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**Supplemental materials for Presentation: Ethics in Social Media Investigations**  
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Advisory Opinions re Advising Client to “Clean Up” their Social Media Pages

New York:

- New York County Lawyers’ Association Ethics Opinion 745 (July 2013),  
[http://www.nycla.org/siteFiles/Publications/Publications1630\\_0.pdf](http://www.nycla.org/siteFiles/Publications/Publications1630_0.pdf)
  - an attorney may proactively counsel a client about keeping his social media privacy settings on or maximized
  - An attorney may offer advice as to what content may be “taken down” or removed “[p]rovided that there is no violations of the rules or substantive law pertaining to the preservation and/or spoliation of evidence.”
- Social Media Ethics Guidelines, The Commercial and Federal Litigation Section of the New York State Bar Association (Updated June 9, 2015), at  
<http://www.nysba.org/socialmediaguidelines/>
  - (Guideline No. 5.A.)
  - A lawyer may advise a client as to what content may be maintained or made private on her social media account, including advising on changing her privacy and/or security settings.
  - A lawyer may also advise a client as to what content may be “taken down” or removed, whether posted by the client or someone else, as long as there is no violation of common law or any statute, rule, or regulation relating to the preservation of information.
  - Unless an appropriate record of the social media information or data is preserved, a party or nonparty, when appropriate, may not delete information from a social media profile that is subject to a duty to preserve.

Pennsylvania

- Philadelphia Bar Association 2014-5 (July 2014),  
<http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Opinion2014-5Final.pdf>
  - A lawyer may advise a client to change the privacy settings on the client’s social media site.
  - A lawyer may not instruct or permit a client to delete / destroy a relevant photo, link, text or other content so that it no longer exists; the lawyer may instruct a client to delete information that may be damaging, but must take appropriate

action to preserve the information in the event it should prove to be relevant and discoverable.

- Pennsylvania Bar Association Formal Opinion 2014-300 (October 2014), <https://www.pabar.org/members/catalogs/Ethics%20Opinions/formal/F2014-300.pdf>
  - a lawyer may advise a client to change the privacy settings on the client's social media page
  - a lawyer may not instruct a client to alter, destroy, or conceal any relevant information, regardless whether that information is in paper or digital form.
  - A lawyer may, however, instruct a client to delete information that may be damaging from the client's page, provided the conduct does not constitute spoliation or is otherwise illegal, but must take appropriate action to preserve the information in the event it is discoverable or becomes relevant to the client's matter

#### North Carolina

- North Carolina State Bar 2014 Formal Ethics Opinion 5, "Advising A Civil Litigation Client About Social Media" (Approved July, 17, 2015), <http://www.ncbar.gov/lawyers/ethics/adopted-opinions/2014-formal-ethics-opinion-5/>
  - If the client's postings could be relevant and material to the client's legal matter, competent representation includes advising the client of the legal ramifications of existing postings, future postings, and third party comments.
  - A lawyer may instruct the client to change the security and privacy settings on social media pages to the highest level of restricted access
  - If removing postings does not constitute spoliation and is not otherwise illegal, or the removal is done in compliance with the rules and law on preservation and spoliation of evidence, the lawyer may instruct the client to remove existing postings on social media.

#### Florida

- Florida Bar Professional Ethics Committee, Advisory Opinion 14-1 (Approved Oct. 16, 2015)
  - a lawyer may advise a client to use the highest level of privacy setting on the client's social media pages
  - Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, the inquirer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved.

#### D.C.

- D.C. Bar, Ethics Opinion 371, “Social Media II: Use of Social Media in Providing Legal Services,” November 2016, <https://www.dcbbar.org/bar-resources/legal-ethics/opinions/Ethics-Opinion-371.cfm>
  - A lawyer has a duty to review a client’s social media to make sure the claim isn’t frivolous or that the defense isn’t fraudulent.
  - A lawyer must review relevant law to determine if a client can remove social media posts or alter privacy settings.
  - Before removal of any information, at a minimum, an accurate copy of such information should be made and preserved, consistent with Rule 3.4(a).