

Educating Clients About the Dangers of Social Media Activity

Whether your clients are individuals or corporations, few legal risks are as overlooked as social media activity. Here are some of the biggest dangers your clients need to know about.

Risk 1: Your Clients Can Easily Compromise Their Case

Legal investigators and activist attorneys routinely search social media for information about their clients, legal adversaries, witnesses and others, which may reveal undisclosed information or evidence of false testimony. In cases where a defense witness's character is introduced by one lawyer, opposing counsel could challenge that information with social media posts that suggest another picture. More and more judges accept social media evidence.

Following the ruling in *United States v. Meregildo* in 2012, even Facebook "friends" are allowed to share your client's social media profile with the government during an investigation. Further, under the Stored Communications Act, in some extreme cases information may be obtained by the social media platforms themselves. So, even if your client has made everything "private," it could be accessible.

Be sure you understand what social media evidence is admissible in your jurisdiction and what is not — and make sure your clients know how their actions and those of others on social media can help or hurt them.

Risk 2: Public Proof (Real or Fake) Can Generate Further Legal Actions in Contentious Cases

Any social post could lead to a lawsuit if the information libels another person and is posted maliciously. During a contentious legal proceeding, clients are likely to respond in kind to insulting social speculations, or their own speculations could constitute libel or defamation.

Deleting posts of evidentiary value could mean claims of spoliation. For example, in *Allied Concrete Co. v. Isaiah Lester* in 2013, deleting Facebook and Myspace accounts (as advised by Lester's counsel) led to increased fines for both the plaintiff and his attorney. Your client should understand that hiding evidence *and* past posts could have an unfavorable effect on a case's outcome.

There's also the fact that anyone can easily fall victim to a twin-fanged monster on social platforms: People can damage their cases with their actual posts, but also run the risk of falling victim to imposter accounts. Imposter accounts can steal identities, identify homes to burglarize, and post false information that causes your clients to take unwise actions. Clients can be equally damaged by social truth and social lies. As a safeguard, your clients should monitor social media for posts that mention their names or make claims about them. Be sure to collect screenshots before the profile or post is removed.

Part of your job is to advise your client to report any fraudulent accounts or slanderous statements to the relevant social media platform and the SEC.

Risk 3: Mixing Business and Personal Accounts

Clients should separate their social accounts based on whether they're personal or business. That doesn't mean personal posts will never find their way into business transactions and online investigations, but it will remind your clients that every social media action could generate unintended consequences, which could encourage wiser posting habits.

Note: Private business accounts do have some protection from being used in court, but frankly, lawyers slip in disallowed evidence all the time. Jurors can be instructed to ignore a statement, but they can't "un-hear" evidence that shows someone is dishonest.

When applicable, make sure to let your client know that all business and personal dealings on social media should be separate and, based on your local laws, what protections they have as a business on social media.

Risk 4: Unknowingly Sharing Impeachment Evidence

This may seem obvious, but it's your responsibility to remind your client that social evidence can simply impeach witnesses and challenge testimonies. It's easy to prove inaccuracies when contrary evidence is posted in public view: "Pictures are worth a thousand lies."

People routinely report every aspect of their lives in social media and demonstrate their attitudes with tweets, photos, videos, Instagram posts and hashtag campaigns. Simple photos and other posts can confirm or disprove legal allegations, and lawyers have a *duty of care* to warn clients about these rapidly developing legal risks. Photos posted online can provide extraordinary evidence, such as proving that your client met someone at a

certain time or date, establishing someone's presence at an event, showing your client's wild side or proving someone's possession of a stolen item.

Warn your clients that their accounts and mentions of their name will be under a microscope. They need to know to check their posts, comments and friends' accounts for any information pertinent to their case. Check-ins, posts made during certain times or those expressing certain opinions can have a hand in determining the outcome of a case.

Rather than conduct a regular search for their name, you might advise your clients to leverage a free service to monitor social media. Also, they can add their name and other relevant search phrases to Google Alerts to be notified if related news is shared online.

Social Media Camaraderie Blinds People to Certain Risks

Most people understand the risks of their kids accessing pornography or being targeted online, but there are big risks that come from indiscriminate posting that many people overlook. Make sure to educate your clients on the potential ramifications raised here.

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