Just Don't Do It

Lawyers, Extrajudicial Statements, and Social Media

BY ANN M. ROAN

This article examines the ethical boundaries on lawyers' use of social media.

Anyone with an internet connection "can become a town crier with a voice that resonates farther than it could from any soapbox."[1] Indeed, social media is the "modern public square."[2] But Colorado's Rules of Professional Conduct (Colo. RPC or Rules) impose limitations on what a lawyer can say about a client in the course of representing the client, after that representation ends, or even in the context of the lawyer's professional activities. These limitations include online posts. Combined with the limits on what lawyers can and cannot ethically discuss, the far-reaching consequences of social media statements resulting from lapses in professional judgment should make lawyers wary about wading into social media's waters.

Lawyers using social media in the practice of law "should stay reasonably informed" of social media's features, capabilities, and security measures and how those could "impact their ethical obligations."[3] Nevertheless, while practicing attorneys are presumed to know the rules of law, including the Colo. RPC,[4] the rules governing extrajudicial statements largely predate social media, and most states—including Colorado—have not amended them to reflect social media's impact.[5] This article offers guidance for lawyers who are considering making statements on social media.

The Rules Framework

The Colorado ethical rules most relevant to extrajudicial statements include Rules 1.6 (confidentiality of information), 3.6 (trial publicity), 4.1 (truthfulness in statements to others), 4.4 (respect for rights of third persons), and 4.5 (threatening prosecution). In addition, prosecutors also must follow Rule 3.8 (special responsibilities of a prosecutor).

Rule 1.6(a) provides that, absent informed consent or implied authorization by the client, a "lawyer shall not reveal information related to the representation of a client." By its plain terms, Rule 1.6 is not limited to information outside the public record. Consequently, lawyers may not reveal client confidences or any other information learned in the course of representation, even if they are part of the public record, except as the specific exceptions in Colo. RPC 1.6 permit.

Rule 3.6 is similarly broad: a lawyer presently or formerly involved in a case or investigation "shall not make an extrajudicial statement that the lawyer knows or reasonably should know" will be publicly disseminated and that has a substantial likelihood of "materially prejudicing an adjudicative proceeding in the matter."[6] Rule 3.6(b) and (c) identify certain information as exceptions that a lawyer may discuss in a public forum. Like Rule 1.6, Rule 3.6 is not limited to statements made in the course of representation.

Next, Rule 4.1 requires truthfulness in a lawyer's statements to others, but only "in the course of representing a client." That same limitation applies to Rule 4.4(a)'s requirement that a lawyer refrain from conduct that has "no substantial

purpose other than to embarrass, delay, or burden a third person[.]" This consideration may be particularly acute given the internet's ability to amplify statements to this effect.

Rule 4.5(a) additionally prohibits a lawyer from threatening "criminal, administrative or disciplinary charges" to obtain an advantage in a civil matter, regardless of whether the lawyer seeks gain for a client or anyone else (including personal gain) by doing so. Along the same lines, Rule 3.8(f) requires that prosecutors make only those statements "necessary to inform the public of the nature and extent of the prosecutor's action in serving a legitimate law enforcement purpose" and refrain from making extrajudicial statements that have a "substantial likelihood of heightening public condemnation of the accused." Rule 3.8(f) is not limited only to prosecutors' extrajudicial statements; they must also exercise "reasonable care" to make sure "investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case" do not make extrajudicial statements prohibited by either Rule 3.8(f) or Rule 3.6.

Colorado Opinions on Lawyers and Social Media

Two notable cases, *People v. Isaac*[7] and *People v. Piccone*,[8] directly address how lawyers' social media use can violate the Rules.[9] Understanding their reasoning helps identify social media activities to avoid.

