



**Can Your Staff's Tweets Land  
You Out on the Street?**  
Social Networking and Law Office Employment

Presented by:  
**Sheila Gladstone**  
[sgladstone@lglawfirm.com](mailto:sgladstone@lglawfirm.com)  
**(512) 322-5863**

816 Congress Avenue  
Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 Fax  
[www.lglawfirm.com](http://www.lglawfirm.com)

---

---

---

---

---

---

---

---

---

---

**From the Blog-Sphere**

**You think the management of Skadden Arps, the highest revenue generating law firm in the country, knows about a blog called the "Skadden Insider"? Here's the description from Skadden Insider itself:**

*Welcome to the Skadden Insider, a blog created to collect and pass along the gossip and news making its way through the halls of a certain law firm's offices. Whether it's New York, Boston, DC or Palo Alto, Skadden Insider will be your place to read the latest. ...The "Insider" is two people, both employed by the firm. We're not disgruntled and we don't have an axe to grind. We just thought a Skadden blog would be fun. Hopefully it will be. Oh, and although we are employed by Skadden, this blog is done on our own time and has no affiliation with the firm.*

---

---

---

---

---

---

---

---

---

---

**Blog has been removed**

**Sorry, the blog at [skaddeninsider.blogspot.com](http://skaddeninsider.blogspot.com) has been removed. This address is not available for new blogs.**

---

---

---

---

---

---

---

---

---

---

### Trends on Gathering Information Through Social Networking?

- OK for lawyer to access Facebook's public space to gather information about opponent
- Not OK to practice "surreptitious friending" (NY Bar-2007)
- "Virtual pretexting" using old case law
  - Has never been OK for lawyer to misrepresent identity and purpose to gather information (OR. Bar)
- Prosecutors can work with police on lawful covert operation

---

---

---

---

---

---

---

---

### Trends on Gathering Information Through Social Networking

- NY court case – appropriate to issue subpoena in personal injury case for private or deleted Facebook material with showing of potential relevance (pictures of plaintiff doing activities)
  - "Privacy" setting does not create discovery immunity
  - Just imagine it's a diary

---

---

---

---

---

---

---

---

### Employment Issues

- Lawyers have always been responsible for the techniques of investigators and employees
- Do you employ paralegal who befriends people to gain information online?
- What if there was a "friend" relationship before the litigation?
  - Not really different from "Chinese Wall" rules of before?

---

---

---

---

---

---

---

---

## Employment Issues

- Current cases make really interesting Tweets and blog entries!
  - Secretary's Tweet: "Spending day typing useless pleadings for a case we should probably lose"
  - Paralegal's Tweet: "In mediation – not going well"
  - Attorney's Tweet: "Going to Houston to interview other potential claimants"

---

---

---

---

---

---

---

---

## Does this lawyer work for you?

- Young Galveston lawyer requested continuance from judge, claiming death in the family
  - Judge was already her "friend" on Facebook
  - Judge checked her page and read all about the big week of drinking and partying
  - Called her senior partner

---

---

---

---

---

---

---

---

## Cities/Law Offices need Social Networking Policies

- Employees who post material, during or outside of working hours:
  - Must not appear to be representing the City
  - Must not disparage or misrepresent City or its interests
    - But not intended to prohibit discussions on matters of public concern
  - Must not reveal or allude to any confidential client information.
  - Must not harass or disparage coworkers
- The City has the right to monitor such sites and protect its interests.

---

---

---

---

---

---

---

---

## Stupid Employee Tricks



### Tweet, Tweet, Tweet

Cisco just offered me a job!  
Now I have to weigh the utility of a fatty  
paycheck against the daily commute to San  
Jose and hating the work.

Who is the hiring manager? I'm sure they  
would love to know that you will hate the work.  
We here at Cisco are well versed in the Web.

---

---

---

---

---

---

---

---

## Working Hard? Or Hardly Working?



---

---

---

---

---

---

---

---

## Discovering Dishonesty?

*I can't come to 10/31 mandatory  
meeting because . . .*

- Return email from boss:
  - I completely understand that family emergencies come up
- I sincerely hope everything is alright
- Love the wand!



A "Family Emergency"

---

---

---

---

---

---

---

---

## Sexual Harassment Investigation Tool?



---

---

---

---

---

---

---

---

## Stupid Lawyer Tricks

- Illinois discipline against experienced public defender, based on her blog:
  - “This stupid kid (#127409) is taking the rap for his drug-dealing dirtbag of an older brother”
  - “Dennis’, the diabetic whose case I mentioned in Wednesday’s post . . . was standing there in court stoned, right in front of the judge, swearing he was clean and claiming ignorance as to why his blood sugar wasn’t being managed well.”
  - Referred to judge as “a total asshole” and in another, as “Judge Clueless”

---

---

---

---

---

---

---

---

## Stupid Lawyer Tricks

- Florida lawyer reprimanded for calling judge an “evil, unfair witch” “seemingly mentally ill” in blog post. Lost on 1<sup>st</sup> Amendment claim.
- California lawyer’s license suspended over trial blog he wrote while serving as a juror.
  - Warned by judge not to discuss case, orally or in writing
  - “Nowhere do I recall the jury instruction mandating I can’t post comments in my blog about the trial.”
  - Mistrial as a result of blog

---

---

---

---

---

---

---

---

### Stupid Judge Tricks

- NC Judge “friended” lawyer in current case, discussed case – ex parte
- Same Judge independently gathered information about a party, during the trial, but never entered such information into evidence

---

---

---

---

---

---

---

---

### Recent Teacher Postings

- Chicago teacher took picture of 7-year-old student’s hair style, posted with caption “right, this is for picture day.”



---

---

---

---

---

---

---

---

### Recent Teacher Postings

- Day after 12-year-old drowned on field trip to beach, NYC 5<sup>th</sup> grade teacher posted:
  - “After today, I’m thinking the beach is a good trip for my class. I hate their guts.”
  - Arguing right to privacy – intended for friends off duty
  - Was colleague who turned her in.



---

---

---

---

---

---

---

---

### Risks of Enforcing Policies

- More & more Privacy/1<sup>st</sup> Amendment claims – unpredictable
- Bad PR – These cases get press – lot of people on-line have strong opinions
  - “Legally justified” may not be worth the PR

---

---

---

---

---

---

---

---

### Questions?

Contact:  
**Sheila Gladstone**  
[sgladstone@lglawfirm.com](mailto:sgladstone@lglawfirm.com)  
(512) 322-5863



---

---

---

---

---

---

---

---