

Guidelines on the Ethical Use of Social Media

Introduction

Social media presents both opportunities and challenges for solicitors. Various articles have discussed some of those opportunities.¹ The purpose of these guidelines is to assist solicitors in addressing some of these challenges.

Social media and ethics

To guard against potential ethical violations, lawyers should use common sense, not say or do anything online that they would not do in front of a crowd, and review the existing ethics rules for guidance.”²

Social media is a form of communication and solicitors should treat it exactly as they would any other communication medium. Be responsible, diligent, and careful. If in doubt, don't say it or write it.

Ethical risk areas

Confidentiality

Solicitors owe their clients a duty of confidentiality. The use of social media by solicitors may expose them to the risk that client confidential information may be disclosed, albeit by inadvertence. For example, if a solicitor tweets that she is in a certain location, either through text or geotagging, she may unintentionally disclose that she is working with an identifiable client and thereby breach the duty of confidentiality.

Inadvertent retainer

Solicitors should take particular care to avoid creating unintended solicitor-client relationships on social media channels. For example, if one of a solicitor's Facebook “friends” posts a legal or quasi-legal question on the

solicitor's Facebook wall, any answer posted by the solicitor may be construed by the questioner or other “friends” as legal advice for which the solicitor may become liable. However, there is nothing to stop solicitors engaging in general legal debate through social media.

Duty to the administration of justice

Every solicitor owes a duty to the court and to the administration of justice which is paramount and prevails to the extent of inconsistency with any other duty. Solicitors must be extremely careful not to say or do things in social media channels that could be viewed as bringing the law into disrepute. Whilst this risk exists in all forms of communication, the informal nature of many social media channels such as Facebook, Twitter, and Blogs may greatly increase the risk.

In addition, care must be taken by solicitors to ensure that opinions are not expressed on the merits of potential or current legal proceedings as this could be an interference in the administration of justice and a possible contempt of court³. Similarly, adverse or demeaning comments about judicial officers and fellow members of the legal profession should never be made as they would be likely to diminish public confidence in the administration of justice.

Breach of “no contact” rule

A solicitor must not deal directly with another solicitor's client or clients except in certain urgent and limited circumstances.⁴ For example, it would be unethical for a solicitor to make a Facebook “friend” request to another solicitor's client or to make such a request to another solicitor's client in order to gain access to their Facebook page. Similarly it would be unethical to

¹ Ashe S, *Can Law Firms be Friends with Social Media*, Lawyers Weekly Vol 541, 8 July 2011, pp16-17

Chester S & Del Gobbo D *How should Law Firms Approach Social Media?* Law Practice Jan/Feb 2012 pp28-30

Chester S & Del Gobbo D, *How to create a Law Firm Social Media Policy* Law Practice Jan/Feb 2012 pp51-52

² Robert B. Teuber, Tax Attorney, Milwaukee, USA.

³ *Legal Profession Uniform Law Australian Solicitors' Conduct Rules* 2015, r 28.

⁴ *Ibid* r 33

accept a “friend” request from a person known to be another solicitor’s client and caution should be exercised generally when accepting “friends”.

Other risk areas

Defamation

Defamation law allows those who believe their character and reputation has been harmed to sue for damages and other relief. The laws of defamation apply to communications made on social media channels.

Advising clients about social media risks

In 2011 it was estimated by one lawyer that in 1 in 3 contested family law cases in Australia solicitors had sought to tender evidence of the other party’s Facebook page as it will often contain information and photographs which are not helpful to that party’s case, especially in child custody matters.⁵ It is expected that this number will increase. Similarly, investigations in personal injury damages and compensation cases may now seek to discover damaging material.

It is desirable that solicitors have at the very least a basic understanding of social media so that they can advise their clients appropriately.

Solicitors must never be party to the destruction of documentary evidence in current or anticipated legal proceedings, and this applies to social media equally.

Employees’ use of social media

If a firm uses social media channels, employees of the firm should be given clear guidance and instruction on their use. This can be best achieved by having a social media policy for the firm and providing all partners and employees with appropriate instruction in its implementation and use including protecting client confidentiality.

It is important to differentiate between what is placed on a firm’s official social media channels such as Twitter or Facebook and what partners and employees of the firm post on their own personal social media channels. This point should be covered by the firm’s social media policy. In particular, all individuals in the firm should be instructed not to say anything in their personal social media channels which may be interpreted as coming from or representing the views of the firm and/or which may impact adversely on the firm or cause breaches of ethical behaviour to occur.

Risk to reputation

A solicitor’s reputation is a very valuable asset but can easily be destroyed. This is especially so in the world of social media. For example, if something which is damaging to a solicitor’s reputation goes viral on the internet, it will be extremely difficult for the solicitor to repair the ensuing damage to reputation. Solicitors and all who work with and for them should be conscious of this risk at all times and regular reviews should be undertaken by law firms to monitor what is being placed on their social media channels. Solicitors may also wish to monitor mentions of their name, firm or associated branding that may be posted by other social media users.

How can we help you?

Visit the Ethics & Practitioner Support Department’s website at <https://www.liv.asn.au/Ethics>

These are guidelines only and do not have the force of law. A solicitor must comply with the *Legal Profession Uniform Law and Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015* and any other applicable rules or legislation.

To discuss concerns about social media, contact the Ethics & Practitioner Support Department on (03) 9607 9336.

Approved by the Board of the Law Institute of Victoria on 17 November 2016.

⁵ “*Social Media and Family Law*”, The Hon. Justice Watts, Australian Family Law Conference, Singapore, 10th – 14th June 2011.