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Cleaning Up Your Facebook

10 October 2013 - As existing clients, and potential clients, are furiously tweeting and posting online, it is important for all litigators to understand that those tweets and posts are discoverable in litigation, often with disastrous consequences.

In an interesting article written by US attorney Cynthia A Augello under the rubric *When Cleaning up your Facebook can lead to Dirty Consequences*, the article states that “In preparation for trial, a lawyer might advise a client to dress or act a certain way in order to improve his or her appearance in the court room. For instance, a lawyer might advise a client to appear in court wearing business attire as opposed to sweatpants; or maybe, tell a client to remove all non-traditional piercings. This sort of cleaning up is a legally permissible way to positively alter the appearance of the client. However, there does come a point when an attorney’s advisement to have a client appear representable could actually result a violation of the legal ethical rules that lawyers must follow and further result in disastrous consequences for the lawyer and the client.”

Lawyers must always be aware of their professional rules of conduct and ethics which oblige them to disclose all evidence to the presiding judge, magistrate or other official and to the opposing party (even if such evidence would be adverse to the clients’ interest) unless such evidence is protected under the attorney and client protection. As stated in the article, the advent of Social media technology has given the term “Cleaning up” a whole new meaning and big consequences for the client and the lawyer.

The article recounts that this is exactly what happened in a recent wrongful death action case in the United States: “There attorney Matthew Murray was representing a client named Isaiah Lester in a law suit against Allied Concrete for the death of Mr. Murray’s wife when one of Allied Concrete’s cement trucks tipped over on top of Lester’s car killing his wife. During the midst of the lawsuit, Allied’s attorneys sought to obtain screen shots and other types of information from Lester’s Facebook page. Upon this knowledge, Mr. Matthew instructed his paralegal to advise Lester to clean up his Facebook page. In response, Lester deleted 16 photos from his Facebook page, including one photo depicting Lester holding a beer can wearing a T-shirt that said, “I (heart) hot moms.” These photos

were already recovered by the defense attorneys prior to the trial and the jurors were also told about these photos.”

The above is a stark warning to attorneys of the dangers of instructing clients to “clean up” social media evidence as there is no doubt that the Law Societies in South Africa would act in the same way as the Court acted in the United States and perhaps even more drastically in this strictly (but correctly) regulated country.

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