

Social Media and Your Case

How to Protect Yourself

A Bridge Between Workshop

Presented By:
Bernard H. Greenberg, Attorney at Law

Kokish & Goldmanis, P.C.
380 Perry Street, Suite 220
Castle Rock, CO 80104
303-688-3535
www.kgattys.com

How Social Media Works and Can Impact Your Case

Social Media is a microphone:

- To the entire world
- The internet is not a private place
- There is no such thing as private social media; there are no settings you can create to prevent your posts from being seen.
- Always assume before you post that any opposing party or their attorney will find, read your post and attempt to use it against you.

Social Media is public:

- Always assume that anyone can read your posts and view your photos.
- Set your privacy settings to require that you approve any tag before it goes live or so that NO ONE can tag you in a photo or post that they make.

Avoiding Social Media Problems:

- Do not post information or photos of your children, ever. You are providing a road map to your kids for predators, criminals and those posts can be used against you.
- Avoid ALL posts about your ex, your job, how much money you make, vacations, purchases and similar posts.
- The best way to avoid a social media problem is to not use it, especially during the pendency of your case or while your children are minors.

Why These Precautions are Important to You and Your Children:

- Your posts are evidence that can portray you in an unfavorable light.
- Posts by others can have a similar effect and impact.
- Opposing parties and their lawyers use social media to find any evidence possible that can be used against you, whether you are the custodial parent or not.
- Child support agencies examine social media to determine how they will proceed in cases and whether civil or criminal prosecutions should be pursued.
- The authorities routinely use social media as an investigative tool in cases involving abuse allegations, restraining order compliance and violations, stalking cases and cases concerning child protection and endangerment.

Ride The Lightning

August 27, 2013

Social Media Postings Suggest Higher Income in Child Support Case

If you're trying to hide your income, don't put evidence of your professional success and lavish life style on social media - or your website. That's a lesson that defendant Jason Duff learned the hard way. A Gibbons law firm [E-Discovery News Alert](#) highlights a recent New Jersey Appellate Division opinion, *Fitzgerald v. Duff*. The proceedings involved Duff's attempt to modify a previously-entered child support order by submitting his 2011 income tax return, which reported a taxable income of \$21,000 from a cash tattoo business.

The child's legal custodian filed a certification opposing modification of the support order, suggesting that much of the defendant's income was unreported and that a much higher child support obligation was warranted. The custodian submitted copies of defendant's web site, Facebook photographs, and various social media comments demonstrating his financial success.

The website indicated multiple locations of the tattoo parlor and plans for its imminent expansion. It featured three staff tattoo artists and advertised that defendant provided tattoo services for professional football players. Facebook photographs showed the defendant throwing \$100 bills, his speed boat, a 2011 Chevrolet Camaro, his elaborate tropical wedding, and accompanying diamond engagement ring and wedding bands. Comments from the father's Myspace page included statements that in four hours he earns \$250, his schedule had "been packed so [he could] pay for this wedding," and that he purchased television advertising spots.

Based on this evidence, the Trial Court "imputed" to the father an annual income of at least \$100,000 and modified upward his child support obligations from \$67 to \$264 per week. In his motion for reconsideration, the father argued the Court lacked any competent admissible evidence to establish a \$100,000 income. The father also proffered additional tax returns to support his contentions, certified that he sold his boat for \$1,700, claimed the Camaro was financed, and alleged his family paid for his honeymoon. The trial judge rejected the motion, stating he was "just not convinced that the defendant's lifestyle and finances are what he purports them to be."

On appeal, the *Fitzgerald* court concluded the trial judge's decision lacked the fundamental fact-finding required by Rule 1:7-4 and remanded the case for the trial judge to clearly identify what evidence was accepted and rejected, and why. Importantly, the *Fitzgerald* Appellate Court also noted many inconsistencies with the father's contentions, and suggested heavy reliance on the electronic and social media evidence might be warranted.

Mr. Duff will get another whack at proving his income, but my guess is that the trial judge is pretty well convinced that the defendant is hiding money (maybe from the IRS as well) and will require clear and convincing evidence to back up his assertions.

One of our most popular presentations is "Perry Mason Goes Digital: Electronic Evidence in Family Law." I am always delighted to see cases like this one make the news - there are so many that refreshing our seminar content with recent news is a veritable breeze.

