

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



**THE EVOLVING DUTIES OF COMPETENCE &  
COMMUNICATION: SOCIAL MEDIA & TECHNOLOGY'S  
IMPACT ON THE PRACTICE OF LAW**

**ESTATE PLANNING COUNCIL OF GREATER MIAMI**

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Professional Responsibility & Ethics Program

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## **ACT I - DIGGING FOR GOLD?**

Mark Golden, a wealthy 70-year-old Miami real estate developer and entrepreneur, maintains a robust social media presence on Twitter and Facebook. Mark recently married his third wife, Clara, a 40-year-old bombshell. Clara begrudgingly signed a prenuptial agreement, but is nevertheless excited to be married. She posts on Facebook, “So in Love; Gold is a girl’s best friend!”

Mark’s daughters, Rylan and Zoe, have not hesitated to share their opinions about the marriage on their respective Facebook pages. Rylan posts, “Here we go again—incoming gold digger;” while Zoe posts, “Team Golden has always had the bigger shovel.”

Shortly after the wedding, Mark’s tweets become somewhat eccentric such as, “Bet on stairway to heaven and castles in the sky, make mine a rocky mountain Golden girl. #lifeisgood.” He has also become extremely forgetful, but explains to Zoe that his mind is fine and that his recent memory issues are from all the marijuana sampling and redeye flights back from Colorado where he is considering investing in a chain of dispensaries. Clara wants to make her mark in the marijuana business and they are having a fabulous time together exploring the possibilities.

After a few exciting years of jet setting with his young wife, Mark professes to Clara that she is his “everything.” Seizing the opportunity, Clara suggests that they visit her lawyer, Connor, to void their prenuptial agreement and Mark agrees. He decides to execute a new will while at Connor’s office, leaving 75% of his estate to Clara. Ecstatic, Clara posts on her Facebook page, “Just left Connor’s office...what a great attorney...I give it no more than two years until I’m the richest gal in Florida ☺.”

Mark continues to post strange comments on social media and seems significantly more forgetful, confused, agitated, and angry. Worried about the deterioration of their father’s mental state, Zoe and Rylan convince Mark to go to the doctor. Mark is diagnosed with Alzheimer’s disease. Two days after his diagnosis, Mark is tragically killed in a car accident.

Soon thereafter, Rylan and Zoe learn about his new will and immediately seek legal counsel to contest it. At their first meeting, the girls provide their lawyer with some screen shots of Mark’s Twitter and posts from Clara’s Facebook, but do not mention that they each have Facebook accounts.

Upon learning that Zoe and Rylan plan to contest the will, Clara consults her attorney, Connor. Fearing that they will frame her as a gold-digger, Connor instructs Clara to “clean up” her social media presence. He also instructs his associate, Travis, to investigate Zoe’s and Rylan’s social media accounts.

### **What are the ethical implications of the following:**

1. The lawyer’s failure to discuss Zoe and Rylan’s social media presence?
2. Connor’s advice to Clara to clean up her Facebook account?
3. Travis investigating the social media presence of Zoe and Rylan?
4. Mark’s Twitter posts?

## **ACT II - TRAVIS PLLC**

After several years of working with Connor, Travis decides to open his own practice. Aware of the importance of technology in today's market, Travis hires a young tech-savvy law clerk, Tim. Travis asks Tim to create a simple website to help promote the firm.

Tim creates a website and uses bold red letters for the tagline "We Specialize in Probate Matters." Tim also creates a blog, *What's Mine is Mine*, to provide advice about prenuptial agreement issues and to discuss the firm's cases. Tim posts the results of a few of Travis' big wins and links the blog to the website.

In an attempt to gain traffic on the website, Tim adds a direct link to the law firm website from his and Travis' LinkedIn pages. One of Travis' recent clients, Suzanne, connects with Travis via LinkedIn. Suzanne endorses Travis for "Legal Writing" and "Commercial Litigation," and leaves the following comment on Travis' page:

"Travis is the BEST Trusts Lawyer in town! Highly recommend if you want to come out on top!"

### **What are the ethical implications of the following:**

1. The tagline on the firm's web site: "We Specialize in Probate Matters"?
2. The firm's blog?
3. Suzanne's endorsements and recommendation on Travis' LinkedIn page?

### **ACT III - INFORMATION SECURITY**

Travis decides to expand his firm. Rick, an old law school friend who has a real estate practice, is interested in a partnership. They establish Travis & Rick P.A. and move into a new office space with two associates and a few administrative staff. Travis consults with an IT professional and they set up a computer network, which facilitates the sharing of information. They do not have an IT professional on staff, but they continue to contact the consultant as needed. The lawyers and administrative staff often communicate using their smartphones; they usually use email correspondence or text message.

Travis and Rick hire law students, Melissa and Russell, who work both at the office and remotely. Melissa often works at home due to her busy schedule. Russell has noisy roommates, so he prefers to work at a local coffee shop. Both students conduct research and draft documents on their personal laptop computers while connected to wireless networks.

#### **What are the ethical implications of the following:**

1. The use of technology within the firm?
2. The law clerks working remotely on their personal laptops?