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■ Bulletin # 213 Sundogs and Getaways

Winter officially arrives on the prairies, by my count, with the first appearance of sundogs. For those living in warmer climates or unfamiliar with the term, sundogs can be described as upright rainbows flanking the sun. They only appear when there's snow on the ground and a serious chill in the air. Sundogs herald the winter season and inevitably turn my mind to the urgency of planning for a winter getaway to a sunny beach location. For me, vacation planning always helps to take the bite out of frostbite.

temporary foreign location while continuing to maintain a place of business in your home jurisdiction. The professional services you provide while on vacation outside of Canada will be insured.

But don't forget that the standards for those services don't diminish just because you're on a break from the office.

■ Bulletin # 214 Social Media and You – How to Reap the Benefits & Avoid the Risks

It is generally true that lawyers are risk-averse and take a cautious approach to adapting to change and to adopting new ways of doing business.

There is no doubt that in the use of social media tools, these generalizations have proven true. While it is relatively easy to find lawyers on Facebook and Twitter, looking at the whole profession, participation in these social networks remains low. The exception may be LinkedIn, a professional social network now used by a significant number of lawyers to network, market their services and manage and maintain their professional contacts.

Whether you already have an online presence or are considering developing one, you need to exercise both common sense and diligence in presenting yourself to an online audience.

In his recent article, *Six Ways to Win with Social Media*, North Carolina lawyer Jay Reeves sets out the following basic advice for lawyers using social media:

- *Start with a great reputation... Make sure people are saying positive things about you.*
- *Know the basics. You need not be a tech expert to establish an effective social media presence. The essential platforms are Facebook, Twitter, LinkedIn, Google Plus and blogs. Most of these services are free. You can create an account in minutes and learn all you need to know through YouTube videos.*
- *Get with the program. Seventy-eight percent of top business executives use social media professionally. That percentage will only increase in coming years. Lawyers will either swim with the tide or sink to oblivion.*
- *Marketing is a conversation. It is not a broadcast. The goal is to initiate dialogue and tweak people's interest. Put out information that is timely, relevant and entertaining.*

Giving proper attention to planning your vacation is important. You need to make sure you've got your transportation arranged, a bed to sleep in and know at least a little of the local landscape and culture. You'll need to make arrangements for someone to keep an eye on your house and walk your dog while you're away. You will likely purchase extra health and trip interruption/cancellation insurance in case of emergencies. If you're planning to work while you're away, or at least keep up with your emails, you may also make arrangements to add a travel data pack to your smartphone plan.

While there are differing views on mixing vacation with work, assuming you've decided that your work must still be done even when you're lounging at the beach, have you given any thought to whether the legal services you're providing are still insured under your professional liability policy when you're working outside of Canada? Probably not, I suspect.

Fortunately, CLIA has considered this question, looking specifically at the wording of Exclusion 3.1 of the policy, which states that *...insurance coverage given by this policy does not apply to a claim arising out of or from professional services from an office located outside of Canada.* The definition of "office" in the policy is *...a place of business established by or for the benefit or use of an insured or that person's law firm and from which services are provided or are intended to be provided to the public on an on-going, but not necessarily regular or full-time basis.*

So, are you covered or not when you're working on your Blackberry or iPad beside the pool while vacationing in sunny St. Martin? The good news is that this exclusion won't apply if you're working remotely from a



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- Encourage feedback and comments. The business will follow.*
- *Show and tell. Use video, audio, photos and graphics to attract attention. You can record a video on a smart phone and have it uploaded to your blog or website in minutes.*
 - *Have fun. A corporate lawyer who loved horses launched a blog about equine law just for fun. Within months she had become the go-to attorney in this practice niche, counting among her clients the Kentucky Derby organization....*
 - *Above all don't be afraid of so-called new media.*

To Reeves' basic and sound advice, I would add the following cautions:

1. *Avoid establishing a lawyer-client relationship*
Although it may be unintentional, it is possible to initiate and form a lawyer-client relationship via a social media channel. The guiding principles that apply to other, offline circumstances apply here. (See, for example, Loss Prevention Bulletin Issue No. 48, Bulletin #190 Does a 7-Minute Call Create a Solicitor/Client Relationship?). It may be prudent to include a disclaimer in your online profile in the same way you would on a website or other marketing communication.
2. *Don't give advice or opinions*
Social media are relied upon by many as a source of information. When there's legal news that matters to your clients (and potential clients), you might post a link to a relevant article, decision or commentary. When doing so, always ensure you're clear about providing information only, and that you are not giving advice or a legal opinion.
3. *Pay attention to client confidentiality and conflicts rules*
If you're describing your day at work, make sure you don't unintentionally breach any ethical rules. If you tweet or post a status update as you exit your client's premises, including any location information may inadvertently identify your client. While using social media during your workday, you may want to consider turning off all location data options. Conflict rules may also come into play online and you should therefore consider carefully with whom you will connect via social networks, whether judges, former clients or experts.
4. *Use care in seeking or providing endorsements*
LinkedIn has recently added an "endorsement" feature that may pop up when you sign in, requesting that you endorse your connections for various skills. The site also features "recommendations" which are a more personalized form of endorsement of an individual. When seeking recommendations or endorsements online, be sure that you're doing so mindful of and in line with your law society's applicable marketing and

advertising rules.

5. *Read the fine print*
You're a lawyer. Don't agree to Terms of Use without reading the document. Enough said.
6. *If you can't say anything nice...*
Use caution when live tweeting from court or on the "courthouse steps" after an appearance. The ABA Journal recently reported the story of a judge's clerk who posted tweets about a lawyer during an ethics hearing she was watching. She was ultimately fired based on her apparently critical remarks. *In Once More With Feeling: Watch What You Tweet*, Kim Nayyer offers this advice:
A guiding policy sometimes offered in respect of online exchanges is to say online only what one would be prepared to say in person. If words could be hurtful in person, assume they will be hurtful online too. If words or activity might expose one to legal action if spoken or conducted in real life, the parallel assumption should follow.

Massachusetts State Bar Practice Advisor Jared Correia puts it more bluntly:

Don't get on Twitter to be a tool. In the final analysis, you get far more traction being the good guy, or lady. It's fine to disagree, but do so amicably, and be reasonable. Everything you tweet is potentially writ upon the face of the internet forever...

In the final analysis, your use of social media in the course of your legal practice needs to be tempered with good judgment, sober second thought and a keen awareness that although the news cycle online is short, what you put out there will not soon disappear.

Sources and resources:

- Six Ways to Win through Social Media, by Jay Reeves published October 2, 2012 at: www.lawyersmutualinc.com/blog/six-ways-to-win-through-social-media
- Research Lawyer Is Fired for Tweeting About 'Naughty Boy' Ex-AG During Ethics Hearing, by Debra Cassens Weiss, published November 19, 2012 at: www.abajournal.com/news/article/research_lawyer_is_suspended_after_tweeting_during_ethics_hearing_of_naught/
- Once More With Feeling: Watch What You Tweet by Kim Nayyer, published November 22, 2012 at: www.slaw.ca/2012/11/22/once-more-with-feeling-watch-what-you-tweet/
- What NOT to do on Twitter, by Jared Correia published August 30, 2012 at: www.lawtechnologytoday.org/2012/08/what-not-to-do-on-twitter-a-guest-post-by-jared-correia/