



What is a Facebook Message? Email? Blog? Both?



A Federal Court in Puerto Rico addressed a specific question: What sort of ESI is a social networking message? Is it an email? A blog? Or something else?

Maldonado v. Municipality of Barceloneta, 2009 U.S. Dist. LEXIS 19842 (D.P.R. Mar. 11, 2009) is a case where a party sought a protective order to bar the defendant from contacting her. The means of communication: A Facebook message.

The Plaintiff, Julio Diaz, (a defendant in a different case) was contacted by Alma Febus on Facebook. The first communication was Facebook Group invitation. The Plaintiff ignored the Group invitation. The second was a message from the Defendant. *Maldonado* 6-7. The message stated: If you want to see the evidence that exists against the municipality let me know so that you can inform yourself well and please consult with a lawyer your civil responsibilities as far as defamation. Soon we will be filing a lawsuit and you could be included. My only request is that you are objective when mentioning my name. *Maldonado*, 8.

The Plaintiff claimed the message violated the Federal witness tampering statute and sought a protective order. *Maldonado*, 7-8.

The Court examined a subtle issue: what exactly is a Facebook message? The Defendants claimed the Facebook message was a blog. The Court noted it was not a blog, which is defined as a “frequently updated web site consisting of personal observations, excerpts from other sources, etc.” *Maldonado*, 8-9, citing *Quixtar Inc. v. Signature Mgmt. Team, LLC*, 566 F. Supp. 2d 1205, 1209 n.3 (D. Nev. 2008).

The Court rejected the Plaintiff’s position the Facebook message was an email. The Court stated: This type of communication, a message sent on Facebook, a “social networking website,” which has not been considered by this circuit or in any other circuit to the court’s knowledge, is likely a hybrid of the two. *Maldonado*, 8-9.

The Court noted that since the Facebook message was only viewable in the Plaintiff’s Inbox, it was more like an email. This removed any potential First Amendment protections because it was not publicly viewable. *Maldonado*, 9. However, it is worth noting the Court viewed Facebook messages as a hybrid of a blog and email.

The Court ultimately found against issuing a protective order, finding no evidence of intimidation by the Defendant. The threat of future litigation was insufficient to find witness tampering. Social networking will be an area to watch. The potential for jury tampering, witness intimidation can be carried out in any medium. Social Networking sites are by no means off the list.

Social networking sites will likely be in a league of their own when it comes to electronically stored information. How they will be treated will depend on what is at issue. If public status messages are conveying a threat or publishing confidential information, the social networking site might be treated like a blog. If messages are at issue, more like email. Regardless, attorneys must understand how social networking sites work and what is at issue for effective representation.