

THE MEMORANDUM

To: Exclusively for our clients and friends.
From: The Klammer Law Office, Ltd.

2010 Issue Number 1

Blogger Beware: The Do's and Don'ts of Social Networking

Just when you thought email had changed the art of communication, along came the social networking service. In a nutshell, social networking sites provide users a way to create a profile for themselves and then share that profile with friends, colleagues, groups, etc. The most widely utilized social networking services are the “external social networks.” These external networks are public and open to all web users for purposes of communication. Some of the most popular of the external networks include Facebook, MySpace, and Twitter.

These networks allow you to reconnect with friends and former classmates. These sites can be quite the time-wasters. While the lost time may result in a dissatisfied employer, a neglected child, or a forlorn spouse, there are other pitfalls you may not have considered.

First is the privacy threat associated with posting too much about yourself. Your information can be easily exploited. You may not give too much thought to the fact that you have an online countdown until you leave for that two week vacation, during which your home will be empty and its contents unprotected, but some long lost acquaintance from your past might cherish the information and also be reveling in the thought of your nest unprotected.

The use of social networking sites in legal and criminal investigations is on the rise. Rather incriminating information can be discovered through viewing the “real time” posts or the uploaded photographs. Many of the posts and photographs can be viewed by “friends of friends” or others within your network whom you have not selected as “friends.” The information garnered from these types of posting can be used against you in a worker's compensation proceeding, a personal injury claim, a divorce, and even a criminal proceeding.

Think twice before uploading photographs of you or your friends partying. In 2009, an Ohio man was convicted based on evidence discovered solely from

uploaded photographs on Facebook. The crime involved permitting possession of alcohol by minors. He was an adult photographed with the possessing minors. Law enforcement officers never broke up a party, nor did they seize any evidence other than the photographs uploaded to Facebook.

Social networking sites can be used as a tool in a internet crime for instance, “cyber-bullying.” Follow these simple rules:

Do think twice before you upload photographs of yourself, your friends, or your family members in questionable or compromising situations.

Don't post your child's name in photo captions.

Don't include harassing language in your posts.

Don't post detailed travel information about your upcoming trip out of town.

Don't upload photographs of your expensive of personal property. These photographs can be used as evidence of assets in litigation and may also be viewed as a payday for the unsuspected thief lurking in your network.

Do use privacy settings. In MySpace, you can make most of these changes in the “privacy settings” menu. Change the settings to private and request that any “friend request” provide additional information from which you can screen requests. Facebook's privacy settings are supposed to be more powerful. Use the “how others see you” tool on Facebook to understand what of your information is public. Use an edited version of your profile for “limited friends.”

Do realize that your soon to be ex-spouse or former spouse likely has access to your information and photographs. You probably still have mutual friends.

Don't assume that the service you utilize will protect your information when presented with a subpoena.

To Blow or Not To Blow? That is the Question.

The question: If I get pulled over for a DUI should I take the test?

Of course, “the test” is the breathalyzer with its almost mythological status in modern DUI law. It is a device designed to calculate a suspect’s breath or blood alcohol concentration, known as the suspect’s BAC.

In simple terms, the device is premised on the belief that alcohol is not digested, but absorbed in the body’s membranes passing directly into the blood stream. It passes through the lungs alveoli, then released in a person’s breath. Supposedly, it is this breath that is tested. There are a number of arguments that counter the entire theory upon which BAC testing is based. That is of no concern to the average person, as **Ohio charges for a “straight” DUI, and a *per se* BAC violation.**

The decision to test is complicated as Ohio is an implied consent state. Implied consent law provides that **anyone who operates a motor vehicle in the state is deemed to have consented to BAC testing.** The refusal to take the test then carries with it certain penalties.

A *per se* DUI is better understood as driving with a prohibited BAC level. In simplest terms, if you take the breathalyzer and test over .08 grams by weight per unit of volume of alcohol per 210 liters of the persons breath , you have committed a *per se* DUI criminal offense whether or not you can defend the fact that you were impaired when driving. **Moreover, where one tests with a BAC of .17, the “super DUI” penalties are twice the .08 penalty.**

For instance, a first time straight DUI is a misdemeanor of the first degree and is punishable by up to six months in jail. A first time .08 *per se* DUI has a mandatory minimum three days in jail or weekend drivers intervention program and a mandatory six month to five year license suspension. A first time .08 *per se* DUI license suspension, includes a 15 day hard-time with no driving privileges. When BAC results exceed .17, the jail time is a minimum six days.

In addition to these criminal penalties, the driver will suffer an administrative license suspension, otherwise

known as an ALS. **For a first time .08 BAC test result, a 90 day license suspension** with no privileges for 15 days is imposed. Hence, the penalties are very real.

Any refusal to take the test carries a longer license suspension. Of course, taking the BAC with results in excess of .08 makes for a difficult criminal defense, the ALS for a **first time refusal is up from 90 days to one year suspension with no driving privileges for 30 days.** Therein lies the dilemma.

Most first time offenders are worried most about the hard-time suspension. Every case is different, but in my experience most clients that are slightly intoxicated on a first time DUI better their chances for a lesser penalty when they’ve taken the test. **This “cooperation” also eliminates the one year ALS suspension which carries the 30 day hard-time without privileges. After the first time DUI or with great intoxication, the opinion would be quite different.**

Klammer Law Office News.

Darya Jeffreys Klammer was recently elected **President** of the Mentor Schools Foundation and **Vice-chair of the Domestic Relations Committee** of the Lake County Bar Association. **Randy Klammer** was recently elected **President** of the Lake County Bar Association.

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