Using Social Media to Find Assets

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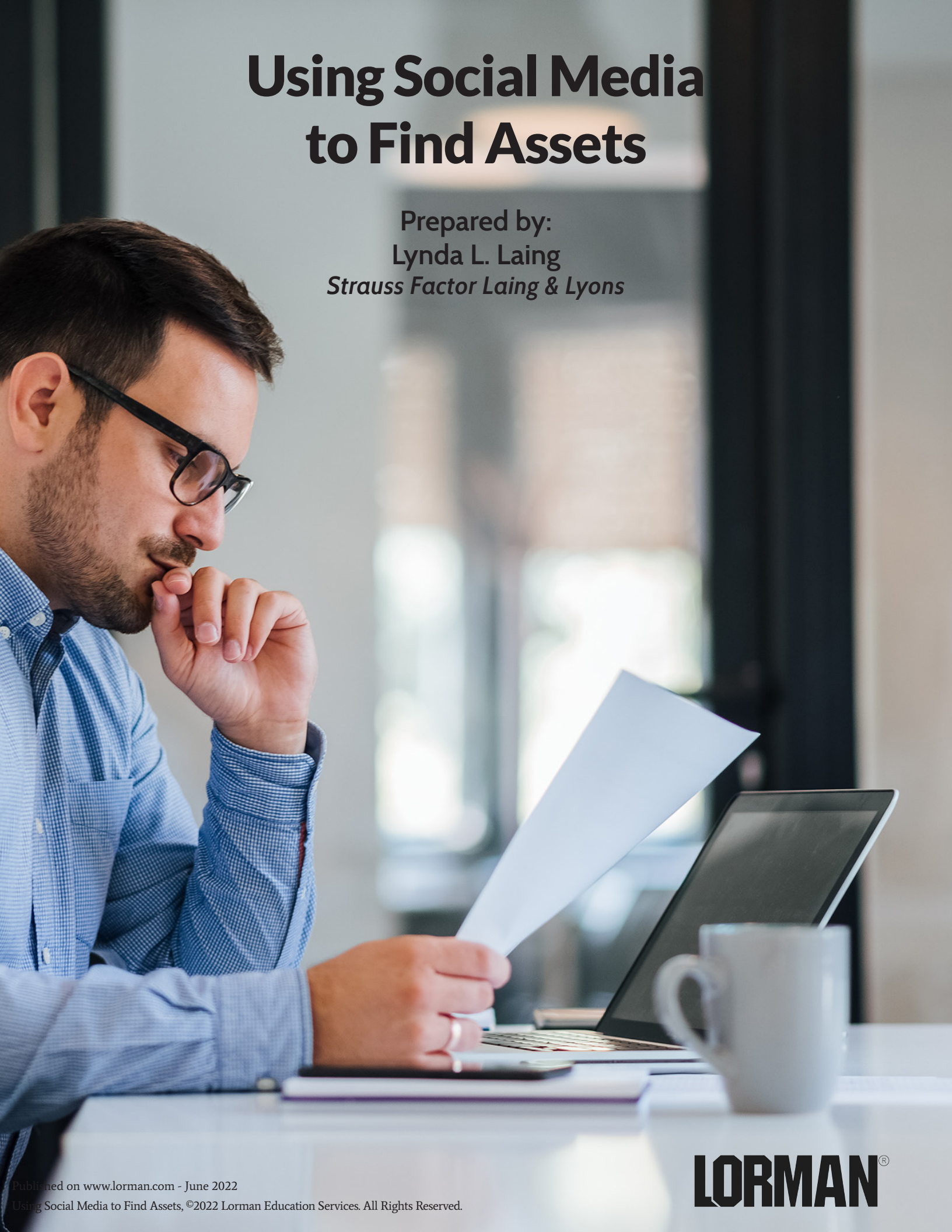

