



Don't 'Poke' The Bear: Using Social Media To Investigate, Law360, by Charles Kellett

An article, written by Charles Kellett, on the recent NJ Supreme Court case involving the use of Facebook as an investigative tool was recently published by Law360.

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The New Jersey Supreme Court made headlines recently when it decided that the Office of Attorney Ethics ("OAE") could investigate a misconduct claim against attorneys based upon their use of Facebook as an investigative tool, despite the fact that the local district ethics committee declined to pursue the matter. The case — Robertelli v. the New Jersey Office of Attorney Ethics — highlights potential ethical dilemmas attorneys can encounter during investigations in the social media age.

Robertelli involves an ethics complaint brought against two attorneys arising from their conduct in defending a personal injury case. As part of their investigation of the veracity of the personal injury plaintiff's claims, the attorneys directed a paralegal to scour the internet for information about the plaintiff. As part of this search, the paralegal was able to access the plaintiff's Facebook page which was, initially, an unrestricted profile accessible to the general public. However, subsequent to the paralegal's initial search, the plaintiff altered his Facebook page's privacy settings, limiting access to his profile to his Facebook "friends" only. According to the OAE, the attorneys directed the paralegal to continue to monitor the plaintiff's Facebook page and, in connection with this direction, she submitted a "friend" request to the plaintiff. The paralegal did not misrepresent herself in connection with the request — she did not use a false identity, but her "friend" request did not disclose her role as a paralegal working for defense counsel nor did she advise that she was investigating the plaintiff. As luck would have it, plaintiff accepted the "friend" request.