

Post, Tag, Litigate: Leveraging Social Media Evidence in Divorce and Custody Cases in 2025

**2025 AAML Ohio Chapter Harold R. Kemp Annual Family Law Symposium
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Why Social Media Matters

- Parents & spouses overshare online
- Posts can prove:
 - Cohabitation / new relationships
 - Hidden income or lifestyle
 - Parenting concerns / judgment issues
- Judges are increasingly receptive to this evidence

Relevance in Family Law Matters

- Custody & parenting time disputes
- Spousal & child support (financial lifestyle proof)
- Domestic violence / threats
- Credibility & impeachment

Authentication (Evid.R. 901)

- Witness testimony ('I saw it on their profile')
- Metadata & screenshots (date, account, context)
- Admissions (discovery or cross-exam)
- Pro Tip: Capture full-page screenshots with visible profile info & timestamps

Hearsay Issues (Evid.R. 801)

- Party's own posts = not hearsay (801(D)(2))
- Third-party comments = potential hearsay
- Possible exceptions:
 - Effect on listener
 - Excited utterance
 - Business records (pages)

Practice Tips

- Discovery Requests: ask for data downloads
- Subpoenas: rare compliance, but worth the effort
- Leverage: great for settlement negotiations
- Strategy: best used for impeachment on cross

Key Takeaways

- Preserve early (before content disappears)
- Authenticate carefully
- Think about hearsay before trial
- Use strategically—don't overplay weak evidence

Closing

- Bottom line: Social media evidence is powerful in Ohio family law cases, but only if you get it in the right way.

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ARTICLE VIII. HEARSAY.

RULE 801. Definitions.

The following definitions apply under this article:

(A) Statement

A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(B) Declarant

A "declarant" is a person who makes a statement.

(C) Hearsay

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the statement.

(D) Statements that are not hearsay

A statement is not hearsay if:

(1) Prior statement by witness

The declarant testifies at trial or hearing and is subject to examination concerning the statement, and the statement is (a) inconsistent with declarant's testimony, and was given under oath subject to examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent

The statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or (b) a statement of which the party has manifested an adoption or belief in its truth, or (c) a statement by a person authorized by the party to

make a statement concerning the subject, or (d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

Effective Date: July 1, 1980

Amended: July 1, 2007; July 1, 2019; July 1, 2022

Staff Note (July 1, 2019 Amendment)

Evid.R. 801(D)(1)

Since its inception, Evid.R. 801(D)(1)(a) has required that, for a prior sworn statement of a witness that was given at a prior trial, hearing or proceeding to be offered for its truth, the statement must have been subject to cross-examination at the time it was made. Thus, for example, as written, a police officer's grand jury testimony, if inconsistent with the officer's testimony at trial and exculpatory of the criminal defendant, could only be used by the defendant to impeach and not for the truth of the matter asserted – because the prosecution examined the witness in the grand jury but did not *cross-examine* the witness in the grand jury. Similarly, in a civil case, a defendant who desires to impeach a plaintiff's witness with prior testimony from a prior ex parte hearing at which the witness was subject to examination, but not cross-examination, by the plaintiff, is, under the letter of the Rule, not entitled to have that statement offered for its truth. Such a literal reading of the rule defeats its purpose – to allow a party to use a prior inconsistent statement for its truth so long as the opposing party had the opportunity to question that witness during the prior testimony, regardless of whether that opportunity presented itself on cross-, as opposed to direct, examination. The proposed amendment removes the requirement that the prior examination be a *cross-examination*. *Accord, State v. York*, 8th Dist. Cuyahoga No. 49952 1985 WL 8502, (allowing prior inconsistent statement of police officer given on direct examination at preliminary hearing, to be offered by defense at trial as substantive evidence).

Staff Note (July 1, 2022 Amendment)

Evid.R. 801(C)

For clarity purposes, Ohio Evid.R. 801(C) is being amended with the addition of the words “in the statement” at the end of the standard hearsay definition.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION.

RULE 901. Requirement of Authentication or Identification.

(A) General provision

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(B) Illustrations

By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge

Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting

Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness

Comparison by the trier of fact or by expert witness with specimens which have been authenticated.

(4) Distinctive characteristics and the like

Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification

Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations

Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or

business, if (a) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (b) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports

Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation

Evidence that a document or data compilation, in any form, (a) is in such condition as to create no suspicion concerning its authenticity, (b) was in a place where it, if authentic, would likely be, and (c) has been in existence twenty years or more at the time it is offered.

(9) Process or system

Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule

Any method of authentication or identification provided by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio or by other rules prescribed by the Supreme Court.

Effective Date: July 1, 1980