Isaac: *Responding to Negative Client Reviews*

Isaac, which addressed only Colo. RPC 1.6, was the first ethics case in Colorado concerning lawyers and social media use.[10] After Isaac discovered two negative reviews from former clients on Google Plus, he posted responses on that same platform.[11]

Isaac's response to the first review described his former client as "abusive, demanding, insulting and offensive," while also insisting that "[a]s with all ethical lawyers, it is inherently inimical, to me, to engage in conduct so base as calling . . . my clients . . . 'names.'"[12] His response further revealed that the former client had been charged with felony theft, and it noted that he had filed motions based on facts the client could not substantiate.[13]

Responding to the second negative review, Isaac again revealed the charges against his former client and claimed that her $4,000 check for his services had bounced.[14] He also accused this former client of committing two other uncharged offenses: forging affidavits and then notarizing them, despite not being a notary public.[15]

The presiding disciplinary judge (PDJ) rejected Isaac's claim that Rule 1.6(b)(6) permitted these posts. That rule permits (but does not require) a lawyer to disclose confidential information

> to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.[16]

The PDJ found that Isaac's disclosures exceeded those authorized by Rule 1.6(b)(6), both because they went beyond what was reasonably necessary to establish a defense[17] and because "[i]n both instances, it appears that [Isaac] disclosed his clients' criminal charges and other alleged misdeeds simply to embarrass or discredit the clients."[18] The opinion cautioned that responding to negative online reviews not only was "an ethical minefield" but also would likely reinforce the negative review and "'fall into the trap of appearing thin-skinned and defensive.'"[19]

The PDJ gave no weight to the argument that some of the information in the responses was in the public record, because Rule 1.6(a) "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, *whatever its source*."[20] The PDJ suspended Isaac's license to practice law for six months, with the requirement that he petition for reinstatement.[21]

Piccone: *Posting About Clients' Cases*

Four years later, a lawyer's social media activity gave rise to another disciplinary proceeding, again concerning Rule 1.6(a), but also implicating Rules 3.6(a) and 4.4(a).[22] *Piccone* involved a solo practitioner who managed all of her firm's social media accounts. Piccone held herself out as an animal law lawyer. She also formed two 501(c)(4) corporations, one that advocated a "no-kill" policy for all Colorado animal shelters and another that lobbied to repeal the City of Aurora's pit bull ban.[23] "In her capacity as an activist," Piccone ran a Facebook page called "SAVE pets from Aurora Colorado Animal Care and Control ('SAVE')."[24]

In two separate cases, Piccone represented clients whose pit bulls allegedly violated various provisions of the Aurora Municipal Code. The owners were also cited for violating the Aurora Municipal Code for their dogs' misbehaviors. The dog in the first case was named Bandit; the dog in the second case was named Diamond.[25]

Piccone's engagement agreement in both cases included a section entitled "Publicity, Media and Fundraising," which authorized her to give "non-confidential information from the public record" to the media, including social media, and to use that same information in interviews. The agreement stated that "all confidences will be preserved."[26] That section also authorized Piccone to use photos of the dogs on social media platforms and to discuss the cases in "generic non-identifying terms," even after her representation ended.[27] It further authorized her to create fundraisers to pay her fee, "either alone or in combination with the client's efforts to crowdfund."[28] Under the fee agreement, she reserved the right to reinstate previously written-off charges if the clients fired her before the cases were completed.[29]

After Aurora's municipal court ordered that Bandit be killed and stayed that order pending appeal, Piccone filed an appeal, hoping to move Bandit from the Aurora Animal Shelter and develop evidence that would both prevent the dog's execution and resolve the charges against his owners.[30] The shelter refused to let Piccone's expert evaluate Bandit outside his cage, and after the municipal court upheld that decision, Piccone took to the internet, linking a GoFundMe fundraising page for her legal costs to posts on both her firm's and SAVE's Facebook pages.[31] Those posts stated that "Aurora CO wants to kill Bandit. Please don't let them get away with it."[32] She also noted that Bandit's $450 monthly boarding fee was coming due.[33] In subsequent posts, she described the Aurora Animal Shelter

as a "hell hole" and claimed that the city was depriving her client, "an Armenian immigrant who speaks little English," of due process.[34]

After unsuccessful negotiations with the city attorney, Piccone posted online that "[t]he Aurora City Attorney's office makes me ILL."[35] The next day, she posted what she described as a "happy update" to an old case on her firm's Facebook page.[36] That post noted that the city attorney prosecuting Bandit's case had created a "major scandal when she (allegedly) had an affair" with a client of the city a decade before; notably, the post included the prosecutor's name and current employment position.[37]

