

Social Networking and Your Divorce: What You Need To Know

Q: Can materials from social networking websites be used as evidence in my divorce case?

A: Yes. Materials posted on such sites can serve several purposes. They can support a witness's testimony or undermine it, and they can prove or disprove a fact. For example, a posting to a social network may confirm that a person was at a certain place (a party, a business trip, a pleasure cruise, with a "secret" lover).

How these materials are used will depend on the specific facts and circumstances of a given case. For example, they are commonly used in a trial preparation procedure called a deposition, where a witness is asked questions under oath and on the record, but outside of the courtroom. Material brought up in a deposition can also be reintroduced and used at trial (subject, of course, to pertinent evidentiary rules).

Q: Can information from social networking sites help my divorce case?

A: Yes, but it can also hurt your case. Savvy divorce lawyers will delve into these sites to learn about their opposing clients and adverse witnesses. It's also important to keep in mind that information about the "target" witness is not simply available on that person's individual "page," but also is available on other pages, like those of friends, associates or co-workers. Lawyers and their clients must remain alert to posts that could undermine their legal positions. For instance, your Witness X may support your case, but if a third person posts damaging photographs of Witness X, then your Witness X loses credibility and so does your case.

Q: I regularly use social networking sites. Do I have to stop using them if I am considering a divorce?

A: In short, no. That being said, you should think very carefully about what you post, if you feel you must continue to post information. You should not post anything that can be twisted out of context, and you should immediately remove any questionable or potentially controversial posts from the sites you use.

As a general rule, posting information about children on the Internet is not a good idea. Especially in a child custody case, you should be careful not to identify your children in any way that could undermine your parenting claims. For example, a competing parent might twist an innocent picture of a child on vacation into evidence that you are using indulgent trips as bribery. Or, a parent may post pictures of children with a new boyfriend or girlfriend thinking, perhaps innocently, that the posted picture shows what a good time the child is having with the new friend. However, the competing parent may claim that the posting parent has inappropriately inserted the child into a questionable or new relationship without proper planning. Parents should be especially careful not

to slip into the trap of posting anything about their child that might be read as an act of revenge, such as sanctioning an activity that the other parent has specifically prohibited.

You also may want to limit what others post about you, if that is possible. Remember, anything that can be used against you will be used against you. If your case is pending, you should avoid using these sites or being included in others' postings if possible. While your attorney may discover information on other's people's sites that can help your case, your spouse's attorney also may be searching sites for postings about you that could be damaging.

Q: Should I ask about social networking experience when interviewing a lawyer about handling my divorce case?

A: Yes. A divorce lawyer should know how to make the most of information available on social networking sites in order to advance your legal case. According to a recent survey by the American Academy of Matrimonial Lawyers, a staggering 80 percent of divorce lawyers have reported an increase in the number of cases that use social media for evidence of spousal infidelity. With that in mind, it is important for you to hire an attorney who understands how information gleaned from social network postings can impact divorce cases.

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This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by certified family law specialist Andrew A. Zashin, co-managing partner at Zashin & Rich Co., LPA, with offices in Columbus and Cleveland firm.

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