

§ 8.6

Social Media

Turning the Tables

Up to this point we have pointed out the risks of using social networks. Most of this advice was in the form of career advice. During an investigation, though, social networks can be great sources of leads and evidence. It is amazing what some people will post online, from *Instagram* to *Pinterest* to *Twitter*, the attitude of many seems to be that free speech means anything is permitted without repercussions. That misstates the facts. Speech is generally protected, but the content of that speech is fair game for determining whether criminal conduct or civil wrongs have occurred.

The most valuable social network for an investigator is *Facebook*. If you are able to view the subject's page (legally and ethically) it may provide comments relevant to the matter in question, pictures that may shed light on relevant issues, and may also detail contacts that can act to expand your investigation.

§ 8.7

Remote Working

How to Investigate in a Remote Working Environment

How do law firm personnel conduct investigations if they are working remotely? If remote working becomes the "new normal," either by circumstance or by choice, some issues should be considered. There is good news and bad news.

GOOD NEWS

- *Interviews*
Investigative interviews can be taken on video or, if absolutely necessary, over the phone. As mentioned previously, it is imperative that any conversation take place in a private environment, and you should use headphones to maximize confidentiality. You should also strongly encourage the person being interviewed to find their own private location, especially if the other person is the client.

- *Phone Calls*

Of course, phone calls are still easy to make from any location. The issue that may arise is when you are asking someone to access information or data. If they are also working remotely or are otherwise unable to access such material, you will need to circle back around.

- *Data Collection*

Documents that might have once been collected physically can mostly be obtained digitally. When asking for photographs make sure they are emailed, if possible, instead of being attached in a message. Clearly label the images, including a reference to who took them and who provided them, the date the image was taken, and the location. All of this could be relevant later. Documents can also be photographed or scanned for easy transmission.

BAD NEWS

- *Data Preservation*

As we will see later, preserving data is a huge issue, especially if a “litigation hold” is implemented. This is where the court issues a requirement that all material in the parties’ possession or control must be preserved as-is so no corruption (often referred to as “spoliation”) can take place. Even opening a relevant document is forbidden. Firms have strategies for this (sometimes) by creating ghost copies of the data, leaving the original undisturbed. But this is difficult to do when data is scattered remotely. The best solution is for the firm to implement a network solution where all files are still maintained on a central server at the law firm or in the cloud.

- *Physical Investigation*

Many investigations simply require visiting a location in person. The scene of a car accident. A hospital where a patient is being treated, and where hospital staff can be questioned. A restaurant where a client fell seriously ill. If there is no option but to venture to such a location in pursuit of your client’s interests, be responsible when it comes to social distancing, use video and photos extensively to lessen the need for follow-up visits, and arrange for phone or video conversations with needed witnesses.

CHAPTER 8

Wrap-Up

WHAT YOU SHOULD KNOW

After reading this chapter you should know the following:

- A paralegal’s role as investigator
- A paralegal’s limitations in law office investigation
- How investigation leads to the identification of evidence
- Skip-tracing techniques as an investigatory device

ASSIGNMENTS

There are no assignments for this chapter.