

In Defense of Technology

Embracing social media in legal cases

For eons, formal research methods permitted attorneys to access certain information that could be analyzed and utilized to directly affect a client's case or matter. Reliable yes, but savoir faire? Certainly not. So what is savoir faire? Social media. Social media sites have carved out a new set of research tools for attorneys and they are unequivocally worth exploring. San Diego employment and litigation attorney Jason Black says he has used social media sites "offensively and defensively in both personal injury cases and wage and hour cases. Actually, it is a big part of litigation now."

A number of attorneys across Southern California have steered clear of exploring these tools due to the legal and ethical troubles these sites can recognizably create. In contrast, a growing number of attorneys, including Lori Bolander whose firm handles adoptions, trusts and estates, and probate litigation, have used these

sites to maximize their practice two-fold. "We market via Facebook and LinkedIn and feel that it has increased our visibility and reinforced people's reliance on us as experts in our field of practice," Bolander says. "We use these [social media sites] a lot as a tool in adoptions when attempting to locate a birth parent and even heirs in probate cases.

"The public is really going to have to assess how their online presence and use of social media could affect their case or future cases, including employment issues, divorces, and contested family disputes," says Bolander.

Social media users post everything from photos of their creatively designed meals to random opinions so much that they've cultivated their social profiles as daily journals, which may not sound like much of an interesting read, but attorneys are learning to scour these for relevant information.

Black says that his legal cases, particularly wage and hour cases, have been affected by content published on social media sites. "Employers are checking social media sites such as Twitter, MySpace and

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Facebook in cases where off-the-clock or unpaid overtime claims are made. Employers have tried to argue that employees are not actually working but instead are spending their time participating in social media sites," says Black.

With American pop culture embracing social media on a level never before anticipated, it is important as an attorney to not only practice law with the acumen of a technologically savoir-faire entrepreneur, but also with the vigilance of a prudent technological hypochondriac. "I do talk to my clients about e-mails and social media because now with the eDiscovery Act, it could all be admissible," says Bolander. "We have revised our attorney-client agreements to include [social media use] provisions." ✍

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