

# Friend Me: Sources for Social Networking Policies for Attorneys

by Gregory Stoner

With the rising use and popularity of a variety of social media, including Facebook, Twitter, LinkedIn, blogs and wikis, the scope of associated potential issues surrounding the use of these technologies has continued to develop and garner the attention of employers and lawyers. While attorneys are becoming increasingly familiar with the value of these tools, as well as the possible ethical ramifications of the misuse of them, many may desire additional information in order to develop or enhance their firms' social media, social networking, media relations, or communications guidelines or policies.

## The Use of Social Media by Attorneys

While social media continues to evolve, it can be defined as the collective technology that allows individuals to collect, share and exchange information such as text, video, audio, and photographs, either publicly or privately, via the Internet. A September, 2009, study by LexisNexis showed that seventy percent of all lawyers and eighty-six percent of lawyers between the ages of 25 and 35 use social media.<sup>1</sup>

In recent years, law firms and their attorneys have increasingly turned to using social media as an additional resource to develop and establish relationships. By connecting with friends, clients, and acquaintances, attorneys have the opportunity to expand their network of contacts, stay in touch with those individuals, and build business for their firm. Also, in an industry where networking is essential and time to meet in person is often limited, these resources offer an additional avenue for accomplishing important objectives.

Attorneys have also indicated that the use of social media tools offers additional benefits. By being more visible to

other attorneys and the public, attorneys have further opportunities to develop business and learn about important developments in the industry. Also, various social networking sites allow for the sharing and storing of information that previously would have been inaccessible, expensive, or time consuming to locate.<sup>2</sup>

The appropriate and ethical use of social media tools by attorneys is a topic of growing interest and discussion.<sup>3</sup> Ethical issues not limited to confidentiality, lawyer advertising, providing references, and the dissemination of legal advice are just a few of the potential risks of improper use of these resources. In several instances, lawyers and judges have been the subject of professional discipline for inappropriate activities involving social media use.<sup>4</sup> While firms may expect that their attorneys and employees exercise discretion, good judgment, manners, and respect in regard to their personal and professional online activities, many firms are now working to develop guidelines or policies concerning social media use. In addition to providing advice about proper or acceptable use, these policies can also have the effect of protecting the individual and the firm from ethical, professional, or liability, concerns as well as helping to minimize undesired attention from misuse or errors of judgment.<sup>5</sup>

## Introduction to Social Media/Networking Policies

Social media or social networking guidelines or policies can vary greatly in scope, length, and format. However, despite these possible differences, the one common feature in a helpful policy is that the firm's approach to social media is clearly explained.

In some instances, provisions concerning social media may be incorpo-

rated into existing company policies. Some firms, however, may wish to create an entirely separate document to broadly address the use of these resources and explain important points.

## Key Components and Points to Consider

### *Value and purpose of social media use.*

An explanation of how the use of various social media and networking tools can be of benefit to the individual and the firm is essential. In some instances, a series of definitions describing terms such as "Web 2.0," "social media," and "social networking" can help clarify potentially confusing issues and serve as a point of reference to subsequent references to these terms in the body of the policy document.

*Guidelines for use of social media.* This may include a discussion of how to protect the reputation of the attorney, colleagues, and the firm, as well as underscoring the importance of being honest and respecting the rights, property, and opinions of others. This may seem like common sense to many individuals, but some may feel having these points in writing is of value. Also, one should exercise care in providing any overly broad or certain specific rules or guidelines in a policy that may infringe on protected rights of employees. A series of recent National Labor Relations Board rulings have noted that policies that prohibit employees from certain exercises and expressions may violate the National Labor Relations Act.<sup>6</sup>

**Social Networking** continued on page 52

**Social Networking** continued from page 51

*Differentiation between use of social media inside and outside of the workplace.* Defining what is personal and what is professional is an important distinction that in some instances may be difficult to determine. It is quite possible that attorneys and firm employees may wish to access or utilize personal social media in the workplace. Policies or guidelines should attempt to explain what constitutes non-work related use of social media inside the workplace and whether or not it is acceptable. Also, policies may address employee online activities outside of the workplace (on a personal computer), but care should be expended to ensure such provisions do not restrict or limit what may be protected activities.

