

Law department management

Facing Facebook and Tweeting with Twitter

GCs Come Up Against Social Networking Sites, Like It or Not

BY MICAH U. BUCHDAHL

What are you doing? In 140 characters or less: “I am writing an article on the impact of social networking sites, such as Twitter and Facebook, on in-house counsel for *GC Mid-Atlantic*.”

That “tweet” uses just short of the maximum 140 characters (136 to be exact) for a Twitter post. It avoids TMI (“too much information” for the non-texting crowd). And knowing what it is and how it works is imperative.

Recently, the chair of a law firm’s professional responsibility committee ordered me to “go print out LinkedIn.” Besides being short of time, paper and toner, he showed his hand. He had no idea what LinkedIn is or how it works. Yet, he wanted to create firm policy regarding its usage.

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As the protector and advocate of a company, you simply cannot afford to be naïve. The continuing advent of social networking creates both issues and possibilities for in-house counsel.

THE NEED TO KNOW

As someone who speaks and advises law firms on ethics issues related to online efforts, including lots of focus on social networking in the last year, I did not want this column to be about ethics. As lawyers, we all know the hot-button issues. Unlike attorneys at law firms, where there is a business development or advertising goal (be it direct or underlying), the in-house audience is not soliciting.

Whether you are “poking” a friend on Facebook or “tweeting” on Twitter, the social networking phenomenon is everywhere — including the offices of top executives at some of the world’s largest corporations. For in-house counsel responsible for protecting a company in areas ranging from intellectual property to employment law, from advertising regulation to communications, the need to have a working knowledge of these online entities is critical.

The “need to know,” however, expands well beyond the responsibilities of protecting your company. Some in-house counsel have utilized these networks in the selection and vetting of outside counsel. In some cases, it is simply reading what is out there in regard to a specific attorney or firm. However, others have proactively used the tools to find counsel. This might involve simply checking your own social network for people that practice in an area or jurisdiction where you require assistance.

On Twitter or Facebook, for example, you might search your network or the vast entity itself for a “Tennessee immigration law firm.” You might contact someone based on the expertise they show through their online portfolio, or perhaps “bingo,” there is an old law school classmate that you can reach out to. On LinkedIn, you may do the same type of searches, but can also check your network to see if you have any direct or indirect connections to the expertise you require.

DRAWING THE LINE

“I use LinkedIn for my business-related social networking. I use Facebook for

my non-business social networking. I use Twitter for news-feed types of updates, for the most part, and I also read tweets from my friends,” said Todd A. Borow, senior corporate counsel at Johnson Matthey and current president of DELVACCA. “I would not be interested in receiving business-related tweets on Twitter. I occasionally get requests on Facebook from business contacts, but I do not approve [them]. I instead direct my contacts to request me as a connection on LinkedIn.”

While the Facebooks and Twitters of the world are largely built around a more informal, casual online relationship, LinkedIn is in many ways the opposite. It is built around your business and professional world. Both entities work. Consider it the difference between hiring someone you clicked with at a cocktail party versus making a selection based on reading an article or attending a CLE program.

As is the case with almost any area of business today, there are plenty of similar online networking tools geared toward your specific industry. It might be pharmaceuticals, automobiles or physicians. In the case of those focusing on the “legal”

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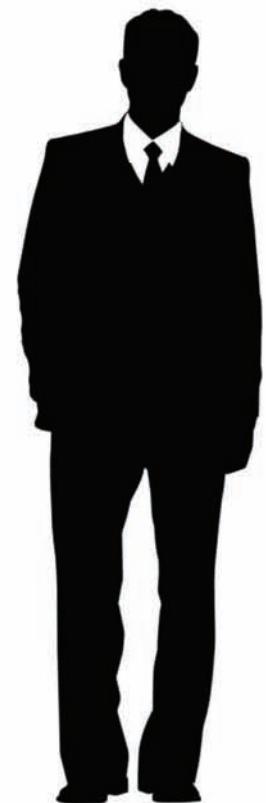
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industry, sites such as Martindale-Hubbell Connected and Legal OnRamp are considered networking tools specific to lawyers and targeting in-house counsel.

For Martindale, the Connected network is an appropriate extension of its age-old directory. In the pre-Internet world, few would dispute that Martindale was the key resource for in-house counsel “looking up” attorneys based on practice and geography. However, that tool has lost its significance in this generation. This is a wise effort by Lexis-Nexis to rebuild the brand for today’s market.

On the flip side, Legal OnRamp is a product of the Web world — designed to provide a community for lawyers to interact and, in some cases, seek counsel, business and employment opportunities.

“I do note that many companies, like mine, block Web sites that are considered to be social networking sites and not business networking sites,” said Borow. “At my own company, Facebook and MySpace are blocked, which further emphasizes my point that these, as well as Twitter, are not the appropriate Web sites for lawyers to use for their marketing efforts,” he continued.

For that reason, Borow maintains that the legal-specific networking sites are more effective if the goal is to market legal services to his audience.

Yet these sites are coming into play every day on the practice side of things. These create potential issues for attorneys, their employers and their businesses.

