
Social Media From A Litigator's Perspective – Your Best Friend Or Worst Enemy?

July 31, 2013

Social media has become a big part of the lives of many in North Carolina and around the world. With this rise in popularity and use, many in the legal profession have found ways to use social media to benefit clients in legal disputes; it can also cause problems as well.

Social media has become an ever-increasing part of the lives of many in North Carolina and around the world. In fact, in today's age of technology, there are few who do not participate in some form of social media. It can be following your favorite NBA basketball player on Twitter®; keeping up with friends and family who have moved across the state, country, or world; or even trying to get a date. Social media has made our connectivity more convenient and more frequent.

This explosion in the use of social media has not gone unnoticed by the legal profession; in many instances, social media now plays a significant role in litigation. This role can begin during the intake or fact-finding process to gather personal information on parties, witnesses, and others involved in a legal dispute, and can continue through discovery, trial, and even an appeal through use in locating applicable individuals, serving documents, or communicating with witnesses. But just as social media has its benefits, it can be used to your detriment as well.

Personal Information

Posting pictures, documents, and a daily running commentary has become routine for those using social media, without much thought given as to who will ultimately view the information. This information may discuss events recently attended, new jobs applied for, or milestones reached in one's life. And for many who read or view this information, it may seem mundane or even boring; however, from a legal perspective, those postings may make or break a case. Social media creates the opportunity to gather vast amounts of information on parties, lawyers, and witnesses without an attorney or investigator ever having to leave the office. And it is as simple as just typing a name into Google®.

Consider the following scenario: Husband and wife are separated and fighting for custody of their children. When the marriage was happy, husband "friends" wife's brother on Facebook® so they could keep up with one another. During the child custody dispute, wife's brother prints off multiple Facebook® posts from husband regarding the use of alcohol, inappropriate behavior, and his plans to move far away if he gets custody of the children. Brother gives this information to wife's attorney, it is admitted in court to the shock and chagrin of husband, and wife is granted custody of the children.

Another example might be a plaintiff injured in an automobile collision who complains of debilitating back pain. A review of the plaintiff's Twitter® account finds recent tweets from the plaintiff about racing motorcycles, skydiving, and living a physically active lifestyle. This information is presented in court, and the jury finds no injury to the plaintiff as a result of the collision.

While it may not be as simple as the hypothetical (but surprisingly common) examples above, the supply of information that is posted on social media sites is endless and, more often than not, little reflection is given by posters on the potential negative effects of this information beforehand because social media users believe these sites are for fun and that they provide "privacy" for participants. The reality of such sites is that this information is out there for all, including those in the legal profession, to view and, in many instances, to download and print.

Location, Location, Location

In many instances, a legal dispute may arise, but the whereabouts of a necessary party is unknown. When this problem arises, it can create serious hardships in a legal dispute because certain notice requirements must be met so that a party is not blindsided by proceedings or even an adverse judgment in an action the party knew nothing about. If the location of a party is unknown, these notice requirements cannot be met. Again, the explosion in social media use has provided help in overcoming this problem in many situations.

Take for instance a car mechanic who has done work requested by a car owner that has resulted in an unpaid bill for \$7,000. This is clearly a problem this businessman wants to resolve. The car owner, who has not paid, has decided he didn't need the car anyway; the repairs, on second thought, weren't worth it; and, unfortunately for the mechanic, the car owner has moved to a new unknown address. After a Facebook® and Twitter® search, the mechanic's attorney learns that the car owner frequents a certain coffee shop every morning. The attorney proceeds to prepare the necessary notices and hands them to the car owner in the coffee shop to enjoy with his mocha latte.

The use of social media has actually been taken one step further in some jurisdictions where the laws have been updated to provide that legal notice requirements can be met simply by posting documents on a party's social media page! North Carolina has not gone so far, but it may be something we see in the future as social media becomes even more commonplace.

Jurors Online

During each and every trial, the judge always instructs jurors not to discuss the proceedings with anyone else and not to independently investigate the matter. The purpose of these instructions is so that the jury may remain neutral in its ability to make a decision based on only legally appropriate evidence. This neutrality and reliance only on proper evidence are the fundamental foundations of our legal system. When two parties cannot resolve a dispute on their own, our system allows such parties to come to the local courthouse, present their case using the legal rules of evidence, and have a jury of 12 unbiased members render a decision based upon the facts. But what if these principles of neutrality and standards of evidence are breached?

Take a juror who obeys the order from the judge to the extent the juror does not discuss the case with anyone face-to-face, but who posts thoughts about the case on Facebook®. Or maybe that juror posts remarks about the proceedings in the courtroom or thoughts about other jurors. No matter what these thoughts may be, this may shed insight into the juror's biases, likes, or dislikes and, if discovered, may be determinative of how evidence is shown to the jury or how arguments are presented by one side, and give an unfair advantage to one party. Additionally, responses to the postings could inappropriately and illegally inflame the juror who proceeds to disregard the evidence presented and the deliberations with fellow jurors, and decides the case on the basis of political or emotional arguments or rank hearsay statements contained in the responses.

The use of information posted by anyone with a smartphone or tablet for the world to view violates the very fundamental tenets of our legal and jury system. Social media is so prevalent and widely used by everyone

that there are endless possibilities of how it can be used against us all.

Conclusion

These are just a few of the ways and examples of how the prevalence of social media in the lives of many has become part of the legal profession. This modern form of communication presents countless opportunities to connect and maintain relationships with friends and family worldwide. However, social media has also become an investigative tool for anyone with Internet access. It has become an increasingly popular tool throughout the legal profession in dealing with all aspects of a case and is one of the first things an attorney will investigate when a client walks through the door. In the years to come, as social media becomes even more increasingly predominant, who knows what future will hold.

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