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FOS NEWS - *Our clients come first*

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Editor: Diane Slomowitz

DON'T STEP ON EMPLOYEES' SOCIAL MEDIA PRIVACY RIGHTS

By Diane Slomowitz

A disgruntled employee badmouths your company on Facebook. You can't access his "private" postings, since he won't accept your "friend" request.

Frustrated, you want to make all employees give their personal social media passwords to HR.

Don't do it.

You may violate a Wisconsin law limiting employers' rights to employee (and applicant) personal social media accounts.

Under the law, an employer cannot request or require that an employee (or applicant), as a condition of employment, give the employer access to or allow observation of the employee's account; or disclose password, user name or other access information.

An employer also cannot fire or discriminate against an employee (or refuse to hire an applicant) for refusing to provide such access; or for objecting to a potential legal violation.

In addition to $1,000 forfeitures, violations may yield discrimination or retaliation claims, and their damage and other remedies.

The law does excuse employer network monitoring systems' "inadverten(t)" accessing of accounts.

It also allows limited employer access to protect the employer's interests. An employer, for example, may require that an employee disclose a personal email address.

An employer may also require an employee's access information for a computer, cell phone or similar device, which the employer paid for or supplied.

An employer may further require access to an account or service which an employee obtained because of his employment and which he uses for the employer's business.

Where an employer reasonably believes that an employee,

Continued on page 3

LAW DOGS ON THE LOOSE!

FOS was a-panting and a-howling at its recent Dog Day.

FOS' furry friends abounded, and bounded, during the festivities, which included hallway racing, water spillage, treat grabbing and inappropriate (animal) sniffing.

Pictured are Lizzie (Al Young), Fergie (Matt O'Neill), Spunky (Diane Slomowitz), Mattie and Tyson (Bill Soderstrom), and Nellie (Mike Hanrahan).

KOMEN WALK/RUN TO SALUTE KAREN FOX

On Sunday, September 27, 2015, FOS will participate in its fourth annual Milwaukee's Susan G. Komen Race for the Cure walk/run.

FOS' team, "The Karen Fox Trotters," honors the memory of our dear Karen Fox.

Team registration deadline is noon on Friday, September 4, 2015. To sign up or contribute, please go to www.KomenSoutheastWI.org. For more information, call Team Captain Mike Koutnik at 414-273-3939.

FOS News—*Our clients come first*

TO TESTIFY OR NOT TO TESTIFY: NOT REALLY A QUESTION WHEN IT COMES TO GRAND JURIES

By Jacob A. Manian

True Perry Mason moments are rare in the criminal justice system -- the moment where the lawyer extracts a shocking and unexpected confession from a witness on the stand in front of the jury.

More commonly, a witness's "incriminating" testimony results from incorrect, incomplete or inconsistent statements about prior events or circumstances, sometimes years after the events or circumstances occurred.

According to the Bureau of Justice Statistics, between October, 2009 and September, 2010, U.S. Attorneys prosecuted 162,000 federal criminal cases. Of those, grand juries declined to return an indictment in only 11.

Given these numbers, would it ever make sense for a target or subject of a federal investigation to testify before a grand jury?

Unlikely. The better course, almost always, is to avoid testifying if at all possible and claim the Fifth Amendment privilege against compulsory self-incrimination whenever appropriate.

A "target" is typically a person or entity against whom the prosecutor has substantial evidence linking to the commission of a crime.

A "subject," on the other hand, is much more slippery to define. Put broadly, a subject is a person or entity whose conduct is within the scope of a federal investigation.

Prosecutors control the grand jury proceeding. They decide what evidence and testimony to present to a grand jury.

If you are called to appear before a grand jury, your counsel will not be allowed to be present with you during your testimony.

That means that no one will be there on your behalf to object to improper, confusing or misleading questions, or to provide context or clarification regarding the subject matter of the investigation. Not even to help quell your anxiety.

And innocent mistakes resulting from that anxiety could hurt you even when you have done nothing wrong and have nothing to hide.

For example, you could innocently misremember certain facts or details; this could create the potential for a later charge against you of perjury and obstruction of justice. At a minimum, innocent mis-

Continued on page 3

FOX 2015 LEADER

FOS founder and senior shareholder **William Fox** was honored on March 18, 2015 as a 2015 Leader in the Law by the *Wisconsin Law Journal*.

The *Wisconsin Law Journal* conducted a video interview with Bill, and a print of Bill appeared in a special Leaders in the Law edition of the publication.

Both can be found on the FOS website at: www.foslaw.com/news-views/leaders-in-the-law-2015.

FOS ON THE MOVE

FOS shareholder **Shannon Allen** has been elected as Vice-President, and to a second three-year term on the Board, of the Milwaukee Bar Association.

FOS shareholder **Diane Slomowitz** has been approved as a member of the National Association of Professional Women.

FOS associate **Jacob Manian** participated in the Boy Scouts' annual Law Merit Badge Clinic on April 18, 2015.

In addition to presiding over a mock jury trial, Jake educated Clinic attendees about consumer protection laws. This is Jake's second year at the Clinic, which helps scouts earn law merit badges.

