

Social Media Accounts Are Discoverable in Florida

You are walking through the outdoor mall one morning, iBook in one hand, a great coffee in the other. As you approach the bookstore to buy the latest techno thriller, you trip over a garden hose that a maintenance worker left across the sidewalk. After a visit to the ER, a hip replacement, and a month of missed work, you call a lawyer to sue for damages.

Now your attorney gets a Request for Production that includes a print out of every social media account you own for months before the incident. And you will need to produce it or face a Motion to Compel.

The Florida Rules of Civil Procedure 1.280 defines the provisions of discovery. Although there are privacy rules for specific kinds of documents requested, mostly in the medical records arena, Florida has very little electronic privacy rules in place once litigation begins.

In a Florida slip and fall case, Facebook data two years before the incident in question were requested, challenged, and enforced by the court. *Nucci v. Target* 162 So.3d 146 (4th DCA 2015). The holding declared there was a “reasonable calculation such a request will lead to admissible evidence.” *Id.* The court declared the relevance of photographs outweigh the privacy interest.

The photos in *Nucci* showed the Plaintiff had limited physical capabilities. The surveillance footage showed she was carrying too many items, and items with excessive weight. The photos from social media verified the plaintiff had limited physical ability.

A savvy attorney answers most of these request with an objection, including privacy, overbroad request, or that the request is not likely to lead to admissible evidence. Florida is not an easy place to sell these objections, and all of your personal feed may show up at your trial in printouts of screenshots.

An expectation of privacy is not a right to privacy, however the expectation will trigger analysis of a right. *Winfield v. Div. of Pari–Mutuel Wagering, Dep't of Bus. Regulation*, 477 So.2d 544, 547 (Fla.1985). If you can show a right to privacy, the party requesting documents has the burden to prove a need. In court, that hurdle is not that high. Even if your Facebook privacy settings are set to a limited group, those privacy settings do not win the day in court. *Davenport v. State Farm Mut. Auto. Ins. Co.*, No., 2012 WL 555759, at *1 (M.D.Fla. Feb. 21, 2012). You can set the feed to be seen by your friends, but your friends are not under the same rules not to share your post, electronically or in print.

If you are at fault in a litigation, or the victim filing suit, be aware your social media accounts will likely be requested, and any evidence found will be used in court. Privacy is a right that the government can protect for you in statute, but the onus is on the individual to make available in social media life only what you expect to be seen by many. Share accordingly.