled-attorney-im-supposed-allow-him-disrespect-me-impunity-bulls>

Other lawyers would charge \$10,000 for this case. Start planning for another lawyer.

- You're ugly, low class, ignorant. I'll finish with you when he gets off. You're demeaning your son.

In re Michael Jerome Moore, Commission No. 2015PR00076 (August 2015)

ARE WE LIVING IN A “SHAMELESS SOCIETY”

- Are accountability and apology are just white flags for the weak?
- Is it really so noble to be crass or misleading in the things you say and never think twice, as long as you're standing up to someone who does worse?
- It cuts across all party lines: “And so Democrats have decided that shame is a luxury they can't afford, either. It's totally fine for a new congresswoman to publicly call the president a “motherf***er” and declare herself “unapologetic” (even as she literally runs from reporters).”



Increased Use of
Social Media

Changing Legal
Landscape

Volatile Political
Climate

2017 ANNUAL REPORT

(WWW.IARDC.ORG)

- ◎ Approximately 94,778 lawyers
 - 64,175 (68%) in Illinois
 - 30,603 (32%) report principal address outside of IL
 - first-year enrollment at U.S. law schools fell to 1970s levels
 - 38% female; 62% male; <1% non-binary
- ◎ Appx 4th largest attorney pop. in the US
- ◎ During 2017, ARDC docketed 5,199 investigations
(the 6th year of decline and the lowest number since 1988)



5,199 Investigations Docketed*

(Down from 5,401 in 2016)

AREA OF LAW:

1,218 – Criminal (23%)

652 – Domestic Relations (13%)

509 – Real Estate (also, landlord-tenant) (10%)

486 – Tort (personal injury/property damage) (9%)

71 – Government (1%)

***Against 3,782 different attorneys**



INVESTIGATION INFORMATION

| <i>Investigations per Attorney</i> | <i>Number of Attorneys</i> |
|------------------------------------|----------------------------|
| 1 | 3,105 |
| 2 | 475 |
| 3 | 110 |
| 4 | 35 |
| 5 or more | 57 |
| Total: 3,782 | |

| <i>Gender</i> | <i>Years in Practice</i> |
|-----------------------|------------------------------|
| Female.....30.9% | Fewer than 5 3.9% |
| Male.....69.1% | Between 5 and 10..... 14.4% |
| Non-Binary0.03% | Between 10 and 20..... 24.5% |
| | Between 20 and 30..... 23.7% |
| | 30 or more.....33.5% |

3,782 lawyers were the subject of an investigation and **18%** of those were the subject of more than one grievance docketed in **2017**.

11% of grievances were received from an attorney report (aka "Himmel" report)

265 overdraft investigations, **5%** of all grievances

113 UPL investigations, **97** of which were made against unlicensed persons or entities.

WHERE DO GRIEVANCES COME FROM?

**Supreme Court Rule 752/Commission Rule 51 = any
source whatsoever**

Most grievances = attorneys' clients

Also based upon:

- **Reports from members of general public**
- **Reports from attorneys' spouses**
- **Self-reports**
- **Newspaper articles**
- **Reports from disciplinary agencies in other jurisdictions**
- **Reports from other attorneys**

