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Social Media Risks

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The modern lawyer is faced with a multitude of ethical considerations when utilising social media. It is apparent that social media sites are used by lawyers for marketing, networking and investigating people in cases.

Lawyers need to think carefully about the consequences of their “posting” information on social networking sites such as facebook, twitter and MySpace. Ethics and professional standards can be easily overlooked by lawyers dropping their legalese in favour of plain language when using these sites.

In recent times, an experienced lawyer in a specialised area was a facebook “friend” of a junior lawyer engaged in a trial. The junior lawyer posted details concerning the trial as well as some opinions regarding the process. The junior lawyer had not used names however, the experienced lawyer was able to work out the matter in question.

Other facebook friends of the junior lawyer had posted comments on what had been written by the junior lawyer which apparently means the whole conversational exchange then becomes visible on each of their pages to all of their “friends” so, it made it all too easy to be widely broadcast and read.

The above example serves as a reminder to lawyers that it is absolutely inappropriate to discuss details of matters, hearings and clients (even without names), as posted content can be reviewed by anyone with an interest in a lawyer’s personal information, and then by their “friends” and so on.

Lawyers need to be mindful of the fact that information posted on a social network may eventually be seen by people not in the intended audience. Even if lawyers control their own privacy settings, their facebook status or tweets could be re-broadcasted by their friends or followers. It may also amount to publication as in the above example, a clear breach of Rule 19 of the Rules of Professional Conduct and Practice.

Blogging and Discussion Forums

Care needs to be taken with blogs – the material on the blog may include the blogger’s opinions about a topic, links to matters that relate to the blog’s subject matter and, comments from the blog’s readers.

Such comments can contain inaccurate or unpleasant information and could expose a lawyer to a defamation case.

Accordingly, care needs to be taken with all comments posted with vigilant monitoring of all such replies to social media conversations.

Assume that anything that is written in such a setting will be widely disseminated and read, and accordingly remember the Rules of Professional Conduct and Practice.



Inadvertent lawyer – client relationships

Answering legal questions over the internet is also an area of potential risk as online communications can give rise to a claim that a lawyer gave legal advice.

Lawyers should provide only general legal information to non-clients accompanied by clear warnings that it is only general information and the recipient is not a client. Also, it is suggested that it be made clear that any such advice relates to a jurisdiction and that there be a recommendation that a lawyer be retained for a specific legal problem. Avoid creating implied solicitor / client relationships by refraining from giving fact specific advice in social interactions.

Other considerations for lawyers providing information in this environment include:

Conflict of interest

Care needs to be taken in social media communications to avoid a conflict situation. Depending on the information disclosed, a lawyer-client relationship could easily be formed and this could be in conflict with an existing client. You may receive confidential information and not protect it as required or, you may only partly answer an enquiry which could cause an error.

Practitioners are reminded of the need to ensure conflict checking process is in place and carried out before accepting the retainer arriving by electronic means.

Confidentiality

As indicated above, even if you are controlling your own privacy settings, a lawyer's facebook status or tweets could be re-broadcast by their friends or followers. Lawyers must be wary of revealing client information including inadvertent disclosure. For example, by making a list of contacts public on a networking site could disclose a confidential relationship.

Lawyers must also protect information received from a potential client by electronic means of communication. Sites inviting email contacts with lawyers heightens the potential for interactions and the forming of an apparent solicitor/client relationship. Caution must be exercised.

**Disclaimers**

Disclaimers used in email messages and on blogs and websites should clarify that a person only becomes a client when the lawyer agrees to the retainer with the lawyer accepting the retainer offer from a prospective client. Such a disclaimer should be prominently displayed and written in clear language. It is suggested that people are discouraged from providing confidential information to a lawyer until a solicitor/client relationship has in fact been established.

Emails

Email etiquette is necessary. Ask yourself before hitting send or posting a message *"Would you be comfortable if a Judge read this email or post?"*

In such circumstances it is suggested that lawyers should take care to:

- check that the message is being sent only to the intended recipient and not to everyone on a list.
- avoid using an aggressive or sarcastic tone.
- proof read so there are no spelling or grammatical errors in the message.



The internet provides some valuable opportunities for lawyers but at the same time associated risks need to be mitigated. As technology evolves practitioners need to ensure they keep in mind the rules that govern our profession to ensure actions are consistent with such rules.

For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.

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