

HUMAN RESOURCES

SOCIAL MEDIA AND PROFESSIONAL LIABILITY



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Are you or others in your firm blogging or using LinkedIn, Facebook, Twitter or other social media sites? Many lawyers are not aware that social networking poses considerable professional liability 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 do a Google search of the firm name and the names of your attorneys. Google also allows you to set up ongoing searches that will send you alerts when certain names and information are being used. 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.

"Social Media is like a snowball rolling down the hill. It's picking up speed...."

-Jeff Antaya

- 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.

With proper prevention, you can limit your firm's risk in activities most likely being pursued by the majority of your attorneys and staff. Your firm should also review your existing professional liability policy and determine how much, if any, coverage it provides for social media/cyber related claims. There are several types of policies available which provide extensive coverage at a relatively low price. 🇺🇸

About the author: *W. Brian Ahern, RPLU, is President /CEO of Ahern Insurance Brokerage, one of the largest independently owned insurance brokerage firms specializing in the insurance needs of law firms. Ahern is an Endorsed Insurance Broker for bar associations throughout California, including the Los Angeles County Bar Association.*