*Notice of privacy expectations.* While an employee's right to privacy in electronic communications may vary, inclusion of language within the policy that clarifies these points can help temper one's expectations. In the event that the firm has a separate employee privacy policy, IT policy, or related policy, reference to the other appropriate documents should be noted.

*Understanding users and users understanding the policy.* In a law firm setting, a social media or networking policy could potentially apply to both attorneys and administrative staff. Members of different groups, such as an experienced partner, a young associate, a marketing director, or a legal assistant, will each likely have different expectations and understandings of social media use. In fact, the development of a policy such as this is often best accomplished when human resources, IT, marketing and attorneys are represented on the social media committee. The policy should be written in such a way that individuals in each group can use social media in the workplace in a manner in which the firm approves. Also, the terminology of the policy should be understandable to

someone who may not have extensive familiarity with social media.

### Resources and Examples of Policies

The following are resources that may include information about the role of social media policies or guidelines in law firms, as well as actual examples that may be helpful in developing a framework for drafting a document for your firm. Of course, please note that as each company has unique needs and business interests and concerns, no one sample policy is likely to be a perfect fit. Also, one should bear in mind that many of these resources will not address issues that may be applicable in a specific jurisdiction, as well as the fact that policies may need to be updated frequently to address changes in this rapidly evolving area.

#### • *3 Geeks and a Law Blog*

(<http://www.geeklawblog.com/>)  
Toby Brown, Greg Lambert, and Lisa Salazar, are the bloggers behind "3 Geeks and a Law Blog," which deals with knowledge management, Internet marketing, and library science. The use of social media in law firms is a frequent topic on their blog and they often provide information and points to consider that may be of value in drafting a policy document for a law firm.

#### • *International Legal Technology Association*

(<http://www.iltanet.org/>)  
Programs concerning social media and social networking policies have been presented at several recent annual meetings of ILTA, a professional organization dedicated to "providing information to members to maximize the value of technology in support of the legal profession." Slides and handouts from these and many other programs concerning social media are available on the ILTA website.

#### • *Online Database of Social Media Policies — Social Media Governance*

(<http://socialmediagovernance.com/policies.php>)

Chris Boudreaux's database of social media policies contains more than 175 examples of social media policies. In addition to creating and maintaining his blog on social media, Mr. Boudreaux works for social media firm Converseon and has authored chapters for the recently published book, *The Social Media Management Handbook: Everything You Need to Know to Get Social Media Working in Your Business*.

#### • *PolicyTool for Social Media*

(<http://socialmedia.policytool.net/>)  
Developed by IT corporation rtraction and technology lawyer and e-legal blogger David R. Canton, the PolicyTool for Social Media is a free resource that allows users to generate a customized social media policy based on the answers provided to an online questionnaire.

#### • *Social Media for Law Firms*

(<http://www.socialmediaforlawfirms.com/>)

In this blog one can find "resources, strategies and discussion" concerning the use of social media for law firms. Several recent posts discuss new social media technologies and their potential impact and value in the legal community. Blogger Samantha Collier is the Business Development Coordinator for a Canadian IP law firm.

#### • *Social Media Policies Database — Compliance Building*

(<http://www.compliancebuilding.com/about/publications/social-media-policies/>)  
Compiled by Doug Cornelius, chief compliance officer at real estate private equity firm Beacon Capital Partners LLC, this extensive database of social media policies is hosted on his personal blog. The database consists of more than two hundred policies from various industries within the public and private sectors. Particular items of note may include documents related from the American Bar Association Young Lawyers Division, the Association of Corporate Counsel, Baker & Daniels,

**Social Networking** continued on page 53

**Social Networking** continued from page 52

the Bottom Line Law Group, the Byrne Law Group, and the Shepard Law Group. Policies from numerous government agencies, non-profits, and professional service organizations are also featured.

