

By Barry Finkel

In the age of digital communications, there now are three sides to every divorce story: his, hers, and what's being stored by the phone company.



Digital communications, like e-mail, instant messaging and increasing text messaging using a wireless phone, has opened new lines of communication between people. This includes couples facing [divorce](#) .

While e-mail and IM are commonly used, most should be wary of texting. Why? Many people who text often will message their spouse, friends or even a lover with whom they're having an affair, revealing intentions, intimate details and negotiation strategies.

Such conversations can become evidence in the mediation or courtroom setting. Yet, hitting "Delete" isn't enough to erase the conversation. The phone company often retains records of text conversations for up to 30 days. In a divorce scenario, those records can be requested or subpoenaed into evidence.

Texts can be the forgotten smoking gun. Imagine one party's surprise when they thought they'd deleted that message to their lover or made a damaging statement, and it shows up as evidence in court. It can cause irreparable damage to a case.

Case law is evolving in the area of digital communications. An authentic text message carries much the same evidentiary weight before a judge or mediator as a letter or email. Produced in court, it can burden or benefit one side's case.

Those who intend to text message any settlement details to a spouse, it's imperative to clear the message with your divorce attorney first. If suspicions arise that a spouse has been texting a lover, suggest the attorney request all text messages from opposing counsel or request a subpoena from a judge if texts have been deleted from the wireless phone.

Texts also can be used favorably, leaving a "paper" trail of how one party was trying to encourage settlement or presenting reasonable terms that would reduce fees by keeping the divorce out of the courtroom because it shows back-and-forth communications in an effort to work things out or come to an agreement.

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