



LAWYER

2.0

by Tracy Kane

WHAT does it mean to be an electronic savvy (or just competent), lawyer these days? Must you/should you have a Facebook page? Is your Facebook page an "advertisement"? How do you keep your online social and professional networking selves separate; should you and is such a thing even possible? Are you missing opportunities because you're not blogging? Or are you missing filing deadlines because you *are* blogging? To Tweet or not to Tweet? Do you even know what a Tweet is? Do you or should you have a social media marketing plan? These are just a few of the questions, conundrums, and ethical quagmires that go through the modern lawyer's mind. A recent survey conducted by Martindale-Hubbell and Leader Networks showed that 75% of lawyers are members of social networks, a figure that is up 25% over last year.¹ Predictably, younger lawyers make up the lion's share of this group with 86% of lawyers aged 25-35 reporting to be members of social networks like Facebook and LinkedIn; however, lawyers over the age of 46 are not far behind with as many as 66% reporting memberships in such networks, a 30% increase over last year.

In this brave new electronic world, how can lawyers leverage these new mediums to build their personal and professional networks, connect with and share information with colleagues, and find and communicate with clients or potential clients? Even more importantly, how can you do all those things without falling into ethical violations and other traps? This article will attempt to cover a few of the social media people are using to market themselves and their services as well as highlight the most effective ways to use them and potential pitfalls to avoid.

Blogging

At this point, I'm pretty confident that anyone reading this article is familiar with the concept of what a blog is; in fact many lawyers, law professors and legal journalists have been using blogs effectively. The American Bar Association (ABA) even devotes an entire issue to recognizing excellence in legal blogging. Just in case one or more of you are like John McCain and don't even use email, a blog is a type of website, usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video. Many blogs provide commentary or news on a particular subject; others function as more personal online diaries. The question is whether blogging is something you should incorporate into your marketing strategy?

Benefits: Blogging can be a great way to market yourself, but only if you are willing and able to provide quality content on a regular basis. Adding a blog to your law firm website can add a personal voice as well as increase your website's ranking in search engines.

Possible pitfalls: This is one of the most time consuming methods of social media and the most difficult to do well. Blog posts should provide your audience with useful information. It should not be a place to vent, at least not with any identifying details, as a lawyer in Fort Lauderdale learned the hard way. Sean Conway was steamed at a judge he was recently in front of and he did what many people are doing today when they become frustrated by a person or business; he blogged about her saying she was an "Evil, Unfair Witch." Because Mr. Conway is a lawyer, however, his blog post didn't just get a few comments in response either agreeing or disagreeing with him, he was hauled before the Florida bar, which issued a reprimand and a fine for his intemperate blog post.² So the lesson is: whether your blog is related to your work or just exploring

a hobby of yours, make sure your blog posts are appropriate and present the kind of professional image you want to send. Finally, if you do blog about your work, particularly issues that have come up in your practice, be careful not to breach client confidentiality or disclose attorney work product in the course of your posts.

A few pointers: If you choose to blog, update frequently; keep your posts brief (around 500 words) but provide quality content that is helpful and interesting to your readers. Also, if possible, blog directly from your website (if you have one) rather than an outside site like WordPress or Blogger as that will bring increased traffic to your website.

Facebook (and/or MySpace)

Social network websites like Facebook and MySpace provide an online space to connect with friends and family by sharing information about your daily or momentary thoughts, your likes and dislikes as well as your activities. Social networking sites are interactive and, on the flip side, allow you to learn about the goings on of your friends in your network and find new friends with common interests. Social network sites are essentially hubs for content, photos, video and networking capabilities. Facebook is currently the largest social network on the web boasting more than 200 million active users with more than half of those logging in at least once a day.

Benefits: Maintaining a personal and/or business profile page on a social networking site allows you to easily maintain and build your network of friends and even colleagues (note, however, the section below on pitfalls). Utilizing your personal networks to advance your career and find job opportunities is not a new invention, but online social networks have created the space to allow you to maintain connections with a greater number of people over a greater

geographic area. For example, you can update everyone in your network regardless of whether they are in Nashville or Singapore with the single click of a button.

