

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2016

PHILADELPHIA, TUESDAY, SEPTEMBER 1, 2015

An **ALM** Publication

F A M I L Y L A W

## The Evolving Landscape of Social Media in Family Law

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Two years ago, for this publication, my colleague explored how social media was starting to impact divorce. At the time, social media was an emerging part of technology and the trend among divorce attorneys was to tell their clients to stop using Facebook and other social media sites. In 2015, social media is a mainstay in our lives with no signs of slowing down and the advice to stop using social media is much less useful and practical.

What has changed in recent years? Social media has certainly become even more ingrained in society. Remember all those people we once knew who were consciously not on Facebook? Many of them seem to have quit resisting and have joined in.

Statistics show Facebook's users continue to increase at a startling rate. In 2012, Facebook hit 1 billion users. There are now almost 1.5 billion Facebook users. This trend does not seem to be slowing. At the current rate of growth, Facebook will have 2 billion users by 2018 or even sooner.

To put that into some context, the world's population is now around 7 billion. More than 20 percent of the world's population is currently made up of active Facebook users. By 2018, Facebook could have close to one-third of the world's population. Those numbers are staggering.

The numbers become even more surprising once you consider that people use multiple social media sites. Previously, Twitter, Instagram, Foursquare and Pinterest were the other big areas of social media use. Now we have even more apps and sites such as Snapchat, Google Plus, Vine, Meerkat, Periscope and Ello. These newer sites and apps have exploded into the social media realm. For example, Snapchat alone, a video and photo app, which actually debuted in 2011, now boasts close to 200 million users. Those 200 million users mostly reside in the United States. Snapchat users send a total of over 400 million "snaps" per day.

Many of the trends in social media and family law litigation have only become more pronounced.



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Newer surveys point to a higher correlation of Facebook use to divorce than in previous years. A 2012 survey from the United Kingdom found that one-third of divorces involved Facebook in some way. Some recent studies show that statistic has risen to nearly 40 percent or more.

A recent survey by the Journal of Cyberpsychology, Behavior and Social Networking found that high levels of Facebook and other social media use (opening your Facebook or other social media apps more than once per hour) lead to more cheating than among those who use social

media less frequently. This study also found that excessive Facebook usage leads to the breakup of relationships in much higher numbers than in relationships where both partners more casually use Facebook.

The journal also found that high levels of Facebook usage are associated with negative outcomes in marriages. This trend is most prevalent in marriages of three years or less. According to these studies, social media, and especially Facebook, may be seen as a leading cause of the demise of short-term marriages.

A new study conducted in the United Kingdom in 2015, by the law firm Slater and Gordon, has even more startling evidence of Facebook and social media's effect on relationships. One out of seven people surveyed claimed they would consider divorce based upon their spouse's behavior on social media sites like Facebook or Snapchat. One out of four people, in the same survey, indicated that they had a Facebook-related argument. In fact, 17 percent indicated that they fought daily about Facebook and other social media use by a spouse or partner.

Last reviewed in 2010, the American Academy of Matrimonial Lawyers recently updated its statistics about social media and divorce. Ninety-seven percent of divorce attorneys surveyed by the AAML indicate an increase in divorce and custody evidence from smartphones and other wireless devices. Much of this evidence is being retrieved from mobile apps for social media sites. More than 70 percent of these same

attorneys now claim that they have used evidence from Facebook, Twitter and other social media sites in their divorce and custody litigation.

Anecdotal evidence seems to point to an increasing number of cases that involve some sort of social media, with Facebook being the most frequently used outlet in these cases.

What can we do as practitioners?

Many attorneys are requesting all information from clients regarding their social media activity. Having clients fill out a worksheet detailing both the client and spouse's social media presence is a good start. This allows practitioners access to what may be used against our clients.

More importantly, it gives us access to the spouse's social media activity that could possibly be used for litigation and future negotiations.

Another possibility is accessing family computers or cellphones to retrieve data from social media postings. Even though your clients or their spouses may believe a post was deleted, it may still be easily accessible by forensic technology experts. The recovered information may be used in court for litigation.

One thing we cannot do as practitioners is advise our clients to destroy or delete previously posted social media postings. That would be spoliation of evidence, according to some recent rulings involving deleted social media. Once the client has posted something to social media, it must remain posted and should not be deleted, especially if divorce or custody litigation has been initiated.

Another thing we cannot do as practitioners is advise clients to install apps on a spouse's phone that illegally intercept or transmit duplicate texts from the spouse's phone to our client's phone. We also should not advise clients to install spyware on family computers or keystroke loggers to uncover the online activities of spouses.

Having a tech-savvy attorney or the support of a forensic technology expert is becoming an important consideration in today's divorce actions. With its pervasive reach, social media affects divorces and this will continue. It would appear that we are just beginning to see the incredible impact that social media will have on all of our cases.

All divorce attorneys should be warned not to ignore social media or simply advise clients not to use it. Evidence indicates more and more of our clients are getting involved in social media each day. Clients will likely ignore this advice and continue to use it without telling their attorneys. Ignore social media at your own peril.

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