

Legal and Ethical Implications of Social Media

Sara Anne Hook, M.B.A., J.D.

Commercial and Bankruptcy Law Section

May 3, 2016



Summary of Today's Seminar

- Social media technologies continue to evolve at an increasingly rapid rate and have now replaced email as the preferred method of communication for many.
- Because of the Rules of Professional Conduct and other doctrines, lawyers need to be especially careful in using social media for client communications, marketing and other law firm functions as well as when handling social media as evidence.
- Not only might incorrect use of social media be a breach of ethical rules, but it might also communicate a lack of professionalism to the community and damage a case or a client.

A Multiplicity of Issues

- Lawyer use of social media and the ethical implications
- Client use of social media
- Social media as evidence in electronic discovery
- Made more complicated by:
 - New communications technologies
 - Including social media tools that claim that content is not stored
 - Revisions to the Federal Rules of Civil Procedure
 - Proposed revisions to the Indiana Rules of Professional Conduct
 - BYOD



Ethical Implications

- What are some of the ethical implications?
 - Competence
 - Diligence
 - Supervision
 - Confidentiality
 - Privilege
 - Attorney-Client Relationships
 - Conflicts of Interest
 - Unauthorized Practice of Law (UPL)
 - Marketing/Advertising
 - Solicitation
 - Honesty in Communications
- (from S.E. Bennett, Ethics of Lawyer Social Networking, *Albany Law Review*)



ABA Rule 1.1 Competence

- One comment says it all:

Maintaining Competence

- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
- And that includes social media!



ABA Rule 1.3 Diligence

- Comment 3 says it all:
 - [3] Perhaps no professional shortcoming is more widely resented than procrastination.
- One of the major disciplinary complaints brought against lawyers is lack of diligence.
- Social media can be a huge distraction and time-waster and provide an excuse to procrastinate.
- On the other hand, to take full advantage of the power of social media and other technologies (and for SEO), you must make the commitment to regularly blog, tweet, post, etc.
- Stale content is highly disfavored, will not contribute to SEO and could even result in ethical breaches.

ABA Rules 5.1-5.3 Supervision

- You are responsible for all of the lawyers working in the law firm, including associates (Rules 5.1-5.2)
- You are also responsible for any non-lawyer employees as well as any third-party vendors, contractors, cloud computing services, etc. (Rule 5.3)
- Note the change in title for Rule 5.3 to Responsibilities Regarding Nonlawyer Assistance – a subtle but profound change

What Does This Mean for Social Media?

- Need an Acceptable Use Policy that covers all use of technology (social media, Internet, email, texting, telephone, photocopier) that includes the right to monitor.
- Need ongoing training about the risks of social media, especial as it relates to client confidentiality.
- If your law firm is going to be active in social media, need someone in charge of this process, standards and policies and a vetting of anything that is going to be posted.
- Also need proper oversight of any third-party providers and contract lawyers, with a contract or Service Level Agreement covering security, privacy, etc.
- BYOD? The continued blurring of personal and professional lives through devices only increases the risks.

Rule 1.6 Confidentiality (and Other Related Rules)

- Social media is so tempting – but the very immediacy and informality of it is what makes it risky when thinking about the duty to safeguard client confidentiality.
- Importance of policies related to social media which should emphasize the need for caution when posting, tweeting, texting or blogging.
- Importance of some sort of conduit for sharing or vetting of content beforehand.

Confidentiality, cont.

- One recommendation is to have a thorough conversation with the client about how he/she would like to be communicated with.
- Include this information in the representation letter.
- An opportunity to alert the client to the risks of communicating through:
 - a public fax
 - an employer-provided email system
 - an email system where family members have access to each other's messages or share the same login and password
 - talking loudly in public on a cell phone
- All of which can waive the attorney-client privilege



Confidentiality, cont.

- Social media is especially tempting for clients – so easy to post information about an opposing party (soon-to-be ex-spouse) or reveal information that would be adverse to a client’s case (mountain climbing when claiming to be injured and unable to work).
- A particularly rich repository of evidence in bankruptcy (see article by Hook and Taht).
- Lawyers do use social media extensively to find information about opposing parties, judges, witnesses, etc., so clients should be made aware of this.

Confidentiality, cont.

- Representation form from seminar.
 - Clients are to indicate how they want to be communicated with
 - Language included that talks about the danger of waiving attorney-client privilege
 - Clients are also required to initial that they will close their social media pages and personal websites
 - BUT: A need to preserve this content as potentially relevant evidence or be faced with a claim of spoliation (client and lawyer)
 - Form must be signed by the client AND notarized.



Creation of Unintended Attorney-Client Relationships

- In a paper world, the court generally sides with the potential client to find that there was an attorney-client relationship.
- The same would apply in a virtual world, so:
 - Use disclaimers – on website, on individual profile pages, after email messages
 - No specific legal advice given in social media postings, blogs or tweets.
 - Do not solicit confidential information.
 - Have a regular process for client intake – also helps to avoid conflicts of interest and UPL

Rule 1.18 Duties to Prospective Clients

- Attorneys should take special care in all of their communications with potential clients, especially potential clients that they might be interacting with through social media, email or other Internet-based technologies.
- There are special ethical rules related to the marketing and advertising of legal services.
- Indiana has updated its Rules of Professional Conduct to reflect the new ways of communication available to attorneys who want to delve beyond the traditional paper- and mail-based methods of reaching prospective clients
- There are proposals to do so again [as presented at the ISBA House of Delegates meeting in October 2015, see proposed revisions to Rule 7.1 and Rule 7.2]

Rule 1.7 Conflicts of Interest

- First, it is always helpful to review the relevant ABA Model Rules of Professional Conduct and the Comments as well as the rules in the particular state where the judge and lawyer are licensed to practice as well as the codes of ethics for paralegals.
 - ABA Model Rule 3.5 Impartiality And Decorum Of The Tribunal
- It is also helpful to review recent articles and ethics opinions that address issues related to social media from the perspective of the state where the lawyer practices.
- Also conflicts of interest may arise because of a lack of proper client intake procedures.

Conflicts of Interest, cont.

- Of course, we can debate whether “friending” someone on Facebook is the same as being a true friend in person, such that the connection would present a conflict of interest or cloud the objectivity of the legal process.
- The real issue is whether the connection looks inappropriate or would bias the process, especially connections between judges and the lawyers who appear before them.
 - One suggestion is to use LinkedIn for professional connections and Facebook or other similar services for personal connections.
 - Or use most robust privacy settings possible and limit access to only true friends, not just acquaintances.
 - Also avoid posting inappropriate materials, photographs, commentary, etc.