Possible pitfalls: Be aware of and give careful consideration to who you allow to become your "friend" in your online social network. If you want to post pictures from last night's bar crawl (or think your friends will do so) or if you want a space to complain about your coworkers, you probably don't want your boss, colleagues or clients as part of your online network.³ Social media postings may also provide new ways in which lawyers may be discovered violating RPC 3.3 (candor with the tribunal). For example, Judge Susan Criss in Galveston, Texas, relayed at an ABA annual meeting program last year that she faced an attorney who asked for a continuance due to the death of her father. The judge, however, found the attorney's Facebook page, which detailed a week of drinking and partying.⁴

In addition to being thoughtful about *who* you "friend" within an online social network, be conscious of the privacy settings on your account – what you find might surprise you. Many users are not aware, for example, that when you agree to play a game or use an application on Facebook, you also agree to make all the information in your profile available to the game-maker's company; even if you don't play games or access applications on Facebook, your friends who do still put you at risk. Your privacy setting dashboard allows you to determine who and what has access to your profile, who can search for you, the information that appears on your wall and news feed, and which information is available to the applications you or your friends use. The privacy policies on social networking sites are constantly evolving; therefore, it's important to monitor and adjust your privacy settings often.⁵

Continued on Page 13 ➔

Finally, as with any online content, be professional about what you say and about whom, especially if you decide to have a business page associated with your personal profile or you include professional colleagues in your "friends" network.⁶

A few pointers: Facebook is people oriented and you must be willing to get involved in the conversation; otherwise, it's not going to work. Also, Facebook differentiates between people and businesses and does not allow businesses to build personal profiles. Therefore, to promote your business on Facebook you can either create a business profile page or create a group for your business. This differentiation can be confusing so remember: profiles are for people; pages are for businesses.

LinkedIn

LinkedIn is similar to personal social networking websites, but it is focused on building your professional and business network. Over 60 million professionals in over 200 countries use LinkedIn to exchange information, ideas and opportunities. It can help you make better use of your professional network and help the people you trust in return.

Benefits: LinkedIn is a great way to build your professional network and it offers a lot of the advantages of Facebook without some of the pitfalls (e.g., you probably won't have your old fraternity brother posting pictures of you doing the naked mile on LinkedIn). Also, former and present colleagues and clients can write recommendations about you and the work you did for or with them. Beyond your personal profile page, LinkedIn offers the opportunity to research companies and other professionals as well as join groups with similar interests. At the end of the day, it's all about business, which is what makes it great for professionals wanting to leverage social media for maximum advantage.

Possible pitfalls: Remember, the internet has resulted in a reduced level of privacy for everyone. Digital data is never really gone and almost everything is searchable and, thus, findable. Nothing is secret on the web!⁷ For example, as a member of LinkedIn you are able to post that you are looking for certain clients, certain deals or even job opportunities, but think before you post because you won't be able to keep the fact that you're looking for a new job a secret from your boss very long if she's part of your online network.

A few pointers: As with all the other forms of social media, LinkedIn works best if you are active on the site. Join groups with similar interests or create a discussion group where you can post content and gain a reputation for quality content. Another good way to build your reputation on LinkedIn is to pose and/or answer questions. Finally, write recommendations for people and encourage others to write a recommendation about you and your work.

Twitter

Twitter is the newest of the social media sites discussed in this article. It is a site where you can post and read about small tidbits of news or get links to articles that are of interest to you. According to data compiled by Neilson Online, Twitter reaches more than 7 million people in the U.S. each month.⁸ The down and dirty of it is that you can post anything you want so long as it's 140 characters or less. Each post is called a "Tweet." Your tweet is then broadcast to other users who "follow" you. Tweeting is often referred to as "micro-blogging" and the key to successful tweets is to post simple, useful information.

Twitter is still in the early stages and businesses are discovering new ways to leverage this new communication tool every day. Current popular uses include communicating specials and events to customers, directing traffic to your blog

or website, following industry trends or tracking your brand. There are many new applications springing up to complement Twitter and make it even more useful. For example, you can use Twitter Search (www.search.twitter.com) to find people talking about your products and services or TweetScan (www.tweetscan.com) to notify you when your services or keywords are mentioned on Twitter. You can also use Twollow (www.twollow.com) to find people who are talking about your services.

Benefits: You can communicate simple information to a large audience in real time. Also, by following others who write about what topics you are interested in or what you write about on your blog, you can keep abreast of industry trends or breaking news as well as develop a following that looks to you for current, quality information. A few law firms around the country are also experimenting with the usefulness of Twitter to provide breaking industry news to clients or send associates to observe key trials and tweet updates about the proceeding. One of the reasons many businesses have jumped on the Twitter bandwagon is that it allows you to engage with existing clients or potential new clients who are having conversations about your services or brand in real time.

Possible pitfalls: All of the above benefits can also lead to a few pitfalls, especially for lawyers. More and more trials around the country are being upended by jurors improperly using Twitter or other communications technologies during jury service. In fact, a committee of the Judicial Conference of the United States recently endorsed a set of model jury instructions for district judges to help deter jurors from engaging in such mischief.⁹ Also, be careful that you don't wade into ethical violations on attorney communication and solicitation – see e.g., RPC 7.1 – 7.4 – they still apply.

