

# Social Media and the Law of Unintended Juror Contact

New York Law Journal  
January 14, 2026

*Even a simple “like” on social media can violate ethical rules and lead to sanctions. Courts warn that automated notifications or platform behaviors can unintentionally contact jurors, risking mistrials. Lawyers must use strict protocols: research only public info, avoid requests or messages, supervise staff, and test platform behavior. Proper procedures are essential to protect trial fairness and stay compliant.*

Imagine you are in the middle of voir dire. One prospective juror says something that raises a subtle concern — not enough for an immediate challenge, but enough to linger in your mind. During lunch, you pull up the juror’s publicly accessible Facebook page. You scroll for any red flags or mentions of the case. Then, a momentary slip, you accidentally “like” a recent post. You immediately try to undo the action, hoping the digital footprint disappears. But if the juror has notifications enabled, your name may already have flashed across their iPhone screen.

What feels like a tiny digital misstep can have consequences. Under Rule 3.5 of the New York Rules of Professional Conduct, lawyers are prohibited from communicating with jurors outside authorized proceedings or attempting to influence them. Even an inadvertent “like” or any platform-generated notification can be held to be an impermissible contact, risking both trial integrity and disciplinary exposure. In today’s digital environment of constant notifications, a single click can blur over the line of legitimate research to unethical communication.

You may think your team’s juror research is compliant, but a single LinkedIn click recently cost a major firm \$10,000 and risked a mistrial. This article dissects the “unpredictability” of social media mechanics that often overrides lawyer supervision and outlines necessary steps to protect your trial integrity and professional license.

## **The Alston & Bird Wake Up Call**

A single LinkedIn click recently cost Alston & Bird LLP \$10,000 — “far more modest than [the court] originally contemplated,” U.S. District Judge William H. Orrick observed in sanctioning the firm. *Contour IP Holding, LLC v. GoPro, Inc.*, No. 17-cv-04738-WHO, slip op. at 3 (N.D. Cal. Oct. 28, 2025)

Judge Orrick’s 2023 Standing Order Regarding Juror Questionnaires and Social Media Research (Standing Order) forbids any direct or indirect contact with prospective jurors — including any action that could reveal counsel’s review of their information. Specifically, it prohibits all outreach such as social media features that notify users of views, bans social media “friend” or “follow” requests, and limits research to passive review of publicly available sources (including paid databases).

An investigator working for counsel’s jury consultant violated the Standing Order by researching prospective jurors on LinkedIn. It didn’t matter that the profiles were publicly accessible, that no connection requests were sent, and that the profile viewer’s identity was anonymized. What mattered was that the investigator’s actions triggered LinkedIn’s automated “profile view” notifications on a prospective juror.

The court found that counsel failed to adequately inform and supervise its consultants of the limits imposed by the Standing Order, opting for a \$10,000 penalty to drive home counsel's compliance of their "ethical duty not to contact prospective jurors.

Judge Orrick acknowledged that "this is an evolving area and different judges have varying perspectives... I recognize that I may be one of only a few judges who consider automatic notifications on LinkedIn to be juror contact."

### **Alignment with New York Ethical Rules**

New York ethics guidance suggests that New York counsel should not be dismissive of the cautionary tale from Judge Orrick's court.

The New York Rules of Professional Conduct, as well as authoritative ethics and bar association opinions, largely align with the principles articulated by Judge Orrick. New York lawyers may review publicly available online information about jurors, but they must not communicate with jurors, and that includes automated alerts caused by viewing activity. See N.Y. Rules of Professional Conduct §§3.5(a)(4)–(5), (c)–(d) (no communications with jurors; limits extend to family; prompt reporting of misconduct); §5.3 (lawyers are responsible for the conduct of nonlawyers employed or retained by or otherwise associated with the lawyer); §8.4 (no violations "through the acts of another"; no dishonesty, prejudice to justice, or harassment).

The New York County Lawyers Association made the point more than a decade ago that, "[d]uring the evidentiary or deliberation phases of a trial, a lawyer may visit the publicly available Twitter, Facebook or other social networking site of a juror but must not "friend" the juror, email, send tweets to jurors or otherwise communicate in any way with the juror, or act in any way by which the juror becomes aware of the monitoring." (Formal Opinion No. 743) The New York City Bar Association ("NYCBA") guidance (Formal Opinion 2012-2) and the New York State Bar Association Ethics Guidelines (released June 20, 2019) further underscore that lawyers may research jurors' public social media, but must avoid any "communication" with a juror—including automated social media platform notifications that reveal the lawyer's viewing activity. NYCBA Formal Opinion 2012-2 is even more pointed - even an automated alert that a juror "has been viewed" can be treated as a prohibited communication.