Conflicts of Interest with Judges

- The American Bar Association recently issued Formal Opinion 462 related to a judge's use of social media. (ABA Formal Opinion 462, Judge's Use of Electronic Social Networking Media, Feb. 21, 2013).
 - The Opinion discusses several factors for judges to consider when using social media, including publicly endorsing or opposing candidates for public office, not giving the impression that they can be influenced by certain people or groups, avoiding ex parte communications concerning pending matters, and not using social networking sites to obtain information about matters before them.
 - Judges should also consider whether to disclose their social media relationships with lawyers or parties in pending matters, although the informal nature of these connections may not rise to the level that a personal, face-to-face relationship would.
 - “[j]udges should also be aware that their comments, images and profile information may be transmitted without their knowledge to others. If the material proves embarrassing, it has the potential to undermine public confidence in the judiciary and to compromise the independence of the judge, the opinion says.”

Conflicts of Interest with Judges, cont.

- According to Lewis, “[t]he states that have considered whether judges can use social networking sites generally have concluded that they may do so. They diverge, however, when considering whether judges must recuse themselves if they have friended a lawyer who appears before them.”
- She discusses the variety of opinions issued in Florida, Kentucky, Ohio, Maryland, California and New York. Florida is an interesting situation, since the Florida Supreme Court is being asked to consider whether being Facebook friends with a prosecutor who then appears in the judge’s courtroom for a case constitutes a conflict of interest and should be grounds for recusal.

Other Social Media Activity

- See Using Facebook for Your Law Firm from the *Michigan Bar Journal* (June 2014).
- *LinkedIn in One Hour for Lawyers*, 2nd ed. (ABA, 2013).
- *Twitter in One Hour for Lawyers* (ABA, 2012).
- *Blogging in One Hour for Lawyers* (ABA, 2012).
- Researching jury or potential jury members: how far can you go in using the Internet and social media?
- Now seeing advice for potential jury members who don't want to be researched through social media (*Grand Rapids Business Journal*, July 14, 2014).
- Jury misconduct – “Googling” during the trial results in jail time for jury members (England and Wales)



Rule 5.5 Unauthorized Practice of Law (UPL)

- A concept in dispute because of new technology that purports to provide information and services in ways that are more efficient and less costly.
- Where do we draw the line for what constitutes the practice of law? No bright-line definition or test.
 - Disclaimers, including the state or states where the lawyer is licensed to practice.
 - Ask those who contact the lawyer through social media where they reside.
 - Avoid giving specific legal advice.
 - Avoid receiving confidential client information.
 - Be wary of ethical rules in various states about blogging, posting, tweeting, etc. – because having an interactive website may be enough to establish that state's jurisdiction and thus the reach of its disciplinary rules.

Rule 7.1-7.2 Advertising

- Note many requirements and restrictions, especially in the Indiana Rules of Professional Conduct
- Law firm websites and social media pages – yes, they are considered advertising in many jurisdictions
 - Take care regarding the types of information posted or communicated
 - Indiana still forbids testimonials, statistical information, endorsements, comparisons, etc.
 - Be especially careful about anything that would cause unjustified expectations

Advertising, cont.

- In terms of using social media as a marketing tool for the law firm, Meinke provides some excellent recommendations.
 - Create a Facebook page – since Facebook has more than 1.25 billion active users and more than 128 million daily users in the United States.
 - Make your page look professional.
 - Provide complete information.
 - Build an online community.
 - Likes for options – with suggestions for how to increase “likes” that the law firm’s page receives, which provides more options, features and tools.
 - Use analytics to improve.

Marketing and Advertising

- Given that a variety of bar associations and commentators are examining some of the ethical issues with social media, including some of its specialized features and tools, the lawyer may want to review his or her profile on LinkedIn.
- Some of the particular issues being raised are endorsements (which could appear to be testimonials) and skills/expertise (which could appear to be implying fields of practice or a specialty. (See ABA Model Rule Rule 7.4 Communication of Fields of Practice and Specialization).
- Fortunately, *LinkedIn in One Hour for Lawyers*, now in a second edition, provides lots of helpful guidance in designing the most comprehensive profile possible while avoiding running afoul of ethical issues.

Testimonials

- Lawyers must be especially careful when using testimonials as part of an advertising plan.
- One of the risks of testimonials is that they can create expectations in the client's or other party's mind about the results that can be achieved by using the attorney's or law firm's services.
- There are so many nuances to cases that may appear similar or situations that may be comparable, which attorneys appreciate, but which may be difficult for those without legal training to comprehend.
 - ABA Model Rule 7.1 and Comment does not address testimonials.
 - However, the Comment certainly cautions lawyers about the risks of even truthful communications.
 - Note: Under the current Indiana Rules of Professional Conduct, testimonials and endorsements are prohibited.
 - This may change with the proposed revisions to the rules.

Testimonials – State Rules

- Individual states may take a more conservative and restrictive view about the use of testimonials.
- The risks with testimonials as well as other popular advertising methods, such as endorsements and dramatizations, are illuminated in the Comments to Rule 7.1 in the Indiana Rules of Professional Conduct.
- Indiana is considering its rules that are part of Rule 7 and may eliminate all of the categories of information that cannot be included (testimonials) in favor of an admonishment that information cannot be misleading.
 - Although the focus is on California, King provides a brief history of attorney advertising and provides a discussion of how this impacts social media, including online testimonials, requirements for disclaimers, blogging, communication about prior results and the interplay between the First Amendment and the regulation of attorney speech.
 - His conclusion is that “[p]rovided that California attorneys aren't engaging in deception, they should have few concerns that a technicality will trip up their constitutionally protected right to express themselves via social media.”
 - But see disciplinary action taken against Indianapolis attorney and blogger Paul Ogden.

Rule 7.3 Solicitation

- Again, it is always helpful to review the relevant ABA Model Rules of Professional Conduct and the Comments as well as the rules in the particular state where the judge and lawyer are licensed to practice.
 - Rule 7.3 Solicitation of Clients
- Note that some specific state rules may have additional provisions that are even more restrictive, such as Indiana.
 - Rule 7.3. Direct Contact with Prospective Clients

Honesty in Communications

- In terms of social media, a lawyer also has to be mindful of the issues of “friending” people or assuming a different persona or identity in a manner designed to glean information or an unfair advantage.
- A number of Rules of Professional Conduct could be violated by inappropriate use of social media, including
 - Rule 4.1 Truthfulness in Statements to Others
 - Rule 4.2 Communications with Persons Represented by Counsel
 - Rule 4.3 Dealing with Unrepresented Persons
 - Rule 4.4 Respect for the Rights of Third Persons, to name but a few.
 - Rule 7.1 Communications Concerning a Lawyer’s Services (no false or misleading communications about the lawyer’s services)

Gubbins - *Michigan Bar Journal*

- Write only the truth.
- Don't mention clients or their matters without their consent.
- Avoid answering legal questions. As the author notes, “[a]nswering legal questions on social media sites can be dangerous. Individuals asking legal questions may interpret your responses as legal advice from you, their ‘new lawyer,’ whereas you don't view them as clients.”
- The author goes on to caution: “Be aware that an initial consultation may result in the formation of a client-lawyer relationship even if you decline to undertake the representation.” Also, even if this does not create a client-lawyer relationship, “confidences imparted in good faith cannot be used to the disadvantage of the prospective client, as provided by MRPC 1.7(b) and 1.9.”

