

## JUDICIAL ETHICS AND SOCIAL MEDIA

Michael Crowell  
UNC School of Government  
July 2015

There has been astounding growth of electronic social networks in the recent years. Huge numbers of people have joined Facebook, LinkedIn, Twitter or Instagram or other on-line social networks as a means to notify others of news in their lives, to opine about current events, to keep up with what their friends and relatives and acquaintances are doing, and to generally stay in touch with other people with whom they have something in common. Typically a social network allows someone to post a profile and photographs, videos, music, etc., and invite others to become “friends” or “fans.” Some information may be shared with the whole world; other parts may be restricted to a select, small group.

Not surprisingly, judges have been slower than the general public to embrace social media. Still, an increasing number of judges are using such sites. As far back as 2012 a [survey](#) reported that nearly half of judges surveyed had a social media profile site, Facebook being the most popular by far. Undoubtedly the numbers are higher today.

For some time state bar regulatory agencies have been addressing the effect of electronic communication on traditional ethical rules for lawyers — the extent to which law firm websites constitute advertising, whether e-mail inquiries establish an attorney/client relationship, and so on. Likewise, judges hearing cases have faced new legal issues involving electronic discovery and searches of computers. Judges have become all too familiar also with problems of jurors communicating with the outside world and conducting their own research via their smart phones and other devices.

Only recently, though, has much guidance been provided to judges about the ethics of their own social networking. The purpose of this paper is to summarize the known ethics opinions and court decisions concerning judges’ use of social media. If you know of other opinions and decisions, please tell us.

### **Judges’ use of social networks**

For the most part judges use social media just like everyone else. They post news to share with friends, list their interests, opine about books and movies, put up photographs from their trips, and so on. They may be inclined to comment about current events, perhaps tweeting a few words about a news story or retweeting someone else’s commentary. And, like everyone else

on social media, they will read and view the news, comments, photographs, etc., of people who interest them.

Some judges incorporate social networks directly into their judicial activity. A judge may search Facebook and other sites to check on what lawyers and parties are up to, and some judges have been known to require juveniles or probationers to friend the judge or another official on Facebook so the judge can monitor their activities.

Judges who are subject to election, as in North Carolina, need to have a social media component to their campaign. They need a Facebook page and have to try to connect with voters by Twitter and Instagram and any other means they can find to get their message out.

Although it is now a bit dated, this [article](#) from Slate is a good overview of judges' use of social media and some of the challenges it presents. For a helpful, more up-to-date judge's perspective on the issues, see the recent "[To Follow or not to Follow: The Brave New World of Social Media](#)" in Volume 53, No. 4 of *The Judges' Journal* (2014) by North Carolina supreme court justice Barbara Jackson. There are also two older but useful articles on social networking in American Judicature Society publications. One is "Judges and Social Networks" in the [Spring 2010 issue](#) of the *Judicial Conduct Reporter*. The other is "The Too Friendly Judge? Social Networks and the Bench," in *Judicature* magazine, Vol. 93, p. 236 (May-June 2010), but it is not online. Both articles were written by Cynthia Gray of the American Judicature Society; now that the society has gone out of business Ms. Gray has moved to the [Center for Judicial Ethics](#) at the National Center for State Courts. On that site she maintains the most up-to-date list of judicial ethics opinions and disciplinary actions related to social media, including private discipline not discussed below. Her work includes a weekly [blog](#) on ethics and discipline.

Social media is here, it's not going away, and judges will use it. Although some ethics opinions seem to want to steer judges away from electronic social networks altogether, that is no longer a realistic alternative. It is not judges' use of social media by itself that raises ethical issues, it is the content they post and who they communicate with.

## **Potential ethical issues**

Participation in an electronic social network can implicate any number of provisions of the North Carolina Code of Judicial Conduct. These are the ones that are most likely:

*CANON 1: A judge should uphold the integrity and independence of the judiciary. — Problems may arise from undignified photographs, comments posted on the judge's social network page, or undignified photographs, etc. of the judge posted by someone else on their page.*

*CANON 2: A judge should avoid impropriety in all the judge's activities.*

*A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. — Problems may arise from undignified photographs, comments.*

*B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment. — An appearance of influence may be created by individuals or organizations being listed as "friends" or "likes" or "fans" or "interests" of the judge or otherwise linked. There also are risks with friends posting comments on the judge's page expressing views on legal or political issues, or the judge being identified as a friend on the page of someone else who is expressing a view about a case or legal or political issue.*

*B, cont. The judge should not lend the prestige of the judge's office to advance the private interests of others . . . — Problems may arise from entries on the judge's page indicating that the judge "likes" or is a "fan" of a particular store, restaurant, organization, etc., or including that particular entity in the judge's "interests," or the judge appearing as a friend in a network created for the entity. The same issues may come from including a link to a store, restaurant, organization, etc., on the judge's page.*