Piccone also put the email address and phone number of Aurora's animal services manager (the shelter manager) on her SAVE Facebook page (not her firm's Facebook page), exhorting viewers to "VOICE YOUR CONCERNS about the inhuman [sic] treatment of Bandit!!!"[38] Predictably, the shelter manager received almost 100 voicemails and hundreds of emails threatening her and her family, prompting the city to assign police to watch her home and her child's school.[39] While the appeal progressed, Piccone posted the shelter manager's contact information again.[40] She also posted that Bandit's owners had "not been able to replenish their retainer, so I'm working solely on donations. . . ."[41]

Bandit's owners subsequently told Piccone to stop working on the case, which she promptly reported online.[42] Two weeks later, Bandit's owners formally fired Piccone and asked for their case file and an accounting of all the money she'd received from her crowdfunding efforts. Piccone gave them the accounting but refused to release the file until they paid her invoice, which she had adjusted to include charges for services she'd previously written off.[43] Piccone posted online about this development, claiming that she'd "written off thousands of dollars in fees" but that "per a clause in my contract, they now owe me all the fees I previously wrote off as a courtesy."[44] She added that her former clients owed her over $2,000.[45]

When a lawyer from The Animal Law Center (TALC) contacted Piccone about filing a substitution of counsel, she again refused to release the file, stating she would not do so until the clients paid her bill.[46] She never gave TALC her former clients' file and instead posted online that TALC

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was "sloppy" and made errors in its substitution motion; she also alleged that she "really got bamboozled with Bandit's case, and most likely screwed out of $2500 because the client didn't replenish the retainer when it ran out."[47]

In the other case, Piccone handled her representation of Diamond and his owners in much the same way, posting multiple crowdsourcing pleas for her internet readers to pay for her representation, despite executing a fee agreement with her clients in the case; attacking the shelter manager specifically and Aurora Animal Control generally; and providing detailed information about how much money the clients owed her. She also disclosed the mental health diagnoses and struggles of one of Diamond's owners.[48]

After Diamond's owners fired her, Piccone revealed online that they owed her nearly $3,500 but she couldn't discuss the case because she "no longer ha[d] client permission because [she] withdrew."[49] Shortly thereafter, Piccone conveyed that Diamond's owners were to blame for the dog's predicament because they let him out of their yard in violation of a stipulated agreement with the City of Aurora after the original charges were filed.[50] As the PDJ later found, Piccone's "post[s] implied that Diamond's family begged her to save their pet but then failed to pay."[51]

The PDJ found that most of the information Piccone reported on social media about each case did *not* violate Colo. RPC 1.6(a), because her fee agreement explicitly authorized her to divulge "non-confidential information from the public record."[52] The PDJ agreed with Piccone that the agreement's language covered "any information in the public domain," including information that she had included in court pleadings before repeating it on social media.[53] The PDJ further determined that Piccone's disclosure of the clients' financial details in her crowdfunding appeals was impliedly authorized by the clients under the fee agreement because it allowed her to crowdfund the balance of what she was owed.[54]

However, the PDJ found that eight of Piccone's social media posts violated Colo. RPC 1.6(a): one post disclosed a client's mental health diagnoses and prior struggles with homelessness; and seven other posts, written after her clients had fired her, criticized TALC and Bandit's owners' motives, and blamed Diamond's owners for letting him run away again.[55] "And most egregious, several of [Piccone]'s posts needlessly disparaged her clients and revealed attorney-client communications, flouting the bedrock duty of loyalty on which Colo. RPC 1.6(a) is founded."[56]

But the PDJ did not find that any of Piccone's social media posts about Bandit or Diamond violated Rule 3.6.[57] In this regard, *Piccone* is notable for its focus on whether extrajudicial statements are "substantially likely" to have a prejudicial impact on a pending proceeding.[58] Using that analysis, the PDJ did not find the "ad hominem attacks [on the shelter manager], which gave rise to other social media users' insults and threats of violence" violated Colo. RPC 3.6(a), although it "strongly disapprove[d]" of them.[59]

The PDJ next found that Piccone's recirculation of the 10-year-old rumored affair by the city attorney violated Colo. RPC 4.4(a).[60] It rejected her arguments that the post was both protected speech and was not made in the context of representing a client.[61] The PDJ reasoned that, had Piccone truly been making protected commentary about governmental corruption, the rational forum would have been her SAVE Facebook page, not her law firm's Facebook page.[62]