Continued on Page 17 ↻



A few pointers: Don't wait until you have a network to start tweeting; following others will get you noticed, but they may not follow you back unless you are sharing interesting information. Mike Duncan, an internet marketing consultant, suggests that you "initiate conversation about your industry, offer tips, listen to what people are saying about your company, and be proactive in responding to @ replies and direct messages."¹⁰

A few other notes about websites, emails and other gremlins on the web: In the face of all these shiny new toys, don't forget that your website is still one of the best marketing tools available to you. You can develop rich content and provide current and potential clients with a three-dimensional look at you and your services. Remember, however, that the same ethical rules that govern print ads or radio and television commercials also apply to online marketing efforts – whether on your website or on a social media site. Christopher Howard and Colin Folawn remind us that, "social media do not present new ethical challenges, but they have the potential to magnify and accelerate the ramifications of ethics violations."¹¹ They explain that "social media may make it easy to blur the line between a permitted mailing and prohibited real-time communication and be careful and thoughtful about what you post and where." It's also important to remember that whether you are writing something in an email, on your blog or posting a comment to Facebook or Twitter, digital data can make for a really permanent record and the old adage, "loose lips sink ships," still applies.

The good news is that we are only beginning to learn how all of this new, interactive media will affect our lives and

businesses. They provide an affordable new way to market yourself and your services as well as build a reputation amongst your colleagues (almost all offer free memberships). As with any kind of marketing, though, you should develop a strategy that's right for you, your business and your customer and to make sure that whatever tool you are using that you are using it effectively. ■

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(Endnotes)

¹ 2009 Networks for Counsel Survey, Martindale-Hubbell and Leader Networks, available at http://www.leadernetworks.com/documents/Networks_for_Counsel_2009.pdf.

² John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar*, N.Y. Times, Sept. 13, 2009, available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html?emc=eta1>.

³ See for example the story of the young administrative assistant who didn't think about the fact that she had "friended" her boss before complaining about him only to get a response from him through Facebook that she didn't need to come to work anymore. <http://www.passiveaggressivenote.com/2009/08/10/why-facebook-is-sooo-gonna-get-you-fired/>.

⁴ Molly McDonough, *Facebooking Judge Catches Lawyer Lie*, at www.abajournal.com/news/facebooking_judge_catches_lawyers_in_lies_crossing_ethical_lines_abachicago.

⁵ See, e.g., Martin Kaste, *Is Your Facebook Profile As Private As You Think?* (National Public Radio broadcast, Oct. 27, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=114187478&ps=rs>; Kristin Burnham, *Facebook Tips: How to Stay Safe While Using Games and Apps, Addendum: Bi-Monthly Online Publication of the Alabama State Bar* (Feb. 10, 2010), <http://www.alabar.org/publications/addendum.cfm>; Sarah Perez, *The 3 Facebook Settings Every User Should Check Out*, N.Y. TIMES, Jan. 20, 2010, available at <http://www.nytimes.com/external/readwriteweb/2010/01/20/readwriteweb-the-3-facebook-settings-every-user-should-c-29287.html?em>.

⁶ E. Thomas Wood, *Nashville at law: Lawyers face defamation suits for out-of-court statements*, THE NASHVILLE CITY PAPER Nov. 11, 2009 (The owners of the Tin Roof filed suit against Manookian of Gideon & Wiseman PLC for defamation, libel, slander and intentional interference with business relationships based on a Facebook post by Manookian suggesting the Tin Roof had been the scene of serious crimes.)

⁷ See, e.g., Martin Kaste, *Digital Data Make for a Really Permanent Record*, (National Public Radio broadcast, Oct. 29, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=114276194>.

⁸ Michelle McGiboney, *Twitter's Tweet Smell of Success* (Mar. 18, 2009), http://blog.nielsen.com/nielsenwire/online_mobile/twitters-tweet-smell-of-success/.

⁹ Proposed Model Jury Instructions: The Use of Electronic Technology to Conduct Research on or Communicate about a Case, Judicial Conference Committee on Court Administration and Case Management, Dec. 2009, available at www.uscourts.gov/newsroom/2010/DIR10-018.pdf.

¹⁰ Mike Duncan, *Social Networking—Blogging, and Facebook, and Twitter, Oh My!* N.C. STATE B.J. (Fall 2009).

¹¹ Christopher Howard & Colin Folawn, *DeNovo*, WASH. STATE B. YOUNG LAW. DIV. pub. (Oct. 2009).

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