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You Did What This Weekend? How to Avoid the Embarrassing Pitfalls of Facebook

According to an article at www.techcrunch.com, Facebook now has 200 million users. That is equivalent to 86 times the current population in Dallas, Texas! This article is designed to give lawyers some tips for these social network sites and what you should do and not do on these sites to maintain your privacy.

What is Facebook?

Facebook was created in 2004 as an Internet-based social network that allowed people to communicate in numerous ways including sharing pictures, sending messages, posting daily thoughts, and writing on each other's digital wall. It is a way to reconnect with friends from school and to market yourself to new clients.

Most users, including attorneys, judges, and law firms, join Facebook for personal and/or professional networking purposes. Some users join because they consider Facebook an essential and powerful marketing tool.

How Do I Even Get On Facebook?

How do you even start to get a Facebook page? When you decide to join Facebook, the first step is to create a profile page by answering questions about yourself. Most of the questions are straightforward (i.e., Where's your hometown? What do you do for a living?), but you also have the opportunity to answer questions such as your religious preference, sexual orientation, and political preference. In other words, your profile can reveal a lot of information about you. You need to be mindful of your answers and how much information you want out in the world about yourself.

Your next step is usually to upload a picture of yourself to include on your profile page. Then, after completing your profile page, you are ready to start gathering friends. You can search for people in various ways (i.e., you can search by school name, company name, or by e-mail addresses) and when you find someone you know, then you send them a request to be "friends." If they confirm your request, then you will be Facebook friends. That allows them access to see your Facebook page and vice versa.

The importance of the friend designation is that this person can (1) view your profile, (2) write on your wall (which means leave messages on your page that can be read by all of your friends), and (3) add pictures of you to Facebook.

Be Warned About Using Facebook

As electronic social networking is still relatively new, there is not a lot of case law or precedent on the ethical dilemmas that may arise from using these types of sites for marketing. However, with so many attorneys joining these sites, it is just a matter of time until that changes.

Be mindful of the rules of ethics and how your postings and pictures could be construed to be in violation of those rules.

For example, Rule 8.02(a) of the Texas Rules of Professional Conduct reads that a lawyer should not make a statement about a judge that is false or made with reckless disregard. Have you ever had a long day at Court and post a message to a friend saying how awful your day was and what you really thought of the judge or opposing attorney? This could arguably fall into a violation of this rule. Watch what you say!

Rule 8.04 of the Texas Rules of Disciplinary Conduct reads that a lawyer shall not commit any criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer. It would not be prudent to have pictures surfacing of an attorney with any sort of drugs, drug paraphernalia, or underage drinkers as these could be construed to be criminal acts that go to an attorney's fitness.

This is an area where we anticipate that there will be rapid changes. For example, in a lawsuit in Australia, a judge allowed an attorney to serve a defendant with a default judgment by posting the terms of the judgment on the defendant's Facebook "wall." There are attorneys in California arguing over Facebook's terms of service that may allow the company to publish anything that you have uploaded (i.e. photographs), even if you have deactivated your account. As technology changes and the rules are interpreted, it is crucial that you monitor your site and really think about what you publish and/or post.

There are companies and organizations that provide continuing legal education credit for attorneys on how to use social networking sites with an emphasis on the ethical considerations. If you are going to use these types of pages for marketing, then it may be well worth your time to attend one of these classes.

What Do I Need to Know About Facebook?

1. Choose your Facebook friends wisely. For example, if you plan to use Facebook as a marketing tool, then you are likely going to accept everyone that requests to be your friend. Therefore, it is important to note that your friends can write anything they want on your digital wall including things that are defamatory or embarrassing. You can delete the content that people write, but you will have to monitor your profile page daily to remove content that you do not want others to see or associate with you. Maybe you should consider a work page and a personal page for just family and close friends?

2. Remember the saying "a picture is worth a thousand words?" You can control the pictures that you upload on to your page; however, your Facebook friends can upload pictures of you on their pages and tag you to the picture. In other words, I can upload a group picture of friends on my page and then move my mouse cursor over the people in the picture. I can click on each face in the picture and type in the name of each person. By doing this, this picture can now be seen on anyone's page that I have tagged as long as they have Facebook. Do you want your potential clients or opposing attorneys to see what you and your friends did last weekend or while you were in college? The answer is most likely no. So, either create separate work or personal pages or let your friends know what your intention is with Facebook so they limit what pictures they tag you to.

3. Some attorneys on Facebook comment on cases or on recent successes. This presents numerous problems because such postings may disclose confidential communication or can be considered *ex parte* communication if an attorney is friends with a judge. Additionally, postings are probably subject to the restrictions of disciplinary Rule 702, which severely restricts what an attorney can say about past successes. To be on the safe side, you (1) may not want to discuss your cases and/or results on Facebook or, if you do, (2) follow the rules that you use for advertising. Always err on the side of caution when you use Facebook to discuss cases!

4. Finally, here is a good rule of thumb: Would you want your client or the Plaintiff to know this information about you? If not, then don't put it on Facebook. Also, you can check your security settings so that only the people you choose as friends can view your page. This is a good idea because it really limits who can see your information.

Facebook has a lot of great features. You can market to potential customers that you may not have had access to otherwise. You can now find friends that you went to high school and even elementary school with years ago. If you are mindful of just how much information can go out about you and your family, then you will make smarter decisions about what you post and who you allow access to your page. Happy networking!

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