Gubbins, cont.

- Keep sites up to date.
- Be aware of what others say on your site.
- Keep detailed records of what you post online.
- The author concludes by observing that “[s]ocial networking sites can help you better serve your clients and bring in new business at a relatively low cost. But remember your ethical obligations when using these sites to protect yourself and your clients.”

Policies on Posting – *The Indiana Lawyer*

- “Use of social media, blogging, and creating an Internet presence can be a key asset and source of marketing and client outreach for attorneys. But it can also be perilous when a comment brushes against the Rules of Professional Conduct.”
- Chief Justice Loretta Rush indicates that more lawyer disciplinary cases arising from social media are coming before the Indiana Supreme Court. These cases often involve disclosure of confidential client information or questionable online comments directed at opposing counsel or parties.
- Many of these cases are handled with a private caution, but social media “has gotten a lot of attorneys in trouble.”
- In the survey, 46 percent of attorneys indicated that their law firms had no social media policy, compared with 37 percent of said their firm had such as policy in place.

Policies on Posting, cont.

- Even an innocuous post may be cause for concern, depending on an attorney's practice area.
- The article gives the example of a mergers and acquisitions attorney using a check-in and location websites to share traveling location and duration of stay.
- Someone who knows the lawyer has a particular client in that location may glean some valuable information.
- In turn, that could disclose, inadvertently, information about the client and hint at why the lawyer is there.

Law Firm Examples

- The firm has no social media policy, but uses a Twitter account to share announcements.
- Its lawyers are encouraged to post appropriate content on personal accounts.
- Nothing is posted that could be considered legal advice.
- Content is focused on current events and trends related to practice areas, court decisions and promoting events involving the lawyer or his firm.
- Another law firm screens posts before they appear on the law firm's social media accounts.
- Another lawyer is careful about what she posts on her private, non-professional Facebook page, because "we never stop being lawyers."
- Clients should also be cautioned about what to post about pending cases, which can potentially be used as evidence by opposing parties.

Ethical Issues of Blogging (Svenson)

- Not complying with applicable advertising restrictions on lawyers
- Comments that are deemed unprofessional or otherwise improper
- Inadvertent disclosure of client confidences or waiver of attorney-client privilege
- Inadvertent creation of an attorney-client relationship
- Inadvertent misrepresentation (often when relying on assistants or outside entities for marketing and advertising)
- Blog posting that contradicts a legal or factual position that you have taken elsewhere
- Violation of rules on lawyer advertising

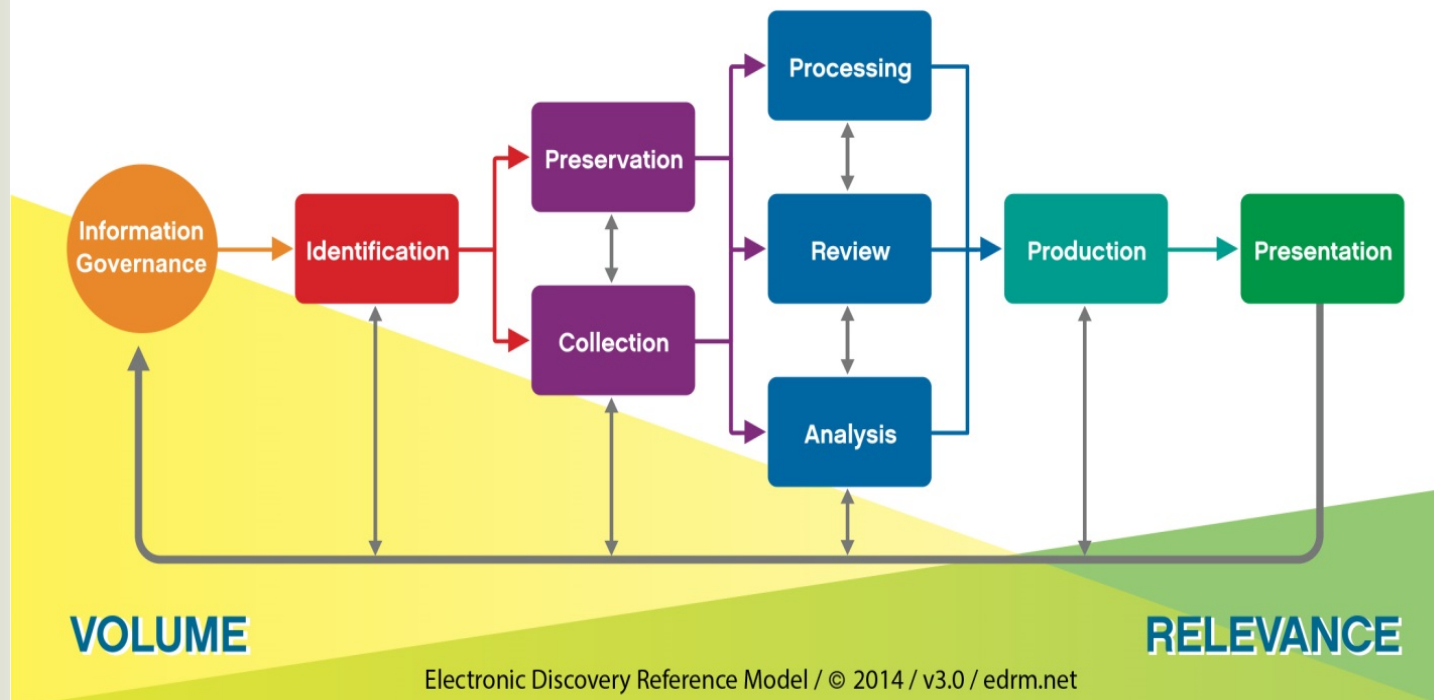
Article in *ABA Journal*, April 2016

- Survey indicates that law firms plan even more posting to generate more business.
- Of the roughly 400 law firms that responded to the survey, 57 percent said they anticipated doing more blogging as a means of generating business.
- Gives the example of Socially Aware and how it contributed to attracting clients.
- But if you are going to blog, do it well and often AND be mindful of the ethical considerations.