*B, cont. . . . nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge. — Problems may arise from identifying a person or organization as a friend of the judge, including a link to a person or organization on the judge's page, or an indication on the judge's page that the judge "likes" or is a "fan" of a person or organization, or including that person in the judge's "interests."*

*CANON 3: A judge should perform the duties of the judge's office impartially and diligently.*

*A. Adjudicative responsibilities.*

*(2) A judge should maintain order and decorum in proceedings before the judge. — A problem may arise when a judge uses a social networking site during court or posts comments on social media.*

*(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials and others subject to the judge's direction and control. — Problems may arise from undignified remarks posted by the judge on the judge's page or on others' pages, or from undignified, discourteous, etc. remarks posted by others on the judge's page and not removed. There also may be problems from inappropriate remarks about cases, litigants, lawyers, etc., posted on social network pages of the judge's assistant, clerk, etc., or posted by those employees on others' pages.*

(4) *A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider ex parte or other communications concerning a pending proceeding.* — Problems may arise from comments or questions about a case posted on the judge's page or directed to the judge.

(6) *A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to the judge's direction and control.* — Problems may arise from comments made by a judge on social media. Problems also may occur from comments or questions about a case posted by someone else on the judge's page and not removed by the judge, and from comments about a case posted on someone else's site linked to the judge's page.

*B. Disqualification*

(1) *On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:*

(a) *The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings . . . .* — Problems may arise from comments posted by the judge on the judge's social networking page, or comments posted by others and not removed by the judge, or links to affected individuals or organizations appearing to indicate a bias by the judge.

*CANON 5:* *A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.*

*B. Civic and charitable activities.*

(3) *A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.* — Problems may arise from comments by the judge on an organization's social network page, supporting the organization and endorsing it, when the page is used for fund-raising.

*CANON 7:* *A judge may engage in political activity consistent with the judge's status as a public official.*

*C. Prohibited political conduct. A judge or candidate should not:*

(1) *solicit funds on behalf of a political party, organization, or an individual (other than himself/herself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;*

*(2) endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code. . . .*

— Problems may arise from appearing as a “friend” or “fan” on a candidate or political organization’s social network page; from a judge’s page listing a candidate as a “like” or “interest” of the judge; or from favorable comments posted by the judge on a candidate or political organization’s social network page.

### **North Carolina ethics opinion**

The North Carolina State Bar’s [2014 Formal Ethics Opinion 8](#) — go to “Adopted Opinions,” choose the “Select by Number” option, then scroll down to 2014 Formal Ethics Opinion 8 near the bottom of the list — adopted on January 23, 2015, is technically an opinion about lawyers’ conduct. It is tied to lawyers’ interactions with judges on social networking sites, however, and, therefore, is instructive to judges as well. Although the opinion is about LinkedIn, its principles apply to any social networking site.

LinkedIn members create a profile page which may include a list of contacts, other members with whom the person has a relationship. Having such a connection allows one member to view information on the other member’s page, post comments, and write endorsements and recommendations. The State Bar opines that lawyers on LinkedIn may accept invitations from judges to be listed as connections, and may send such invitations to judges, but such activity always is subject to the Code of Professional Responsibility’s prohibition against conduct that implies an ability to influence the judge. In other words, the State Bar views electronic social networking the same as live interaction — it is acceptable for lawyers to have social interactions with judges, but they must avoid the impression that it gives them particular sway with the judge. The opinion says that if the judge’s invitation to connect on LinkedIn comes while the lawyer has a matter pending before the judge the lawyer should decline — and may explain to the judge the reason for doing so — until the matter is concluded.

The opinion goes on to say that a lawyer on LinkedIn may endorse a judge’s skills and recommend the judge, again subject to the limitation that the lawyer may not imply an ability to influence the judge. A LinkedIn lawyer may not accept a judge’s endorsement or recommendation for display on the lawyer’s page, because doing so would create the impression of partiality by the judge which would violate the Code of Judicial Conduct. If lawyer A endorses and recommends lawyer B and then lawyer A becomes a judge, lawyer B must remove the endorsement and recommendation from lawyer B’s profile page.

## **North Carolina disciplinary case**

North Carolina has one public sanction issued against a judge for an incident involving the use of social media. It is an [April 2009 reprimand](#) issued by the Judicial Standards Commission. The judge and lawyer had decided at the beginning of a child custody/support proceeding to friend each other on Facebook and then exchanged comments about the case on the social network. That contact led to the reprimand for ex parte communication. The judge was also reprimanded for his independent research on the parties, without informing either side, through his visits to the wife's business website, a photography business where she posted both photographs and poems.

## **North Carolina Judicial Standards Commission advice**

The North Carolina Judicial Standards Commission has not addressed social media issues formally other than through the disciplinary case just described. However, Chris Heagarty, the executive director of the commission, says that the commission's informal advice follows the majority of other states and the American Bar Association. He summarizes it this way: "A judge may participate in electronic social networking, but as with all social relationships and contacts a judge must comply with the relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create a reasonable appearance of impropriety."

