



Presentations?

If you would like to schedule a presentation call 214.393.9142 and ask for Kelly or send her an email

Goals

Carol Wilson's goal is to help good people in difficult times. [Click here to learn more about Carol](#)

Electronic Evidence

How do you prove what you already know?

Keep Reading!

Social Media as Evidence

How Do I Get that Tweet Admitted at Court

In the old days, opposing parties in a hearing would testify as to who said what and when or what terrible thing the other person did. The Judge and/or jury decided who was telling the truth.

Today written electronic proof submitted in the form of e-mails, text messages, facebook posts, twitter tweets and other website representations can be offered as evidence in both criminal and civil courts of law. For lawyers and clients today the quantity and quality of admissible evidence has increased dramatically making their cases easier or harder to win.

Client Comments

"You all made us feel like family and that you truly cared about us. The entire firm made a difficult time less difficult through your professionalism, communication, caring and compassion."

- A Recent Client
"My only regret is that I didn't find you first!" - A Recent

Client

Much has been written about electronic evidence and many court cases appealed because electronic evidence was presented. *Tienda v State*, 358 S.W.633 (Tex. Ct. Crim. App. 2012) involved a man convicted of murder based in part on the relevant postings and pictures from his MySpace pages. The Court of Criminal Appeals held that the evidence was sufficient to establish a prima facie showing that the social networking webpage proffered by the State was authored by the defendant.

In this case the deceased's sister testified to finding the MySpace pages, the company was subpoenaed and offered account information for the profiles, photos, comments and instant messages linked to the accounts. The names on the account were names by which he was known. The content related to the crime and contained information that likely only the perpetrator would know.

A detective testified that it was common for gangs to "stay in touch" through social media. The defendant was found guilty and appealed claiming that Rule 901(a), which defines authentication as a "condition precedent" to admissibility of evidence, had not been met. The Court of Criminal Appeals upheld the verdict finding that the totality of the evidence offered was sufficient that a reasonable fact finder could find genuiness.

The totality of the evidence, circumstantial and otherwise, convinced this Judge to allow the evidence in court. The court in *Tienda v State* acknowledged that computers can be hacked, passwords can be compromised, id's can be faked, postings can be fabricated etc. On the other hand, alterations can be made in paper documents as well. The courts look for as much factual evidence as possible when authenticating electronic evidence at trial.

Presentations

If you, your employer or your professional organization would like to know more about separate property, court-ordered maintenance, fiduciary duties or social media evidence and their impact on family law issues, including divorce and property issues, contact my office to schedule a free one-hour lunch-and-learn continuing education presentation.

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Super Lawyers

2012

The Following Rules of Evidence Apply E-mails, texts, tweets, posts, blogs, websites and the like can be submitted as evidence if the message is authenticated to the Judge's satisfaction - that a reasonable juror could determine the truth.

Considerations include:

- a) Distinctive Characteristics, Texas Rule of Evidence 901(a) (authentication of the evidence) and (b)(4) - Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. The message may reference facts and events that only the true writer of the message would know, and that the message came from an e-mail address associated with or routinely used by that person;
- b) Admission Against Interest, Texas Rule of Evidence 801. A message can be admitted if it was made by a party in the case and it was not in that party's favor. For instance, representations made on a website if they can be attributed to the owner of the website;
- c) Authenticated Business Records, Texas Rule of Evidence 902(11). A presumption that the website is genuine or authentic based on statutes or other rules. This one can be difficult if some of the posted messages are written by people outside the business or organization;
- d) Admission may require testimony from more than one witness before the message can be admitted. In *U.S. v. Safavian*, 435 F. Supp. 2d36(D.C.2006)there were 147,000 e-mails. Some of them were only admissible after more than one witness testified;
- e) Comparison by Trier or Expert Witness, Texas Rule of Evidence 901(b). Comparison with message specimens which are known to be genuine, such as the e-mail signature block, or similarity with other postings or emails. The court held that the possibility of alteration was not enough to exclude e-mail messages any more than excluding paper documents on the same basis;
- f) Admissions by the defendant that the message/post/picture was true - Texas Rule of Evidence 801(e)(2);
- g) Non-verbal conduct by defendant;
- h) Message which shows the opposing party's state of mind at the time the message was written - Texas Rule of Evidence 803(3);
- i) Statements made by a co-conspirator in furtherance of the conspiracy -Texas Rule of Evidence 801(e)(2)(E).

Although it can be time consuming to search for electronic evidence, it can be rewarding. With your client's assistance, and your own diligence, the evidence accumulated may provide the advantage needed in Court. Remember, the first hurdle is authentication and it is important to provide as much factual data as possible to prove your evidence is what you say it is.

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