

Could Social Media Put Your New York or New Jersey Business Lawsuit at Risk?

by Robert Levy on April 9, 2012

There is growing concern in the legal community that social media use by jurors could influence the way business lawsuits and other cases are decided. A new survey of federal judges sheds light on the prevalence of the problem and what can be done to prevent it.

The survey was conducted by the Federal Judicial Center at the request of the Judicial Conference Committee on Court Administration and Case Management. In total, 508 judges responded, including eight from the District of New Jersey.

As detailed in the resulting report, “Jurors’ Use of Social Media During Trials and Deliberations,” judges acknowledged that although social media use by jurors is a concern, it is often difficult to detect. Only 30 judges reported instances of detected social media use by jurors during trials or deliberations.

Social media use was more commonly reported during trials (23 judges reported at least one instance) than during deliberations (12 judges reported at least one instance). In addition, social media use was more frequently detected during criminal trials (22 judges with experience) than during civil trials (5 judges). Three judges encountered jurors using social media during both criminal and civil trials.

While social media use most often took the form of posts about the progress of the case or the juror’s service in general, there were several instances of jurors attempting to contact participants in the case via social media. In a widely reported case earlier this month, a Florida state court judge overseeing a personal injury case sentenced a juror to three days in jail for contempt after he sent a Facebook message to one of the parties.

While judges are still sorting out the legal ramifications of social media use by jurors, most are taking steps to prevent it from happening in the first place. The report reveals that the majority of judges (94%) say they have taken at least some form of precautionary steps to ensure that jurors do not use social media in their courtrooms.

Below are some of the most common measures used by judges to combat social media use by jurors:

- Explained, in plain language, the reason behind the social media ban (62.4%)
- Instructed jurors at multiple points throughout the trial (53.3%)
- Used other jury instructions before trial (44.7%)
- Reminded jurors at voir dire to refrain from using social media while serving as a juror (44.7%)
- Used other jury instructions before deliberation (34.6%)

- Confiscated phones and other electronic devices during deliberations (28.9%)
- Confiscated phones and other electronic devices at the start of each day of trial (22.2%)
- Alerted the jury about the personal consequences (20.3%)

On a local level, the issue of social media in the courtroom is also a concern. In March, Chief Judge Jerome Simandle lead a panel discussion on “Social Media and Litigation: Issues Affecting Lawyers, Litigants, Judges and Jurors” at the annual conference of the Association of the Federal Bar of New Jersey.

Given the potential implications on our clients, all of our New Jersey business litigation attorneys are also closely monitoring this rapidly developing area of law.