The PDJ explained that a lawyer cannot find cover for extrajudicial statements "by the mere invocation, without evidence or support, of the First Amendment."[63] And the timing of the post undercut any notion that it was not connected

to Bandit's case.[64] The PDJ reasoned that once Piccone realized that a negotiated settlement with Aurora was unlikely to succeed, she became "motivated to lash out at the decision maker whom she believed was responsible for effectively sealing Bandit's fate."[65]

That the post itself did not mention Bandit's case was irrelevant: Piccone "posted embarrassing information about [the] City Attorney *because* of their recent interactions in Bandit's case."[66] "Indeed, to require an explicit reference or 'smoking gun' link between cruel or vicious behavior and a pending case would seem to gut the effect of [Rule 4.4(a)], which serves as a backstop against lawyers' basest impulses when advocating for their clients."[67]

Assessing the Injury

Isaac and *Piccone* present a notable contrast in assessing injury. On the one hand, *Isaac* emphasized that the lawyer's social media posts caused "actual injury" to "the legal profession and members of the bar suffered actual injury . . . as those postings cause members of the public to question whether attorneys can be trusted to act in their best interests and to safeguard their information."[68] But four years later, the PDJ made no mention of any injury to the profession caused by the far more flamboyant and numerous posts at issue in *Piccone*, even including those that incited threats of violence against the shelter manager.[69]

Following *Isaac*, the Colorado Bar Association Ethics Committee issued Formal Ethics Opinion 136, "A Lawyer's Response to a Client's Online Public Commentary Concerning The Lawyer," concluding that a lawyer who discloses confidential information when responding online to a negative client review is unlikely to find cover in the exception to disclosure created by Colo. RPC 1.6(b)(6).[70] However, the opinion suggests that if the dispute between the lawyer and client rises to the level of a "'genuine controversy between the attorney and the client which could reasonably be expected to give rise to legal or disciplinary proceedings[,]'" Colo. RPC 1.6(b) would permit disclosing confidential information, but only to the extent reasonably necessary to defend the lawyer.[71]

Then, in early 2021, the ABA Standing Committee on Ethics and Professional Responsibility considered the ethical considerations implicated by a lawyer posting responses to clients' negative reviews.[72] The ABA Committee explicitly disagreed with the conclusions in CBA Formal Ethics Opinion 136 concerning what Rule 1.6(b) permits. Specifically, it opined that "a public posting that discloses confidential information goes beyond a direct response to the accuser allowed by Rule 1.6 and its explanatory Comments."[73]

A Lawyer's Personal Use of Social Media

The lawyers in *Isaac* and *Piccone* unquestionably used social media in their professional roles, including in the course of representing clients. But what about posts that are not so clearly created in that context? Many social media users cling to the notion that their posts are just between them and their "friends," and this puzzling failure to appreciate the general lack of privacy afforded by social media posts often has unfortunate consequences.

For example, Carlton Terry, a North Carolina judge, "friended" a lawyer on Facebook in 2008. That lawyer practiced before Judge Terry, and the two men used Facebook to discuss a case the lawyer was then litigating before the judge. During that litigation, Judge Terry also ran a Google search on the party not represented by his Facebook lawyer friend and referenced the results of that search in his eventual ruling.[74] These actions earned the judge a public reprimand, both for ex parte communications and for independently investigating a matter before him.[75]

In another instance, an Oregon workers' compensation lawyer was suspended for 90 days after sending an email to a listserv of other workers' compensation lawyers revealing confidential information about a former client she described in the email as "difficult."[76] The disciplinary board explained that the sanction was "aggravated by a self-serving motive" combined with the lawyer's "substantial experience in the practice of law."[77]

Lawyers Who Post Pseudonymously

Nothing on the internet is ever really a secret. At least one court has found that a lawyer's pseudonymous posts can violate the prohibition against concurrent conflicts of interest because the personal interests of the posting lawyer significantly risk the duties owed to the client (in addition to breaching other rules that apply to extrajudicial statements).[78]

Salvador Perricone, a federal prosecutor in New Orleans, posted approximately 2,600 comments over a five-year period to newspaper articles on *The Times-Picayune*'s website.[79] He posted under several different pseudonyms and never identified himself as a US Attorney's Office employee. Less than 1% of his comments concerned cases his office was prosecuting.[80] But an investigation into his inflammatory, pseudonymous posts about New Orleans police officers (and their lawyers) during their prosecution for gunning down six unarmed Black men crossing the Danziger Bridge just days after Hurricane Katrina[81] unmasked his online personae.[82]

