



RISK MANAGEMENT INSIGHTS

by W. Brian Ahern, RPLU

Social Media— Are You Protected?

Are you or others in your firm blogging or using LinkedIn, Facebook, Twitter or other social media sites? Many law firms are not aware that social networking poses considerable risks to law firms. Among the most common pitfalls of online activity is the potential to break confidentiality, inadvertently creating a client-attorney relationship and unintentionally practicing law. These, and other risks, can make your firm vulnerable to a malpractice lawsuit.

“The bottom line is that members within a firm should not post anything on a social media website regarding the firm’s work that they would not be able and willing to post in a national newspaper,” says Sandra McDonough, a partner with Paul Plevin Sullivan.

In the past professional liability policies have been silent on these types of claims but recently several carriers have started to address cyber related claims.

A simple way to monitor your firm’s exposure is to Google the firm name and the names of your attorneys. You may discover that your attorneys – and perhaps even staff - are answering law-related questions, making representations about expertise, or exchanging testimonials without regard for the rules that govern such activities. Given the public, permanent nature of the Internet, these unregulated activities create potential problems.

Firms that have attempted to ban all use of social media sites typically fail because such a mandate is ignored. Educating your attorneys and staff as to the risks will yield better results.

Developing a social media policy is an important step in protecting your firm from liability. When developing a social media policy some of the key points to consider include:

- Draft your policy so it includes all members of the firm, attorneys and staff alike.
- Include language that specifically states the major risks of irresponsible activities online.
- Address the basic fiduciary obligations to your clients and to the firm.
- State that the policy governs firm related, online activities and define what constitutes firm related activities.
- Reinforce the ethical responsibility to keep client information private even if it is already in the public domain.
- Forbid the uploading of client names and contact information to social media sites and to use caution when befriending or otherwise connecting with clients and professional contacts online.
- Caution about giving legal advice online and provide disclaimer language to be used if one does so.
- Discourage dishonest behavior and misrepresentation such as using an alias.
- Designate one person at the firm as the go to person for more information and clarification. Be sure this individual is approachable and has experience using social media sites.
- Note that the firm will hold attorneys and staff responsible if their activities are traced back to the firm and reserve the right to discipline individuals for their behavior.

A 2008 survey found that nearly 50 percent of lawyers engage in social media activities and given the growing popularity, that number is undoubtedly now much larger. With proper prevention, you can limit your firm’s risk in activities most likely being pursued by the majority of your attorneys and staff.

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