

“Will Your Tweet Bring You Heat? The Ethics of Discussing Your Land Use Case in the Age of Social Media”

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UT Law 23rd Annual Land Use Conference

Austin, Texas
April 25-26, 2019

I. Introduction

We live in an increasingly wired world in which over 82% of adult Americans maintain at least one social networking profile; in which Facebook boasts more than 2.2 billion users worldwide; and in which a single minute witnesses over 360,000 tweets on Twitter, 293,000 status updates on Facebook, and over 400 hours of footage uploaded to YouTube. And with social media being as ubiquitous as it's become, it's hardly surprising that being active on social media has taken on increasing significance for lawyers and law firms as well. According to the American Bar Association's 2017 Legal Technology Survey, 81% of lawyers responded that they use social media for professional purposes while 77% reported that their firms also maintained a social media presence. 71% of firms with 500 or more attorneys maintain at least one law firm blog, while 38% of mid-sized firms with 10-49 lawyers maintain a blog. Client development is the leading reason given for lawyer blogging (76%) with public outreach/writing enjoyment coming in a distant second (47%). From Facebook and Twitter to blogging and LinkedIn, the legal profession's embrace of technology continues to increase steadily.

And whether it's blogging about a recent development in your eminent domain case or tweeting about a zoning ruling that impacts your land use case, using social media and other online platforms has assumed greater importance for land use lawyers in recent years. Along the way, however, recent ethics opinions in Texas and nationally as well as real world examples of lawyers getting into trouble for their social media posts provide a sobering reminder that before you comment about a case in any medium, it's vital to know where the ethical boundary lines are drawn. Consider the following cautionary tales of lawyers posting about their cases online:

- In May 2016, Florida plaintiff's personal injury lawyer David Singer, who began a jury trial in a case over whether a passenger had been permanently injured by walking on the hot deck of a Carnival cruise ship, only to have the federal judge presiding over the case refer him to a disciplinary committee over his Facebook posts. Carnival's counsel argued that Singer should be disqualified for "inexcusable" conduct in posting photos and "willfully improper" statements on Facebook to warn passengers of "outrageously high temperatures" on the cruise ship deck. Among other statements on Singer's Facebook page right before trial were allegations that Carnival "knew that their fake Teakwood deck heated up" so as "to burn the feet of a passenger who ended up having all 10 toes and parts of both feet amputated," as well as admonishments to a defense medical expert that "Doc, your buddies at Carnival knew of the problem because there were nine previous cases of burns on their deck—many of them kids." Carnival's lawyers also claimed that Singer had violated court orders by allegedly publishing private information about a mediation in the case. Although Singer apologized to the court, federal judge Joan Leonard referred the Facebook conduct to a disciplinary committee.¹
- In January 2018, a Philadelphia judge punished two lawyers who had represented the plaintiff in a December 2017 trial over the medication Xarelto. The two lawyers, Ned McWilliams of Pensacola, Florida and Emily Jeffcott of New

¹ "Facebook Post Earns Attorney a DQ Bid in Cruise Injury Suit," Law360, May 31, 2016.

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First appeared as part of the conference materials for the
23rd Annual Land Use Conference session
"Trying Your Land Use Cases in the Media"