

Ask a Family Law Attorney: Social Media

Written by Keith Berkshire, Certified Family Law Specialist, Rose Law Group, pc.

Q: I am going through a divorce and my wife is posting nasty stuff about me on Facebook; can this be used in my divorce? What about her nasty text messages to her friends about me?



A: Absolutely! Over the last couple of years, with the proliferation of social media, such as Facebook and Twitter, we have seen an influx of the amount of evidence in divorce cases from these sources. It has gotten to the point where the standard speech I give to new clients is that they need to assume that every email or text they send, and Facebook post they make, could end up in as evidence in their divorce case. And to another extent, every phone call they make can also end up as evidence, as Arizona allows for any party to a conversation to record it without permission of the other party. Electronic media has become a vast source of evidence in family court, and creates a lot of tension in some cases. No one likes to see their spouse bad-mouthing them on the internet, and it often escalates simple cases into confrontational cases.

Now even though you have evidence that your wife is posting what a “dirt-bag” you are, for whatever reason, it doesn’t mean that the Facebook posts will actually be relevant, or admissible. If you are involved in a custody case, then the evidence about the nasty things that are being posted publically about you may be relevant, because posting negative comments does not create a positive parenting environment. It also can be used to show the character of your spouse. But that is usually only the case if they are posted publicly. If you got ahold of text messages sent to her friends, comparing you to the more colorful synonym for a donkey, then these might not be relevant. Every judge realizes that parties going through a divorce may talk poorly about the other side due to the emotional rollercoaster of a divorce. The important part is whether they do it publically, or in front of the children. Telling your best friend that your spouse is not your favorite person is somewhat assumed in most cases. But posting it on Facebook so all of their friends and family, or worse their children, can see it is a vastly different story. Of course if you told 500 people about your spouse’s least appealing qualities that is as good as putting it on Facebook.

Facebook and emails are also used commonly now to prove where people were or what they were doing around their children. It never ceases to amaze me how someone will post on Facebook that they don’t drink, and they have pictures of themselves at the lake driving a boat with a beer in their hand, and worse, the kids sitting next to them. I have even seen cases where a party says they never do drugs and we find a picture on Facebook of them with a bong in their hand. And perhaps the dumbest thing that I have seen is immediately after a hearing someone will post in Facebook that “The judge really bought my lies in Court today!”

The message here is that if you are going through a divorce, or custody case, quit acting like a 12 year old, no matter what you think of your spouse. The last thing that you want is for your stupid and juvenile messages to get into evidence, which could make you look bad on all areas of your case. And if you find your spouse doing this, then by all means print them and give them to your lawyer. How a party acts during a case can make the difference between winning and losing. If you lie to the Court, and the Court finds out about it, then you could be sunk on every issue.

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This article does not constitute as legal advice nor does it create an attorney-client relationship. Keith Berkshire, Certified Family Law Specialist, Rose Law Group, pc. Rose Law Group pc is a full service and, real estate law firm with 27 areas of focused practice including one of the State’s leading renewable energy practice groups; an unmatched lobbying, land use and zoning practice; one of the State’s few certified legal specialists in family law; a robust real estate transaction, tax and project finance department; along with estate/special needs planning, asset protection, medical marijuana, equine law, employment law and high profile and business litigation among others; Rose Law Group is consistently involved in some of the State’s biggest and most important issues from representing County Sheriffs on Senate Bill 1070 litigation to revolutionizing the provision of distributed solar generation in Arizona and defending the State’s rights in litigation involving medical marijuana. Learn more at RoseLawGroup.com

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