2017 COMPARISON:

TYPE OF MISCONDUCT ALLEGED



1,959

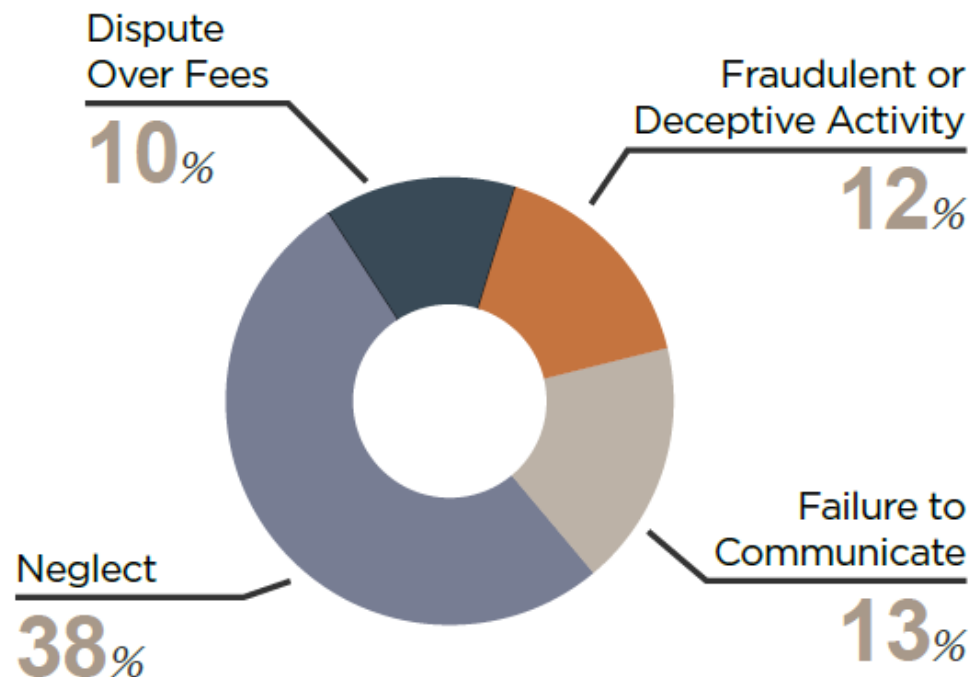
Neglect

260

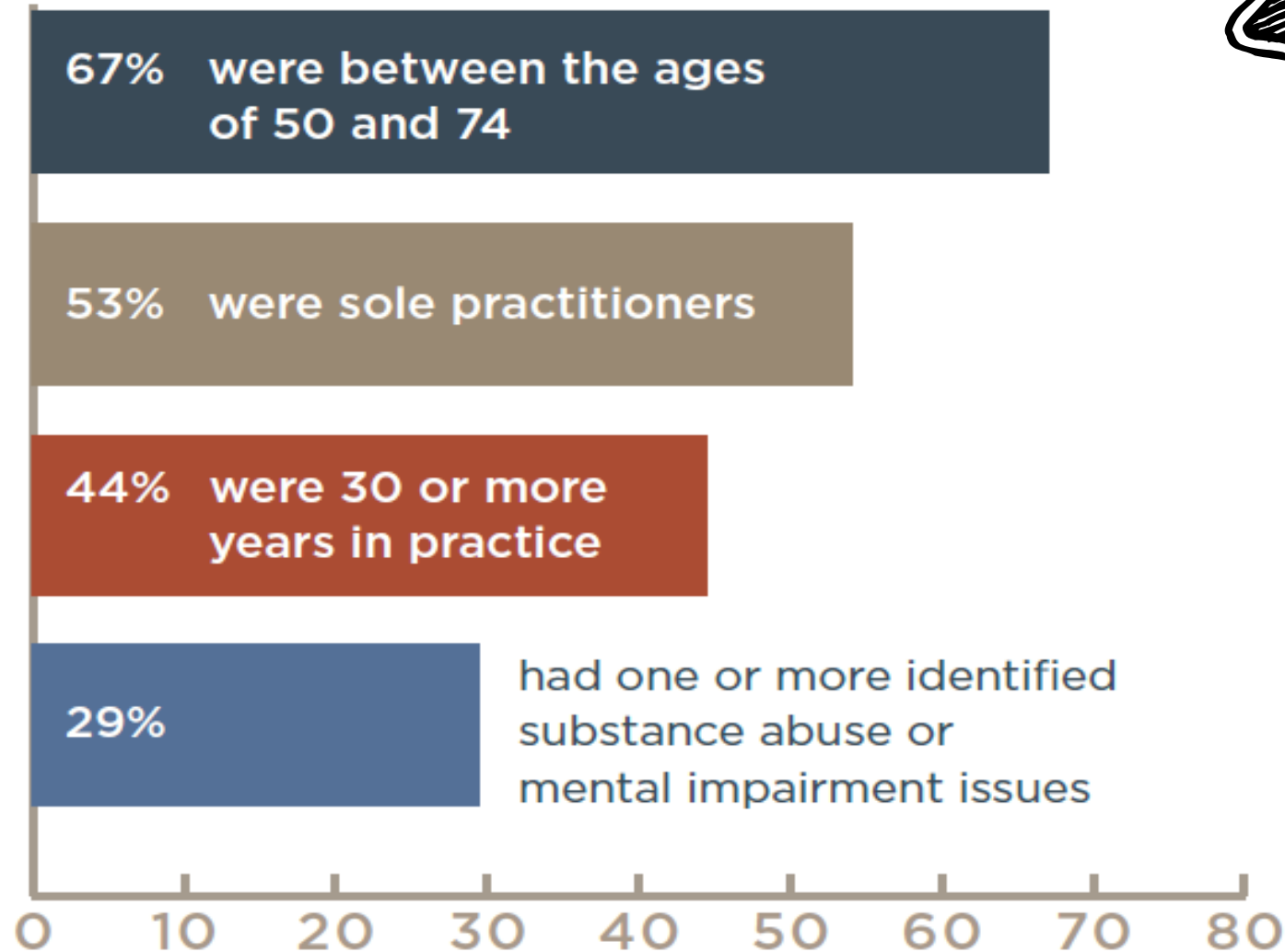
Incompetence

ATTORNEY-CLIENT RELATIONS

73% of grievances arises out of a
breakdown in attorney-client relations:



"Prosecution" Function



AREA OF LAW INVOLVED IN DISCIPLINARY COMPLAINTS FILED IN 2017

| <i>Subject Area</i> | <i>Number of Cases*</i> | <i>% of Cases Filed*</i> | <i>Subject Area</i> | <i>Number of Cases*</i> | <i>% of Cases Filed*</i> |
|----------------------------------|---------------------------------|----------------------------------|------------------------------------|---------------------------------|----------------------------------|
| Real Estate..... | 14..... | 19% | Bankruptcy..... | 6..... | 8% |
| Criminal Conduct/Conviction..... | 12..... | 16% | Probate..... | 5..... | 7% |
| Tort..... | 11..... | 15% | Workers' Comp/Labor Relations..... | 4..... | 5% |
| Contract..... | 10..... | 14% | Criminal..... | 3..... | 4% |
| Domestic Relations..... | 9..... | 12% | Immigration..... | 1..... | 1% |
| | | | Tax..... | 1..... | 1% |

