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Social Media as Evidence in Lawsuits

Author:



PETER J. GREGORY

Practice Areas
Litigation
Personal Injury

25 East Main Street
Rochester, NY 14614

Phone: 585-546-2500
Fax: 585-546-7218
www.mccmlaw.com

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March 5, 2012 — With hundreds of millions of users worldwide, the social media revolution has arrived. Generally, social networks such as [Facebook](#), [Twitter](#) and [LinkedIn](#) allow their members to share information to enable interpersonal communication through online systems. Social media users share various content, including pictures, videos, messages, names of friends and business contacts, political causes and leisurely activities. Users exchange information about their personal and professional lives, post commentary about what they are doing or thinking and can even post their current location using GPS technology. However, these communications might later turn into potentially relevant evidence in court proceedings, such as incriminating photos or frank admissions.

Skilled attorneys are aware of the vast pool of potential evidence that social media may offer at trial. If you are a party to a lawsuit, expect a lawyer to be scanning your social media profiles for anything that might undermine your credibility. As part of their research of businesses or organizations, attorneys will regularly examine official social media sites, and those of their key individuals, for potentially damaging evidence.

The landscape of such electronic evidence is continuing to take shape, and courts are interpreting how to deal with certain issues that may arise when social media evidence is offered at trial. For example, the rules of evidence determine whether social media is admissible at trial. In the federal courts, [Federal Rule of Evidence 901](#) controls authentication of evidence and places the burden of authentication on the proponent of the evidence. In other words, proof of authorship of the social media account may come into question, and the attorney presenting the social media evidence must prove that the account is owned by the person or group that allegedly operates the account.

Another area in flux regarding social media and legal evidence is in the area of privacy. Regardless of steps taken to keep social media accounts shielded from the public with privacy settings, attorneys may still request access to social media accounts via court orders. As a New York court recently noted in *Patterson v. Turner Const. Co.*, 88 A.D.3d 617, 618 (1st Dep't 2011), "The postings on plaintiff's online Facebook account, if relevant, are not shielded from discovery merely because plaintiff used the service's privacy settings to restrict access. . . just as relevant matter from a personal diary is discoverable. . . ."



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As such, we encourage our clients to be mindful of the material that they publish online, including posts on social media networks. We also recommend regularly reviewing the privacy settings on your accounts, so that you may actively choose the scope of your social media audience.

Please contact one of our litigation attorneys, [Paul Barden](#), [Kevin Cooman](#), [Peter Weishaar](#) or [Peter Gregory](#), if you would like to schedule a consultation to discuss how this may impact your case.

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