FOS SUPPORTS BOYS & GIRLS CLUB

FOS shareholder **Shannon Allen** was a sponsor of the 14th Annual Lawyers for Boys & Girls Clubs held on June 4, 2015 at Milwaukee's Public Market.

In addition to Shannon, other FOS attorneys attended the event, including FOS shareholder, Club Board member, and Club MVP honoree **William Fox**.

SPECIAL DELIVERY! - ACCOMMODATION FOR PREGNANT EMPLOYEES

By Michael G. Koutnik

Employers should take a "pregnant pause" to review their employee leave policies, in light of a recent U.S. Supreme Court decision under the federal Pregnancy Discrimination Act.

That case involved Peggy Young, a delivery driver for UPS. UPS requires its drivers to be able to lift up to 70 pounds.

Upon becoming pregnant, Young's doctor told her that she should not lift more than 20 pounds. Because she could not perform a necessary work requirement, and had previously used all of her family/medical leave, UPS put Young on an unpaid leave.

After giving birth and returning to work, Young sued the company, arguing that UPS's refusal to accommodate her restrictions amounted to discrimination under the Pregnancy Discrimination Act.

For support, Young pointed to other employees with similar limitations—not caused by pregnancy—who were accommodated.

In response, UPS defended its refusal to accommodate Young by pointing to its employment policies. Basically, a UPS employee was only eligible for accommodation, such as light-duty work, if the employee was injured on the job or had a disability covered by the Americans with Disabilities Act.

On March 25, the Supreme Court held that the Pregnancy Discrimination Act requires that, if employees with pregnancy-related work limitations are treated differently than employees with similar, but non-pregnancy-related work limitations, the company must be able to prove legitimate reasons for the differences.

Even if the company is able to prove legitimate reasons, those reasons must not be "pretextual," or simply cover for an activity that would otherwise violate the law.

In Young's case, the Supreme Court sent the case back to the Fourth Circuit to determine whether UPS's rationale for the different treatment was pretextual.

In light of this decision, employers should review their leave policies.

If the policies provide for accommodation for some employees, but those accommodations are not available to, or different from, the accommodations available to pregnant employees, the employer should consider modifying the policy to provide the same accommodation.

Employers should also ensure that their decision makers all follow the same procedure, so that requests for accommodation are handled consistently.

FOS can help you create and/or maintain an effective leave policy which complies with the new Supreme Court decision.

Don't Step On Employees' Social Media

Continued from page 1

without authorization, has transferred the employer's confidential/financial information to the employee's personal internet account, the employer may require access/observation (but not passwords, user names, etc.) for that account.

The employer may take similar steps if it reasonably believes the employee has engaged in work-related misconduct related to the account.

An employer, of course, can legally view public social media information, and legally restrict employee access to internet sites through employer equipment/networks.

The law also applies to lessors and educational institutions, but not regulated financial institutions.

Social media is here to stay. Don't step over its privacy line.

Work with FOS to create a legal, well-defined, and easily implemented social media policy.

To Testify or Not to Testify

Continued from page 2

takes in your recollection of facts before the grand jury could be used against you if the matter ever goes to trial.

Given the above statistics and the circumstances of grand jury proceedings, if you even think you may be a target or subject of a federal investigation, you should immediately contact your FOS attorney.

Knowledge, after all, is power.

Maybe you don't have to testify, but can provide information another way.

Or maybe you can obtain immunity for your testimony.

Your FOS attorney can walk through the process with you.

And, if you do have to testify, your FOS attorney will help you prepare, and determine when to claim your Fifth Amendment privilege against compulsory self-incrimination.

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IN THIS ISSUE

BUSINESSES CAN BE SCAMMED TOO

By Michael J. Hanrahan

Recently, a client contacted me and asked whether his company should pay an invoice that appeared to be from the U.S. Patent and Trademark Office (USPTO).

FOS had recently submitted a trademark application for this client.

The top of the invoice stated "Important Notification Regarding Your Federal Trademark." The invoice was from the "Trademark Compliance Office" and stated that $385.00 was "due now" for a "processing fee" and "intellectual property rights recordation."

The invoice referred to the client's specific trademark information. Given the specific information and references to the USPTO, the invoice appeared to come from a government office.

However, the invoice was a scam.

Once I read the small print on the invoice, it was apparent that the "Trademark Compliance Office" had nothing to do with any government agency, and the fee was for useless services.

This incident is an example of a growing trend. Several legal publications and law firm websites have begun to report similar incidents.

Scammers create misleading notices and invoices which appear to come from a government agency and attempt to gain payments for useless services.

A client who has retained FOS or another law firm to handle intellectual property matters (patents, trademarks and copyrights) should expect to hear from the law firm regarding filing fees, renewal fees or other fees related to the maintenance of the intellectual property.

Thus, any invoices sent directly to a business, and not the filing law firm, are automatically suspect. If you get one, send it to your FOS attorney for review.

Intellectual property is not the only business asset subject to these types of scams. Businesses should be on guard against similar scams unrelated to intellectual property. For example, scammers may try similar tricks as to corporate registrations, government licenses and tax matters.

Bottom line: All invoices seeking fees for government entities should be closely examined. If you have any question, contact your FOS attorneys.