## **Other jurisdictions' ethics opinions**

Questions about judges joining social networks, becoming social network friends with lawyers and law enforcement officers, and related issues now have been addressed by over a dozen state ethics committees for judges, by the United States courts, by the American Bar Association, and also by public disciplinary action and appellate court decisions in several jurisdictions. Although the number of opinions, disciplinary actions and appellate decisions is still small, there seems to be a consensus building on several issues. There appears to be general agreement among the ethics committee, for example, that:

- (1) Judges may join on-line social networks.
- (2) Social networks create opportunities and temptations for ex parte communication that judges must be careful to avoid.
- (3) Judges are still judges when posting materials on their social networking pages and need to realize that the kinds of comments and photographs posted by others may not be appropriate for them.

- (4) Judges need to avoid on-line ties to organizations that discriminate, just as they are prohibited from joining such organizations.
- (5) Judges also need to avoid on-line ties to organizations that may be advocates before the court.
- (6) Judges need to avoid posting comments on social network sites or taking other actions on such sites that lend the prestige of the judge's office to the advancement of a private interest.
- (7) Social networks, with their instant communication, informality and lightning quick jump to the public realm, are a danger zone for judges who are obligated to always be dignified and circumspect.

The ethics committees divide most sharply on the issue of a judge accepting a lawyer as a friend on a social network. The majority of the states opining on the issue conclude that friending does not by itself establish such a relationship as to imply that the lawyer has special influence and does not by itself require the judge to recuse from cases with that lawyer, although they recognize that a social network friendship may create such problems when combined with other circumstances. In the view of those states, being a friend of a judge on a social network is no different than being a friend in person and does not by itself lead to automatic recusal. On the other hand, the ethics committees of four states (Connecticut, Florida, Massachusetts, Oklahoma) have concluded that a social network friendship is sufficiently likely to create the impression of special influence that it should be barred. Although such an impression of favoritism may be mistaken, the approach of those ethics committee is to err on the side of caution when it comes to appearances of fairness.

Several of the ethics opinions deserve particular attention. The Utah opinion is the most complete, describing in detail a variety of social media situations a judge might face. The California opinion is noteworthy for its discussion of the different kinds of social networks, explaining that the application of ethics rules may vary depending on whether the network is one for relatives and close personal acquaintances or is one for people with looser ties. The Florida opinions offer the strongest assertion of the minority view that judges and lawyers simply should not be social media friends.

In addition to the ethics issues, judges should be aware of the security issues that come with social networking. A judge's page on Facebook or other social network can provide lots of information to someone who is dissatisfied with the judge's decisions and wants to do harm.

Below are short summaries of the individual state ethics opinions, public disciplinary actions and appellate decisions, in alphabetical order of the states, followed by the ethics opinions for the United States judiciary and the ABA opinion.

## Alabama

The Alabama Court of the Judiciary in [Case No. 42, In the matter of Henry P. Allred, District Judge Walker County](#) (Mar. 22, 2013), reprimanded and censured a district judge for making public comments on his Facebook page about a pending contempt proceeding against a lawyer, and requesting that Facebook friends spread the message “far and wide.” He also emailed the same comments and request to all state court judges.

## Arkansas

In *Judicial Discipline and Disability Commission v. Maggio*, 2014 Ark. 366, 440 S.W.3d 333 (2014), the Arkansas Supreme Court removed a district judge for comments posted on a public electronic forum and for involvement in “a hot-check case.” The comments were made on a “tigerdroppings” site for LSU athletic fans under the screen name “geauxjudge.” Although the opinion does not describe the comments, other sources indicate that “geauxjudge” made glaringly offensive sexist remarks — e.g., “Women look at 2 bulges on a man, one in the front of the pants or second one in the back pocket” — and also disclosed information about an adoption handled by a fellow judge for the actress Charlize Theron.

## Arizona

[Advisory Opinion 14-01](#) of the Arizona Supreme Court Judicial Ethics Advisory Committee, issued August 5, 2014, is one of the lengthiest and most comprehensive opinions, covering a range of social media topics in its 13 pages. Among its conclusions:

- A judge may use LinkedIn but may not use the site to recommend a lawyer who regularly appears before the judge, nor use the judge’s title to recommend any other professional. A judge may recommend a former law clerk to a specific prospective employer.
- A judge who maintains a blog must be careful to avoid statements that could be perceived as prejudiced or biased, and must refrain from comments that require frequent recusal. A judge should assume that a statement made on social media, even though intended only for close acquaintances, will end up in public.
- A judge on Facebook should avoid discussions about issues that may come before the court, including postings by others.
- Judges are not required to automatically disqualify themselves from cases in which lawyer Facebook friends appear, but they should evaluate each situation individually. Recusal is more likely when the lawyer is in the “close friend” category.
- If a Facebook friendship raises concerns sufficient for disqualification, simply de-friending is not an adequate response.



