

[LEGAL ETHICS]

CHOOSE ONLINE FRIENDS WISELY

Social Networking Sites Pose Risks for Lawyers and Would-Be Attorneys

by BRUCE A. CAMPBELL

Many mothers tell their children to choose their friends wisely. The reason is that friends' actions can reflect on the children — or the lawyers those children grow up to become. Today, that reflection is magnified by the enormous reach and perpetual availability of online information. Before diving into the world of online social networking sites, lawyers need to consider the risks.

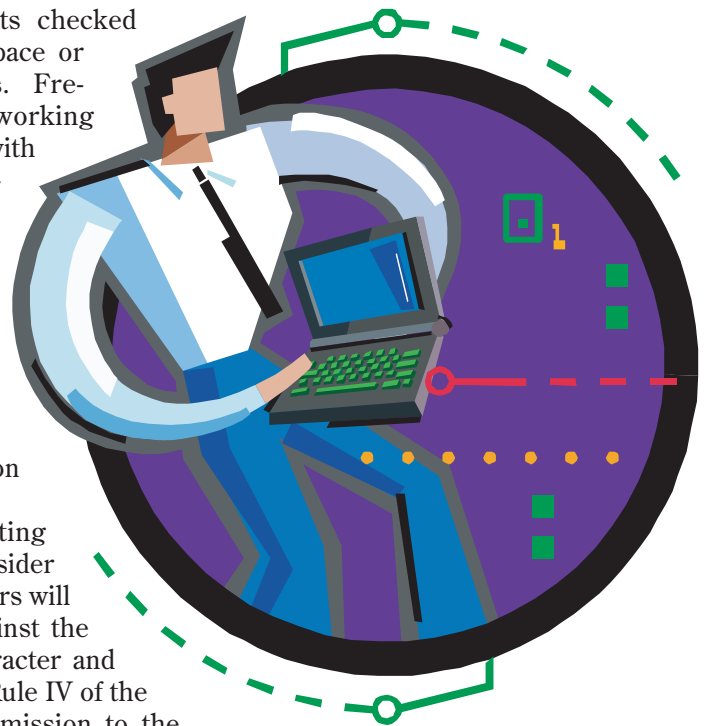
A September article in the *ABA Journal*, "Web 2.0 Still a No-Go," reported that 15 percent of the American Bar Association members polled have joined an online social network, such as MySpace or Facebook. Undoubtedly, this number will continue to increase.

Two of the risks these sites pose are licensing (for would-be lawyers) and potential discipline (for lawyers admitted to practice). Evaluating this risk is somewhat difficult, because electronic social networking is relatively new. But over the past couple of years, a number of college students secured well-paying jobs prior to graduation, only to see the offers rescinded once someone in the companies' human

resource departments checked the applicants' MySpace or Facebook accounts. Frequently, social networking accounts are awash with photographs reflecting behavior that might make an HR department cringe. Aside from risking a job offer, there are plenty of other reasons why lawyers and would-be lawyers should exercise caution on such sites.

Applicants awaiting licensure need to consider whether bar examiners will use site content against the applicant in the character and fitness assessment. Rule IV of the Rules Governing Admission to the Bar of Texas, in pertinent part, states:

The purpose of requiring an Applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the Texas



Disciplinary Rules of Professional Conduct.

A 2001 decision by Austin's 3rd Court of Appeals provides an example of how the Texas Board of Law Examiners might view information about drinking or use of controlled substances. According to the 3rd Court's opinion, this is what happened: An applicant disclosed in his application that he had undergone treatment for alcohol and

substance abuse almost 20 years before his application. The board told the applicant that a social worker and a board evaluator would need to evaluate him and that he would have to see a master addiction counselor before the board could issue him a probationary law license. Despite testimony by both counselors that the applicant did not suffer from chemical dependency and similar testimony from the applicant's father, wife, employer and former classmate, the board determined that "there was a clear and rational connection between the Applicant's possible chemical dependency . . . and the likelihood that he might fail to discharge properly his duties to a client, a court or the legal profession." In overturning the board's decision, the district court found that an applicant presently must be chemically dependent before the board could impose a probationary license. The 3rd Court agreed and found insufficient evidence of a present chemical dependency. The applicant's behavior did not constitute criminal activity, but it is noteworthy that the board was concerned that the applicant's treatment for alcohol and substance abuse 20 years before could affect his character and fitness to practice law.

The board's cautious approach in this case suggests that an applicant for admission to the bar who posts recent images of himself or herself in a state of intoxication on a social networking site could be courting board questions about his or her character, fitness, and ability to fulfill duties to a client, a court and the legal profession.

Lawyer Discipline

For those who have received their law licenses, risks stemming from posting information and images on online social networking sites also exist. Texas Disciplinary Rule of Professional Conduct 8.04(a)(2) provides in pertinent part that a lawyer shall not "commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."


Lawyers often refer to this section of the disciplinary rules as the officer-and-a-gentleman rule. Courts have broadly interpreted the rule or those like it. For example, an attorney who served alcoholic beverages to a minor was found to have violated the Kansas version of the rule, and a Vermont lawyer was suspended for the use and cultivation of marijuana based on Vermont's version of the rule. A

Florida court found that felony drug possession constituted a crime of moral turpitude, thus allowing discipline to be meted out to the lawyer. Attorneys should understand that pictures of themselves on a social networking site with drug paraphernalia or other incriminating substances could lead to discipline.

Unfortunately, another potential problem with some social networking sites is that fellow site users are able to post comments and images to an account holder's profile, unless the account holder sets up the profile to block such postings. Potentially, other site users could post information, photographs or other material that reflected the account holder had engaged in improper behavior. Thus, the lawyer's own contacts could post information that had the unintended consequence of subjecting the lawyer to discipline.

Also, some electronic social networking sites allow blogging from the site. Attorneys who blog negatively about judges risk violating Texas Disciplinary Rule of Professional Conduct 8.02(a):

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory official or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Ultimately, lawyers must consider carefully the content they post or allow others to post about them on a social networking site. Now is the time to heed that advice about choosing friends wisely. 



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