

New Jersey Judiciary Addresses Attorney and Juror Use of the Internet

Product Liability Advisory

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The increasingly prominent role that the Internet plays in American society has created both challenges and opportunities in the judicial system. On one hand, the integrity of jury trials may be threatened when jurors use the Internet to search for information relevant to the case, contact other jurors in cyberspace, or blog about the trial. On the other hand, the Internet provides a valuable tool for attorneys to obtain information regarding potential jurors. The New Jersey judiciary has recently taken some steps to address the emerging issues created by attorney and juror use of the Internet and wireless communication devices.

The Potential for Misuse

In response to the growing use of wireless communication devices and the integration of the Internet into everyday life, the New Jersey judiciary has recently amended Civil Model Jury Charge 1.11c ("Charge 1.11c") to instruct jurors not to "communicate with others about the case, either personally or through computers, cell phones, text messaging, instant messaging, blogs, Twitter, Facebook, Myspace, personal electronic and media devices or other forms of wireless communication." In addition, Charge 1.11c provides a detailed explanation for the restrictions on juror Internet usage, based on the premise that if jurors understand why they are restricted in their Internet usage during and before trial, they will be more likely to comply with the instructions. Charge 1.11c provides the following explanation for the instructions regarding juror Internet usage:

Why is this restriction imposed? You are here to decide this case based solely on the evidence – or lack of evidence – presented in this courtroom. Many of you regularly use the Internet to do research or to examine matters of interest to you. The information you are accessing is not evidence. One of the problems is that what you are examining may be wrong, incomplete, or inaccurate. That material may be outdated. Indeed, there often is no way to determine whether the information that we see on the Internet is correct. We must insist that, as a juror, you must not be influenced by any information outside of this courtroom. Otherwise, your decision may be based on material which only you, and none of your fellow jurors, know. This would unfairly and adversely impact the judicial process. We must make certain that each party has a fair opportunity to refute or explain evidence offered against it or that may be unfavorable to its case.

Charge 1.11c provides a good start in addressing the issues created by juror Internet usage, but it will likely not be a panacea for a number of reasons. First, as a practical matter, investigations of juror misconduct cannot be launched unless there is evidence of a violation. In addition, regardless of the instructions that are given, there is very little that can be done to prevent jurors from seeking out information on the Internet regarding issues related to the case after court has adjourned for the day. Although it may be possible to monitor whether jurors are communicating on the Internet regarding a trial, it is very difficult to determine whether they are searching for information related to issues raised in the trial. As such, the best strategy for attorneys seeking to cope with the new realities presented by the Internet is to accept that there is always a chance that jurors will ignore the judge's instructions and prepare accordingly. More specifically, attorneys may want to conduct their own Internet research on issues relevant to the case so that they are aware of the relevant information in cyberspace. Armed with such knowledge, attorneys may be more effective in questioning potential jurors during voir dire and will be equipped to tailor their arguments at trial to address information that jurors may have seen if they did not follow the judge's instructions regarding Internet usage.

The Valuable Tool

Aside from the potential harm that can be caused by juror misuse of the Internet during trial, the Internet can serve as a valuable tool for attorneys seeking to gain information regarding potential jurors. In this regard, the Superior Court of New Jersey, Appellate Division, has recently affirmed that attorneys are free to use wireless Internet connections in the courtroom to perform research on potential jurors. In *Carino v. Muenzen, M.D.*, No. 5491-08, 201 N.J. Super. LEXIS 2154 (Aug. 30, 2010), the court determined that the trial court erred in prohibiting the plaintiff's attorney from conducting Internet research on potential jurors at the counsel table. More specifically, the *Carino* court reasoned that there is nothing that "requires attorneys to notify the court or opposing counsel in advance of their intention to take advantage of the internet access made available by the Judiciary." *Id.* at *26. The *Carino* court determined that the fact that the plaintiff's counsel "had the foresight to bring his laptop computer to court, and defense counsel did not, simply cannot serve as a basis for judicial intervention in the name of 'fairness' or maintaining 'a level playing field.'" *Id.* at *27. On the contrary, the playing field was already level "because Internet access was open to both counsel, even if only one of them chose to utilize it." *Id.* In addition, the *Carino* court reasoned that prohibiting attorneys from using the Internet in court would have little practical effect because "counsel could have researched the prospective jurors overnight or during breaks." *Id.*

The recent decision in *Carino* highlights the expanded opportunities for obtaining information regarding potential jurors that have been created by increased wireless Internet

access. Attorneys should embrace new technology and use it to their advantage in the juror selection process, but at the same time be mindful of its potential to prejudice the jury.

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