- Judges need to be aware of the potential problems social media present with respect to ex parte communications and independent investigations of facts in a case.
- Although a judge may “like” or “follow” an organization on Facebook, the judge will have to consider whether to disqualify if that organization appears as a litigant.
- A judge may not be a social networking friend of a candidate’s campaign Facebook page, nor “like” that page, because that would appear to be endorsing the candidate.
- A judge may not be a friend of the Facebook page of the sheriff or local law enforcement, nor “like” such a page, since those officers appear regularly before the court.

The Arizona opinion also discusses the ethical obligations of judicial employees with respect to social media. The advice generally is the same as for judges with the additional admonition that judicial employees should advise the judges for whom they work of any comments made through social media, or any friendships of lawyers or litigants, that raise questions of impartiality.

## **California**

[Opinion 66](#) from the Judicial Ethics Committee of the California Judges Association, issued on November 23, 2010, states:

- A judge may join a social network, even one which includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must defriend the lawyer when the lawyer has a case before the judge.
- Whether a judge may friend a lawyer depends on the nature of the social network and whether the lawyer has a case before the judge. If the social network is one limited to the judge’s relatives and a few close colleagues and it is used for exchanging personal information, for example, the likelihood will be greater that the lawyer appears to have special influence. There is much less risk, by comparison, when the social network involves individuals and organizations interested in a particular subject or project, say a sports team or a charitable project, and the exchanges are limited to that topic.
- Regardless of the nature of the social network, the judge should always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. Even for the second kind of social network, the less personal one, the judge should de-friend the lawyer when the lawyer appears in a case before the judge.
- A judge must monitor comments posted by others on the judge’s page and must delete or hide from public view comments that would create the appearance of bias or must otherwise repudiate comments that are offensive or demeaning.
- A judge may not create links to political organizations or others that would amount to impermissible political activity.

- A judge must not lend the prestige of the office to another by posting any material that would be construed as advancing that other person's interest.
- Judges need to be familiar with a social network's privacy settings and how to modify them. And the judge should be aware that other participants in the social network may not guard privacy as diligently and may thereby expose the judge's comments, photographs, etc., to others without the judge's permission.

## **Connecticut**

The Connecticut Committee on Judicial Ethics issued [Informal Opinion 2013-06](#) on March 22, 2013. It states:

- Judges may participate in social networking sites though they are "fraught with peril for Judicial Officials because of the risk of inappropriate contact with litigants, attorneys, and other persons unknown to the Judicial Officials and ease of posting comments and opinions . . . ."
- A judge should not friend lawyers who may appear before the judge, nor law enforcement or social workers or others who regularly appear in court.
- A judge should disqualify from a case in which a social networking relationship with a lawyer is likely to result in bias or prejudice.
- Judges must maintain dignity with all comments, photographs and other information shared on social media.
- Judges may not maintain social media interactions with individuals or organizations that would affect confidence in judicial independence or suggest they are in a position to influence the judge.
- A judge should not use likes or endorsements to advance the interests of the judge or others.
- A judge should not use social media to comment on pending matters.
- A judge should not view parties' or witnesses' pages and not use such sites to obtain information about a matter before the judge.
- A judge should not give legal advice on social media.
- A judge should not use social media to endorse or oppose candidates, to like or create links to political organizations, or to comment on political topics.
- A judge should be aware of the contents of the judge's social media page and its privacy and security features.

## **Florida**

The Florida Supreme Court's Judicial Ethics Advisory Committee's [Opinion 2009-20](#), issued on November 17, 2009, received a great deal of publicity because it was one of the earliest

opinions and because it concluded that judges may not add lawyers as friends on a social network. The opinion states:

- A judge may join a social network site and post comments and other materials so long as the material does not otherwise violate the Code of Judicial Conduct.
- A judge may not add as friends lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The judge's acceptance of a lawyer as a friend would convey the impression, or allow others to convey the impression, that a person is in a special position to influence the judge, even if that is not true.
- A judge's election campaign committee may post material on a social network and allow lawyers and others to list themselves as "fans," provided the judge or campaign committee did not control who could list themselves in that manner.

[Opinion 2010-04](#), issued March 19, 2010, advises:

- A judicial assistant may add as Facebook friends lawyers who may appear before the judge for whom the assistant works, so long as the assistant's Facebook activity is conducted independently of the judge and does not mention the judge or court.

[Opinion 2010-05](#) also issued on March 19, 2010, states:

- Based on the wording of the Florida Code of Judicial Conduct specifying which portions apply to candidates, candidates for judicial office are not subject to Opinion 2009-20 above and, thus, may add as Facebook friends lawyers who are likely to appear before them if elected.