Social Media and Electronic Discovery

- Social media clearly qualifies as electronically stored information (ESI) and should be included in any discovery request.
- Most courts: social media is nearly always discoverable and admissible.
- A rich repository of evidence (see article by Hook and Taht).
- Under Terms of Service, social media users should have little to no expectation of privacy
- Famous cases:
 - *EEOC v. Simply Storage Mgmt., LLC*, 270 F.R.D. 430 (S.D. Ind. May 2010).
 - *Romano v. Steelcase Inc.*, 907 N.Y.S.2d 650 (Sept. 21, 2010).
 - *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal. 2010)
 - *McMillen v. Hummingbird Speedway, Inc.*, No. 113-2010 CD (C.P. Jefferson, Sept. 9, 2010)
 - *Clark v. State*, 915 N.E.2d 126 (2009) (Indiana – criminal law)

Electronic Discovery Reference Model



EDRM, <http://www.edrm.net/resources/guides/edrm-framework-guides>

K&L Gates Electronic Discovery Law

- Another excellent resource for cases, statutes, guidelines and other materials for electronic discovery is the K&L Gates Electronic Discovery Law website (<http://www.ediscoverylaw.com/>).
- The website contains a very helpful database of over 2000 cases that is searchable by keyword as well as having a number of pre-determined case attributes (<http://www.ediscoverylaw.com/e-discovery-case-database/>).
- Many of the cases have very short summaries that include the case citation, the nature of the case, the electronic data involved, the electronic discovery issue and searchable attributes.
- A number of the cases have more robust summaries that also may have links to additional materials.
- A quick search of the K&L Gates database for cases involving social media in personal injury yields several interesting and helpful cases, including two cases that have become major cases in the world of electronic discovery, *McMillen v. Hummingbird Speedway, Inc.* and *Romano v. Steelcase, Inc.*

Browser: <http://www.ediscoverylaw.com/> | Page: 125%


PUBLISHED BY
K&L GATES


Topics

- CASE SUMMARIES
- EVENTS
- FEDERAL RULES AMENDMENTS
- NEWS & UPDATES
- RESOURCES

HOME

- E-DISCOVERY ANALYSIS & TECHNOLOGY GROUP
- CONTACT US
- OUR ATTORNEYS
- E-DISCOVERY CASE DATABASE
- LOCAL DISTRICT COURT RULES
- STATE COURT RULES





Electronic Discovery Law
Legal issues, news, and best practices relating to the discovery of electronically stored information.

Court Declines to Preclude “Eyes On” Review for Privilege

By K&L Gates on November 25th, 2014
Posted in **CASE SUMMARIES**

Good v. Am. Water Works Co., Inc., No. 2:14-01374, 2014 WL 5486827 (S.D. W. Va. Oct. 29, 2014)

In this case, the parties made an effort to “craft an agreement respecting the handling of attorney-client and work product information inadvertently disclosed,” but disagreed regarding the proper procedure for identifying privileged information. Defendants sought to “encourage the incorporation and employment of time-saving computer-assisted privilege review, while Plaintiffs propose[d] that the order limit privilege review to what a computer can accomplish, disallowing linear (aka ‘eyes on’) privilege review altogether.” The court agreed with the defendants and entered an order allowing both computer-assisted and linear review, but invited the plaintiffs to file a second motion should the defendants’ methodologies result in unacceptable delays.

Continue Reading

[Tweet](#) [Like](#)

[Comments](#)

The 2014 ABA Journal Blawg 100: Vote for Your Favorites Now!

By K&L Gates on November 25th, 2014

PUBLISHED BY
K&L GATES

Topics
 CASE SUMMARIES
 EVENTS
 FEDERAL RULES AMENDMENTS
 NEWS & UPDATES
 RESOURCES

HOME
 E-DISCOVERY ANALYSIS & TECHNOLOGY GROUP
 CONTACT US
 OUR ATTORNEYS
 E-DISCOVERY CASE DATABASE
 LOCAL DISTRICT COURT RULES
 STATE COURT RULES

Electronic Discovery Law
 Legal issues, news, and best practices relating to the discovery of electronically stored information.

E-DISCOVERY CASE DATABASE
 Search more than 2000 cases collected from state and federal courts involving electronic discovery issues by keyword, or by any combination of 30 different case attributes, including on site inspection, format of production, allegations of spoliation, or involving data that is "not reasonably accessible," etc.
[CLICK HERE](#) to access the database, free of charge.

2014 NOMINEE

http://ediscovery.klgates.com/ Searchable e-Discovery Cas... X

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUPUI Indi... Suggested Sites Get more Add-ons Page Safety Tools

Electronic Discovery Case Database

K&L Gates maintains and continually updates a database containing over 2,000 electronic discovery cases collected from state and federal jurisdictions around the United States. This database is searchable by keyword, as well as by any combination of 31 different case attributes, e.g., on-site inspection, allegations of spoliation, motion for a preservation order, etc. Each search will produce a list of relevant cases, including a brief description of the nature and disposition of each case, the electronic evidence involved and a link to a more detailed case summary if available. For an alphabetical list of all cases contained within the database, click the search button at the bottom of the page.

Please select one or more of the following case attributes and/or enter keyword search terms below:

E-Discovery Rules

FRCP 26(b)(2)(B) "Not Reasonably Accessible" FRCP 34(b) Procedure or Format FRCP 26(b)(5)(B) or FRE 502

FRCP 37(e) Safe Harbor FRCP 26(b)(2)(C) Limitations Local Court Rule, Form or Guideline

Context

TRO or Preliminary Injunction Motion for Preservation Order Early Conference or Discovery Plan

Motion to Compel Motion for Protective Order Third-Party Discovery

Motion for Sanctions

Particular Issues

Data Preservation Mirror Images Cost Shifting

Records Retention Policy On-Site Inspection Spoliation

Backup Media Recycling Keyword Searches Court-Appointed Expert

Backup Tapes Format of Production Privilege or Work Product

Deleted Data Recovery Metadata Lack of Cooperation or Inaccurate Representations

Admissibility Adequacy of Search/Identification or Collection (added 03/13) Computer Assisted Review

Enter keyword search terms:

Limit results to citations with case summaries only

Search Reset

125%



http://ediscovery.klgates.com/ Searchable e-Discovery Cas... x

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUPUI Indi... Suggested Sites Get more Add-ons

Page Safety Tools

Electronic Discovery Case Database

K&L Gates maintains and continually updates a database containing over 2,000 electronic discovery cases collected from state and federal jurisdictions around the United States. This database is searchable by keyword, as well as by any combination of 31 different case attributes, e.g., on-site inspection, allegations of spoliation, motion for a preservation order, etc. Each search will produce a list of relevant cases, including a brief description of the nature and disposition of each case, the electronic evidence involved and a link to a more detailed case summary if available. For an alphabetical list of all cases contained within the database, click the search button at the bottom of the page.

