

## Social Media Lawyer

# How to Deal with the Bad and the Ugly of Social Media

by Jeffrey O'Brien, Esq., Mansfield Tanick & Cohen, P.A.

"The Good, the Bad and the Ugly" is, of course, the title of a well-known Clint Eastwood film. The title has since become ingrained in our collective vocabulary, so permit me to use it in the context of social media.

In past columns, I've talked about the benefits that a well-planned social media marketing strategy can have on your business, as well as the potential usefulness of various social media tools in communicating to the communities that your company manages. We'll call those columns "the good."

In the months since that last column, however, we have seen "the bad and the ugly" of social media.

In the political world, a United States Congressman resigned in the wake of a scandal involving his sending inappropriate tweets to young women via his Twitter account. Closer to home, a Minnesota State Senator faced an ethics hearing when another Senator complained about a Tweet which she alleged to be a false statement about her.

Social media mayhem was not, however, confined to Twitter. In Minnesota, the Court of Appeals on July 11, 2011 decided its first case involving the social media site Facebook. That case, *Tatro v. University of Minnesota*, involved a student (Amanda Tatro), in the University of Minnesota's mortuary science program, who posted on Facebook about her desire to cause bodily harm to someone with a trocar (a surgical instrument used in the mortuary science industry). Ms. Tatro also openly discussed her work in the cadaver laboratory, which constituted a violation of the University's conduct code. Her penalty? A failing grade in the class, a required psychiatric evaluation, and a clinical ethics class. When Ms. Tatro appealed the University's decision on

free speech grounds, the court cited Ms. Tatro's violations of written policy (i.e., the University's conduct code) as justification of the University's actions.

What is the significance of these incidents to the rest of us utilizing social media? They evidence the fact that what makes social media an effective communications tool also makes it a dangerous communications tool. If you're part of a CIC community which utilizes a social media site as a communications tool (say, for example, a Facebook group), it is imperative to have someone monitoring what is said on the site and to delete inappropriate posts. In my own neighborhood, we have almost 100 residents as members of our Facebook group. In the three months since its launch, we have been fortunate to have nothing but respectful posts and discussions from all participants. Nonetheless, the group was created with three administrators who have the ability to delete offensive or inappropriate posts. Further, the group is a "closed" group, which means that people who wish to join the group have to be approved by one of the administrators. In this way, we have a means to verify actual

residency before allowing someone into the group.

For businesses, the risk of inappropriate online behavior could result in legal action against your company. Therefore, you need a written policy about social media usage that should be distributed to all employees. A signed acknowledgment from each employee is also a must.

The law of social media is an evolving area, and the body of precedent is sure to grow over time. This will lead to greater certainty as to the do's and don'ts in online behavior. However, the incidents thus far demonstrate the fact that a strong measure of self-restraint goes a long way to prevent your company from being a headline because of its social media activities. ■



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## Societal Trends That Affect Your Association

- **Dense Neighborhoods Gaining over Suburbs.** From a story in USA Today: "This urban revival is fueled by the fact that cities have fared better than many suburbs in the economic downturn because the resulting housing bust put the brakes on many people moving to bigger houses or newer communities. It's also helped by changes in the nation's demographics: Younger people are seeking urban lifestyles near mass transit, and older empty nesters want the same."
- **Working from Home.** The number of people working from home continues to increase. One study recently reported that 7% of the workforce now works 3 or more days from home. That's an estimated 1/3 of all knowledge workers.
- **Families Dropping the Second Car.** More families use only one car to save money and time. Car sharing/rental services, light rail, buses and trains are gaining in use. Just ten minutes of planning trips and bunching errands can save an hour's worth of driving.

- Marketing Association Education Magazine