[Opinion 2010-06](#), issued on March 26, 2010, revisits some of the issues addressed in Opinion 2009-20, and concludes:

- A judge who is a member of a voluntary bar association which uses a Facebook page may use that page to communicate with other members, including lawyers, about the organization and about non-legal matters, and does not have to "de-friend" lawyer members who might appear before the judge. The organization, not the judge, controls the Facebook page and decides which friend requests to accept and reject.
- As stated in the original opinion, a judge may not friend a lawyer even if the judge places a disclaimer on the judge's Facebook page stating (i) that the judge will accept as a friend anyone the judge recognizes or who shares a number of common friends, (ii) the term "friend" does not mean a close relationship, and (iii) no one listed as a friend is in a position to influence the judge.
- Likewise, a judge may not friend a lawyer even if the judge's Facebook page states that the judge will accept as a friend any lawyer who requests to be added. The proposed disclaimers fail to cure the impression that a lawyer listed as a Facebook friend has special influence; lawyers who chose not to use Facebook would not be listed as friends; and there is no assurance that someone viewing the page would see or read the disclaimer.

[Opinion 2010-28](#), issued July 23, 2010, states that a judicial candidate should not host a website or Facebook page promoting the campaign. Because the Florida code prohibits a candidate or judge from personally soliciting campaign funds the website or Facebook page should be established and maintained by a campaign committee instead.

In [Opinion 2012-12](#), issued on May 9, 2012, the Florida committee reiterated that the 2009 opinion about not friending lawyers on Facebook applies to other social media sites as well, including LinkedIn:

- A judge who is a member of LinkedIn may not add lawyers who appear before the judge as “connections,” to do so creates the impression that the lawyer is in a special position to influence the judge.

In [Domville v. State](#), \_\_\_ So. 3d \_\_\_, 2012 WL 3826764 (Fla. Dist. Ct. App., 4<sup>th</sup> Dist., 2012) — the third opinion from the end of the 9/5/12 opinions listed in the link — the Florida District Court of Appeal, Fourth District, relying on the November 2009 ethics opinion discussed above, held that the trial court should not have dismissed a motion that the judge disqualify himself from hearing a case in which the prosecutor was a Facebook friend of the judge. Based on the ethics opinion, the allegation about the Facebook friendship was sufficient to create a fear that the defendant would not receive a fair and impartial trial.

In [Chace v. Loisei](#), \_\_\_ So. 3d \_\_\_, 39 Fla. L. Weekly D221, 2014 WL 258620 (Fla. Dist. Ct. App., 5<sup>th</sup> Dist., 2014) — the last opinion in the list of 1/20/14 opinions in the link — the Florida District Court of Appeal, Fifth District, held that the trial judge should have disqualified herself from hearing a divorce case after the judge requested that the petitioner wife friend her on Facebook and the wife did not respond. The friend request put the wife in the impossible position of either agreeing to engage in ex parte communications with the judge or run the risk of offending the judge by not accepting the friending request.

## Georgia

On March 18, 2013, the Georgia Commission on Judicial Qualifications publicly reprimanded a county judge and suspended him for 60 days without pay in [In re: Inquiry Concerning Judge J. William Bass, Sr., Docket No. 2012-31](#). His numerous ethical violations included ex parte communications on Facebook with a woman who had contacted the judge about her brother’s pending drunk driving trial. The judge’s indiscretions included advising the woman how to get the matter to his court so he could handle it.

## Indiana

On February 10, 2015, in [\*In the Matter of the Honorable Dianna L. Bennington, Judge of the Muncie City Court\*](#) (No. 18S00-1412-JD-733), the Indiana Supreme Court accepted an agreement by which a judge resigned and agreed to never serve again in any judicial office. The ethical violations were numerous and serious; among the lesser offenses was the comment the judge posted on the Facebook page of the father of her twins, needling him for not paying child support.

## Kentucky

[Formal Judicial Ethics Opinion JE-119](#) of the Ethics Committee of the Kentucky Judiciary — scroll down the list of opinions in the link to JE-119 — issued on January 10, 2010, says:

- Judges may join social networking sites such as Facebook, LinkedIn and Twitter, and may be friends with lawyers, law enforcement officers and others who appear before them, with limitations.
- Whether a judge must disclose a social relationship or disqualify from a case depends on the closeness of the relationship, but being designated a friend on a social network does not by itself convey an impression of a special relationship. “Friend”, “fan” and “follower” are social media terms of art that do not carry the ordinary sense of those words.
- Judges are not free to participate in social media the same as the general public. Personal information, photographs and comments that might be appropriate for someone else may not satisfy the higher standards for judges.
- Judges also need to be cautious to avoid ex parte communications and to resist the use of social media for the independent investigation of the facts of a case.

On July 21, 2014, in [\*In the Matter of: Dana M. Cohen\*](#) — see the list of “Public Actions” in the lower right section of the link — the Kentucky Judicial Conduct Commission publicly reprimanded a candidate for district judge for “liking” a Facebook posting that endorsed a candidate for public office and for contributing to the candidate.