The judge presiding over the Danziger Bridge case granted the defendants' motion for a new trial, finding that Perricone's pseudonymous online comments, in connection with other evidence of prosecutorial misconduct, denied the defendants due process of law.[83] On appeal, the Fifth Circuit upheld the order for a new trial, based in part on the "significant, repeated misconduct by Perricone" in his pseudonymous posts.[84]

In response to the subsequent grievance, Perricone admitted writing the posts but initially denied any ethical violations:

> He stated that he made the anonymous online comments to relieve stress, not for the purpose of influencing the outcome of a defendant's trial. He further stated that his anonymous comments did not identify him as an [assistant US attorney], and as such, he did not intend, nor did he reasonably expect, that his conduct would influence the outcome at trial, prejudice the fairness of any subsequent legal proceeding, or otherwise prejudice the administration of justice.[85]

Prior to the disciplinary hearing, however, Perricone reversed his position and stipulated that he violated Louisiana Rules of Professional Conduct 3.6, 3.8(f), 8.4(a), and 8.4(d).[86] He focused instead on mitigating his misconduct, providing testimony from a psychologist who had diagnosed him with "complex post-traumatic stress disorder (PTSD)" and opined that his online postings were caused by that condition.[87]

Following the hearing, the hearing committee found that, in addition to the rule violations Perricone had already admitted to, his online

posts "also violated Rule 1.7(a)(2) by placing his own interests, *i.e.*, his need to 'vent' about the criminal cases being prosecuted by the [US Attorney's Office for Louisiana], above the interests of that office, his client, in having those cases proceed unimpeded."[88] The hearing committee recommended that Perricone be suspended from practicing law for two years, with one year deferred, based in large part on the mitigating evidence of his mental condition and the fact that, at the time he was posting, "there were no regulations, rules, or guidelines regarding anonymous Internet postings[.]"[89]

The disciplinary board reviewed the hearing committee's findings and conclusions and reached a far different result. The disciplinary board used Perricone's non-case-related posts to reject his claim that his case-specific posts were not meant to influence those cases, finding it incredible "that while [Perricone] was attempting to influence other commenters regarding benign topics like LSU football, he was not attempting to influence others with his comments about the guilt of various individuals subject to investigation or prosecution."[90] The disciplinary board was unmoved by the absence of any rules specific to Perricone's actions at the time he took them, reasoning that the ABA *Standards for Imposing Lawyer Sanctions* did not recognize such absence as a mitigating factor and that Perricone "should not benefit from a lack of a specific policy or rule prohibiting otherwise unethical conduct."[91]

The disciplinary board found that Perricone's mental health issues did not mitigate his conduct, given the absence of any clear and convincing evidence that his PTSD diagnosis was the cause of his extensive online activities.[92] It thus recommended that Perricone be disbarred because his conduct was extensive and caused "significant actual and potential harm[.]"[93]

Perricone sought review by the Louisiana Supreme Court concerning only the sanction, arguing that his PTSD had not been given proper mitigating weight as a mental disability.[94] The Court rejected that argument because Perricone's own expert witness testified that Perricone knew right from wrong:

> This testimony is corroborated by respondent's own admission that even before his conduct was discovered, he knew he should not be engaged in posting extrajudicial comments. When asked why he engaged in commenting in a prohibited way, [Perricone] candidly admitted that he was angry over public corruption and he vented this anger in the caustic criticism leveled against all who, in his judgment, warranted accountability, *even though he knew this was improper*.[95]

Because Perricone, like all prosecutors, was held to higher ethical standards than other lawyers, the court agreed that disbarment is "[t]he only appropriate sanction" for a lawyer who loses sight of the fact that vigorous advocacy is only acceptable in the courtroom, where rules of evidence provide necessary safeguards, especially in the age of social media.[96] The Court concluded that "[o]ur decision today must send a strong message to [Perricone] and to all the members of the bar that a lawyer's ethical obligations are not diminished by the mask of anonymity provided by the Internet."[97]

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Recommendations for Social Media Use

The safest course of action for lawyers to both maintain a law license and to help rebuild the public's respect for and trust in the legal profession is to refrain from discussing information related to client representation on the internet. At a minimum, law firms and government legal agencies should develop clear, comprehensive policies governing lawyers' personal and professional social media use and enforce them consistently and diligently. Such policies should