Likewise, there is no workaround: lawyers cannot use deception to access non-public juror content, and may not do through consultants or investigators what they are ethically forbidden to do themselves.

Notwithstanding the routine use of social media in daily life and what might appear to be harmless, passive conduct of viewing, liking, and profile hits, in the context of jury research, what may seem counterintuitive can constitute high risk impermissible communication.

### **Persuasive New York Opinions: Watts and Milton**

Two federal cases in New York reflect the range of judicial approaches.

In *United States v. Watts*, 934 F.Supp.2d 451, 494-95 (EDNY 2013), the court, taking a conservative approach, prohibited any action that could trigger automated notifications (such as LinkedIn "profile view" alerts), and required prompt disclosure of adverse information. The rationale was clear: passive review of public content is acceptable, but jurors must remain unaware of monitoring.

By contrast, *United States v. Milton*, 2023 WL 5609098 (SDNY 2023), reflects a more permissive stance. The court emphasized that defense counsel could freely conduct comprehensive online research during voir dire and trial, imposing no restrictions or disclosure requirements. *Milton* did not address automated notifications, leaving open whether the court would have treated them as prohibited conduct.

Together, these decisions illustrate the spectrum of judicial attitudes in New York's federal courts. Nonetheless, the common thread remains attentiveness, counsel must avoid any conduct that causes a juror to receive information traceable to them.

### **The Practical Tension: Duty to Investigate vs. Duty Not to Communicate**

New York lawyers practice in a narrow lane. Courts expect counsel to identify juror misconduct, e.g., social-media posts about the case, improper communications, external influence. See *United States v. Daugerdas*, 867 F.Supp.2d 445, 484 (SDNY 2012) (“An attorney's duty to inform the court about suspected juror misconduct trumps all other professional obligations, including those owed a client. Any reluctance to disclose this information—even if it might jeopardize a client's position—cannot be squared with the duty of candor owed to the tribunal.”). Yet, the same rules that encourage vigilance impose strict prohibitions on anything that is considered contact.

You're required to look. You're forbidden from being seen looking. This tension is why mechanics matter. It's not enough for litigators to know the rules. They have to understand how platforms behave in practice.

### **LinkedIn and Other Social Media Platforms: The Problem of Unpredictability**

Many lawyers assume that using “private mode” or disabling notifications on LinkedIn eliminates risk. In practice, these features behave inconsistently across versions, devices, and account types. LinkedIn's mobile app can behave differently from its desktop interface; corporate accounts and basic accounts sometimes display non-identical settings; and updates can quietly change default behavior.

This instability is precisely why the Orrick Standing Order flatly bans using LinkedIn for juror research. Even well-intentioned management of settings may not avoid a notification. New York lawyers need to assume the same risk profile and build procedures that avoid platforms with uncertain notification mechanics.

### **Implementation: What Real Compliance Now Requires**

More than ad hoc caution is needed by litigators. Most sanctions in this area arise from failures of training or supervision—usually involving consultants, investigators, or junior staff who don't appreciate the limits of Rule 3.5 of the New York Rules of Professional Conduct.

A workable protocol includes:

- a written, matter-specific juror-research plan circulated to every team member and support vendor;
- platform-by-platform guidance identifying which tools are allowed and which are not;
- internal testing of platform notification behavior before trial teams begin voir dire research;

- supervisory review to confirm that outside consultants understand and comply with applicable court orders; and
- a mandatory reporting procedure for any suspected inadvertent contact.

### **Will New York Courts Adopt Uniform Rules?**

Several federal judges in New York have begun borrowing language from each other's trial-procedure orders, especially in complex civil cases. It wouldn't take much for a judge in the SDNY or EDNY to adopt a version of the Orrick Standing Order. The trend line leans toward greater uniformity, not less, especially as more judges recognize the unpredictability of automated notifications.

### **Guiding Principles**

- Juror research is allowed. Improper contact is not. The line between them is narrower than most lawyers appreciate, and digital platforms don't care about the difference.
- Use only public information. Confirm that your activity can't trigger a notification. Train and supervise every person involved in research. Log what you do. Promptly disclose juror misconduct.
- Don't send requests, use pretext, try to access restricted content, rely on default platform settings, or delegate research to anyone who doesn't fully understand the rules.

The Alston & Bird cautionary lesson isn't that LinkedIn is dangerous, but that the web today blurs the boundary between viewing and communicating. Lawyers can avoid that trap, but only if the right systems are in place before voir dire begins.

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