Please select one or more of the following case attributes and/or enter keyword search terms below:

E-Discovery Rules

FRCP 26(b)(2)(B) "Not Reasonably Accessible" FRCP 34(b) Procedure or Format FRCP 26(b)(5)(B) or FRE 502

FRCP 37(e) Safe Harbor FRCP 26(b)(2)(C) Limitations Local Court Rule, Form or Guideline

Context

TRO or Preliminary Injunction Motion for Preservation Order Early Conference or Discovery Plan

Motion to Compel Motion for Protective Order Third-Party Discovery

Motion for Sanctions

Particular Issues

Data Preservation Mirror Images Cost Shifting

Records Retention Policy On-Site Inspection Spoliation

Backup Media Recycling Keyword Searches Court-Appointed Expert

Backup Tapes Format of Production Privilege or Work Product

Deleted Data Recovery Metadata Lack of Cooperation or Inaccurate Representations

Admissibility Adequacy of Search/Identification or Collection (added 03/13) Computer Assisted Review

Enter keyword search terms:

Facebook x

Limit results to citations with case summaries only

Search Reset

125%

http://ediscovery.klgates.com/search.aspx

Searchable e-Discovery Cas... X

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUPUI Indi... Suggested Sites Get More Add-ons

Page Safety Tgols

Electronic Discovery Case Database

K&L Gates maintains and continually updates a database containing over 2,000 electronic discovery cases collected from state and federal jurisdictions around the United States. This database is searchable by keyword, as well as by any combination of 31 different case attributes, e.g., on-site inspection, allegations of spoliation, motion for a preservation order, etc. Each search will produce a list of relevant cases, including a brief description of the nature and disposition of each case, the electronic evidence involved and a link to a more detailed case summary if available. For an alphabetical list of all cases contained within the database, click the search button at the bottom of the page.

show search criteria

Records 1 - 10 of 39

Printer-friendly: all records

< >	
Case Citation:	Bass v. Miss Porter's School, 2009 WL 3724968 (D. Conn. Oct. 27, 2009)
Nature of Case:	Claims arising from alleged bullying and harassment of private school student
Electronic Data Involved:	Facebook
E-Discovery Issue:	Upon in camera review of all documents produced to plaintiff by Facebook pursuant to subpoena, and in response to plaintiff's objection to producing all such documents on the grounds that many were irrelevant and immaterial, court found "no meaningful distinction" between the pages produced and the pages withheld and stated that "Facebook usage depicts a snapshot of the user's relationship and state of mind at the time of the content's posting" and that "relevance is more in the eye of the beholder" such that production should not be limited to plaintiff's determination of what may be "reasonably calculated to lead to the discovery of admissible evidence" and ordered the production of all documents produced by Facebook to defendants, rather than the smaller subset previously provided
Case Summary:	Not Available
Attributes:	Motion to Compel; Third Party Discovery
Case Citation:	Crispin v. Christian Audigier, Inc., 717 F.Supp.2d 965 (C.D. Cal. 2010)
Nature of Case:	Breach of contract, copyright infringement, breach of covenant of good faith and fair dealing
Electronic Data Involved:	Messages from social networking sites
E-Discovery Issue:	Upon holding that the social networking sites at issue (Facebook, MySpace, Media Temple) were subject to the Stored Communications Act, court quashed subpoenas seeking private messages but, as to subpoenas seeking messages posted to plaintiff's Facebook wall and MySpace comments, remanded for further investigation of plaintiff's privacy settings as to those messages because the Stored Communications Act is not applicable to information readily available to the general public
Case Summary:	Available
Attributes:	Third Party Discovery
Case Citation:	Fawcett v. Altieri, ---N.Y.S.2d---, 2013 WL 150247 (N.Y. Sup. Ct. Jan. 11, 2013)
Nature of Case:	Personal injury
Electronic Data Involved:	Social network content (Facebook, MySpace, Friendster, Flickr, etc.)
E-Discovery Issue:	Court acknowledged the discoverability of social media content but reasoned that "[i]n order to obtain a closed or private social media account by a court order for the subscriber to execute an authorization for their release, the adversary must show with some credible facts that the adversary subscriber has posted information or

125%


http://www.ediscoverylaw.com/2010/06/articles/case-summaries/pursua... Searchable e-Discovery Case L... Pursuant to Stored Commu...


File Edit View Favorites Tools Help
 X Convert Select
 A - Z List About IUPUI Indi... Suggested Sites Get more Add-ons

PUBLISHED BY
K&L GATES

Topics
 CASE SUMMARIES
 EVENTS
 FEDERAL RULES AMENDMENTS
 NEWS & UPDATES
 RESOURCES

HOME
 E-DISCOVERY ANALYSIS & TECHNOLOGY GROUP
 CONTACT US
 OUR ATTORNEYS
 E-DISCOVERY CASE DATABASE
 LOCAL DISTRICT COURT RULES
 STATE COURT RULES





Home > CASE SUMMARIES > Pursuant to Stored Communications Act, Court Quashes Subpoena for Private Messages, Remands for Further Consideration of Facebook Wall and MySpace Comments

Pursuant to Stored Communications Act, Court Quashes Subpoena for Private Messages, Remands for Further Consideration of Facebook Wall and MySpace Comments

By K&L Gates on June 11th, 2010
 Posted in **CASE SUMMARIES**

Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965 (C.D. Cal. 2010)

Defendant subpoenaed several social networking sites seeking disclosure of plaintiff's subscriber information and communications relevant to the underlying dispute. Plaintiff sought to quash the subpoenas arguing that such disclosure would violate the Stored Communications Act ("SCA"). The magistrate judge denied plaintiff's motion to quash upon finding the SCA was inapplicable. Plaintiff moved for reconsideration of the order.

Granting reconsideration, the district court judge found the SCA was applicable to the social networking websites at issue (Facebook, MySpace, Media Temple) and quashed the subpoenas to the extent they sought private messages. However, the court recognized a distinction between strictly private messages and those posted more openly, such as on plaintiff's Facebook wall or MySpace comments.⁴ Specifically, the court noted the inapplicability of the SCA to information that is readily available to the general public. Thus, a review of plaintiff's privacy settings was necessary to determine the extent of access allowed to his Facebook wall and MySpace comments (although the court recognized

125%

Browser address bar: <http://www.ediscoverylaw.com/articles/federal-rules-amendments/>

Page Title: FEDERAL RULES AMENDME... X

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUPUI Indi... Suggested Sites Get more Add-ons

Home Page Safety Tools

PUBLISHED BY

K&L GATES

Topics

- CASE SUMMARIES
- EVENTS
- FEDERAL RULES AMENDMENTS
- NEWS & UPDATES
- RESOURCES

HOME

E-DISCOVERY ANALYSIS & TECHNOLOGY GROUP


CONTACT US

OUR ATTORNEYS

E-DISCOVERY CASE DATABASE


LOCAL DISTRICT COURT RULES

STATE COURT RULES



Legal issues, news, and best practices relating to the discovery of electronically stored information.

