

**UNIVERSITY OF MIAMI SCHOOL OF LAW  
CENTER FOR ETHICS & PUBLIC SERVICE**



**ETHICAL IMPLICATIONS FOR THE TRUSTS & ESTATES LAWYER IN  
THE DIGITAL AGE**

**Estate Planning Council of Greater Miami**

**February 16, 2017**

*Professional Responsibility & Ethics Program*

Jan L. Jacobowitz, Esq., Program Director

Luisa Andonie, Intern

William Golden, Intern

**HYPOTHETICALS**

**Act I**  
**Technology: Blessing or Curse?**

Darcee & Jones is a trusts and estates law firm based in Miami. One of the firm's partners, Patrick Darcee, meets with a new client, Jayn Austin, a novelist. Patrick is an avid reader who loves Jayn's books and has always secretly aspired to write the Great American novel. After several meetings, Patrick drafts Jayn's estate documents and Jayn inspires Patrick to create a blog and write short stories.

One year later, Patrick downloads some new client documents on a flash drive before attending a three-day legal ethics conference in Naples, Florida. During a break, he sits at the hotel bar where there is free public Wi-Fi. He decides to read his e-mails. He opens an e-mail from Jayn's parents and is shocked to learn that Jayn has died. The e-mail provides information about her death, and also requests Jayn's Facebook password. Patrick logs onto the firm's cloud storage service, PopBox, but does not find Jayn's Facebook password in any of her files.

Patrick is so upset about Jayn's death that he leaves the bar and returns to his room to gather his thoughts. He decides to work on some new client matters and realizes that he has lost the flash drive.

**What are the ethical implications of:**

1. Using a flash drive?
2. Using public Wi-Fi for e-mail?
3. Subscribing to a cloud service?
4. Accessing the cloud service from public Wi-Fi?
5. Accessing Jayn's file in a public place?

**Act II**  
**Social Media: Marketing Opportunity or Ethical Landmine?**

Patrick's firm retains Emma, a marketing and operations manager. Emma recommends using Twitter and enhancing the firm's LinkedIn presence by adding connections, accepting recommendations and endorsements, and writing short articles.

Later that day, Emma notices that Patrick seems upset and asks whether he has a problem with her suggestions. Patrick explains that his client, Jayn, has died, and that he loved Jayn's books; she inspired Patrick's popular fiction blog. Emma suggests that Patrick pay tribute to Jayn on his blog. She also proposes that he add the firm's URL to his blog with a note saying that he is a lawyer.

**What are the ethical implications of:**

1. Adding connections on LinkedIn?
2. Accepting recommendations and endorsements and writing stories on LinkedIn?
3. Using Twitter as a marketing channel?
4. Paying tribute to Jayn on his blog?
5. Adding the firm's URL to Patrick's blog?

**Act III**  
**Digital Assests: Facebook Legacy or Liability?**

The next day, Patrick meets with Jayn's parents and explains that she left her entire estate to them. However, her estate documents are silent regarding access to: manuscripts and photos in her cloud-based account, her Facebook account, and her GMAIL accounts.

**How should Patrick proceed if:**

1. Jayn provided Patrick with power-of-attorney?
2. Jayn appointed her mother as the trustee of her trust?
3. Jayn appointed her mother as the personal representative of the estate?