*Totals exceed 73 disciplinary complaints and 100% because many complaints allege several counts of misconduct arising in different areas of practice.

TYPES OF MISCONDUCT ALLEGED

2017 FORMAL PROCEEDINGS

| <i>Type of Misconduct</i> | <i>Number of Cases*</i> | <i>% of Cases Filed**</i> |
|--|---------------------------------|-----------------------------------|
| Fraudulent or deceptive activity..... | 49 | 67% |
| Improper handling of trust funds | 24 | 33% |
| Failure to communicate with client..... | 23 | 32% |
| Criminal conduct/conviction of lawyer..... | 19 | 26% |
| Neglect..... | 15 | 21% |
| Conflict of interest..... | 12 | 16% |
| Rule 1.7: concurrent conflicts..... | 5 | |
| Rule 1.8(a): improper business transaction with client | 5 | |
| Rule 1.8(c): improper gift from client..... | 1 | |
| Rule 1.8(e): financial assistance to client..... | 1 | |
| False statement or failure to respond in disciplinary matter | 10 | 14% |
| Improper withdrawal from employment, including failure to refund unearned fees..... | 8 | 11% |
| Misrepresentations to a tribunal..... | 8 | 11% |
| Misrepresentation to third persons or using means to embarrass or delay..... | 7 | 10% |

