

## Legal Ethics

# Lawyers can look up jurors on social media but can't connect with them, ABA ethics opinion says

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By [Terry Carter](#)

Lawyers who want to pick through troves of public information that jurors or potential jurors put on the Internet about themselves may do so, but they may not communicate directly with the jurors, such as asking to “friend” them on Facebook, according to a formal ethics opinion issued today by the ABA Standing Committee on Ethics and Professionalism.

[Formal Opinion 466](#) (PDF) mentions websites and examples of Internet-based electronic social media such as Facebook, MySpace, LinkedIn and Twitter, but notes that because their capabilities change so frequently, the opinion deals only generically with someone’s control over access to their information on websites and ESM or their ability to know who has viewed what is publicly available.

Formal opinions are based on the ABA’s Model Rules of Professional Conduct, which have been adopted by all states except California. The rules are not binding but serve as models that can be adopted or modified. Formal Opinion 466 addresses three situations concerning lawyer review of the Internet footprints of jurors or potential jurors.

- **Looking at information available to everyone on a juror’s social media accounts or website when the juror doesn’t know it’s being done.** The opinion says the “mere act of observing” is not improper ex parte conduct, much as driving down a juror’s street to get a sense of his or her environs isn’t.
- **Asking a juror for access to the his or her social media.** The opinion says that is improper, much like stopping the car to ask the juror’s permission to look inside the juror’s house for a better view.
- **When a juror finds out, through a notification feature of the social media platform or website, that the lawyer reviewed publicly available information.** The formal opinion says the social media provider, not the lawyer, is communicating with the juror, the same as if a neighbor saw the lawyer’s car pass by and told the juror.

On that last point, the formal opinion recommends that lawyers read social media platforms’ terms of agreement for information about matters such as automatic subscriber notification features, and to be aware that this information changes frequently.

The formal opinion hedged on one thorny issue: A lawyer’s obligation to notify the court of information gleaned through social media that indicates possible misconduct by the juror.

The problem is a glitch in one revision made by the ABA’s Ethics 2000 Commission, which conducted an extensive review of the Model Rules in that year. For [Model Rule 3.3](#), the ABA House of Delegates adopted the commission’s recommendation for a new subsection (b) concerning a lawyer’s obligation to notify the court of fraudulent or criminal behavior by a juror or potential juror.

The commission intended that it also include lesser wrongdoing—“improper conduct.” But, the Standing Committee wrote in the Formal Opinion 466, this “was never carried out.”

So, for now, if a lawyer comes across publicly available information about a juror on the Internet that indicates a violation of court instructions but not criminal or fraudulent actions, “applicable law” might trigger the lawyer’s duty to report it to the court under current Model Rule 3.3.(b).

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