- include standard disclaimers for use on social media sites;
- govern requesting and retaining social media profile recommendations and "specialty" information (e.g., LinkedIn);
- recommend or require privacy settings for social media accounts;
- ensure that blog and Twitter posts conform to the series 7 lawyer advertising rules (RPC 7.1 to 7.3);
- cover the ethical use of social media to gather case information;
- address whether attorneys may "friend" or otherwise create and maintain social media links to judges before whom they practice; and
- proscribe posting information about clients.[98]

In light of Colo. RPC 3.8(f), prosecutors' offices are well-advised to develop additional written policies that fulfill their obligation to take "reasonable care" to prevent their employees, agents, and others who assist them with cases from making impermissible extrajudicial statements.

Conclusion

The relative anonymity and spatial separation afforded by the internet removes the social consequences that discourage aggressive confrontations when people are face-to-face with each other. As lawyers, we have the enormous privilege of speaking for those who would otherwise go unheard. That privilege carries the ethical (and moral) responsibility to listen to the better angels of our nature, rather than joining the trolls under the bridge, when using social media. CL

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NOTES

1. *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

2. *Packingham v. N.C.*, 137 S.Ct. 1730, 1732 (2017).

3. Colo. Bar Ass'n Comm. on Ethics, Formal Ethics Op. 127, Use of Social Media for Investigative Purposes at 3 and n.3 (rev. May 2019) (explaining that ABA Model Rule of Professional Conduct 1.1 requires lawyers to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology" (citing ABA RPC 1.1, cmt. [8], which Colorado attorneys should consider "as instructive")).

4. *In re Trupp*, 92 P.3d 923, 932 (Colo. 2004).

5. One notable exception is the Florida Supreme Court's overhaul of Florida's ethical rules in response to The Florida Bar's proposal concerning legal advertising and social media. *See In re Amendments to the Rules Regulating The Florida Bar, Subchapter 4-7, Lawyer Advertising Rules*, 108 So.3d 609, 609–11 (Fla. 2013).

6. Colo. RPC 3.6(a). Given the Supreme Court's pronouncement in *Packingham*, 137 S.Ct. at 1737, any claim that a lawyer did not reasonably know social media comments could be publicly disseminated is difficult to credit. This is particularly so given Rule 1.1 and the duty of competence, which includes competence in "relevant technologies." *See* Colo. RPC 1.1 and cmt. [8]. *See also* Formal Op. 127 at 3 and n.3 and *infra* note 3.

7. *People v. Isaac*, 470 P.3d 837 (Colo. O.P.D.J. 2016).

8. *People v. Piccone*, 459 P.3d 136 (Colo. O.P.D.J. 2020).

9. However, cases decided by a hearing board serve neither as stare decisis nor as the law of the jurisdiction. *See In re Roose*, 69 P.3d 43, 48 (Colo. 2003).

10. *Isaac*, 470 P.3d at 846.

11. *Id.* at 839.

12. *Id.*

13. *Id.*

14. *Id.* at 840.

15. *Id.*

16. *Id.*

17. *Id.* (citing Colo. RPC 1.6(b) and 1.6 cmt. [14]).

18. *Id.* at 841.

19. *Id.* at 845 n.35 (quoting Fucile, "Discretion is the Better Part of Valor: Rebutting Negative Online Client Reviews," 83 *Def. Cons. J.* 84, 88–89 (Jan. 2016)).

20. *Id.* at 840 (emphasis added).

21. *Id.* at 847.

22. *Piccone*, 459 P.3d at 139. The PDJ also discussed Rule 1.5(g), but not in the context of social media posts.

23. *Id.* at 141–42.

24. *Id.*

25. *Id.* at 142, 149.

26. *Id.* at 143.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 143–44.

31. *Id.* at 145.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* (capitalization in original).

36. *Id.* at 146. That Piccone styled it as an "update" to an old case became central to her defense. The PDJ rejected this association with the existing case, instead finding that she used the update "to take a swipe" at the city attorney by re-airing "stale allegation[s] of the affair" but in no other way identifying government corruption or lack of professional ethics. *Id.* at 158.

37. *Id.* at 146.

38. *Id.* (capitalization and punctuation in original).

39. *Id.* at 146–47.

