

## SOCIAL MEDIA ALERT – FACEBOOK USED AGAINST RUSH CANDIDATES

In the ever growing age of social media, the challenges faced by fraternal organizations are not always as apparent as one might think. Recently, MSNBC reported (<http://on.msnbc.com/fiqs2y>) that numerous sororities in the south have been hit by a rash of what can most accurately be called cyber stalking. In these incidents, an individual passing as a sorority member by using a fake Facebook account complete with photos and names of current sorority members, contacts pledges and begins to inquire about the pledges' background under the guise of rush related activities. These questions begin innocently enough, and continue via Facebook over a period of days or weeks until the imposter begins to request more personal information and photographs. Ultimately these requests turn to an explicit nature, in which the pledge is asked to pose in various states of undress. If a pledge protests, the imposter continues to push, suggesting that failure to comply with the requests will result in the pledge's disqualification from the rush process. Scared of losing out on the chance to be part of the sorority, numerous pledges have relented to the requests and have been taken advantage of by this reprehensible activity. Once initial embarrassing information or photographs are provided, the imposter begins to blackmail the subjects seeking even more explicit material with threats of publishing the information to the pledge's friends and family.

While all can agree that this type of activity is abhorrent and one that no fraternal organization would ever knowingly allow to occur, there are ways that you can help ensure that your chapters are not victims. By instituting an official social media policy you provide your chapters with an important tool in fighting these attacks and also gain an opportunity

to avoid legal exposure in a wide range of areas. A comprehensive social media policy can dictate who may speak on behalf of your organization and provide pledges with a reference point if conduct ever becomes a concern. You may also wish to set forth whether rush related activities may occur via social media at all, and if so, provides a description of those activities, and designate certain identified individuals who are authorized to conduct rush activities. By providing this policy to pledges and current members, you give each of your chapters an important tool to protect their members. Additional guidance as to the nature of content and the ramifications of sharing private content on public social media pages can also be very valuable.

Providing training at the beginning of each semester provides an additional level of protection that serves to reinforce your policy and protect your members. Not only can policies and training help members avoid attacks such as those referenced above, they also can provide an important front line in limiting your organizations overall exposure to litigation. If your organization does not currently have a Social Media policy, now is the time to consider implementing one. Counsel experienced in the area can provide you with ideas on how to protect your chapters and provide valuable information to your members.

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## UPDATE ON CLS V. MARTINEZ

The Christian Legal Society case which earlier resulted in a 5 to 4 decision by the United States Supreme Court<sup>1</sup>, upholding the denial of recognition to CLS by Hastings College of Law was returned to the United States 9<sup>th</sup> Circuit Court of Appeals on the question of whether or not Hastings' policy requiring organizations to admit "all-comers," had been selectively enforced but added the limitation that the issue need only be considered by the lower court "if, and to the extent, it is preserved." The Ninth Circuit, having considered that question, ruled in mid November that the question had not been preserved.

CLS had presented a single issue when it initially appealed their case to the Court of Appeals. That was whether or not a public law school could, consistent with the Constitution, deny a religious student group the benefit of recognition because membership and officer status was limited based on religious belief. The 9<sup>th</sup> Circuit found that single issue did not

encompass the question of selective enforcement of the "all-comers" policy and therefore determined that it had no obligation to give any further consideration to the case.

While CLS could attempt to appeal again to the United States Supreme Court, it is unlikely that the court would consider this dispute again. Under these circumstances, it appears that the CLS case is at an end and the potentially troubling decision of the U.S. Supreme Court will stand as is.

• Timothy M. Burke

1 *Christian Legal Soc'y of the Univ. of Cal. v. Martinez* 130 S. Ct. 2971 (2010)

2 *Christian Legal Soc'y of the Univ. of Cal. v. Woo*, Ninth Circuit Court of Appeals, (9<sup>th</sup> Cir. Nov. 17, 2010) 2010 U.S. App. LEXIS 23727