## Maryland

[Opinion 2012-07](#), issued June 12, 2012, by the Maryland Judicial Ethics Committee — scroll down to opinion 2012-07 in the list on the link — says:

- The mere fact of a social connection — friend — on a social networking site does not create a conflict requiring a judge to disclose the social relationship or disqualify, just as

the mere existence of a real world friendship with a lawyer does not in itself disqualify the judge from cases involving that lawyer.

- Whether a judge must disclose a relationship or disqualify depends on the nature of the social relationship, not the medium in which it takes place.
- Judges are admonished to be aware of the perils of social media, especially with respect to maintaining the dignity of the office and avoiding ex parte communications.

## Massachusetts

[CJE Opinion No. 2011-6](#), issued by the Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court on December 28, 2011, states:

- A judge may join a social network site but may not friend any lawyer who appears before the judge. “Stated another way, in terms of a bright-line test, judges may only ‘friend’ attorneys as to whom they would recuse themselves when those attorneys appeared before them.” Friending creates the impression that the lawyer is in a position to influence the judge.
- Judges should not identify themselves as judges on the social network site, nor allow others to do so. Such identification uses the prestige of the office to advance private interests and creates the impression that others are in a special position to influence the judge.
- Judges are warned to avoid posting embarrassing photographs and avoid ex parte communications.
- Judges may not comment on pending cases on social media, nor join Facebook groups of prohibited organizations, nor use social media for political endorsements.

## New Mexico

On February 13, 2015, the New Mexico Supreme Court in [In the Matter of Hon. Phillip J. Romero, Pro Tempore Judge \(No. 30,316\)](#) — see the item listed as 02-13-15 under “Recent Commission Action and Notices” in the link — accepted the stipulation reached with the Judicial Standards Commission that the judge retire permanently from office and be barred from future judicial office, for publicly endorsing candidates and posting their campaign materials on Facebook, agreeing not to do so, and then doing so again.

## New York

[Opinion 08-176](#) of the New York Advisory Committee on Judicial Ethics, issued on January 29, 2009, stated:

- There is nothing fundamentally different about a judge socializing through a social network and socializing in person, and nothing fundamentally different about communicating electronically rather than face to face.
- A judge needs to be aware of the public nature of comments posted on a social network site; the potential of creating the appearance that a lawyer who friends the judge will have special influence; and the likelihood that people might use the judge's social network page to seek legal advice.
- When combined with other circumstances, friending on social media can lead to the appearance of a close social relationship requiring disclosure or recusal.

[Opinion 13-39](#), issued on May 28, 2013, states:

- A judge is not required to disqualify from a criminal case just because the judge is Facebook friends with the parents of some minors affected by the defendant's conduct, if the social relationship is mere "acquaintance." As described in earlier opinions, disclosure or disqualification is not required unless there is a "close social" or "close personal" relationship.
- Facebook friendship by itself does not establish grounds for calling a judge's impartiality into question nor create an appearance of impropriety.
- The judge should prepare a memorandum for the file stating the basis for concluding that recusal is not necessary, in case questions arise later.

[Opinion 13-126](#), issued on October 24, 2013, concerns political activity by judicial candidates and states:

- During the "window period" allowed by the judicial ethics code for New York judges to engage in political activity, a judge who is a judicial candidate may include a link to the judge's Facebook campaign page as part of the signature on personal email.
- Because New York prohibits judges from personally soliciting campaign contributions, but allows solicitation of non-financial assistance, the judge's Facebook link may request only that the reader "like" or "friend" the site.
- The judge may not include the Facebook campaign link on the judge's court system email.

[Opinion 14-05](#), issued March 13, 2014, concerns the use of Facebook pages to display court information and states:

- A local court should not establish a website on Facebook if that site will include commercial advertisements. The appearance of such advertisements on the site may create the appearance that the court is subject to outside influences, undermining the court's dignity and independence.

## Ohio

[Opinion 2010-7](#), issued December 3, 2010, by the Ohio Supreme Court's Board of Commissioners on Grievances and Discipline — the last in the list of 2010 opinions in the link — states:

- Because there is no prohibition on a judge being a friend of a lawyer who appears before the judge, friending on-line cannot be an ethics violation by itself.
- There are special risks associated with social networks for judges.
- A judge must be careful to maintain the dignity of the office in every comment, photograph, etc., posted on social media.
- A judge should not interact on social networks with individuals or organizations whose advocacy or interest in matters before the court would raise questions about the judge's independence.
- A judge should not make any comments on a site about any matter pending before the judge.
- A judge should not use the social network for ex parte communications.
- A judge should not undertake independent investigation of a case by visiting a party's or witness' page.
- The judge must consider whether interaction with a lawyer on a social network creates any bias or prejudice concerning the lawyer or a party.

