

Social Media Guidelines for Barristers

April 2018



NEW SOUTH WALES
BAR ASSOCIATION

NSW Bar Association – Social Media Guidelines for Barristers

Approved by Bar Council on 22 March 2018

Social Media Guidelines for Barristers helps barristers to understand their duties under the *Legal Profession Uniform Conduct (Barrister) Rules 2015* (Barristers' Rules) and the importance of their role in the administration of justice in the context of social media use.

It applies to barristers in both a professional and personal capacity, since anything that is published online is public and may be linked back to your status as a NSW barrister.

1. About this document

This document outlines the opportunities social media presents for individual barristers but also the profession more generally.

It also outlines potential intersections between the current ethical obligations of barristers and the use of social media.

This document is intended to assist barristers to identify ethical and practical issues that may be associated with the use of social media.

It is intended to be read alongside, and is not a replacement for, other ethical obligations which may be found in the inherent disciplinary jurisdiction of the Supreme Court, legislation regulating the legal profession, rules relating to contempt of court and the *Legal Profession Uniform Conduct (Barrister) Rules 2015* (Barristers' Rules).

2. What are social media?

Social media are online platforms that facilitates the creation and communication of information and ideas by individuals to a community over the internet.

This is called user-generated content.

There are many such systems now available. Popular examples include LinkedIn, Facebook, Twitter, Instagram, and YouTube, as well as forums, discussion boards and blogs.

Each differs in focus, accessibility and purpose.

As more clients and instructing solicitors use social media for all kinds of communication, the use and knowledge of these systems will play a more central role in a barrister's practice.

While there are many positive benefits of 'using' social media to develop a barrister's practice and keep up-to-date with developments, there are also risks for which this policy seeks to provide guidance.

3. Why use social media?

Social media presents an opportunity for barristers to communicate with other members of the legal profession and an opportunity to communicate more widely with the public, sharing the knowledge they have accumulated over many years of practice, and contributing to public discourse.

Social media has an important role to play in strengthening the collegiality and professional standing of the Bar and demonstrating its independence and individuality.

Many barristers already use social media in this positive way.

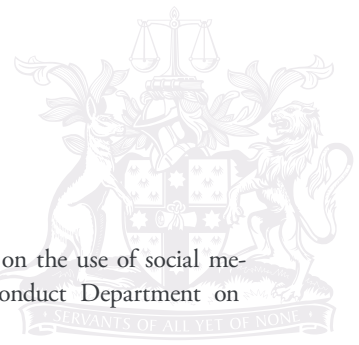
However, the important role barristers have within the community places a greater onus on members of the bar to take care in commenting, posting or sharing material on a social media platform.

4. Relevant features of social media

Social media are online platforms that facilitates the creation and communication of information and ideas by individuals to a community over the internet. This is called user-generated content.

For the purpose of this note, the six relevant features of social media systems are that:

- publication is immediate, and often indexed or cached even if a user deletes the communication which means that the online platforms stores the data and any activity undertaken by the user on the platform;
- it is not private;
- it is archived and remains discoverable (through search and other means) for an indeterminate period in the future;
- it is not subjected to editorial or other oversight before publication;
- it may be commented upon or republished in a manner and to an extent beyond the knowledge or control of the original creator, including in or on other systems and formats, without editorial oversight ; and
- social networks created by social media systems have much greater potential audience (size and scope) than if the creator of that content used other communications channels.



5. Social media and the Barristers' Rules

Barristers should be conscious of the guiding principle that barristers have a paramount duty to the administration of justice, this includes barristers' conduct when engaging with social media.

Barristers' Rule 8 provides that:

A barrister must not engage in conduct which is:

- a) dishonest or otherwise discreditable to a barrister;
- b) prejudicial to the administration of justice; or
- c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

Some examples of social media use which may be contrary to Barristers' Rule 8 is as follows:

- comments made which demean or discredit members of the judiciary, fellow members of the legal profession, parties to proceedings or clients;
- comments which are inaccurate, misleading or dishonest;
- defamatory or inflammatory comments;
- comments which are in violation of any law or regulation (including for example, defamation, trademarks and copyright, financial rules and regulations, and terms and conditions of use of the relevant social media system/s);
- comments which are discriminatory or offensive;
- comments that risk prejudicing current or pending proceedings;
- comments which are bullying, discriminatory or harass a fellow member of the Bar or the wider legal profession (see also rule 123);
- discloses confidential or privileged information (see also rule 114);
- breaches the restrictions on dealing directly with a party who is legally represented (see also rule 52) or who is unrepresented (see also rule 53);
- creates a client-barrister relationship such as replying to a request for legal advice via social media;
- appears to or does express the opinion of a barrister on the merits of a current or potential proceeding or on any issue arising in such a proceeding, other than in the course of genuine educational or academic discussion on matters of law (see also rule 76); and
- relates to any current proceeding in which the barrister is appearing or is likely to appear (unless the conduct falls under the media comment exceptions in rule 77).

Engaging in the above conduct may be a breach of the Barristers' Rules and could give rise to a complaint and/or disciplinary action against the barrister.

These guidelines will be considered by the Bar Council in any complaint received in relation to a barrister's use of social media.

6. Further advice

If a barrister requires further guidance on the use of social media please contact the Professional Conduct Department on 02 9232 4055.

Any other social media related inquiries can be directed to a member of the Innovation & Technology Committee via the policy lawyer, Ms Ting Lim (tlim@nswbar.asn.au or 9232 4055).



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