

DIVORCE IN THE DIGITAL AGE

How technology can impact your divorce

Any kind of information stored in electronic form—for example, information on desktop computers, mobile telephones, personal computers or “thumb” drives—can potentially be helpful or harmful in the course of your divorce. Your lawyer may ask for copies of this information to use in preparing your case. By the same token, the other side may “discover” this information from you during your legal case and may try to use it against you. All electronically stored information must be handled carefully.

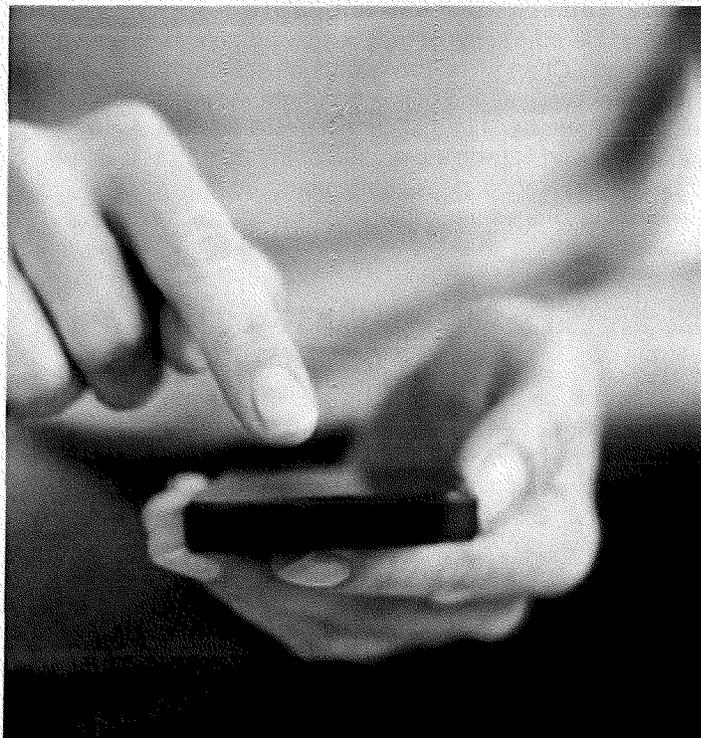
Here are some issues to be aware of as you move through the divorce process:

DO NOT SEND INFLAMMATORY MESSAGES TO YOUR SPOUSE

All of the emails that you send to your spouse will be accessible to his or her lawyer and can easily be used against you in court. Maintain at all times a professional, conciliatory tone. The same is true of text and voice mail messages. It may be emotionally satisfying to fire off an angry email or text message, but the better course is to wait until you calm down to respond. Before you press “send,” ask yourself if this email is something you would want a judge to see in court. If not, don’t send it.

DON'T FORWARD EMAILS FROM YOUR ATTORNEY

Electronic communication has made it easy to share information with others almost instantaneously. While it's great to have such options, passing on communications from your attorney to others can waive your privilege to keep conversations with your attorney private. Don't turn private advice from your lawyer into something the opposing party has a right to see because you send the information on to someone else. Only send attorney-client communications on to others if your attorney says it's okay.



USE SOCIAL NETWORKING SITES CAUTIOUSLY

You should assume that anything you post on a social networking site (Facebook, Twitter, Tumblr) is public information readily available to your spouse. This includes written information and photos. Even though these sites have security features, they are not reliable. Even if your site is secure, others who have access to your site may pass on your information as well. Information on social networking sites may well be subject to the discovery process. Also, once information is posted, it can be difficult or impossible to erase. If you must use these sites, keep your postings as neutral as possible. Do not post information about your case. Remember that the content of dating sites is discoverable just like anything else.

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SECURE YOUR DEVICES AND ACCOUNTS

Your spouse may know or may readily be able to guess your passwords. Change the passwords on your computer, email, smart phone, tablet and online accounts. Use something that you can remember, but that cannot easily be guessed by another person. Using a birthdate or the names of children or pets is not a good idea. Remember, too, that mobile devices like phones and tablets can be used to track your location.

USE INTERNET SEARCH PROGRAMS LIKE GOOGLE WITH CARE

Many people do not realize that Google searches and the like can later be retrieved and used in court. There are cases where witnesses have claimed to not know certain things, but their Google search histories have been used to counter those claims. Do not run Google searches that might later be used to show guilty knowledge. More importantly, always be truthful with your lawyer and when testifying in court.

STORE YOUR EMAILS AND OTHER PERSONAL INFORMATION IN "THE CLOUD".

Information that is stored on a computer owned by you or your spouse can be discovered fairly easily. There may be a higher standard of privacy that applies to information stored on a commercial server, or "in the cloud." To take advantage of this potentially greater privacy, open an email account on Gmail, Yahoo! or a similar online service. Maintain your email on the website and don't download it to your computer using a program like Outlook. Use your online account particularly for matters related to your divorce, especially communications with your lawyer. And for real privacy, use the U.S. mail system.

PRESERVE POTENTIAL EVIDENCE

You must not delete any electronic information that is potentially usable by either party in the divorce. Deleting damaging information may seem like a good idea, but it is not. The penalties for destroying evidence may be quite severe and may even result in your lawyer not being able to present your side of an issue to the judge.

You must also stop your computer devices from automatically deleting potentially useful information. For example, if your email program periodically deletes old messages, you must make it stop until your case is over.

DON'T INSTALL SPYWARE

Again, using spyware to "check up" on your spouse's activities may seem initially like a good idea. The same goes for accessing his or her email accounts and reading them. In truth, these activities are of no use to your lawyer and may subject you to civil and criminal penalties. Evidence readily obtainable by discovery and presentable in court may be excluded if it has been illegally obtained.

USE YOUR OFFICE COMPUTER FOR WORK ONLY

As a general rule, your spouse will be able to discover the contents of any shared computer, that is, any computer that either of you owns personally, whether or not your spouse uses it regularly or even has access to it. If you have a work computer, either at your place of employment or a laptop that you bring home, again as a general rule, its contents may not be discoverable if you have taken steps to protect them. This means not using your work computer for personal uses that might make the contents of the work computer discoverable by the opposing party.