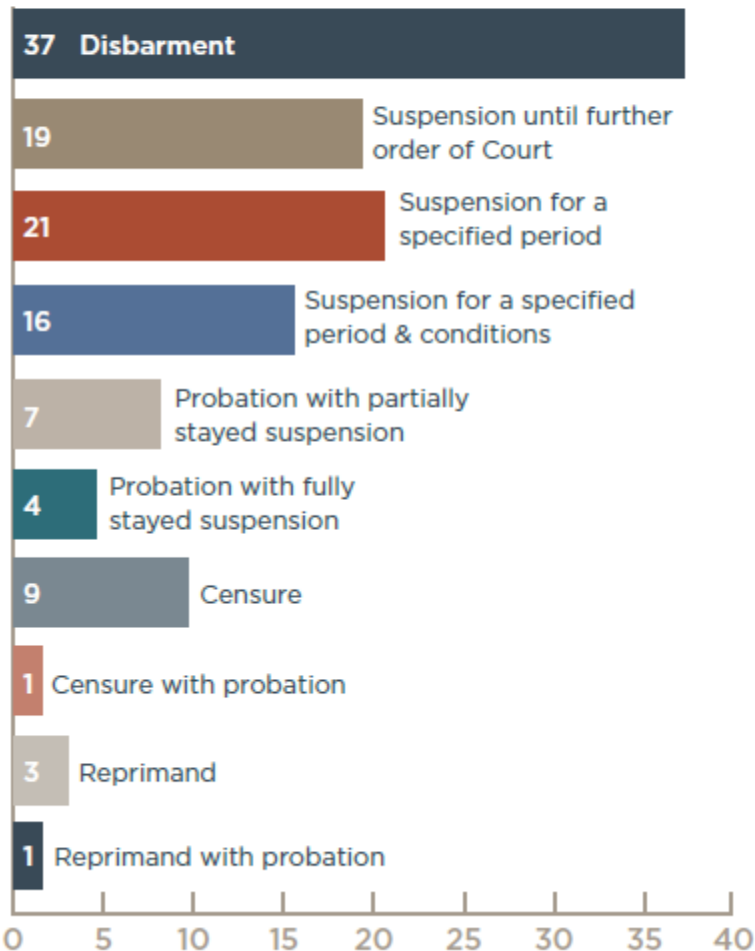
| <i>Type of Misconduct</i> | <i>Number of Cases*</i> | <i>% of Cases Filed**</i> |
|---|---------------------------------|-----------------------------------|
| Pursuing/filing frivolous or non-meritorious claims or pleadings | 6 | 8% |
| Excessive or unauthorized legal fees..... | 5 | 7% |
| Unauthorized practice after removal from Master Roll for failure to register | 4 | 5% |
| Failure to supervise non-lawyer staff | 4 | 5% |
| Assisting a client in a crime or fraud..... | 1 | 1% |
| Unauthorized practice after suspension..... | 1 | 1% |
| Failure to provide competent representation ... | 1 | 1% |
| False or reckless statement about a judge..... | 1 | 1% |

* Based on complaint initially filed and not on amended charges.

** Totals exceed 73 disciplinary cases and 100% because most complaints allege more than one type of misconduct.

SANCTIONS

118 lawyers were sanctioned
by the Illinois Supreme Court
in **2017**.



COUNTY OF PRACTICE OF LAWYERS DISCIPLINED IN 2017

| County | Number Disciplined | County | Number Disciplined |
|-------------------|-----------------------|-------------------|-----------------------|
| Cook..... | 59 | Henry | 1 |
| Out-of-State..... | 29 | Lee | 1 |
| DuPage | 7 | Madison | 1 |
| Lake..... | 5 | Marion..... | 1 |
| McHenry | 3 | McLean | 1 |
| Will..... | 3 | Morgan..... | 1 |
| Sangamon..... | 2 | Piatt..... | 1 |
| Adams | 1 | Rock Island | 1 |
| Grundy..... | 1 | | |

THE INFLUENCE OF TECHNOLOGY ON YOUR PROFESSIONAL LIFE



WHICH TECHNOLOGIES CREATE LAWYER ETHICS CONCERNS?

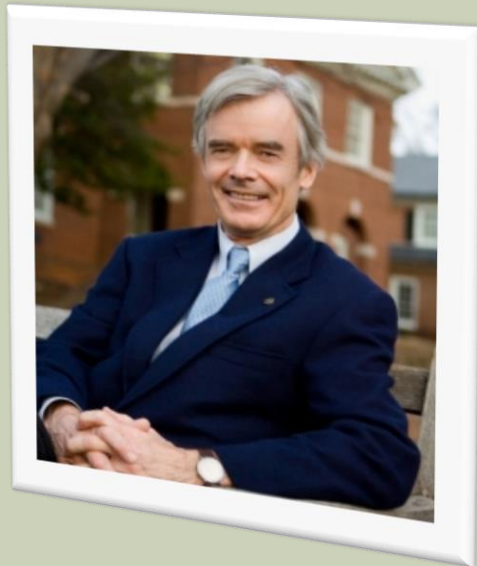
ALL OF THEM!!!





**FACEBOOK &
TWITTER**

FACEBOOK SPOILIATION OF EVIDENCE



Allied Concrete v. Lester,
Record No. 120074 &
120122
(Virginia, January 10, 2013)
and

In re Michael B. Murray,
Nos. 11-070-088405, 11-
070-088422 (Virginia, July
17, 2013)

THE PERILS OF AN ELECTRONIC WORLD

- Mr. Recalde is charged with stabbing girlfriend to death in Florida in 2010;
- Assistant Public Defender Anya Cintron Stern, admitted in 2008, is appointed to represent him;
- Recalde's family brings him bag of fresh clothes to wear during trial. When Miami-Dade corrections officers lift up the clothing for a routine inspection, Stern snaps a photo with her smart phone...

