§ 1.5

Social Media Issues
Privileged Communications

KEEPING IT CONFIDENTIAL

Communications between a client and her or his legal representatives are privileged. This includes communication between a paralegal and the client or even between a paralegal and the attorney working on the case.

What does it mean when something is "privileged"?
Privileged communications, whether written, digital, or oral, means that those interactions may not be used against the client in a legal matter. But for the privilege to remain intact, the communication *must* remain private. Once it becomes public at the fault of the attorney, paralegal, or client, that communication is likely to lose its privileged status.

Note: *Privileges and Legal Ethics* are covered in much more detail later in this textbook.

How do social networks impact privileged communications?
It may be tempting to post a message on Twitter about an interesting case. It may be exciting to have a selfie alongside a famous client, perfect for posting on Instagram, or a short video on TikTok. But make no mistake: using social networks to document any communications or interactions with the client would be a serious violation of legal ethics.

Even acknowledging that your firm is representing a specific client would most likely be violating ethical rules. For example, if the law firm I worked at specializes in family law, and I confirm that Lucy Page has hired (retained) our law firm, the assumption could be made that she may be seeking a divorce. Or she may be having serious issues with her teenage son. Or she is trying to adopt. Any of which are private, privileged matters.

So, when a friend asks, "Hey, I heard your firm is representing Smash Mouth," your response should be, "Sorry. Can't talk about that." Practice giving that response.

One more thing. Never, ever send documents or files regarding a client using a social media account, even if it is being sent as a private message, or even if it is to your supervising attorney. Those platforms are not secure.