- **Social Media Policy and Blogging Policy** — *Jaffe PR* (<http://www.jaffepr.com/>) Jaffe PR, a public relations firm for law firms, has created and provides access to templates for a social media policy and a blogging policy on their website. Designed specifically for law firms and attorneys, these form policies are updated to reflect developments in the field (most recently updated in March 2011). The site also includes a series of white papers dealing with the use of Twitter, LinkedIn and blogs by attorneys.
- **Social Media Usage Toolkit—Practical Law Company** (<http://us.practicallaw.com/>) (Subscription service, free trials available for non-subscribers) The Practical Law Company's Law Department has created a social media toolkit that contains a number of checklists, guidance documents and sample documents that may be of great value to attorneys in drafting a law firm social media policy, illustrating the utility of social media and networking use within the company, and even tracking what others are saying about the firm and your employees. A series of thought provoking checklist style documents, including "Company Use of Social Media: Best Practices Checklist," "Employees and Social Media: Company Best Practices Checklist," and "Monitoring and Responding to Third Party Use of Social Media: Best Practices Checklist," are succinct explanations of important issues and provide attorneys with valuable points to consider. Practice Notes, including "Social Media: A Quick Guide," "Social Media: Risks and Rewards," and "Online Advertising and Marketing"

provide general overviews of social media use and non-technical explanations of important terms and concepts. Lastly, two documents, "Social Media Policy" and "Company Social Media Use Guidelines" contain detailed sample language alongside helpful drafting notes. Each of these materials is particularly helpful in that they provide important information in a concise format that is easy to understand.

- **Social Networking Law Blog** (<http://www.socialnetworkinglawblog.com/>) This blog, compiled by attorney Megan J. Erickson, explores the "intersection of technology, social media, Web 2.0 and the law." Posts frequently include discussions of social media policies and legal developments concerning social media in the workplace.

## Endnotes:

- 1 2009 Networks for Counsel Study, accessed July 22, 2011, at [http://www.leadernetworks.com/documents/Networks\\_for\\_Counsel\\_2009.pdf](http://www.leadernetworks.com/documents/Networks_for_Counsel_2009.pdf).
- 2 Ibid.
- 3 For a discussion of these issues, see James M. McCauley, "Blogging and Social Networking for Lawyers: Ethical Pitfalls," *Virginia Lawyer* (February 2010).
- 4 Peter Vieth, "Blogging lawyer is disciplined," *Virginia Lawyers Weekly* (October 24, 2011).
- 5 For a discussion of recent examples of questioned social media use by attorneys, as well as information about the use of social media policies or guidelines in law firms, see Sara Randazzo, "The Tweet that Roared: Lawyers and Law Firms Navigate Social Media Landmines." *The AmLaw Daily* (November 2, 2011) accessed November 4, 2011, at <http://amlawdaily.typepad.com/amlawdaily/2011/11/twitter-vs-lawyers.html>.
- 6 Leigh Kamping-Carder, "NLRB's Social Media Crackdown a Warning to Employers." *Law360* (April 11, 2011) accessed June 1, 2011, at <http://www.law360.com/articles/238076>. For additional information about specific social media and social media policy investigations by the NLRB, see "Acting General

Counsel releases report on social media cases," (August 18, 2011) accessed November 4, 2011, at <https://www.nlr.gov/news/acting-general-counsel-releases-report-social-media-cases>.



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# HIPAA Compliance Resources

by Paul Birch

As health care consumers, attorneys may need no introduction to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>1</sup> It may have introduced itself to you already in the form of a refused request for your spouse's pharmacy receipts without signed authorization, or lengthier patient information forms to fill out before seeing a new doctor. On the other hand, the legislation may have facilitated your own access to your personal health records that otherwise would have been denied, or shielded those records from public disclosure by deterring a mass data spill. Along with establishing portability requirements for employee health plans and standardized coding for health transactions—and several other health care-related topics beyond the scope of this article—the agency rules mandated by HIPAA set the standards for privacy and security of health information stored or transmitted by covered entities. Here are some starting points for HIPAA compliance research.

## Primary Law

As originally enacted, HIPAA created civil and criminal penalties for wrongful disclosure of individually identifiable health information,<sup>2</sup> but did not establish privacy standards. However, the statute contemplated Congress doing so in separate legislation within 36 months of HIPAA's passage, delegating rule-making authority to the secretary of Health and Human Services only if Congress did not meet that deadline. The deadline passed without any such legislation.

The resulting HHS rules, codified at 45 C.F.R. Part 164, comprise a two-pronged regulatory scheme:

Security Standards,<sup>3</sup> defining administrative, physical, technical, and organizational safeguards for covered entities' handling of electronic health information.

Privacy Standards,<sup>4</sup> defining the covered health care entities and the uses requiring or not requiring patient authorization. Also included are provisions requiring and specifying the form of notification of privacy policies and asserting a patient's right to request enhanced privacy.