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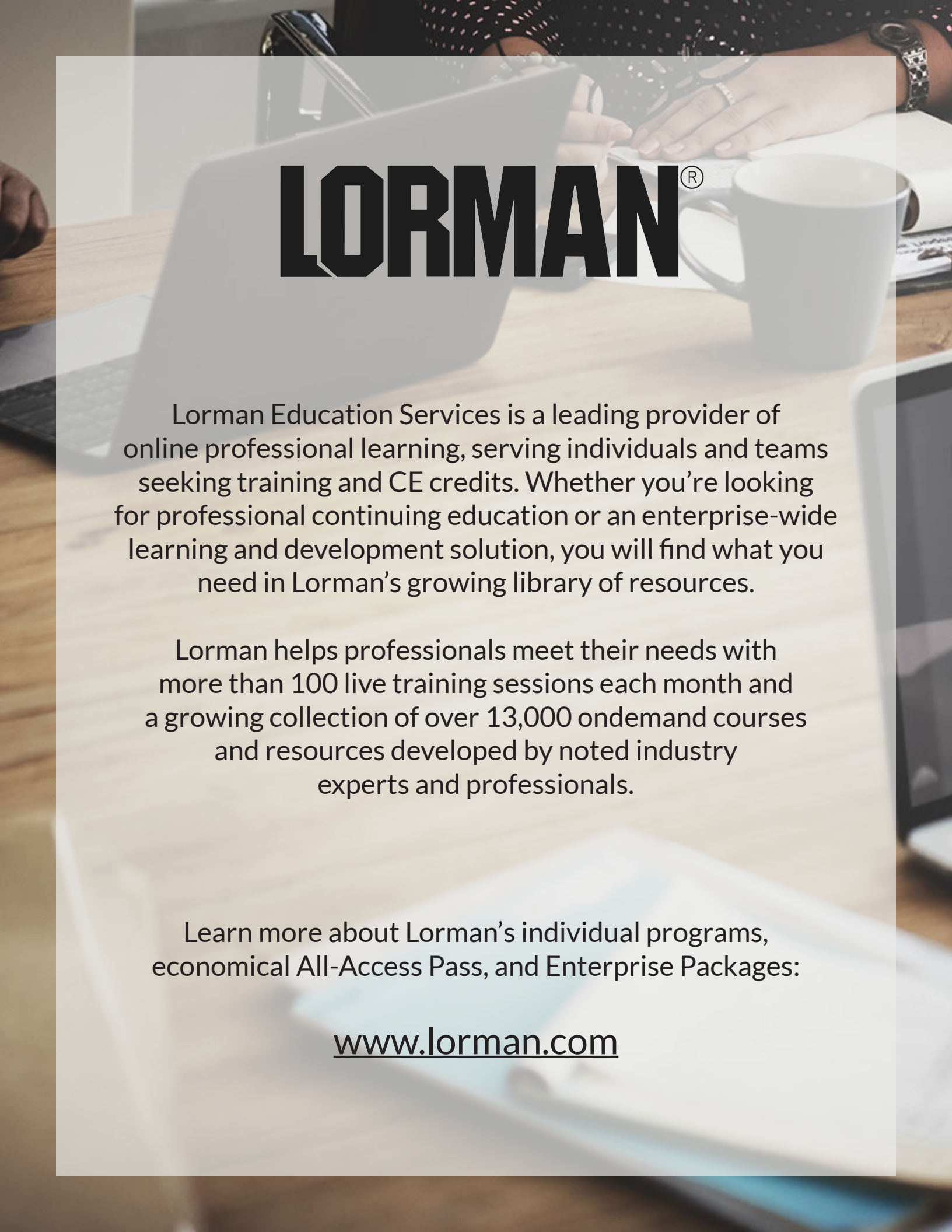

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USING SOCIAL MEDIA TO FIND ASSETS

Many ethical questions arise when an attorney uses social media. Make certain that you document all the social media that you use so that if a complaint arises you or your staff have made notes concerning the account. For example, if a debtor requests that you email information or reminder letters to him or her, the request to do so is documented in your collection notes. Make certain your staff includes the Mini Miranda if your communication. Our office does not allow text messages under any circumstance to a consumer. However, the Final Rule allows said communication. Our office is concerned that a third party may be able to view that communication causing a third party to learn of the debt. As a result, an FDCPA violation may occur. Our office does not use Facebook or instant messaging to communicate with a consumer which is consistent with Regulation F. We have found that having a webpage to allow a consumer or a commercial account to pay has increased our revenues. However, safeguards need to be in place to prevent unauthorized payments on a bank account when additional transactions have not been approved.

