Law 360

Attnys' Social Media Use Rife with Land Mines, Panel Says

By: Allison Grande
www.Law360.com

Oct. 1, 2013 -- A panel of legal experts warned attorneys and their clients Tuesday to be careful about how they use social media, saying that even the most innocuous search or posting could violate ethics rules or inadvertently expose sensitive corporate data to bad actors.

During a panel at the National Advertising Division's annual conference in New York City, a trio of seasoned technology and advertising attorneys detailed the pitfalls that could arise from the use of platforms such as Facebook and Twitter by attorneys looking to enhance their litigation research or brag about a big win, and by companies eager to share good news about their operations.

"Just because social media platforms are easier to use, that doesn't mean that regular laws and legal ethics don't apply," Touro Law Center professor Jonathan Ezor said. "They're being thought about, and they're being paid attention to."

Given the increased use of social media in recent years, social media sites can provide attorneys with a great deal of assistance during litigation by uncovering relevant information such as pictures that counter a plainti's personal injury claims or inappropriate postings by active jury members, Ezor said.

"If you're not watching the jurors, you're not doing your full job of representing clients in litigation," he added.

These seemingly harmless investigatory activities, however, could

FEATURING

Paul Rubell
Partner
Corporate / Social Media & Privacy Law

190 Willis Avenue, Mineola NY 11501 Phone: 516-747-0300 Fax: 516-747-0653
info@meltzerlippe.com **Copyright © 2001-2014 Meltzer, Lippe, Goldstein & Breitstone, LLP**

The information and materials contained herein have been prepared by Meltzer, Lippe, Goldstein & Breitstone, LLP for general informational purposes only and are not intended and should not be considered to be legal advice or opinion. Transmission, receipt or use of this information does not constitute nor create an attorney-client relationship. No recipients of this content should act, or refrain from acting, based on any or all of the contents herein. Meltzer Lippe, Goldstein & Breitstone, LLP does not warrant that the information contained herein is accurate or complete, and hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause. Meltzer, Lippe, Goldstein & Breitstone, LLP is not responsible for, and makes no representations or warranties about, the contents herein.

and attorneys in hot water with local ethics boards if done incorrectly, Ezor said.

For example, although looking at public information on parties involved in litigation is generally acceptable under ethics rules, the Philadelphia Bar Association in a March 2009 opinion found that the rules of professional conduct do not permit attorneys or their third-party aliates to attempt to view nonpublic information by sending a friend request to a litigation participant without disclosing the true reason that they want access to his or her profile, Ezor said.

The professor added that searching for information while selecting jurors can also be harmful to an attorney's case by revealing information that would not otherwise be permissible at trial.

"Even if you don't use the information, you don't want to be put in a situation where the opposing party can say that you have the information and then you have to prove you didn't use it," Ezor said.

Besides ethics violations, attorneys can also run afoul of advertising rules if they seek to turn a successful court experience into further nancial gain, according to Olshan Frome Wolosky LLP partner Andrew Lustigman.

"Standards may be relaxed in terms of dialogue in social media, but traditional advertising rules still apply," he said.

Lustigman pointed to several examples where attorneys tweeted about signicant victories for clients, with ones that generally referenced the win found to be permissible while others that included enticements such as "who wants to be next?" and endorsements such as "our client is happy" deemed to be advertisements that required additional disclosures such as the typicality of results.

He also noted that attorneys should be careful in dealing with those who respond to their tweets and postings because the respondents could disclose condential information that would trigger attorney-client privilege.

In addition to the inadvertent disclosure of protected client data, attorneys and corporations need to be careful to protect sensitive corporate data that can be gleaned from information contained in a posting — such as a company's nancial health or an executive's current location — from internal and external bad actors that could use the data to harm the law firm or company, according to Meltzer Lippe partner Paul Rubell.

190 Willis Avenue, Mineola NY 11501 Phone: 516-747-0300 Fax: 516-747-0653
info@meltzerlippe.com **Copyright © 2001-2014 Meltzer, Lippe, Goldstein & Breitstone, LLP**

The information and materials contained herein have been prepared by Meltzer, Lippe, Goldstein & Breitstone, LLP for general informational purposes only and are not intended and should not be considered to be legal advice or opinion. Transmission, receipt or use of this information does not constitute nor create an attorney-client relationship. No recipients of this content should act, or refrain from acting, based on any or all of the contents herein. Meltzer Lippe, Goldstein & Breitstone, LLP does not warrant that the information contained herein is accurate or complete, and hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause. Meltzer, Lippe, Goldstein & Breitstone, LLP is not responsible for, and makes no representations or warranties about, the contents herein.

"With the rise of platforms such as Facebook and Twitter, the impact of a malicious or angry employee or other person taking trade secrets is much greater, because the information can be disseminated to so many people in such a short time, and that damage can't be undone," he said.

To help mitigate these risks, attorneys recommend that law rms and companies think carefully about what they disclose on social media sites and have a social media policy that is actively enforced.

"Preventing disclosures and preventing client information from being known publicly is all of our jobs," Rubell said. "It's important to not only design best practices for social media use for your companies, but also to deploy them, because if they're not being executed, then you haven't accomplished a whole lot."

###

190 Willis Avenue, Mineola NY 11501 Phone: 516-747-0300 Fax: 516-747-0653
info@meltzerlippe.com **Copyright © 2001-2014 Meltzer, Lippe, Goldstein & Breitstone, LLP**

The information and materials contained herein have been prepared by Meltzer, Lippe, Goldstein & Breitstone, LLP for general informational purposes only and are not intended and should not be considered to be legal advice or opinion. Transmission, receipt or use of this information does not constitute nor create an attorney-client relationship. No recipients of this content should act, or refrain from acting, based on any or all of the contents herein. Meltzer Lippe, Goldstein & Breitstone, LLP does not warrant that the information contained herein is accurate or complete, and hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause. Meltzer, Lippe, Goldstein & Breitstone, LLP is not responsible for, and makes no representations or warranties about, the contents herein.