> Although an attorney is not responsible for the content that other persons, who are not agents of the attorney, post on the attorney's social networking websites, an attorney (1) should monitor his or her social networking websites, (2) has a duty to verify the accuracy of any information posted, and (3) has a duty to remove or correct any inaccurate endorsements. . . . This obligation exists regardless of whether the information was posted by the attorney, by a client, or by a third party. In addition, an attorney may be obligated to remove endorsements or other postings posted on sites that the attorney controls that refer to skills or expertise that the attorney does not possess.

The North Carolina State Bar Association has made similar recommendations. See N.C. Formal Op. 2012-08 (Oct. 26, 2102).

Louisiana lawyers with professional social media sites should heed this advice. Even though your client may tell the virtual world that you're "the best," it is a comparison that cannot be factually substantiated. As a result, it likely violates the rules. Although you may like it and your Facebook friends may "Like" it even more, ODC may not. Take it down.

MAY I ADD AN ARBITRATION CLAUSE TO MY ENGAGEMENT AGREEMENT?

Yes. Most state courts that have considered the enforceability of lawyer-client arbitration clauses have approved them. The issue was an open question in Louisiana, however, until the Louisiana Supreme Court addressed the issue in *Hodges v. Reasonover*, 103 So. 3d 1069 (La. 2012). Noting that an arbitration clause "does not inherently limit or alter either party's substantive rights; it simply provides for an alternative venue for the resolution of disputes," the court held that a "binding arbitration clause between an attorney and client does not violate Rule of Professional Conduct 1.8(h) provided the clause does not limit the attorney's substantive liability, provides for a neutral decision maker, and is otherwise fair and reasonable to the client." *Hodges*, 103 So. 3d at 1076. However, the court imposed a number of "minimum" requirements for enforceable arbitration clauses:

> "At a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:
>
> Waiver of the right to a jury trial;
>
> Waiver of the right to an appeal;
>
> Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
>
> Arbitration may involve substantial upfront costs compared to litigation;
>
> Explicit disclosure of the nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;

> The arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities;
>
> The client has the opportunity to speak with independent counsel before signing the contract."

See id. at 1077. If a Louisiana lawyer includes these terms in the lawyer's engagement agreement, it will be enforceable.

MUST I REPORT MY OWN MISCONDUCT?

No, but sometimes self-reporting is advisable.

Louisiana Rule 8.3(a) provides that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel."

Self-reporting is not required by Rule 8.3, which pertains only to a violation of the Rules of Professional Conduct by "another" lawyer. Moreover, compelled self-reporting of lawyer misconduct could raise Fifth Amendment issues.

Nevertheless, self-reporting is sometimes the prudent course of action. The Office of Disciplinary Counsel may consider a lawyer's self-report as a "mitigating" factor if disciplinary sanctions are ever imposed after litigation or by consent. The best advice is to consult with counsel experienced in dealing with disciplinary matters before making a final decision to self-report.

MAY I SCAN MY CLOSED FILES AND SHRED THE PAPER?

Yes you can. A 2017 advisory opinion from Nebraska addressed this issue, and concluded that "given the impact of technology on how files can be retained, it is not reasonable or practical to keep physical/paper copies of every client file." *See* Neb. Ethics Adv. Op. for Lawyers No. 17-02 at 3089 (Aug. 2017). Thus, nothing prohibits a lawyer from "keeping a closed client file in electronic form and immediately destroying the physical copy." *Id.* at 3089.

The Louisiana Revised Statutes likewise permit a Louisiana lawyer to maintain copies of past (and present) client records solely in electronic format. After digital imaging, a lawyer may "dispose of the original record," unless the record relates to a claim or report due to the State of Louisiana. *See* La. Rev. Stat. § 13:3733(A). An electronically-imaged document "shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence."[192] *See id.* § 13:3733(B).

[192] The ABA is in accord, advising that lawyer records "may be maintained by electronic, photographic, or other media provided that . . . printed copies can be produced" and that

Prior to making a decision to destroy or to electronically image client documents, a lawyer must make reasonable efforts to assure that the subject documents are eligible for destruction or imaging. The Nebraska opinion advises that a lawyer should consider the following factors in deciding which paper files to destroy:

- the availability and cost of physical and electronic storage space;
- the ease of access to documents;
- the potential need for originals in future litigation; and,
- the need to preserve confidentiality.

Id. at 3092. In most instances, a lawyer need not review each individual document. Rather, the lawyer can simply review broad categories of folders or boxes under consideration for destruction. However, the extent and nature of a lawyer's predestruction review efforts will turn on the nature of the lawyer's practice and the documents in issue.

To avoid any confusion regarding the destruction of closed files, a lawyer should address the issue in the lawyer's client engagement agreement. Here is some recommended language for a paperless lawyer:

> Lawyer will scan and store all Client files in electronic PDF format and destroy all hard-copy (paper) files given to or received by Lawyer immediately after scanning. All files will be stored "in the cloud" using widely-used providers such as SugarSync and Dropbox. Lawyer and Client understand that there are risks to confidentiality associated with this means of data/document storage. Lawyer will store at Lawyer's expense all relevant PDF files relating to Matter for a period of up to five (5) years following termination of Lawyer's representation. Lawyer may thereafter destroy all of Client's files without further notice to Client. Client may request in writing that Lawyer make available to Client or the Client's designee any PDF files in Lawyer's possession that have not been destroyed. Within seven (7) days of receipt of such request, Lawyer shall make electronic (not hard-copy) files available for download.

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the records are "readily accessible to the lawyer." *See* ABA Model Rules for Client Trust Account Records r. 3 (Aug. 9, 2010).