

Social Media: From Internet to Evidence

Michael J. Golden

Overview

1. Self-help discovery

- Disciplinary Rules
- SCA
- Constitution
- Public Policy

2. Formal discovery

- Social media not immune
- Threshold showing req'd
- SCA compelled consent

3. Admissibility



2

<http://nouvellier.deviantart.com>

The Disciplinary Rules

“In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.”

TEX. DISCIPLINARY R. PROF. CONDUCT 4.02(a)

3

The Disciplinary Rules

“‘[O]rganization... ’ includes: (1) those persons presently having a managerial responsibility with an organization... that relates to the subject of the representation, or (2) those persons presently employed by such organization... and whose act or omission in connection with the subject of representation may make the organization... vicariously liable for such act or omission....”

TEX. DISCIPLINARY R. PROF. CONDUCT 4.02(c)

4

The Disciplinary Rules

“The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.”

MODEL R. PROF. CONDUCT 4.2, cmt. 3

5

The Disciplinary Rules

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TEX. DISCIPLINARY. R. PROF. CONDUCT 4.02(a)

6

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First appeared as part of the conference materials for the
22nd Annual Labor and Employment Law Conference session
"Getting from Internet to Evidence"