

Emails, Facebook, Twitter and Other Electronic Media: Friend or Foe
2012 Community Association Law Seminar & Expo

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1. Electronic Media

- Email, texts, IM's Facebook, Twitter, Myspace, blogs, list-serves, on-line forums, chat-rooms, Skype, voice messages
- Fast, convenient, and affordable
- Easy to store, share, and retrieve

2. Inadvertent Disclosure of Information

- Electronic media lasts forever
- Think before you send

3. Waiver of Attorney-Client Privilege

- What is the Attorney-Client Privilege?

Communication between an attorney and their client, related to legal matters about which the attorney has been engaged, is privileged and generally may not be discovered by third-parties (i.e., "the other side").

- To whom does the privilege belong?

The attorney-client privilege belongs to the client. The privilege is for the client's protection and to secure the client's confidence in the secrecy of communications with legal counsel and promote greater freedom of consultation so that the lawyer can more fully understand the matter about which they have been retained.

- Waiver

Because the attorney-client privilege is so strong, its scope is kept narrow and it is easily waived if the client discloses it to any third party.

4. Metadata

- Metadata is “data about data.”

Some of it is user-created, but most is automatically created by applications and programs. It can include such information as the creation date, modification date, author’s name, prior versions, time spent with the document open, when it was printed and by whom and to what computer, when and to whom it was emailed.

- Metadata does not die easily.

It “lives” in different directories and registries. Metadata “scrubbing” programs can identify and remove some or all of a document’s metadata. But this is no guaranty that the information cannot still be found, particularly in backup copies or cloud-based storage systems.

5. E-Discovery

- Any documents or electronically stored information--including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form and tangible things like computers, hard drives and back-up tapes.

6. Destruction of Evidence

- Spoliation
- Requirement to preserve electronic information when a party “reasonably anticipates litigation”
- Litigation hold notices
- Backup systems and record retention policies

E-Mails, facebook, Twitter and Other Electronic Media: Friend or Foe?

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Curry & Wilco 
ATTORNEYS AT LAW



Ned Blumenthal

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Electronic Media is Good

Because:

- It's everywhere. Email, texts, IM's Facebook, Twitter, Myspace, blogs, list-serves, on-line forums, chat-rooms, Skype, voice messages.
- It's fast, convenient, and affordable.
- It's easy to store, share, and retrieve.



Electronic Media is Dangerous

Because:

- It's everywhere. Email, texts, IM's Facebook, Twitter, Myspace, blogs, list-serves, on-line forums, chat-rooms, Skype, voice messages.
- It's fast, convenient, and affordable.
- It's easy to store, share, and retrieve.



Oops!

Inadvertent Disclosure of Information

- You are what you blog. Electronic media is easily found and lasts forever.
- Sorry, I didn't mean to copy you on that email where I called you a “@_+##\$%^”.

Please disregard.

- I didn't realize YOU were on that list-serve.

My bad.

- Engage brain before fingers.

Think before you hit send.



Waiver of Attorney-Client Privilege.

Oh yeah ? Well, my Lawyer Says

- What is the attorney-client privilege?
- Whose privilege is it?
- How is it waived?



“Meta-death” is not a Rock Band.

How your document’s hidden metadata
can kill you.

- What is metadata?
- Why is it dangerous?
- Can anything be done about this?



Seriously? I have to give them a Copy of my Hard Drive and my iPhone?

Welcome to the brave new world of e-discovery.

- What can they get their hands on?
 - Any documents or electronically stored information--including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form and tangible things like computers, hard drives and back-up tapes.



Seriously? I have to give them a Copy of my Hard Drive and my iPhone?

Welcome to the brave new world of e-discovery.

- It costs how much?!?
- The limits of cost shifting.



It's Okay, I Deleted That.

Destruction of evidence, spoliation and other bad things.

- Requirement to preserve electronic information when a party “reasonably anticipates litigation”.
- Litigation hold notices.
- Backup systems and record retention policies.



Thank You!

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