Category Archives: FEDERAL RULES AMENDMENTS

 [Subscribe to FEDERAL RULES AMENDMENTS RSS Feed](#)

Another Milestone Passes: Judicial Conference Approves Federal Civil Rules Amendments

By K&L Gates on September 17th, 2014
Posted in [FEDERAL RULES AMENDMENTS, NEWS & UPDATES](#)

As reported by the National Law Journal (subscription required), the Judicial Conference has approved proposed changes to the Federal Rules of Civil Procedure. No revisions to the proposals were reported. The proposals will now go before the United States Supreme Court for review and, if approved, will take effect on December 1, 2015, absent any...

[Continue Reading](#)

Committee on Rules of Practice and Procedure ("Standing Committee") Approves Proposed Amendments to Federal Rules of Civil Procedure

By K&L Gates on June 5th, 2014
Posted in [FEDERAL RULES AMENDMENTS, NEWS & UPDATES](#)


Last week, the Committee on Rules of Practice and Procedure (the "Standing Committee") approved proposed amendments to the Federal Rules of Civil Procedure, including the "Duke Rules Package," addressing Rules 1, 4, 16, 26, 30, 31, 33, and 34 and a rewritten version of Rule 37(e), addressing preservation. The

Proposed Rule 37(e) Draft Committee Note Now Available

By K&L Gates on May 12th, 2014
Posted in [FEDERAL RULES AMENDMENTS, NEWS & UPDATES](#)

As previously discussed on this blog, proposed amendments to the Federal Rules of Civil Procedure were recently approved by the Advisory Committee on Civil Rules for submission to the Committee on Rules of Practice and Procedure (the "Standing Committee"). At the time of approval, the Committee Note for Proposed Rule 37(e) remained "under construction." The...

[Continue Reading](#)



125%

Browser address bar: <http://www.ediscoverylaw.com/local-rules-forms-and-guidelines-of-unit>

Browser tabs: E-Discovery Law Blog | K&L...

Browser menu: File Edit View Favorites Tools Help

Browser toolbar: Convert Select Suggested Sites Get more Add-ons Page Safety Tools

PUBLISHED BY


K&L GATES


Topics

- CASE SUMMARIES
- EVENTS
- FEDERAL RULES AMENDMENTS
- NEWS & UPDATES
- RESOURCES

HOME

- E-DISCOVERY ANALYSIS & TECHNOLOGY GROUP
- CONTACT US
- OUR ATTORNEYS
- E-DISCOVERY CASE DATABASE
- LOCAL DISTRICT COURT RULES
- STATE COURT RULES





Electronic Discovery Law

Legal issues, news, and best practices relating to the discovery of electronically stored information.

Local Rules, Forms and Guidelines of United States District Courts Addressing E-Discovery Issues

Many United States District Courts now require compliance with special local rules, forms or guidelines addressing the discovery of electronically stored information. Below is a collection of those local rules, forms and guidelines, with links to the relevant materials. Please note also that many individual judges and magistrate judges have created their own forms or have crafted their own preferred protocols for e-discovery. These are generally available on the website of the individual judge or magistrate judge and care should be taken to ensure you are aware of any such forms or guidelines in any court you may appear in.

District of Alaska

[Local Rules \(Civil\)](#)

Local Form 26(f): Scheduling and Planning Conference Report

Local Rule 16.1 Pre-Trial Procedures (requiring use of Local Form 26(f) or one substantially similar)

Eastern and Western Districts of Arkansas

[Local Rule 26.1 Outline for Fed. R. Civ. P. 26\(f\) Report](#)

Northern District of California

[Guidelines for the Discovery of Electronically Stored Information](#)

[ESI Checklist for use during the Rule 26\(f\) meet and confer process](#)

[Model Stipulated Order Re: the Discovery of Electronically Stored Information](#)

[Standing Order for All Judges of the Northern District of California](#)

Zoom: 125%

Kroll Ontrack

- A second excellent resource for materials on electronic discovery is the Kroll Ontrack (<http://www.krollontrack.com/>).
- This website includes blogs on electronic discovery and data recovery, white papers, case studies and industry news.
- It also offers a searchable database of electronic discovery cases that complements what is provided by K&L Gates and is searchable by keyword as well as by e-discovery-related topics and jurisdiction (<http://www.ediscovery.com/pulse/case-law/>).
- I find it comforting when both of these databases provide summaries of the same case, but also they may cover different cases, which broadens my collection of cases.

http://www.krollontrack.com/

United States (change) search Search

Home Company Events Resource Library Support

Email Subscription Center

The Ediscovery Blog

The Data Recovery Blog

Podcasts

Industry News

White Papers

Case Studies

Data Recovery Information Management Ediscovery Products Partners

Kroll Ontrack.

The World's Data Recovery

Recover your d

Call 800.872.2599 or get a **Free Online Quote.**

Learn more about data recovery.

News Blogs Ontrack® PowerControls **Top 10 Data Disasters**

Top 10 Data Disasters

MORE →

http://www.krollontrack.com/resource-library/ 125%

The screenshot shows a web browser window displaying the ediscovery.com website. The browser's address bar shows the URL <http://www.ediscovery.com/pulse/case-law/>. The website header includes the ediscovery.com logo, a phone number (800.347.6105), a 'Contact' link, and a location indicator for 'United States'. Navigation links for 'Solutions', 'Pulse', 'Resources', and 'Events' are present, along with a 'Login' button.

The main content area features a blue banner with the text: **Critical ediscovery case law at your fingertips, in-hand, under your thumb.**

Below the banner, the breadcrumb trail reads: [Home](#) / [Pulse](#) / [Case Law](#).

The primary heading is: **Ediscovery case law summaries by topic, jurisdiction or keyword - you pick.**

Subtext: **Stay on top of the latest ediscovery law developments with Kroll Ontrack's ediscovery case law summaries.**

Additional text: **The ediscovery law summaries are a collection of the most salient ediscovery orders and opinions issued in courts across the country. Each month, the most important points of ediscovery law are added to this database.**

The search interface includes:

- A 'Select from a list' section with two dropdown menus: 'All Topics' and 'All Jurisdictions', followed by a 'Go' button.
- A separator: '-- OR --'
- A 'Search via keyword' section with a text input field containing the placeholder 'Keyword' and a 'Search' button.

The browser's status bar at the bottom right indicates a zoom level of 125%.

Home / Pulse / Case Law

Ediscovery case law summaries by topic, jurisdiction or keyword - you pick.

Stay on top of the latest ediscovery law developments with Kroll Ontrack's ediscovery case law summaries.

The ediscovery law summaries are a collection of the most salient ediscovery orders and opinions issued in courts across the country. Each month, the most important points of ediscovery law are added to this database.

