Chris Griswold,P.C.

News From the Firm October 2014

Message From Chris….

Texting. We all do it…. *What did we do without it*? Outside of the car wrecks and other casualties that sometimes unfortunately result from irresponsible texting, taken in its best light and done responsibly, texting is probably still one of the handiest inventions in recent times for business people. From a legal perspective, however, there are times when, shockingly, **as to employees**, texting is preferable to emailing and other venues when discussing certain sensitive, business related matters which might otherwise be discoverable later on during litigation (in addition to the fact that texting is more spontaneous and less restrictive than emailing and other venues). Let's talk about it below…. (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

The Virtues of Texting

Although electronic discovery in both State and Federal Courts now extends well into electronic transmissions of all types (including social media venues which are within the public domain), if you're an employee of a company which is involved (or soon to be involved) in litigation, given employers' universal duties to defend and indemnify their employees, the texts made on an ***employee's personal smartphone*** (not the employee's issued, company owned smartphone) with any other company employees (including any other intra-company communications of any nature conducted through such texts), generally speaking, ***require additional effort on the part of any other litigant to such lawsuit to obtain during the discovery phase of litigation*** since the device is owned personally by such employee, not corporately owned by the business entity involved in such lawsuit, and even if obtained, still require the company's indemnification of such employee. ***Note****: An exception to the indemnification rule set forth above is something called an "ultra vires act" exclusion whereby the employee acts well outside the course and scope of its employment (something called an* ***ultra vires*** *act on the part of such employee) thereby negating the employer's duty to indemnify such employee.*

So, if you're an employee using your own personal smartphone to sometimes conduct your company's business affairs, the texts you share on your personally owned smartphone with other company persons on their personally owned smartphones (except with the business owners themselves) are usually just that much harder to obtain during the discovery process. The same thing could ostensibly apply to emails sent on the employee's personally owned smartphone, however, unlike texting (where only phones are usually involved) if the emails are unintentionally sent to other company owned computers and/or other devices (as is usually the case since smartphones are usually set up to send/receive email through such corporate owned, host computers), the protective effect I mention above would be lost once such emails were received on such corporate owned computers and/or devices.

Lastly, remember that texting can be helpful in other ways too for everyone (whether or not you're an employee). ***How***? By texting, you can keep an excellent record of events come litigation time - reconstructing timelines, recounting various positions taken by different parties, etc… becomes much easier when looking back on old texts.

What My Clients Are Saying

"I have been extremely pleased with the legal services provided by Chris. He is an expert on real estate issues; devotes immediate attention to our needs and follows through with all required action. I look forward to a continuing relationship with Chris."

Harrison Levy / Chairman / Newmark Grubb Levy Strange Beffort / Oklahoma City, Oklahoma

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