UNAVOIDABLE ISSUES

Lawyers are struggling with issues of monitoring site usage and dictating company policy. While Borow mentions some sites being blocked in the workplace, these same sites are often heavily used for marketing and recruiting in some places. All of the content is discoverable and can and will be used against you in a court of law.

In June, nearly every in-house counsel and intellectual property lawyer had to stay on top of potential trademark issues dealing with Facebook domain names. The power of Facebook and the potential dilution or misissue of corporate trademarks necessitated registration action. Failure to understand the site and the impact would be a serious misstep.

Your company’s marketers are likely crafting sophisticated social media programs that have complicated strategic objectives and metrics. They are used to provide value, and they involve two-way interaction between the audience and the company or product. While the Internet itself has created numerous difficulties in maintaining control over

your intellectual property, a key element to remember is that in the world of social networking, you simply do not maintain control over your message.

It is not just the marketers — your communications department is involved in moving traditional PR efforts to these networks. Internally, your company may be using a Facebook page as a communications tool as well.

Remember that all of these networks have terms of service guidelines (which may change with little notice). There are numerous social media monitoring tools to stay aware of the conversations that might be affecting your brand. Make sure the company messages are consistent from one social site to the next.

Besides company usage policies, you need to address certain considerations when communicating through these sites with clients, need to identify possible issues including confidentiality, communications with counsel and the need to be truthful and accurate with statements.

Another important area affecting your job is in monitoring the company’s use

of such tools for recruiting and hiring. It is yet another area that requires rules and policies.

“Savvy employers will make use of these networking tools,” said Margaret M. DiBianca, an associate in the employment law group at Young Conaway Stargatt & Taylor in Wilmington, Del., and editor of the Delaware Employment Law Blog.

“Employers should proceed with caution when looking for potential job applicants. Anyone can create content and post it online, which means you could hire someone based on false information. And if you decide not to hire the applicant, the information you found on the Internet could be used against your organization to support a discrimination claim.”

DiBianca also warns that there are limits to how far you can go in keeping tabs of an employee’s blogs, instant messages and social networking sites.

CONCLUSION

There is no end in sight to the impact of the Twitters and Facebooks on the profession. Recently, a judge in North Carolina was reprimanded for “friending” a lawyer that was involved in a case before him. Issues involving twittering jurors (in the middle of a trial) have led to numerous cases heading for appeal. Last April, as Pennsylvania Sen. Vincent Fumo’s trial finally headed to a verdict, a juror’s Facebook musings were enough to have Fumo’s legal team seek a new trial.

It is no longer about whether you want to try this stuff out; you had better know how to tweet. •

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a post she held from 1993-2001.

She also has fond memories of her tenure with Boston-based Ropes & Gray, where she practiced as a litigator from 1974 to 1993, becoming partner in 1983.

“It was a firm that was excellent at bringing lawyers along. The firm is also an ethical training ground” for

lawyers, she says.

Not only is Acheson’s professional life as Amtrak’s GC demanding and ever-changing, which she likes, she also pursues several interests outside her Union Station office.

Although her free time is limited, Acheson treks to her home in Cape Cod nearly every weekend, all year long. She boards — what else — a train from Washington to Providence, R.I., although she does sometimes

fly. That’s followed by a 90-minute drive to Cape Cod, but Acheson loves it. “It’s nice to get away,” she says.

Also on her travel agenda are nearly annual summer trips to her house in Wyoming’s Yellowstone National Park. While there, Acheson enjoys hiking and reading.

While she’s been fortunate to travel to countless places worldwide, Acheson dreams of seeing more. She’s never been to China, Japan, Korea,

Australia or New Zealand, and says she hopes to visit all of them someday.

No matter where she travels or what she does in her free time, Acheson is emphatic about enjoying her role as Amtrak’s general counsel.

“It is satisfying and gratifying, and it’s a lot of fun. It’s the best of the practice of law. I encourage attorneys to seek in-house positions,” says Acheson. •

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building residential projects,” he says. “The company has always been recognized as an equation changer. When you bring people to the buildings, you create a whole new culture mentality.”

That’s one of the reasons why Lebor got into law in the first place — to make a difference in the lives of others.

“If you look at the various professions, outside of medicine, which is also a helping profession, the legal profession engages in things that are helpful to the community at large,” he says.

Following his own mantra of helping others, Lebor regularly lectures for the Pennsylvania Bar Institute and teaches real estate law courses at Temple University. He also serves as a director on the board of Habitat for Humanity in Philadelphia.

When he’s not busy working, teaching or volunteering, Lebor enjoys going to the theater and opera with his wife, Dr. Talia Eisenstein, and spending time with their three children, Etana, Orly and Ronit.

“I love classical music and I like to read,” he says. “We also like to travel. My wife and I travel about three to four times a year. I believe that you’re a better lawyer if you enjoy life.”

One final advice that Lebor likes to dole out to today’s attorneys interested in

moving from a law firm to in-house is to understand the larger picture.

“When one does transition from a firm to in-house, it’s good to understand the business the client is in before you go and understand it well,” he says. “You need to know what they do on a day-to-day basis. Try to understand the larger picture. A successful GC offers advice and integrates it into the business model and the issues that are central to the company in which they are involved.” •

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