HIPAA enforcement rules and procedures can be found at 45 C.F.R. Part 160. Administrative enforcement is handled by HHS's Office for Civil Rights.

Newer federal legislation, the Health Information Technology for Economic and Clinical Health (HITECH) Act,<sup>5</sup> part of the American Recovery and Reinvestment Act of 2009, amended HIPAA by extending liabilities to "business associates" of covered entities and enhances breach notification requirements. HITECH also expanded HIPAA violation penalties substantially and required HHS to issue annual guidance to the industry as to effective and appropriate security, particularly in the area of data encryption.<sup>6</sup> Predictably, these recommendations have already found their way into security regulation revisions.

The attorney is urged not to overlook Virginia's Patient Health Records Privacy Act,<sup>7</sup> essentially the state's "little HIPAA." Most notably, Virginia offers patients the private right of action for health privacy violations that HIPAA does not.<sup>8</sup>

## Compliance Resources

The rapidity of HHS rule changes, especially in light of the HITECH legislation and regulations, render less useful the handful of pre-2010 print HIPAA compliance manuals lacking supplementation, except, perhaps for the broadest of overviews. One would expect, however, a crop of new titles of this kind in the coming years. Indeed, among print resources, one of the few of current

value is the American Health Lawyers Association's looseleaf *Health Law Practice Guide*, published by Thompson Reuters/West. The guide devotes a chapter each to HIPAA and HITECH, and includes a number of relevant forms and practice checklists in its appendices.

Among Internet resources, a likely first stop is HSS's own Health Information Privacy website.<sup>9</sup> Designed for patients, health care workers, and attorneys, the site includes concise lay-oriented explanations of the privacy and security rules, complaint forms, and training materials for covered health care entities. It also reproduces the statute and regulations, along with HHS news releases.

It was not until this year that DHS levied its first HIPAA fine against a provider—a \$4.2 million fine against Cignet Health—signaling to the industry the potential for huge liability exposure.<sup>10</sup> As such, a growth industry of websites has lately emerged, dedicated to providing compliance guidance by combining free information with offers to sell commercial products or services such as record tracking software and staff training courses. The number of hits generated by entering "HIPAA compliance" in a search engine may surprise you; the range of quality and quantity of information offered on the free side may be less surprising. One can usually recognize these sites by the presence of the HIPAA acronym somewhere in their address.

Of particular note are a handful of blogs that deal with HIPAA issues. One excellent example, "HIPAA Blog,"<sup>11</sup> maintained by Dallas attorney Jeff Drummond, provides excellent and frequently updated commentary and analysis of developments. Also recommended is the health care industry coverage at Foley Hoag's "Security, Privacy and the

HIPAA continued on page 58

Law.”<sup>12</sup> Other useful blogs come from your likely partners in compliance work, the IT sector. For example Redspin Security, one of the leading consulting firms in the field, offers up an excellent blog,<sup>13</sup> All of these will likely become frequent stops for the attorney who works frequently with HIPAA.

Endnotes:

- 1 Pub.L. No. 104-191, 110 Stat. 1936 (1996).
- 2 *Id.*, § 261 (codified as amended at 42 U.S.C. § 1320d-6 (2006 & Supp. III 2009)).
- 3 45 C.F.R. §§ 164.302–164.318, plus Appendix (2010).
- 4 45 C.F.R. §§ 164.500–164.534 (2010).
- 5 American Recovery and Reinvestment Act, of 2009, Pub. L. No. 111-5, § 13401, 123 Stat. 115, 260 (codified at 42 U.S.C. § 17931(a)).
- 6 See, e.g. 74 Fed. Reg. 19006 (2009).
- 7 Va. Code Ann. § 32.1-127.1:03 (2011).
- 8 *Fairfax Hospitals v. Curtis*, 254 Va. 437, 492 S.E.2d 642 (1997).
- 9 <http://www.hhs.gov/ocr/privacy/index.html>.
- 10 Lena H. Sun, “Clinic Penalized for Not Providing Records,” Wash. Post, Feb. 23, 2011, at B04.
- 11 <http://hipaablog.blogspot.com>.
- 12 <http://www.securityprivacyandthelaw.com>.
- 13 <http://www.redspin.com/blog>.



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