Select from a list:

-- OR --

Search via keyword:

All Jurisdictions

- 1st Circuit
- 2nd Circuit
- 3rd Circuit
- 4th Circuit
- 5th Circuit
- 6th Circuit
- 7th Circuit
- 8th Circuit
- 9th Circuit
- 10th Circuit
- 11th Circuit
- Court of International Trade
- DC Circuit
- Federal Circuit
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Federal Claims
- United States Air Force Court of Criminal Appeals
- U.S. Supreme Court
- U.S. Tax Court
- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia

Defendant Entitled to New Trial After “Russian Equivalent of Facebook” into Evidence

United States v. Vayner, 2014 WL 4942227 (2d Cir. 2014)

Keywords: social media, Facebook

Defendant Ordered to Keep Discoverable Documents the Same

ability to do the

125%

Home / Pulse / Case Law

Ediscovery case law summaries by topic, jurisdiction or keyword - you pick.

Stay on top of the latest ediscovery law developments with Kroll Ontrack's ediscovery case law summaries.

The ediscovery law summaries are a collection of the most salient ediscovery orders and opinions issued in courts across the country. Each month, the most important points of ediscovery law are added to this database.

Select from a list

-- OR --

Search via keyword

[Defendant Entitled to New Trial After Trial Court Erroneously Admitted "Russian Equivalent of Facebook" into Evidence](#)

United States v. Vayner, 2014 WL 4942227 (2d Cir. Oct. 3, 2014).

Keywords: social media, Facebook

[Defendant Ordered to Keep Discovery Promises despite Plaintiff's Inability to do the Same](#)

125%

Home / Pulse / Case Law

Ediscovery case law summaries by topic, jurisdiction or keyword - you pick.

Stay on top of the latest ediscovery law developments with Kroll Ontrack's ediscovery case law summaries.

The ediscovery law summaries are a collection of the most salient ediscovery orders and opinions issued in courts across the country. Each month, the most important points of ediscovery law are added to this database.

Select from a list

-- OR --

Search via keyword

[Court Rejects Privilege Request for Private Social Networking Site Communications](#)

McMillen v. Hummingbird Speedway, Inc., No. 113-2010 CD (C.P. Jefferson Sept. 9, 2010).

Keywords: Facebook, MySpace, social media, privilege

[Court Finds Company Acted Appropriately in Blocking Facebook Following Employee Complaint](#)

125%

The screenshot shows a web browser window displaying the Ediscovery.com website. The browser's address bar shows the URL: <http://www.ediscovery.com/pulse/case-law/detail/26295/#:~:text=VI80gU1O1jjo>. The website header includes the Ediscovery.com logo, a phone number (800.347.6105), a 'Contact' link, and a location selector set to 'United States'. A search bar is also present. Below the header, there are navigation links for 'Solutions', 'Pulse', 'Resources', and 'Events', along with a 'Login' button. A large blue banner with the text 'Case Law' is prominently displayed. Below this banner, the breadcrumb trail reads 'Home / Pulse / Case Law'. The main content area features the title 'Court Rejects Privilege Request for Private Social Networking Site Communications' with social media sharing icons (Facebook, Twitter, LinkedIn, Email, Print) and a counter showing '0'. The article is categorized under 'Pennsylvania' and discusses the case *McMillen v. Hummingbird Speedway, Inc.*, No. 113-2010 CD (C.P. Jefferson Sept. 9, 2010). The text describes a personal injury litigation where defendants sought production of user names, log-in names, and passwords for the plaintiff's Facebook and MySpace accounts. The court found that private portions of social media sites might contain impeaching content and that recognizing a privilege would contravene the purpose and policy of Pennsylvania's broad discovery rules. The court expressed concern that recognizing such a privilege would contravene the purpose and policy of Pennsylvania's broad discovery rules. Thus, finding no reasonable expectation of confidentiality given the clear language contained on both sites regarding the possibility of disclosure, no subjective or objective relational need for privilege outside of attorney-client communications and a failure to outweigh the interests of justice, the court ordered the plaintiff to preserve existing information and provide his Facebook and MySpace user names and passwords to the defendants' counsel. The keywords listed are 'Facebook, MySpace, social media, privilege'. A 'Back' link is provided at the bottom left of the article content. The browser's zoom level is set to 125%.

Other Resources

- Other resources are available to advise lawyers on the proper handling of social media as ESI throughout the electronic discovery process.
 - Anahit Tagvoryan and Joshua M. Briones. *Social Media as Evidence: Cases, Practice Pointers and Techniques*. Chicago: American Bar Association, 2013, ISBN: 978-1-61438-629-2).
 - *Social Media Evidence – How to Find It and How to Use It*, which was presented by the ABA Section of Litigation at the 2013 ABA Annual Meeting. This free resource includes sample interrogatories and document requests, advice for jury instructions (because the temptation for jury members to conduct their own investigations via Google and social media is an increasing problem in litigation), complaints, requests for discovery and other documents.

Social Media – Complying with the Stored Communications Act

- One of the earliest cases to address the application of the Stored Communications Act to requests for ESI from social media was *Crispin v. Christian Audigier, Inc.* 717 F.Supp.2d 965 (C.D. Cal. 2010).
- More recent cases have been decided, including:
 - *Optiver Australia Pty, Ltd. & Anor v. Tibra Trading Pty. Ltd. & Ors*, No. C 12-80242 EJD (PSG), 2013 WL 256771 (N.D. Cal. Jan. 23, 2013).
 - *Doe v. City of San Diego*, No. 12-cv-0689-MMA (DHB), 2013 WL 2338713 (S.D. Cal. May 28, 2013).
 - *Ehling v. Monmouth-Ocean Hospital Service Corp.*, No. 2:11-CV-3305 (WMJ) (D.N.J. Aug. 20, 2013).
 - *Maremont v. Susan Fredman Design Group, Ltd.*, 2014 WL 812401 (N.D. Ill. March 3, 2014).



Obtaining Posted Content

- Many resources provide practical information on social media as evidence, including how to request and preserve it, the duty to preserve, the consequences of failing to preserve and warning clients not to delete, preservation in a BYOD (Bring Your Own Device) world and methods of access to social media.
- In terms of obtaining posted content, DiBianca identifies several methods in her article and discusses the advantages and difficulties with each method:
 - direct access to social media accounts (see *Gatto v. United Air Lines, Inc.*)
 - *in camera* review (see *Offenback v. L.M. Bowman, Inc.*)
 - attorney's eyes only (see *Thompson v. Autoliv ASP, Inc.*)
 - third-party subpoenas (but beware of issues with the Stored Communications Act, see *Crispin v. Christian Audigier, Inc.*, 717 F.Supp.2d 965 (C.D. Cal. 2010)).

