

Social Networking: It Can And Will Be Used Against You

By Pallie Zambrano

When a potential new client contacts a family law attorney, the attorney is likely to Google the client's and spouse's names to see what comes up. Information about the client's occupation, contacts, education and social network will be readily revealed. Some of this information is irrepressible, as any public reference to an individual is potentially available via the Internet, including the results of high school sporting competitions, media references and group affiliations.

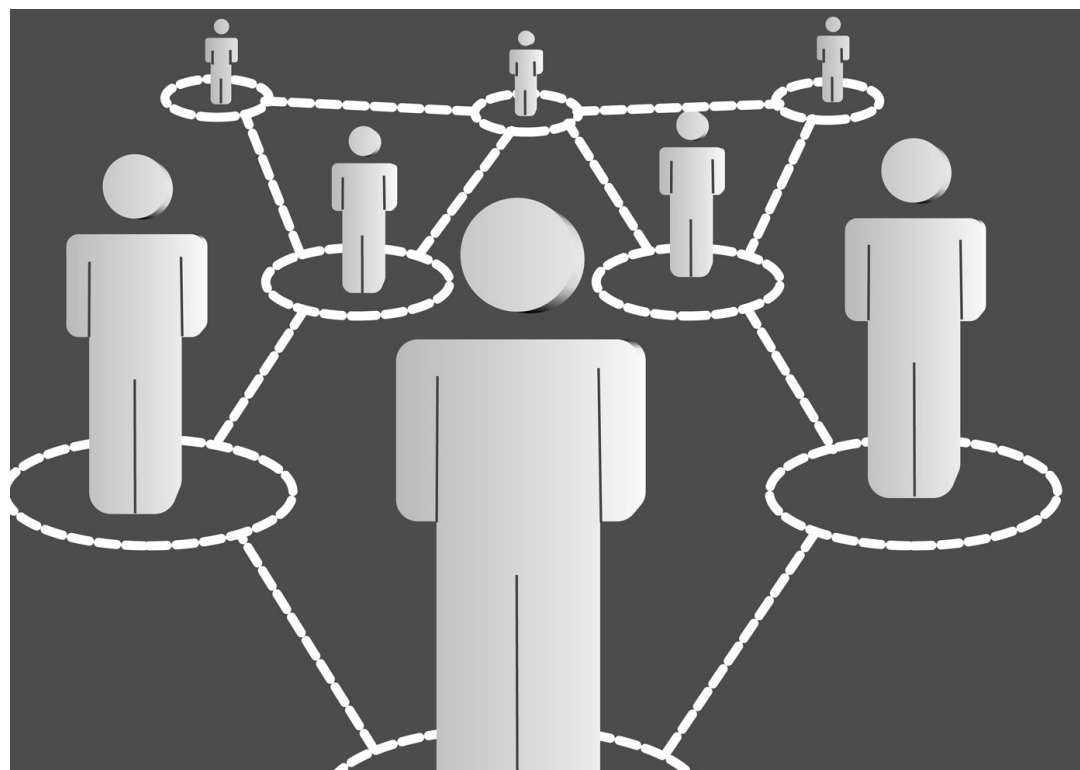
Given the ease of access, affordability and prevalence of technology, every client should be counseled at the outset of litigation regarding the care and maintenance of his or her online profile. Does the client use social networking sites? How severe are his or her privacy settings? Is she or her spouse using an online dating site? Who can view this profile? Does the individual send text messages or e-mail? Who has access to these accounts?

To borrow from *Miranda*, a client's Facebook status, tweets, blogs and other online activities can and will be used against her in court. Text messages are not safe either, and cell phones may be used as both a weapon and a shield.

Technology has made it easier to communicate. But because it's so easy, we share more than ever before — and often without appropriate editing. Tough morning? Vent on Facebook. Photos captured during a night of partying and shared without a second thought are available for "friends" and their "friends" to tag or repost — never to be recalled or deleted and quickly beyond the subject's control. Planning a vacation? Mention it online, and a wide network is now in the know. Any of these seemingly minor indiscretions may be printed and used as exhibits during heated litigation.

While an individual may know all of his "friends," it's unlikely he knows with whom they share information. "Friends" shared by parties during a marriage often retain access to both the husband's and wife's social networking sites after the parties separate. This access makes the "friend" a potential witness for either side. Also, depending on a client's privacy settings, posts may be accessible by his or her friends' friends — including the ex-spouse. All of these risks must be considered if a client is going to continue to post online during dissolution proceedings.

It is often surprising what people will post on social networking sites. An angry father rants about his wife's drug use and comments about her treatment of



the children. Given the long list of people who might have access to his postings, if anything he includes is proven to be untrue, he could be found liable for defamation. Additionally, the damage done to the mother's reputation and relationship with the children could be permanent.

Another immediate concern about this type of posting is how the comments might be perceived by the court should a custody battle ensue. What do the client's posts say about his judgment as a parent? Is he knowingly allowing the children to be placed in a dangerous situation? While he may just be blowing off steam, his comments could have long-term ramifications.

Clients should be counseled against these types of postings and advised that once it's online, it's forever. Comments about the other parent should be written with the presumption that the child will read it years later as an adult. How will the grown child feel about one parent's public bashing of the other?

These increasingly common technologies are also playing a significant role in the family law arena. Where an order to show cause for a temporary restraining order may have previously been supported by declarations and photographs, videos are now

readily available to support a party's position. Individuals carrying devices with video capabilities are eager to record the interactions with their spouses — often to extreme results.

Video clips of an aggressive spouse who is verbally or physically abusive can be very persuasive as the basis for a restraining order. But parties beware — the recordings could be illegal depending on how they are obtained. California Penal Code Sections 630, et seq., make it a crime to eavesdrop or record the audio of another without his consent. Pursuant to Family Code Section 2022, recordings obtained in violation of these sections are inadmissible. Video recordings may also be illegal if done secretly. Clients must be counseled that this type of recording could expose them to criminal liability.

In addition to potential criminal ramifications, clients should be advised that even recording their ex in the open can backfire. The videographer often forgets that a video or audio recording not only captures the opposing party, but also the one making the recording. When reviewing recordings of this sort, the individual holding the camera is often heard encour-

aging or inciting the behavior — again showing a lack of judgment or worse.

Unlike other litigation, in family dissolution proceedings, the parties often maintain regular contact outside of their counsel's presence. Heated discussions are sometimes reduced to pointed text messages, which are easily forwarded to others, including the parties' lawyers. Agreements and promises made via text message can be used as evidence. For example, text messages sent by a husband making promises of certain property, other concessions, or even threatening the wife can easily be forwarded directly to the wife's attorney, printed out and saved. These messages can then be used to cross-examine the husband should he change his position. If necessary, the messages can also be attached as exhibits to support a given position in a motion or at trial. Spouses who communicated regularly via text messaging and e-mail during their marriage, often continue to do so after separation — forgetting that the content is no longer sacred, especially if they are still sharing an account. In this evolving age of technology, nothing is private.

New clients must be counseled about the accessibility and potential use of all their online activities — as well as those of their friends and acquaintances. A friend's photos or video footage may also be shared and have an impact. Comments made by these friends about an individual's daily whereabouts or feelings as a dissolution proceeds can be captured and exploited. It's not enough that the client monitor his or her accounts. The client needs to watch all online activity in which he or she is involved.

Technology is often said to be a blessing and a curse, and this is definitely true in family law proceedings. Google your name. You may be surprised what comes up. But be sure to Google your client, the opposition and any witnesses. The information gathered can be used to strengthen your case and impeach the other side.



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