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Ethical concerns may exist for lawyers who use social media

Social media is a growing business — and it isn't just the large chain retailers who are looking to get in on the action. More and more attorneys are looking to social media as a means to develop and maintain relationships with strategic partners and clients. In 2008, the American Bar Association Legal Technology Research Center found that 15 percent of lawyers say they maintain a presence on an online social network. In 2010, that number surged to 56 percent. Larry Kaufman, business development executive for Plante Moran, frequently conducts seminars for attorneys on how to leverage LinkedIn as a business development tool.

"Lawyers can truly benefit by having a professional presence on LinkedIn," Kaufman said. "Chuhak & Tecson has taken additional steps to ensure ethical compliance with how their attorneys use LinkedIn. Their marketing team has allotted time each month to meet with attorneys to ensure they create professional profiles that fall within the firm's guidelines."

I am active on several social media sites — through LinkedIn, a business page on Facebook (Lindsey Markus — Plan Today, Strengthen Tomorrow) and Twitter handle @EstatePlanAtty. In an effort to encourage more of my colleagues to leverage the benefits of the Internet, Kaufman recently presented "LinkedIn for Lawyers" at Chuhak & Tecson and helped open the attorneys' eyes to social media opportunities. Prior to Kaufman's presentation, we researched the ethical issues associated with social media.

The number of lawyers using social media websites is high and growing. Accordingly, ethical issues involving attorney usage of social media websites is an increasingly important concern.

Though the same ethical rules governing lawyers' offline conduct apply to online conduct, it is not yet always clear how those rules apply to social media usage. Some particular areas of ethical concern that disciplinary agencies across the country are currently seeing through formal and informal inquiries involving online conduct include the following: Revealing client confidences; lawyer communications, including advertising; and approaching an unrepresented individual online without disclosing that the lawyer is representing a party seeking information about or from the individual.

Illinois Rules of Professional Conduct 1.6(a) provides "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by Paragraph (b) or required by Paragraph (c)."

Lawyers who blog or otherwise post items about cases they are handling risk disclosing confidential client information. For example, an Illinois lawyer lost her public defender job after making blog postings containing thinly veiled information about her clients (including, in one instance, highly confidential information that suggested the client had committed fraud upon the court) and referred to a judge presiding over one of her cases as "Judge Clueless." The Illinois State Bar filed a disciplinary complaint against her in 2009. As long as a lawyer gets informed consent from a client, however, the attorney can tweet, post or blog away.

Rule 7.1 provides that "(a) lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law

THE BUZZ



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Lindsey Paige Markus, a principal at Chuhak & Tecson P.C., draws on her early career in business, finance and clinically applied neuroscience to communicate with clients and develop creative solutions to fit their estate planning and asset protection needs. Lindsey was named an Illinois Super Lawyers Rising Star in 2010, 2011 and 2012. She is licensed in Illinois and Florida.

or omits a fact necessary to make the statement considered as a whole not materially misleading." Online, puffing or the exaggeration of the quality of an attorney or an attorney's work, is both permanent and easy to check and such behavior can lead to violations of Rule 7.1.

Even completely truthful statements about a lawyer's experience may constitute violations of Rule 7.3 if unaccompanied by an advertising notice as required by

Subsection (c) of that rule. An easy safeguard to help prevent miscommunication is to provide notices and disclaimers with regards to advertising and providing legal advice. Put a short statement on the bottom of your profile on Twitter, your Facebook information page or at the bottom of your website or blog.

Rules 4.3 and 8.4 bring to the forefront the issue of pretexting, one of the most discussed ethical issues in social networking for lawyers. Pretexting occurs when a lawyer contacts someone (i.e. "friends" someone on Facebook) or causes an employee or associate to contact someone with the aim of gaining access to information about that person that the person made available only to approved persons (i.e. Facebook "friends"). At first glance, a lawyer's reaching out to an unrepresented party to connect to gain information helpful to the lawyer's case might seem like a clear-cut violation of Rule 4.3, which prohibits a lawyer from stating or implying that the lawyer is disinterested when dealing on behalf of a client with a person not represented by counsel, or of Rule 8.4, which prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

There is so much ambiguity in social media and legal ethics that the ABA is currently conducting a review of the Model Rules of Professional Conduct through the Ethics 20/20 Commission, precisely because of the fuzziness of the rules' interface with some uses of social media. Until we receive more guidance on the do's and don'ts for cyberspace, take caution and be mindful of the ethical implications before you post.

A special thanks to Chuhak & Tecson Law Clerk Brian Hendricks for his contribution to this month's column.

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