Obtaining Posted Content

- Likewise, *Social Media Evidence – How to Find It and How to Use It* offers the following principles and trends for involving the discovery of social media evidence:
 - Discovery requests/subpoenas for social media evidence should be drawn narrowly.
 - Tie your discovery requests to information already in hand that shows the request is seeking evidence that likely exists and, therefore, not a fishing expedition.
 - Compulsion efforts are better targeted at the users of the social media, not at the social media providers.
 - If you have evidence that the producing party has improperly withheld evidence, go to the court for sanctions and/or for more social media discovery.
 - Consider who “owns” the social media link. You may have more than one potential discovery target.
 - *In camera* review by the court may be needed.
 - If the request is too broad, the court may limit it or deny it altogether.

Social Media Preservation

- Two of my favorite authors are Sharon Nelson and John Simek, who have been on the cutting edge of security, digital forensics, electronic discovery and legal technology for many years through their company, Sensei Enterprises.
- One suggestion is that all lawyers register for Sensei's free article distribution service.
- A recent article by Nelson and Simek covers the preservation and harvesting of social media evidence as well as authentication, which is available from the Sensei Enterprises website.
- Benefits and risks of outsourcing the preservation process versus trying to handle it in-house, with special concerns raised about the danger of spoliation which often results in significant sanctions.
- They also provide practical suggestions for how to harvest the information without going through the social media vendor, who are only allowed to provide basic subscriber information, but not content, because of the Stored Communications Act.

http://www.senseient.com/ Virginia Digital Forensics, In... x

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUPUI Indi... Suggested Sites Get more Add-ons

Page Safety Tools



SENSEI ENTERPRISES, INC.

CLIENT SUPPORT

Call Us (703)359-0700 or Toll Free (877)978-3440

HOME ABOUT SERVICES NEWS & PUBLICATIONS VADER SEMINARS FAQS CONTACT US

DIGITAL FORENSICS
INFORMATION SECURITY
INFORMATION TECHNOLOGY
MIGRATING FROM XP
MOBILE PHONE TEXT RECOVERY
FREE ASSESSMENTS
CLIENT TESTIMONIALS

SENSEI E IC.
Your trusted
Technology
Digital Forensics.



ABOUT SENSEI

Sensei Enterprises, Inc. is a nationally-known [digital forensics](#), [information technology](#) and [information security](#) woman-owned small business, founded in 1997 by [Sharon Nelson](#), a practicing attorney and [John Simek](#), vice president. Sensei provides information technology to hundreds of businesses locally in the DC Metro area. Sensei provides digital forensics and information security services nationwide.

HOW MAY WE HELP YOU?

Name *

125%


http://www.senseient.com/ Virginia Digital Forensics, In... x

File Edit View Favorites Tools Help

Convert Select

A - Z List About IUJUI Indi... Suggested Sites Get more Add-ons

Page Safety Tools



SENSEI ENTERPRISES, INC.


Call Us (703)359-0700 or Toll Free (877)978-3440

CLIENT SUPPORT

HOME ABOUT SERVICES NEWS & PUBLICATIONS VADER SEMINARS FAQs CONTACT US

SENSEI NEWS
ARTICLES
PODCASTS
PUBLICATIONS
LAW PRACTICE TIPS
RIDE THE LIGHTNING BLOG
YOUR IT CONSULTANT BLOG

SENSEI ENTERPRISES, INC.
Your trusted partner in
Technology Support,
Digital Forensics.



ABOUT SENSEI

Sensei Enterprises, Inc. is a nationally-known digital forensics, information technology and information security woman-owned small business, founded in 1997 by Sharon Nelson, a practicing attorney and John Simek, vice president. Sensei provides information technology to hundreds of businesses locally in the DC Metro area. Sensei provides digital forensics and information security services nationwide.

HOW MAY WE HELP YOU?

Name *

125%


Browser address bar: <http://senseient.com/category/articles/>

Browser tabs: Articles Archives - SENSEI E... | Sara Anne Hook: IU School of ...

Browser menu: File, Edit, View, Favorites, Tools, Help

Browser extensions: JUPUScholarWorks Repos..., London Art College - dict..., eDiscovery Assistant™, Canvas at IU, Purdue OWL APA Formatt..., New Online-Distance Edu..., The World of the String Q..., Indy Latino - Be informed..., Customer Log In Box

Page: Page, Safety, Goals


SENSEI ENTERPRISES, INC.
CLIENT SUPPORT

Call Us at 703.359.0700 or Toll Free 877.978.3440

HOME
ABOUT
SERVICES
NEWS & PUBLICATIONS
VADER
SEMINARS
FAQ
CONTACT US
Q

ARTICLES

CLIENTS DEMAND LAW FIRM CYBERAUDITS

March 11, 2016

Excerpt Amid much hand-wringing, the prophecy that law firms would be forced to confront their data security shortcomings has finally come true. Clients now want, as do regulators, assurance that law firm data is being adequately protected. The receipt of information security audits, more politely termed "assessments", is now a regular occurrence at many law firms. They come not only from clients, but from insurance companies offering cyber insurance – but they want to know what they are getting into first!

[Read the entire article here.](#)

SHARE THIS:

BE PREPARED – PLANNING FOR WHEN YOUR LAW FIRM SUFFERS A DATA BREACH

NEWS & PUBLICATIONS

- [All News & Publications](#)
- [Sensei News](#)
- [Articles](#)
- [Podcasts](#)
- [Publications](#)
- [YouTube Videos](#)
- [The Adventures of Sensei's Sherlock](#)
- [Ride the Lightning Blog](#)
- [Your IT Consultant](#)

HOW MAY WE HELP YOU?

Your Name *(required)*

E-mail Address *(required)*

Service of Interest *(required)*

New Issues with Social Media and Electronic Discovery

- Revisions to the Federal Rules of Civil Procedure – December 2015
 - Proportionality
 - Sanctions for spoliation
- New types of social media – wherein vendors claim that nothing is stored – or is it? (see forthcoming article by Faklaris and Hook in *The Federal Lawyer*)
- Ongoing duties of lawyers to issue and monitor litigation holds
 - Increasingly difficult in a BYOD world
 - And that means social media posts, tweets, texts and emails – all communications
 - No “counseling” the client to remove or alter social media sites or the information on them
 - And that means devices, too!

And That Means Devices, Too!

- NFL wins Deflategate appeal, Tom Brady Suspension Back On



indybar
Indianapolis Bar Association

Any Questions?

- Thank you for attending today's seminar!
- Contact:
 - Professor Sara Anne Hook
 - sahook@iupui.edu
 - 317-278-7690
 - <https://soic.iupui.edu/people/sara-hook/>

Stay connected and visit us online!



www.indybar.org



www.twitter.com/indybar



www.facebook.com/IndyBar



www.linkedin.com
Search for the IndyBar group



indybar
Indianapolis Bar Association