## Oklahoma

[Judicial Ethics Opinion 2011-3](#), issued by the Oklahoma Judicial Ethics Advisory Board on July 6, 2011, states:

- While a judge may participate in social networking sites the judge should not be social network friends with lawyers, law enforcement officers, social workers or others who may appear in the judge's court. Such a relationship can convey the impression that the person is in a special position to influence the judge. It is immaterial whether the person actually is in such a position, it is the possible impression that matters. "We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril.'"

## South Carolina

[Opinion 17-2009](#), issued in October 2009 by the South Carolina Advisory Committee on Standards of Judicial Conduct, states:

- A magistrate may join Facebook and be friends with law enforcement officers and court employees so long as the site is not used for discussion of judicial business.



## South Dakota

In [\*Onnen v. Sioux Falls Independent School District, 2011 S.D. 45 \(2011\)\*](#) — use the link to go to 2011 opinions and select opinion 45 — the South Dakota Supreme Court held that the trial judge did not have to recuse himself from a case just because he had received a birthday greeting in Czech on Facebook from a witness the judge did not know personally.

## Tennessee

[\*Advisory Opinion 12-01\*](#), issued October 23, 2012, by the Tennessee Judicial Ethics Committee — from the list of opinions in the link select opinion 12-01 — advises:

- Judges may participate in social media but must do so with caution and with the expectation that their use will be scrutinized by others.
- Judges should note the cautions expressed in other states' opinions. Because of constant changes in social media the committee cannot be specific as to allowable or prohibited activity.

In [\*State v. Forquson\*](#), \_\_\_ Tenn. \_\_\_, 2014 WL 631246 (2014) — available by using the search function on the link — the Tennessee Court of Criminal Appeals held that a judge was not disqualified from hearing a criminal case based just because of his Facebook friendship with a confidential informer who was a witness at trial. The defendant offered no other evidence of the nature of the relationship between the judge and witness nor of their interactions, and the judge stated that the witness was someone he had known all his life in the small community and was someone he had formerly prosecuted and seen in court in child support matters.

In [\*State v. Madden\*](#), \_\_\_ Tenn. \_\_\_, 2014 WL 931031 (2014) — available by using the search function on the link — the Tennessee Court of Criminal Appeals held that the trial judge was not disqualified from hearing a case based on the judge's Facebook connections to the Middle Tennessee State University women's basketball team, of which the victim was a member, nor was the judge disqualified by a Facebook friendship with a coach who was a witness. The defendant also was a Middle Tennessee student and the coach was one of over 1,500 Facebook friends of the judge, and there was no other showing of bias. The court suggested, however, that Tennessee ought to consider restricting on-line friendships between judges and lawyers and witnesses likely to appear before them.

## Texas

In [Youkers v. State](#), 400 S.W.3d 200 (Tex. 5th Ct. App., 2013) — scroll down the list of opinions in the link to “Criminal Causes Decided” — the Texas Court of Appeals, Fifth District, held that the trial judge was not required to disqualify from the trial of defendant just because of the judge’s Facebook friendship with the father of the victim or an unsolicited communication from the father. The judge stated he was a “friend” of the father only because they ran for office at the same time; he had no other relationship with the father; and when he received the Facebook message from the father about the defendant (actually seeking leniency for the defendant), he advised the father it was an improper ex parte communication which he could not read or consider.

On April 20, 2015, the Texas State Commission on Judicial Conduct admonished a district judge in [Public Admonition and Order of Additional Education, Honorable Michelle Slaughter, CJC No. 14-0820-DI & 14-0838-DI](#) — on page 49 of the FY 2015 “Public Sanctions” on the link — for posting Facebook updates and comments on a high profile trial and for Facebook comments about issues and parties in other cases before her.

## Utah

[Informal Opinion 12-01](#), issued August 31, 2012, by the Utah Courts Ethics Advisory Committee — use the search option to find 2012 opinions — states:

- A judge may be social media friends with lawyers who appear before the judge. Being a Facebook or other social media “friend” does not by itself indicate that the person has a close personal relationship.
- A judge is not required to recuse from a lawyer’s case just because they are social media friends, it does not by itself create the impression of being in a special position to influence the judge. Whether the judge should recuse depends on the nature of the relationship, including the frequency and substance of their contacts through social media.
- Judges may identify themselves as judges on social media.
- A judge may appear in robes on Facebook so long as the photograph is taken in an appropriate setting and is not displayed in a way that undermines the dignity of the office.
- A judge may “like” events, companies, institutions, etc., on Facebook.
- A judge is not required to recuse from a case just because it involves a party the judge “likes” on social media. Such social media notations are not noticeably different from a judge displaying preferences through the car the judge drives, the church the judge attends, the bank the judge uses, and so on.

