



Divorce Lawyers: Facebook Tops in Online Evidence

Attorneys: Foibles on Facebook, other social networks making divorce cases oh so easy

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Forgot to de-friend your wife on Facebook while posting vacation shots of your mistress? Her divorce lawyer will be thrilled.

Oversharing on social networks has led to an overabundance of evidence in divorce cases. The American Academy of Matrimonial Lawyers says 81 percent of its members have used or faced evidence plucked from Facebook, MySpace, Twitter and other social networking sites, including YouTube and LinkedIn, over the last five years.

"Oh, I've had some fun ones," said Linda Lea Viken, president-elect of the 1,600-member group. "It's very, very common in my new cases."

Facebook is the unrivaled leader for turning virtual reality into real-life divorce drama, Viken said. Sixty-six percent of the lawyers surveyed cited Facebook foibles as the source of online evidence, she said. MySpace followed with 15 percent, followed by Twitter at 5 percent.

About one in five adults uses Facebook for flirting, according to a 2008 report by the Pew Internet and American Life Project. But it's not just kissy pix with the manstess or mistress that show up as evidence. Think of Dad forcing son to de-friend mom, bolstering her alienation of affection claim against him.

"This sort of evidence has gone from nothing to a large percentage of my cases coming in, and it's pretty darn easy," Viken said. "It's like, `Are you kidding me?'"

Neither Viken, in Rapid City, S.D., nor other divorce attorneys would besmirch the attorney-client privilege by revealing the identities of clients, but they spoke in broad terms about some of the goofs they've encountered:

— Husband goes on Match.com and declares his single, childless status while seeking primary custody of said nonexistent children.

— Husband denies anger management issues but posts on Facebook in his "write something about yourself" section: "If you have the balls to get in my face, I'll kick your ass into submission."

— Father seeks custody of the kids, claiming (among other things) that his ex-wife never attends the events of their young ones. Subpoenaed evidence from the gaming site World of Warcraft tracks her there with her boyfriend at the precise time she was supposed to be out with the children. Mom loves Facebook's Farmville, too, at all the wrong times.

— Mom denies in court that she smokes marijuana but posts partying, pot-smoking photos of herself on Facebook.

The disconnect between real life and online is hardly unique to partners de-coupling in the United States. A DIY divorce site in the United Kingdom, Divorce-Online, reported the word "Facebook" appeared late last year in about one in five of the petitions it was handling. (The company's caseload now amounts to about 7,000.)

Divorce attorneys Ken and Leslie Matthews, a husband and wife team in Denver, Colo., don't see quite as many online gems. They estimated 1 in 10 of their cases involves such evidence, compared to a rare case or no cases at all in each of the last three years. Regardless, it's powerful evidence to plunk down before a judge, they said.

"You're finding information that you just never get in the normal discovery process — ever," Leslie Matthews said. "People are just blabbing things all over Facebook. People don't yet quite connect what they're saying in their divorce cases is completely different from what they're saying on Facebook. It doesn't even occur to them that they'd be found out."

Social networks are also ripe for divorce-related hate and smear campaigns among battling spousal camps, sometimes spawning legal cases of their own.

"It's all pretty good evidence," Viken said. "You can't really fake a page off of Facebook. The judges don't really have any problems letting it in."

The attorneys offer these tips for making sure your out-loud personal life online doesn't wind up in divorce court:

WHAT YOU SAY CAN AND WILL BE HELD AGAINST YOU

If you plan on lying under oath, don't load up social networks with evidence to the contrary.

"We tell our clients when they come in, 'I want to see your Facebook page. I want you to remember that the judge can read that stuff so never write anything you don't want the judge to hear,'" Viken said.

BEWARE YOUR FRENEMIES

Going through a divorce is about as emotional as it gets for many couples. The desire to talk trash is great, but so is the pull for friends to take sides.

"They think these people can help get them through it," said Marlene Eskind Moses, a family law expert in Nashville, Tenn., and current president of the elite academy of divorce attorneys. "It's the worst possible time to share your feelings online."

A PICTURE MAY BE WORTH ... BIG BUCKS

Grown-ups on a good day should know better than to post boozy, carousing or sexually explicit photos of themselves online, but in the middle of a contentious divorce? Ken Matthews recalls photos of a client's partially naked estranged wife alongside pictures of their kids on Facebook.

"He was hearing bizarre stories from his kids. Guys around the house all the time. Men running in and out. And there were these pictures," Matthews said.

PRIVACY, PRIVACY, PRIVACY

They're called privacy settings for a reason. Find them. Get to know them. Use them. Keep up when Facebook decides to change them.

Viken tells a familiar story: A client accused her spouse of adultery and he denied it in court. "The guy testified he didn't have a relationship with this woman. They were just friends. The girlfriend hadn't put security on her page and there they were. `Gee judge, who lied to you?'"