As our practice changes, attorneys must adapt to new technologies found on the internet. Debt collectors can use the internet and social media to collect information about a consumer. For example, you may be able to view employment and other information on Facebook. Social media sites like Facebook, Twitter, LinkedIn, and Pinterest can give a collector

personal information such as where a person might live, their date of birth, employer, occupation, relationship status, education, and photographs. Other sites such as Instagram, Trip Advisor, and Yelp may help find debtors and assets.

The Fair Debt Collection Practices Act does not prohibit the use of social media per se. However, an attorney should use caution in this area. Some staff uses Facebook to skip trace a defendant. The ethical rules address how to deal with unrepresented parties. Certainly "friending" an opposing party is allowed in New York if you can "friend" without using a false name or information. New York State Bar Assoc. on Professional Ethics Op. 843 (Sept. 10, 2010) and Op. 743 (May 18, 2011)

Social media can be a useful tool and some collection firms believe there is a difference between the use of Facebook before judgment and after judgment. I believe that if you view a public page without any misrepresentation, this tool should be allowed. See Oregon State Bar Formal Op. No. 2005-164 (Aug. 2005). However, having a third party "friend" a witness is deceptive in violation of Rule 8.4(c). Philadelphia Bar Assn. Professional Guidance Comm. Op. 2009-02 (March 2009). In the circumstances, that a skip tracer can use Facebook, you may find a party's birth date, address, employment, or other asset information.

As a general rule, a collector may not discuss a debt owed by a consumer with anyone other than the consumer, his attorney, a consumer reporting agency . . ., the creditor, the attorney of the creditor. See 15 U.S.C. 1692(c) (d). Certainly, a

debt collector cannot impersonate as a person's friend in order to view their page, i.e. "request to be a friend." This is a violation of the Act under 1692e. Section 1692e prevents a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

A debt collector cannot post on the consumer's wall that they owe a debt. This is a clear violation of the Act under 1692(c) (d). Recently, a Florida state judge ordered a company to not contact its customer, friends, or family via Facebook or any other social networking site. In that case, the company was posting on the consumer's wall that her car payment was late. They contacted her friends and family on Facebook asking them to call the company. This consumer filed a lawsuit claiming violations of the FDCPA and violations of privacy. The order that the company agreed to was not an admission of wrongdoing.

Another example is a friend request from a woman in a bikini. The consumer accepted the request on Facebook and later learned it was a collection agency. The collection agency placed a public posting on the consumer's Facebook wall saying, "Pay your debts, you deadbeat." The FDCPA also prevents harassment of consumers under 806. Some examples of such harassment could be disclosing the debt being owed on the public page as it could affect the debtor's reputation. Also, it may be in an effort to shame the debtor into paying which is considered harassment under the Act.

In Sohns v Bramancint, LLC, No. 09-1225, 2010 WL 3226264 (D.Minn. Oct. 1, 2010), Sohns sued Bramancint for violations of the Fair Debt Collections Practices Act. Sohns claimed that Bramancint used "caller ID spoofing" to call Sohns concerning her nonpayment for a 2005 Chrysler Sebring. Hummel who worked for the defendant admitted that she dialed an 800 number, entered an access code, and entered a phone number that Sohns would recognize which was her mother-in-law's number. During that call, the debt collector told Sohns that she had "googled" her saw that she had a beautiful daughter. Sohns claimed that the debt collector told her that it "would be terrible if something happened to your kids. Because you were getting hailed off by the sheriff's department." Hummel admitted that she called Sohns and called herself Investigator Ortiz. She also admitted that she mentioned the daughter but she was not trying to threaten the consumer. The Court granted Sohns's motion for summary judgment as the defendant clearly violated the FDCPA as the caller Id spoofing service was used to conceal the defendant's identity and motive for talking with Sohns. Furthermore, the comments about the beautiful daughter were an effort to intimidate Johns.

