



See id. at ¶ 7. *Upon seeing the Court's order, the undersigned counsel immediately deleted the Facebook post.* See id. at ¶ 10.

**Local Rule 83.03(a)(1)**

Undersigned counsel was aware that our Local Rules do not allow for pictures or videos to be taken during a hearing or a trial. After three years as a law clerk in the Middle District of Tennessee (2002-2005) and having practiced in Nashville since, he has seen dozens of pictures taken inside the Courthouse and posted on Facebook by lawyers and non-lawyers. See id. at ¶ 13. He did not realize that Local Rule 83.03(a)(1) prohibits people from taking any pictures inside the Courthouse. See id. at ¶ 12-13.

This understanding is not unfounded. Rule 83.03(a)(1) specifically notes that no photography will be permitted “on the floors of the courtroom occupied by the Court.” The undersigned reads the word “occupied” to mean “being used by.” Counsel interprets that to mean that no photography is allowed to be taken when Court is in session. At the time the picture was taken, neither the jury nor the Judge were in the Courtroom and Court was not in session. In addition, it appears as though the intent behind Local Rule 83 is to insulate “Judicial Proceedings” from photography or recordings.<sup>2</sup> As judicial proceedings were not in session/the courtroom was not occupied by the Court, counsel did not believe that he was violating any rule (as is also evidenced by the fact that the picture was privately made available for hundreds of lawyer “Facebook Friends” to see).

**Regardless, based on this Court's Order, the undersigned will assume that the Court saw the photograph (which clearly shows no jurors or anyone else in the Courtroom) and that this Court finds that no photography can be taken inside the Courtroom at any time, whether**

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<sup>2</sup> This is consistent with Rule 53 of the Federal Rules of Criminal Procedure, which does not allow for the taking of photographs in the courtroom “during judicial proceedings.”

**Court is in session or not. Counsel apologizes and will not take any photographs inside the Courthouse at any time in the future.**

**Local Rule 83.04(a)(1)**

Local Rule 83.04(a)(1) states that a “lawyer who is participating in ... litigation of a matter ... must not make any extrajudicial statement (other than a quotation from or reference to public records) that the lawyer knows or reasonably should know will be disseminated by public communications and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in this matter, including especially that will interfere with a fair trial.”

The Facebook post did not violate Rule 83.04(a)(1) for five separate and distinct reasons. First, the Facebook post was private, limited to “Friends Only,” and was not available for jurors or the general public to see. Second, the post only referenced a handful of closing argument topics that the jury had already heard, giving friends an overview of a closing argument that had taken place earlier in the day. Third, anyone could have sat in on Plaintiff’s closing argument and publicly reported the themes use and arguments made without repercussion. Fourth, this Court instructed the jury that certain things are not evidence and may not be considered, and that these things include statements, arguments, and questions by lawyers. Fifth, there is no likelihood (let alone a *substantial likelihood* that is required pursuant to the Local Rule) that the post would *materially prejudice* this matter or interfere with a fair trial.

The undersigned has learned his lesson. Going from one of the greatest highs in his legal career to one of the greatest lows in his legal career only hours later is sufficient punishment. He assures the Court that he will never take any pictures inside the Courthouse whether Court is in session or not.

Respectfully submitted,

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**Certificate of Service**

This is to certify that a copy of the foregoing has been e-filed with this Court on May 13, 2024, and delivered to:

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