



Fox Rothschild Podcast

Featuring New Jersey Family Law Attorneys Robert Epstein and Eliana Baer in Princeton

We are talking today about the perils of social media in family law matters with Robert Epstein and Eliana Baer on Fox Rothschild Podcast. Robert and Eliana are attorneys with the firm's New Jersey Family Law Group. They are frequent contributors to the firm's New Jersey Family Legal Blog and helped to develop the firm's New Jersey Divorce app for mobile devices. Robert, Eliana, good morning.

Robert Epstein and Eliana Baer: Good morning. Thank you.

Question: *It's interesting, Robert, that in our culture today, many Americans seem to be largely unable to abandon, or at least use caution, with social media, no matter what the impact may be. And this certainly plays out in family law, correct?*

Robert Epstein: That's absolutely right. Our listeners may have heard about the massive case involving dozens of New York firefighters and police officers who are charged with defrauding the Social Security disability system. They allegedly did so by faking the nature of their own conditions in order to procure government benefits. Key pieces of evidence were collected by the Manhattan District Attorney's Office that included Facebook postings from the accused detailing activities that defy the basis for the disability claims. For example, there was an officer riding a scooter, one who was riding a motorcycle, and others working jobs as helicopter pilots and martial arts instructors.

Eliana Baer: That's right. The impulse to always live in the moment and let everyone in our universe know what we are doing at all times can have disastrous consequences, as these former officers and firefighters may soon find out.

Question: *And Eliana, you have blogged before about the use of social media postings on Facebook, Twitter and the like as potential evidence in family law matters.*

Eliana Baer: Absolutely. It's incredible that, no matter the risks of the use of social media in a divorce matter, whether the issues are that of custody, support or something else, clients often seem either unwilling or unable to help themselves. Before a party knows it, it's in a motion that's been filed and attached to the litigant's certification are Facebook postings that are being used against you by the other party as evidence.

Robert Epstein: Look, maybe it was that picture of you driving that new Mercedes that you just bought that shows you certainly don't need that alimony reduction that you have filed for. Maybe it was the indication on your profile that you are working at a company such as "ABC, Inc." when, in your divorce litigation, you say that you're unemployed or a stay-at-home parent. Maybe you posted a message to the other party that even impacts upon your claim of domestic violence. It can really be any number of things and, yet, litigants can't stop themselves.

Question: Eliana, tell our listeners more about the risk.

Eliana Baer: As lawyers, we often argue that social media postings should be inadmissible hearsay and should not be considered, especially when attached to a litigant's certification on a motion. This is especially the case when the litigant attaching the post got it from someone else or third hand. In other words, litigants often think that blocking a spouse from viewing his or her profile will stop that spouse from procuring a questionable post from any one of the other 500 "friends" you may be connected to.

Robert Epstein: Family judges, however, often find such evidence is very compelling and often times rely on it despite the evidentiary issues that may otherwise exist. Worse, as certifications in family matters are largely "he said, she said," the other litigant has a chance to sway the judge with what might be complete speculation. The picture of you holding that bottle of alcohol? Suddenly your former spouse is accusing you of being an alcoholic. The posting by you about gun rights or gun control? The other party may accuse you of expressing reckless judgment. The picture of you standing with your new significant other and the children at issue in a custody dispute? Now suddenly you're being accused of improperly allowing the new significant other into the lives of the children. Really, the possibilities are endless, but incredibly, litigants are unable to exert self-control. In our family law world that's often "no holds barred," where there's often a "wild west mentality," a greater degree of caution must be applied.

Question: Eliana, are social media posting an addiction? Why are parties still largely unable to stop themselves?

Eliana Baer: Actually, a recent study at Harvard University found that posting information about ourselves online relates to the same part of the brain that's connected with a pleasure sensation – similar to eating food, receiving money or, you guessed it, even having sex.

Robert Epstein: I believe the article called it "self-disclosure," which is considered to be a similar form of rewarding behavior. This is why, no matter how many times we may tell a client not to post anything on Facebook or Twitter or whatever social media it may be, and no matter how innocuous the message may seem, inevitably it's going to happen and, inevitably, we're only going to find out about it afterwards.



***Question:** So Robert, what's the lesson, then, for family law litigants?*

Robert Epstein: Be wary of social media. Whether that lesson has been learned, however, is another story. At this point, maybe social media has just become such a big part of our lives that modifying how we use it is like asking someone to modify how he or she breathes.

Eliana Baer: It certainly seems that way sometimes. Maybe we should just hand out old flip phones to our clients during cases and confiscate smart phones, computers and iPads until the case is over. Something tells me, though, that litigants will still find a way.

***Narrator:** Well, thank you Robert and Eliana. Listeners, to confidentially discuss how past social media postings might impact your family law dispute, please contact Robert Epstein in Roseland, New Jersey at 973.994.7526 or Eliana Baer in Princeton at 609.895.3344.*

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