Recently, The Pittsburgh Post-Gazette wrote that a Brighton Heights man (who did not want to be disclosed) owed $270,000.00 in student loan debt. In May 2014, the man had his picture taken at Square Café with PBS personality Rick Sebak. The picture was posted to Facebook and shared more than 50 times with a friends list of more than 5,000 people. Soon thereafter, a person contacted the Café looking for the

man. That person left a phone number for the man. The newspaper contacted the CFPB for comment. Christopher Koegel stated that "if the debt collector research Square Café by becoming his Facebook friend under false pretenses or by connecting with individuals on his friends list under a false pretense, the company is in violation of disclosure laws and laws prohibiting contact with third parties associated with the debtor without prior consent."

Sometimes a debtor may have settings that block your search, but the friends list may not be blocked. If their pages are public, information about the debtor may be on the friend's page and can be helpful in locating the debtor. Some people use Facebook and let friends know where they are at "liking" an establishment to get incentives and thus helping a constable find their whereabouts. This also may happen on Twitter so a resourceful constable may use social media to find the debtors. Sometimes even the pictures that people post can be useful in identifying the proper party for service. "Linked In" can give useful information as to where the person went to school and his employment. One of the downsides of Linked In is that the person on Linked In will know you visited their profile.

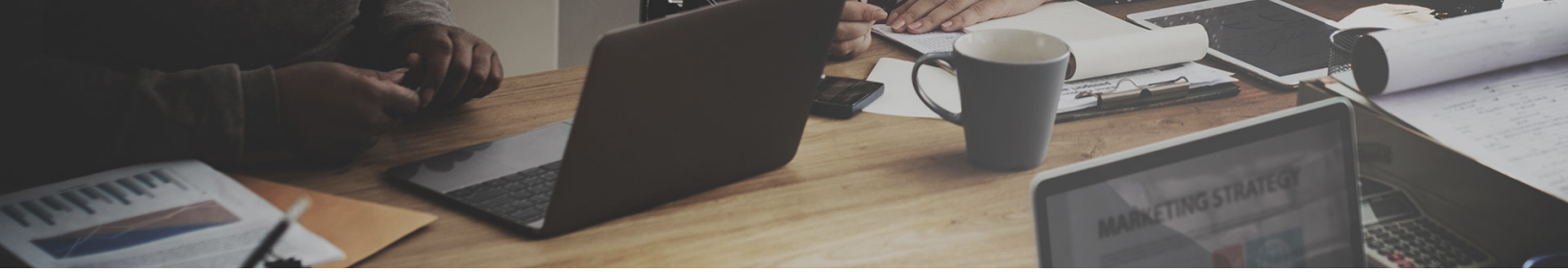
The FTC has not yet regulated debt collectors' use of social media. However, the FTC did issue a letter to a lawyer who used Facebook to contact a debtor. The FTC warned that they would find violations if an attorney requested to join a debtor's social media network (for example, by sending a friend request on Facebook or making any subsequent communications for the

purpose of collecting a debt without making the necessary disclosures as required by 807(11) (mini Miranda).

Furthermore, use of other technology may also lead to FDCPA violations. Some debt collectors are using ringless voice mail drops. Software allows a collector to insert voice mails into phones without a ring. As a result, some collectors argue that this ringless voice mail, is not a telephone call and the restrictions concerning phone calls do not apply. I would still be cautious as a consumer could claim they were harassed under the Act.

Virtual collection agents can also be used by emailing the consumer with a photo in an email and the consumer can click a link to a site where the person attempts to talk to them. This new technology may have problems if the proposed rules.

If a consumer asks that you contact them by email or text, our office prefers not to correspond in that fashion unless we can document that the consumer has made such a request. We keep a copy of the request in the file and make certain that the consumer is given all the necessary warnings such as the mini-Miranda at the end of the email and that the request is kept on the consumer's file. Our office does this as no email or texts are private and a third party may read the email causing a third party disclosure. We never communicate with a consumer on social sites through email or comments.



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