40. *Id.* at 147.

41. *Id.*

42. *Id.*

43. *Id.* at 148.

44. *Id.* The PDJ held that the fee agreement's reverse discount provision violated Colo. RPC 1.5(g) because it disincentivized the clients from exercising their right to fire her. *Id.* at 152–53.

45. *Id.* at 148.

46. *Id.* "The Colorado Supreme Court has consistently recognized the client's right to the prompt delivery of papers and property to which the client is entitled upon termination of the representation, and the Court has consistently disciplined lawyers for failing to do so." *People v. Garrow*, 35 P.3d 652, 655 (O.P.D.J. 2001).

47. *Piccone*, 459 P.3d at 148.

48. *Id.* at 150.

49. *Id.* at 151.

50. *Id.*

51. *Id.*

52. *Id.* at 153–54.

53. *Id.* at 154.

54. *Id.* at 155 and n.136 (noting lawyer's discretion "to determine what disclosures are necessary to the appropriate representation of the client" (internal quotation marks and citations omitted)). *See also* Colo. RPC 1.6(a).

55. *Id.* at 155–56.

56. *Id.* at 156.

57. *Id.* at 156–58.

58. *Id.*

59. *Id.* at 158. The PDJ observed that these posts "cannot be condoned by a profession that seeks justice through reason." *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 159.

63. *Id.* at 159.

64. *Id.* at 158–59.

65. *Id.* at 158.

66. *Id.* at 158 n.156 (emphasis in original).

67. *Id.*

68. *Isaac*, 470 P.3d at 844.

69. *See Piccone*, 459 P.3d at 153–58.

70. Colo. Bar Ass'n Comm. on Ethics, Formal Ethics Op. 136, A Lawyer's Response to a Client's Online Public Commentary Concerning the Lawyer at 5 (Mar. 18, 2019).

71. *Id.* at 8 (quoting State Bar of Ariz., Ethics Op. 93-02, Confidentiality; Former Client (1993)).

72. American Bar Ass'n Standing Committee on Ethics and Prof'l Responsibility, Formal Op. 496, How to Respond to Online Criticism (Jan. 13, 2021).

73. *Id.* at 4.

74. N.C. Judicial Standards Comm'n., Inquiry No. 08-234 (Apr. 1, 2009), https://www.nccourts.gov/assets/inline-files/Public-Reprimand-08-234-Terry.pdf?oRRumeb2d.LtDBNITPCVpDgKmDYYlFcC. No Colorado judge has been publicly disciplined for similar misconduct; however, the absolute secrecy that all judicial discipline complaints are afforded unless the Judicial Discipline Commission recommends public discipline makes it impossible to determine whether such violations have been committed in Colorado. *See* Colo. Const. art. 6, § 23(3)(g).

75. *Id.*

76. *See* OSB #80098, Kasia Quillinan, Oregon State Bar Bulletin Jan. 2007 (citing Oregon Rules of Professional Conduct 1.6(a), 1.9(c)(1), 1.9(c)(2)), https://www.osbar.org/publications/bulletin/07jan/discipline.html.

77. *Id.*

78. *See In re Perricone*, 263 So.3d 309, 310 (La. 2018) (per curiam). *See also* Colo. RPC 1.7(a)(2).

79. *Perricone*, 263 So.3d at 310.

80. *Id.*

81. *United States v. Bowen*, 799 F.3d 336, 339 (5th Cir. 2015). Two of these men—one of whom was developmentally disabled and was shot in the back—died as a result of the officers' actions.

82. *Perricone*, 263 So.3d at 313.

83. *Id.*

84. *Bowen*, 799 F.3d at 350.

85. *Perricone*, 263 So.3d at 314.

86. *Id.* Practitioners should be aware that ill-advised online comments may also violate the conduct prohibited by Colo. RPC 8.4.

87. *Id.*

88. *Id.* at 315.

89. *Id.* at 315 and 316 n.12.

90. *Id.* at 316.

91. *Id.* at 316 n.12.

92. *Id.* at 316–17.

93. *Id.*

94. *Id.* at 318.

95. *Id.* (emphasis added).

96. *Id.* at 319 (quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1058 (1991)).

97. *Id.*

98. Kasten, "Professional Ethics and Social Media," *Boston B.J.* 40, 44 (Summer 2011).