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## Lawyers' online acts have consequences

### Don't go there!

Monday, October 10, 2011  
By Gabrielle Banks, Pittsburgh Post-Gazette

To help her colleagues spot and ultimately steer clear of the career pitfalls of social media, chat rooms, message boards and blogs, Pennsylvania attorney Jennifer Ellis has developed a popular online continuing legal education course called, "I'm Begging You -- Please Don't be an Idiot on the Web."

Ms. Ellis, a Montgomery County consultant who specializes in the intersection of ethics and technology, does not suggest avoiding such forums altogether. However, it's important to realize that dangers abound for lawyers on the Internet.

She represents part of a growing cohort of legal professionals helping their peers learn to navigate the Web ethically, safely and intelligently, and she has amassed a colorful collection of the mistakes that lawyers around the country have made, to serve as warning to others.

Some of the violations Ms. Ellis cites are beyond the pale, such as the California lawyer who posted an ad on Craigslist for a secretary and then explained to a job candidate via email that she would have to have sex with him as part of the interview.

The job seeker reported the incident to the bar association.

Then there was the government lawyer who logged on to Twitter during the occupation of the Wisconsin state capital over collective bargaining rights. This attorney, most likely off duty, heard on the news that law enforcement officials had set a deadline to clear the rotunda of protesters, possibly armed with rubber bullets.

The lawyer tweeted that the police should use real bullets. He lost his job, Ms. Ellis said.

"When you're on the prosecution side, you should not be suggesting harmful or illegal behavior. Lawyers have an obligation beyond that of the general population to comport ourselves in a certain way."

Jim Singer, a strategic counselor on intellectual property with Philadelphia-based Pepper Hamilton LLP, recalled the case of a Florida man who advertised on Craigslist that he was a law student and would answer legal questions for \$5. The Florida State Bar contacted the student and insisted he remove the post because -- bargain or no bargain -- non-attorneys can't give legal advice.

In most cases, avoiding legal and ethical violations is a matter of common



James Hilston/Post-Gazette

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sense.

The No. 1 rule, Ms. Ellis said, is: If you can't do something offline because it's unethical behavior, then you can't do it online either.

"The difference is, if you insult judge at a cocktail party, you probably said it to one person, and if the party was fun they forgot. If you did on social media, you've provided written proof," she said.

There are instances where forwarded emails have ruined careers. And, of course, the likelihood of getting caught if you post something on a public forum is exponential.

Which is why Harold M. Goldner, an Internet-savvy employment lawyer near Norristown, Pa., was shocked to discover a blogger with a law degree lambasting his soon-to-be-ex-wife's divorce lawyer on his personal website.

The divorce lawyer was running for Common Pleas Court in Montgomery County and the blogger critiqued him at length in an open letter. In the post, Mr. Goldner noted, the blogger claimed he was a lawyer but failed to mention he'd been administratively suspended, which is a violation of the rules of professional conduct.

The missteps lawyers make, according to several attorneys who track them, seem to fall into a few categories. On sites like Facebook and MySpace, they say, lawyers should beware of false "friending" -- in other words, seeking out or accepting online friendships with witnesses, judges or jurors, especially using a made-up identity, or having someone pursue false friendships on their behalf.

"Attorneys have an obligation to be honest in their actions. You can't have a third party do something for you that you can't do yourself," Ms. Ellis said.

Florida has a law that it is illegal to "friend" a judge.

Elsewhere in the country, there is no explicit prohibition on judges being Facebook friends with attorneys who may appear in their courtrooms. It is up to individuals whether that relationship has the appearance of impropriety, but they should know that any communication they have in quasi-public forums are a permanent record that others may see.

On the surface, it seems obvious that attorney-client confidentiality must be upheld online, but lawyers may slip up inadvertently. Ms. Ellis noted the case of a public defender who posted information on her blog that was "so thinly veiled it could be identified."

The public defender referenced a client whose case had been adjudicated and revealed that the client admitted to lying on the witness stand. Since lawyers are prohibited from disclosing perjury, she was called before the disciplinary board in her state and fired from her job of 15 years.

Attorneys may also harm their reputations if they share too much personal information on social networking sites. For example, if you've been granted a continuance due to a conflicting court appearance, it's bad form to post photographs of yourself on Flickr or Facebook on a ski vacation during the missed court date.

Mr. Goldner said this sort of mistake can be avoided if lawyers keep in mind that "they are professionals, they need to keep their feeds straight." He said he keeps his Facebook profile private and strictly personal, and, "for the most part, I don't friend clients or colleagues." He consciously opts not to have any professional Facebook presence, though he knows other lawyers who do choose that route.

Todd J. Shill, an expert on social media from at Rhoads & Sinon in Central Pennsylvania, agrees. "The biggest mistake lawyers make on social networking sites and blogs is failing to respect the line between their professional lives -- and rules of responsibility -- and their desire to connect with others as an individual."

If you have a professional blog where you comment on legislation or court rulings, several experts said, avoid getting specific in back-and-forth comments with readers and be sure to have a disclaimer explaining that information in the blog is not intended as legal advice.

Another matter bloggers or prolific legal commenters should consider is whether they are licensed in the state or country where the person is reading the dispatches lives. If they are not licensed to practice in the reader's jurisdiction and the reader interprets the comments as legal advice, the attorney could face charges for the unauthorized practice of law, which is a

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crime and could be subject to disciplinary action before the state bar.

"Most people realize you don't get legal advice from a website just like you don't get medical advice from a website. It's the people who don't understand that are the problem," said Mr. Goldner, who maintains an employment law blog called HumanRacehorses.

He said he has chosen to be "fairly active on Twitter" where he comments on sports and responds to items in the news. "I come off as clearly left of center and I'm a little more freewheeling," he said.

"You only have 140 characters [per tweet]. How much trouble can you get into?"

In addition to watching their own backs, lawyers must keep an eye on their clients' online behavior. If attorneys fail to monitor their clients' online posts while a case is pending, it can backfire in court.

Take the case of a man seeking monetary damages for an accident, who testified that the scar he got from an accident made it embarrassing to wear shorts. Opposing counsel found photos he had posted of himself on MySpace in shorts with the scar showing.

If this kind of evidence is publicly available or legitimately obtained and it is contrary to what the plaintiff said in court, Ms. Ellis said, judges have allowed discovery to go forward.

Despite the litany of cautions, several of the experts agreed that it's still important for a law practice to have an online presence. The key is to do your homework and get legal advice of your own as you go about it.

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*Correction/Clarification: (Published October 11, 2011) Todd J. Shill is an expert on social media at Rhoads & Sinon law firm in Central Pennsylvania. His name was misspelled in a Monday story about mistakes attorneys make when using social media websites.*

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