

Excerpt from *Social Media E-Discovery: Are Your Facebook Posts Discoverable in Civil Litigation*, By Jake Perkowski and J. Alexander Lawrence, Socially Aware Blog, August 24, 2015

Courts generally have held that there can be no reasonable expectation of privacy in your profile when Facebook's homepage informs you that "Facebook helps you connect and share with the people in your life." Even when you decide to limit who can see your photos or read your status updates, that information still may be discoverable if you've posted a picture or updated a status that is relevant to a lawsuit in which you're involved. The issue, then, is whether the party seeking access to your social media profile has a legitimate basis for doing so.

If you've updated your Facebook status to brag about your awesome new workout routine after claiming serious and permanent physical injuries sustained in a car accident—yes, that information is relevant to a lawsuit arising from that accident and will be discoverable. The plaintiff in *Largent v. Reed* learned that lesson the hard way when she did just that and the court ordered her to turn over her Facebook log-in information to the defense counsel.

Courts in many jurisdictions have applied the same standard to decide whether a litigant's Facebook posts will be discoverable: The party seeking your posts must show that the requested information may reasonably lead to the discovery of admissible evidence.

For example, the plaintiff in *Zimmerman v. Weis Markets, Inc.* claimed that he suffered permanent injuries sustained from operating a fork lift—and then went on to post that his interests included "ridin" and "bike stunts" on the public portion of his Facebook page. The court determined that his public posts placed the legitimacy of his damages claims in controversy and that his privacy interests did not outweigh the discovery requests.

When it is shown that a party's Facebook history should be discoverable, however, the party must make sure not to tamper with that history. Deactivating your Facebook account to hide evidence can invite the ire of the court. Deleting your account outright can even result in sanctions. The takeaway is that courts treat social media data no differently than any other type of electronically stored information; what you share with friends online may also be something you share with your adversary—and even the court.