

# Social Media and Jury Selection: Ethics and Practice

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# Social Media and Jury Selection

## Why is it important?

“Jurors are like icebergs– only 10 percent of them is what you see in court. But go online and sometimes you can see the rest of the juror iceberg that’s below the water line.”

# Social Media and Jury Selection

## Why is it important?

The duties of competence and diligence require that we must understand and use technology, when ethically appropriate, during jury selection.

# Researching Jurors under the ABA What are the rules?

A lawyer shall not: ... (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order[.]

ABA Rule 3.5 Impartiality and Decorum of the Tribunal

# Researching Jurors under the ABA What are the rules?

*Lawyer Reviewing Jurors' Internet Presence*

ABA Standing Committee on Ethics and Professional  
Responsibility Formal Opinion 466 - April 24, 2014



# Researching Jurors under the ABA What are the rules?

Research is permitted and even encouraged



# Researching Jurors under the ABA What are the rules?

Communication is **forbidden**.



# Researching Jurors under the ABA What are the rules?

An “access request” is communication.





# Researching Jurors under the ABA

## What are the rules?

Do not send a “friend” request or a request to “follow” a juror.



# Researching Jurors under the ABA

## What are the rules?

The fact a juror may know you have looked is not communication, according to the ABA.



# Researching Jurors in New Jersey What are the rules?

No ethical rule or opinion directly on social media and jurors.



# Researching Jurors in New Jersey

## What are the rules?

Estate of Carino v. Muenzen: New Jersey's Appellate Division approved using the internet in the courtroom to research jurors.



# Researching Jurors in New Jersey

Give thought to how you (or others on your trial team) will perform internet research.



# Researching Jurors in New Jersey

Pretrial research can be performed by getting the list of all potential jurors pursuant to R. 1:8-5.



# Researching Jurors in New Jersey

Propose *voir dire* questions which address how jurors consume and use social media.



# Researching Jurors in New Jersey

*Voir dire* questions also sensitize the Court, the panel, and the attorneys to how social media may be misused during trial.





# Researching Jurors

## What about bad juror behavior?

What do you do if you learn of juror misconduct?

# Researching Jurors

## What about bad juror behavior?

You have a potential duty to disclose juror misconduct which is “criminal or fraudulent”. (See Model Rule 3.3)

# Researching Jurors

## What about bad juror behavior?

<http://jurorsbehavingbadly.blogspot.com/>

“A blog about the very small percentage of jurors who fail to follow the judge's instructions, including doing independent Internet research, using social media (such as Facebook) to contact parties and lawyers, and blogging about the trial.”

*Thank you.*

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