

Chicago Daily Law Bulletin®

Volume 160, No. 149

How will online parody play in Peoria?

Can you be lawfully arrested and prosecuted under Illinois' false personation statute for setting up a parody Twitter account to transmit off-color tweets in the name of a public official?

A lawsuit filed by a Peoria man against the city and its mayor addresses that very question.

In Illinois, it is a crime — punishable by up to one year in jail and a \$2,500 fine — to impersonate via the Internet another person, be it a police officer, firefighter, veteran, public official or (thanks to a 2012 amendment) even your neighbor — if you assume another's identity with the "intent to intimidate, threaten, injure, defraud, or to obtain a benefit from another."

Illinois' false personation statute, 720 ILCS 5/17-2, will likely be put to the test in *Daniel v. City of Peoria*.

The person at the center of this controversy is Jonathan Daniel, a 29-year-old Peoria native. For 10 days in March under a Twitter account named @Peoriamayor, Daniel posted crude and vulgar tweets about sex, drugs and alcohol from an account that was made to look like it was from the real Peoria mayor, using a picture of Mayor Jim Ardis as the account's avatar.

Three days after creating the account, Daniel had the account labeled as a parody account.

Unfortunately for Daniel, the actual mayor of Peoria did not appreciate his prank. According to the federal lawsuit Daniel filed after Ardis and other Peoria city

officials discovered the true identity behind @Peoriamayor, the Peoria police, at the mayor's direction, raided Daniel's home, seized his computers and other electronic devices and eventually had Daniel arrested at his job for falsely impersonating a public official.

Twitter suspended the account on March 20.

On June 11, Daniel, with assistance from the American Civil Liberties Union of Illinois, filed a federal lawsuit against the mayor and other city officials, claiming an abuse of power and violation of his First and 14th Amendment rights.

Although the city decided not to prosecute Daniel under the statute, the mayor defended his actions in a statement claiming that Daniel's "filthy attacks" using the mayor's official picture, the city logo and the mayor's contact information constituted identity theft, resulting in harm to the city and threats against his family.

If you or your clients decide to engage in online satire, it is critical to know what constitutes permissible and impermissible conduct.

Whether Ardis was justified in aggressively pursuing the creator of @Peoriamayor, or whether he violated a fellow citizen's civil rights, will be decided by a federal judge in Peoria. The Daniel case highlights the risks associated with online pranks and drives home the fact that one person's joke may be another's slander or



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false personation.

Online impersonations that are made with the intent to "threaten, injure, defraud or to obtain a benefit from another" are actionable under Illinois law. These terms are not defined in the statute and, as the Daniel case shows, can be open to interpretation.

Although satire and parody are protected forms of expression, it would be wise to consider the following factors to

help ensure that you or your client's online parodies don't become a federal case:

Avatar — Avoid using an avatar that is the exact likeness or logo of the person or organization you are parodying. For example, Twitter's policy requires that the avatar not be the exact trademark or logo of the subject you are seeking to parody.

Account name — Avoid account names that are the exact name of the person or organization you want to parody. This can be accomplished by inserting terms in the account name such as "not," "fake" or "fan."

Alternatively, you can use fictitious names that poke fun at real names, such as @ElBloomberg, which was the parody account created to mock the stilted Spanish spoken by New York City's former mayor Michael Bloomberg.

Bio — Put a disclaimer in your bio to distinguish it from a regular account. For example, statements like "This is a parody," "This is a fan page" or "This account is not affiliated with ..." may not be funny, but they may go a long way in avoiding legal trouble from an offended target.

Tone — Experts suggest that to buttress an argument that online comments constitute a parody, you should use an irreverent tone throughout the posting. It can be helpful to include unbelievable items, ridiculous names and over-the-top quotes.

Parody accounts of public figures are plentiful on Twitter, as celebrities and public officials appear to be fair game when it comes to judgmental comments and satiric posts. No doubt the use of Twitter and other online forums will continue to blur the line between truth and parody.

But if you or your clients decide to engage in online satire, it is critical to know what constitutes permissible and impermissible conduct. The Daniels case may well help to further define the line between the two.