

Torts Section Meeting Agenda

March 18, 2014

Alaska Bar Association

Social Media Revisited. This will be a roundtable discussion to revisit the issue of social media and litigation. Areas to be covered are: updated cases and ethics opinions regarding the use of social media information in litigation, including obligations for automatic disclosures, disclosing prior to use, and access to the information.

I. Social Networks

The rise and growth

II. Discovery of Information on Social Networks

A. Civil Rule 34(a):

Rule 34. Production of Documents, Electronically Stored Information, and Things, and Entry Upon Land for Inspection and Other Purposes.

(a) **Scope.** Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photo-graphs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained), translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

B. Civil Rule 26(b)(2)(B):

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

III. How to Obtain

A. Voluntary Production

B. Involuntary Production

Thompson v. Autoliv ASP, Inc., Not Reported in F.Supp.2d, 2012 WL 2342928 (D.Nev. 2012)

Romano v. Steelcase Inc., 907 N.Y.S.2d 650 (N.Y. Sup. Ct. 2010)

Gallion v. Gallion, Not Reported in A.3d, 2011 WL 4953451 (Conn. Super. 2011), and

McMillen v. Hummingbird Speedway, Inc., 2010 WL 4403285 (Pa.Com.Pl. 2010)

C. Why not just subpoena the Social Network for the information?

Stored Communications Act, 18 U.S.C. § 2701 et seq.,

IV. Trending

Courts are now completing a more thorough analysis on the content of what is to be produced and providing limitations.

See Discovery Rulings Increasingly Unfriendly to Facebook Users' Privacy Rights, 82 U.S.L.W. 867, 892–95 (Dec. 17, 2013) (discussing various approaches courts have taken to ensure that Facebook material requested in discovery is not overbroad).

Root v. Balfour Beatty Const. LLC, --- So.3d ----, 2014 WL 444005, (Fla.App. 2 Dist 2014).

Bosh v. Cherokee County Governmental Bldg. Authority, Slip Copy, 2013 WL 6150799 (E.D.Okla. 2013).

Holder v. AT & T Services, Inc., Slip Copy, 2013 WL 5817575 (M.D.Tenn. 2013).

Potts v. Dollar Tree Stores, Inc., Not Reported in F.Supp.2d, 2013 WL 1176504 (M.D.Tenn. 2013).