E-mail: snelson@senseient.com Phone: 703-359-0700

www.senseient.com

<http://twitter.com/sharonnelsonesq>

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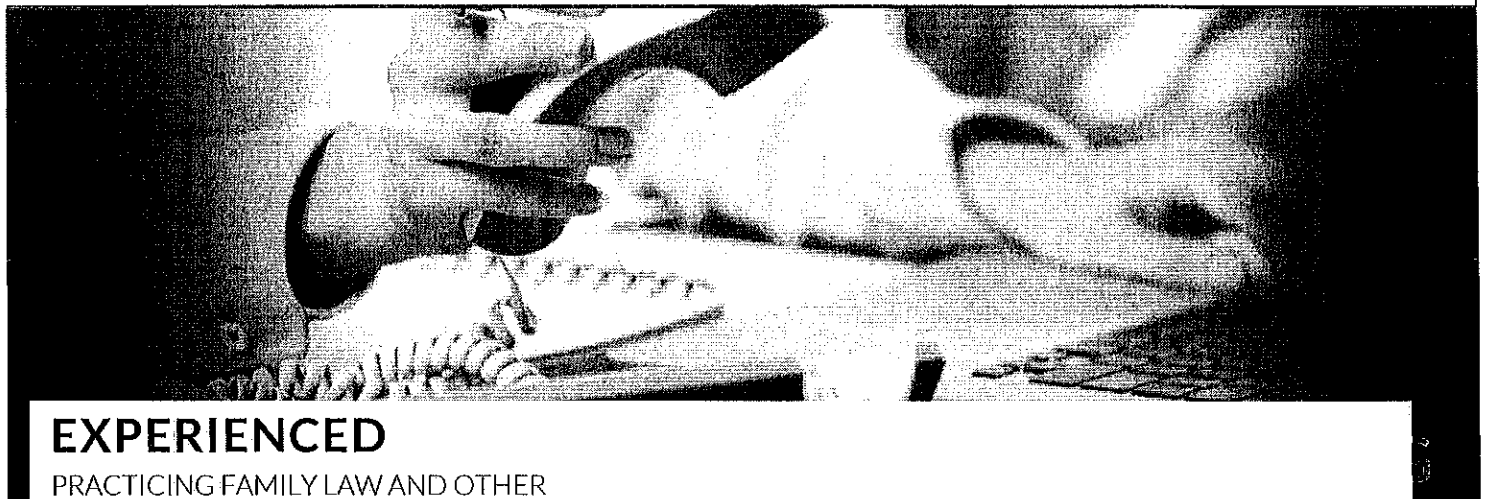
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Social media posts used as evidence in child support cases

On behalf of The Law Office of Alec M. Lewis posted in [Child Support](#) on Wednesday, July 23, 2014.

Parents in Maryland may be interested to hear that officials in some states have begun using Facebook posts as evidence in child support cases. In one instance in Wisconsin, a man's three-year-old son had been diagnosed with leukemia but the father had only paid \$189 in support since the boy's birth. The district attorney's office has now charged him with a felony because of his lack of payment. He apparently wrote on Facebook about how much money he was making.

Another man had put photos of himself holding large quantities of cash on Facebook. However, he only made one \$100 child support payment and is now being charged for his failure to pay. A third

man who was delinquent in his payments posted about a music studio he'd built in his home. An assistant district attorney said that it is possible they do not realize their social media posts can be used as evidence. However, it is a way to determine who may have the means to pay support but is not.

To determine the amount of child support a parent owes, a judge will consider a number of factors, including how much each parent earns, what the child's standard of living was like prior to a divorce and whether they have any special needs. If the non-custodial parent does not pay child support as ordered by the court, they can be found to be in contempt of court and possibly be jailed.

If a non-custodial parent experiences a change in circumstances, such as a job loss, that makes it difficult for them to pay their child support, they can request that the amount be lowered. They can also file to have their payments lowered if the custodial parent experiences a change in their financial circumstances, such as inheriting a significant amount of money.

Source: Opposing Views, "Fathers Face Charges For Avoiding Child Support, Bragging About Money On Facebook", Sarah Fruchtnicht, July 17, 2014

Tags: Child support, custodial parent, jail

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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

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.

1/24/2011

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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Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

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Top Ten Ways Social Media Use Can Impact Your Custody or Support Case

In recent years it has become common practice in family law cases to use social networking sites as tools to gain evidence in divorce, child custody, and child support cases. Facebook and Twitter are amongst the top social media sites used by individuals to express their daily thoughts and to vent to the cyber-world about their pet peeves and life's injustices. Then there are other sites like LinkedIn and other business networking sites where people promote themselves professionally. Many people who are in the process of a divorce, child custody and/or support case thoughtlessly put their life out there on the Internet through Facebook, MySpace, Instagram, Twitter and other forms of blogging and social networking. Although social media can be entertaining, informative, and innocent if used properly, these sites can be detrimental to your case if used irresponsibly. Here are ten of the most typical types of social networking posts that can negatively impact your case:

1. Posting pictures of lavish vacations, fancy cars, new motorcycles, or luxury items (especially if support is an issue);
2. Tweeting about your crazy Saturday night out (when you were supposed to have been parenting your children);
3. Post referencing marijuana, other drug or even alcohol use or a "party" lifestyle – even if the post does not indicate YOU are doing so – can impact custody issues;
4. Posting a profile on dating or other websites seeking any kind of "hookups";
5. Posting provocative pictures of yourself or others during custody cases;
6. Updating your status about your new girlfriend/boyfriend, especially when your divorce is not finalized;
7. Maintaining a profile on dating websites as "single, with no kids" when you are not single – or when you are seeking custody of your children;
8. Posts by your new girlfriend/boyfriend showing off gifts you bought him/her may result in allegations that you are dissipating marital assets during divorce and undercut actions to reduce support;
9. Venting or posting about an active court case or decision or about the other party, your family or the other professionals involved in your case (just not wise);
10. Posting things that can be perceived as threats to others, especially if you are accused of having anger management issues.

It is crucial to point out that while you are posting information on your social networking site, your ex-spouse and his/her lawyer may be printing it out to use against you! Why give them any ammunition? Consider taking a complete break from social media or staying away from posting personal matters while you are going through any case that could affect your family's future. At a minimum, you should carefully consider the potential impact of whatever you post before posting or being tagged in photos. If you do find yourself needing an attorney to resolve any legal family matter, contact Attorney Lori A. Michaud at (757) 395-4017 to see what legal options are available and appropriate or for more information go to lorimichaud@familylawyerva.com.

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