

Online Evidence: Digital discovery during divorce

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“Fantastic advances in the field of electronic communication constitute a greater danger to the privacy of the individual,” Supreme Court Justice Earl Warren prophetically stated in 1963.

Today, people use email, text messaging and social networking sites more than ever. Digital activities of a couple going through a divorce can become valuable evidence when determining issues such as parental fitness, financial support or the division of assets and debt. A history of social media use can be a virtual character witness – for good or ill.

It should also be no surprise that public posts on sites like Facebook, Instagram and Twitter can be examined by attorneys involved in the discovery process. However, texts and so-

called private messages on social networking platforms can also be obtained by attorneys and become evidence in a divorce.

Deleting posts, messages and/or texts can also invite trouble. Procedurally, a divorce begins with a Petition for Dissolution of Marriage, which includes an Automatic Temporary Injunction.

The injunction includes the following language that specifically prohibits either party from deleting social media information, text messages or emails during the divorce process: "Intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, specifically including but not limited to, any electronically stored materials, electronic communications, social network data, financial records, and any document that represents or embodies anything of value."

For those inclined to delete embarrassing messages or image transmissions, the best policy is to talk to their attorney about it so preparations can be made to address the matter.

Some general guidelines for communicating digitally during a divorce: If you want to communicate in a way that is truly private, talk in person. One-on-one verbal communication in a private location is the only real private way to interact.

Be aware that many digital devices and social media sites use geographical data. When you post or tweet, be aware that you may also be publishing your location. To avoid this, turn off the geolocation option on your sites and mobile devices.

When you email, text or post messages to social networks, assume that all of those messages will be seen by the judge. Especially refrain from sending or posting anything that is motivated by frustration or anger.