During a break in the trial, Stern puts the following on Facebook:



— X

[Clear Chat History](#)

Me

9:34 am

Is this REALLY
appropriate attire
for trial???



THE RESPONSE



BLOGGING

Patty Public Defender has been toiling away (for little pay) at the public defender's office of a small county. As an interesting diversion, Patty begins writing and publishing a blog about her life as an attorney. Over time, Patty's blog begins to focus more and more on her work as a public defender, and some of the more challenging and frustrating aspects of life as a public defender.

In the blogs, Patty reveals confidential information about her cases. Although she never uses the client's real names, she does use their inmate numbers as a way to identify the clients. She also frequently provides enough detail about the clients and/or their legal matters, so that they are easily identifiable.

After a few particularly frustrating days of work, Patty blogged about her dealings with judges, referring to one judge as being "a total asshole," and another as "Judge Clueless." Patty's blog was open to the public and was not password protected, and the contents of her blog were continuously available to anyone with access to the Internet. She maintained a site meter on the blog that counted the number of visits to the blog, and Respondent knew that her blog received approximately 35 visits per day.

HYPOTHESIS – TO BLOG OR NOT TO BLOG (CONT'D)

See: *In re Kristine Ann Peshek*, M.R. 23794, 2009 PR 00089 (Ill. May 18, 2010). Ms. Peshek, who was licensed in 1989, was suspended for sixty days.

While serving as an Assistant Public Defender, she revealed protected client information in an internet blog. Further, she failed to disclose to a tribunal that one of her clients had made false statements about the client's drug usage during the course of a guilty plea. The suspension was effective on June 8, 2010.



CONFIDENTIALITY

- Phillip D. "Phill" Kline, former Kansas AG and Johnson County DA is charged with engaging in lawyer misconduct
- Allegations include his misleading judges and a grand jury and his mishandling of evidence when he investigated abortion clinics

CONFIDENTIALITY

- **Case Receives Extraordinary Media Attention;**
- **Kline files a motion asking for recusal of certain Supreme Court Justices.**
- **Five Supreme Court Justices recuse themselves from hearing case and are replaced by two Court of Appeals justices and three District Court judges.**

DURING ORAL ARGUMENT IN THE DISCIPLINE CASE,
SARAH PETERSON HERR, A RESEARCH ATTORNEY FOR THE
KANSAS COURT OF APPEALS BEGINS TO TWEET...



Sparkly Lil' Sarah 🔒

@sparklylillife

Working to make the world a better place with sparkly fun, impromptu
dance parties, and dirty martinis!

Topeka, KS



TWEETS



- Holy balls. There are literally 15 cops here for the Phil [sic] Kline case today. Thus I actually wore my badge.
- You can watch that naughty naughty boy, Mr. Kilein [sic], live! live.kscourts.org/live.php.
- I might be a little too feisty today.
- “It’s over...sorry. I did like how the district court judges didn’t speak the entire time. Thanks for kicking out the SC Phil! Good call!”
- “I predict that he will be disbarred for a period not less than 7 years.”
- “Why is Phil Klein smiling? There is nothing to smile about, douchebag.”

THE BACKLASH

Kline's Lawyer:

“I have no interest in insulting any judge or justice in that courthouse who is prepared to be fair and objective as it relates to Phill Kline...But the bigger question has always been **what kind of atmosphere prevails in the back rooms of the high courts of Kansas that would make a young lady like that so comfortable to tweet those kinds of comments in those circumstances.**”

THE RESPONSE

- **Herr immediately suspended from job, fired three days after incident;**
- **Herr writes letter of apology-says she did not know tweets would be seen by the public-at-large;**
- **Herr self-reports conduct to Kansas Disc Auth;**
- **Kline suspended indefinitely in October 2013;**
- **Former AG is now assistant professor of law at Liberty University in Virginia.**
- **Formal disciplinary charges lodged against Herr in September 2013; In January 2014, lowest sanction recommended.**

RESOURCES

- Full-Text of Illinois Ethics Rules, Client Trust Account Handbook & Free MCLE webinars – www.iardc.org

- Questions about IOLTA & Enrollment Forms – Lawyers Trust Fund: www.ltf.org

- ARDC Ethics Inquiry Hotline for Guidance on Rules:

Chicago office – (312) 565-2600
or (800) 826-8625

Springfield office – (217) 522-6838 or (800) 252-8048