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Five Reasons to Deactivate or Delete Your Facebook Account while Your Divorce Case is Pending

1. Your Facebook History is Subject to the Discovery Process

During the discovery process, it is common for an attorney to request that the opposing party produce a complete copy of their Facebook history. What is the opposing counsel looking for? Images or messages that reflect that you are an unfit parent, that you cheated (or are cheating) on your spouse, that you made disparaging comments about your spouse, or even that you confessed your own marital or parenting faults and failures - all of which could be damaging to your domestic case.

Even after you comply with your spouse's attorney discovery request and you produce your Facebook history, keep in mind that you have an ongoing obligation to continue to provide supplemental discovery until the date of your trial. Just because you produced your Facebook history early on in your case does not give you the all-clear to post without consequences from that point forward.

2. "Big Brother" (AKA Your Spouse) is Always Watching

Family Law attorneys ask their clients to provide them with evidence of any allegations that they want to make against their spouse. For instance, if you allege that your spouse is cheating on you, how can you prove this? If you believe that your spouse is unfit to care for your minor children, how can you prove this? If your spouse is an avid Facebook user, then your spouse's Facebook page will probably be the first place you, your attorney, your private investigator, and even your spouse's attorney will look for evidence. (In fact, more often than not, one of your spouse's Facebook posting(s) may have been one of your reasons for divorce.) Keep in mind that this search for evidence may occur on a frequent basis while your case is pending.

A picture on Facebook may truly be worth a thousand words because a picture posted on Facebook may contain more than just a damaging picture - it may contain a comment from a paramour or a comment or picture of a friend that joined your spouse for a night out on the town or on a vacation getaway where the alleged adulterous acts took place, providing your attorney with the name and possible contact information of a potentially key witnesses.

3. The Danger of the “Overshare” : You May Not Be Able to Resist Posting Content That is Detrimental to Your Case

You know yourself best, but in a moment of weakness you may not be able to control the urge to post content on your Facebook page that could be damaging to your case. Or, with all the stress that accompanies a divorce, you may end up unintentionally posting detrimental content. This detrimental “oversharing” is so easy to do, all it takes is just a few keystrokes and a click and your dirty laundry is aired out on Facebook for all to see, including your spouse (and/or your spouse’s attorney) who is dutifully reviewing your Facebook page on a daily basis and collecting evidence in order to prove his or her case.

By way of example, you filed for divorce against your spouse because he committed adultery, but you decide that if he’s being unfaithful then you will start as well. In a moment of weakness, and in order to show your spouse that two can play at that game, you decide to post a scandalous picture of yourself on Facebook. This photo may very well end up as ammunition for your spouse’s attorney to question your fitness as a parent and thereby put your case at risk.

Or, during your deposition you may be asked by your spouse’s attorney if you have ever said or written anything disparaging about your spouse. You may say no, having completely forgotten what you posted on Facebook in a moment of weakness, and your spouse’s attorney (who has been given daily updates of your Facebook postings) has fuel to attack your credibility at trial or worse.

4. You Cannot Control The Pictures/Comments Your Facebook “Friends” Post on Your Page

While you may know yourself best, you may not know your Facebook “friends” and their posting tendencies at all. You may be doing a good job of keeping your private life under wraps, and controlling the urge to air your dirty laundry, but beware - you cannot control the ability of your Facebook “Friends” to post on your page.

Here’s the scenario: you privately disclose to several of you Facebook “friends” who you thought you could confide in and who you thought were on your side during your divorce, that you are having an affair. However, you didn’t realize that one of your “friends” was always jealous of you and jealous of what she perceived as your perfect marriage. A day or two later, your “friend” posts a snide comment on your page about adultery or flat out repeats your secret - potentially damaging your case. The various ways that this type of scenario can play out are simply out of your control and can be detrimental to your case.

5. Avoid Temptation, it Starts with a Friend Request...

If you are in the midst of a divorce or custody dispute then it is possible that a Facebook friend request to you or your spouse may have sparked the demise of your marriage. Facebook makes it so easy to reconnect with a high school boyfriend/ girlfriend, college sweetheart, an old fling, or connect with an acquaintance that perhaps you wouldn't normally speak to on a regular basis or face-to-face. And what may start out as innocent Facebook Flirting can rapidly turn into much more.

So, taking heed to Reason Number (1) (the fact that your Facebook history could be subject to the discovery process) and, more importantly, moral principles, don't allow yourself to even be tempted to start a new relationship.

Take Action

So, how do you protect yourself? Facebook provides you with the capabilities to deactivate your account or even delete your account. ***But again, always consult an attorney before deleting your social media accounts!*** Doing so improperly can result in being accused of spoliating evidence. If you decide to deactivate your account, you have the ability to temporarily leave your account and then return to it when your case has concluded. If your account is deactivated, your profile immediately disappears from Facebook, and if your name is searched your Facebook page will not appear and your profile information will be saved in case you want to return to Facebook at a later date. If you decide to permanently delete your account, then your account will be shutdown and you will not be able to regain access. Furthermore, most of your personally identifiable information associated with your account will be removed from the Facebook database, such as your e-mail address and mailing address. However, Facebook reassures its users that need the utmost protection that if you permanently delete your account, copies of some material (ex: photos, notes) may remain on its servers for technical reasons, but this material is disassociated from any personal identifiers and completely inaccessible to other people using Facebook.

After speaking with your attorney, if you decide not to deactivate or delete your Facebook account, it is wise to unfriend your spouse and your spouse's friends and change your privacy settings so that you can, at a minimum, protect what is visible to the public on your page. You are still subject to the possibility that information may be obtained through the discovery process, but the information is not readily accessible to the public.