- A judge may be a friend of the personal social media page of a political candidate, but not a friend on the person's campaign page. Being a friend on the campaign page suggests endorsement. And the judge must be careful to avoid posting comments on the candidate's personal page that suggest endorsement.
- A judge may be a social media friend with elected officials.
- A judge may "follow" or "like" law firms. Such designation does not by itself create an appearance of bias.
- A judge may follow on Twitter a lawyer who might appear before the judge. If the judge were to start receiving ex parte communications, however, the judge could no longer follow that lawyer.
- A judge may follow a legal or political blog that is also followed by lawyers and politicians. Judges often read the same legal materials as do lawyers and politicians.
- A judge is not required to monitor comments on a webpage of an individual or entity with whom the judge is associated, to avoid association with material that might reflect poorly on the judiciary. If the judge becomes aware of such content, however, the judge may have to disassociate from the site.
- A judge should not use a judicial title when posting a restaurant review or making similar comment, to avoid creating the appearance that the judge is lending the prestige of the office to a for-profit entity.
- A judge may use a "screen name" or pseudonym when posting comments, if allowed by the site, but should assume that all viewers will know the identity of the judge and should avoid inappropriate comments.
- Judges are not required to always identify themselves as judges on social media to avoid ex parte communications. But if a judge does receive an inappropriate ex parte communication the judge may need to disclose it or disqualify.
- A judge may post content on social media about the judge's personal interests and pursuits.
- A judge should not post comments about legal issues that may come before the judge, that appear to be taking sides on a controversial legal or political topic, or that may be considered offering legal advice.
- A judge may maintain a profile on LinkedIn, including that the person is a judge and the court on which the judge serves.
- A judge may join LinkedIn law-related groups.
- A judge may not "recommend" on LinkedIn a lawyer who regularly appears before the judge, it may be perceived as endorsement of the person's skill and credibility, but the judge may recommend lawyers who do not appear before the judge or individuals in other professions. A judge may recommend someone who has worked for the judge, such as a law clerk.
- A judge may ask others on LinkedIn to recommend the judge for a judicial position but not for a non-judicial position, such as a law firm, while the judge is still on the bench.

- A judge’s recommendation on LinkedIn does not by itself require the judge to disqualify from a proceeding involving that person. A judge need not recuse because of recommending a former law clerk, but will need to disqualify from a case involving a lawyer the judge has recommended based on the judge’s interactions with the lawyer in court.

## **West Virginia**

On March 14, 2014, the West Virginia Judicial Investigation Commission publicly admonished a magistrate in [\*In the Matter of Richard D. Fowler, Former Magistrate of Mercer County \(Complaint No. 125-2013\)\*](#), for an improper communications with a woman involved in cases before the judge. The communications included multiple sexually suggestive messages sent over Facebook. Because the magistrate already had resigned and pledged not to seek office again, the commission took no action other than the admonishment.

## **Judicial Conference of the United States**

The federal judiciary’s Committee on Codes of Conduct issued its [Advisory Opinion No. 112](#) on in March 2014, following up on its 2011 [Resource Packet for Developing Guidelines on Use of Social Media for Judicial Employees](#). The Advisory Opinion states:

- A judge should not use social media to advance the private interest of another by identifying as a supporter of a restaurant or other establishment.
- A judge should not post comments on a blog that endorse political views, demean the prestige of the office, speak to issues that may arise before the court, or create the impression that another has unique access to the court.
- Social media exchanges with lawyers who appear before the judge — such as “wall posts” and tweets — can raise an issue of appearance of impropriety even if they do not concern litigation and can also create the impression that the person is in a special position to influence the judge.
- Social media exchanges with lawyers must be scrutinized to see that they do not constitute ex parte communications.
- Issues arise when a judge identifies as a “fan” of an organization that frequently litigates before the court.
- Issues may arise when a judge circulates a fundraising appeal to a large group of social network friends that includes lawyers who practice before the court.
- Judges should not include their court email addresses in social media.
- A judge should assume that all social media communication will be public and should not detract from the dignity of the office by posting inappropriate photographs, videos or comments.

- A judge should not appear to be endorsing a candidate by “liking” or becoming a “fan”, posting photographs that affiliate the judge with a political candidate or party or event.

### **American Bar Association**

The American Bar Association issued [Formal Opinion 462](#) on February 21, 2013. As would be expected from the ABA, the document identifies issues and cites the state bar opinions more than it provides specific direction. While generally saying that an electronic social media relationship is subject to the same analysis as relationships formed in person, the ABA warns of the dangers inherent in electronic communication — retransmission by others without permission, wider dissemination, a longer life, and an increased likelihood of comments being taken out of context.

The ABA opinion does not address specifically whether a judge may friend lawyers and others, instead referring to the various state opinions, but it says the issues of whether a judge should disclose an electronic social media relationship and should disqualify should be analyzed the same as with in-person professional or personal relationships. The opinion does say that the “open and casual” nature of electronic social media communications means a judge seldom will have an affirmative duty to disclose such a connection. Nor does a judge need to search all social network connections if the judge does not have any specific knowledge of a connection that arises to the level of a problematic relationship.

As for social networks and campaigning, the opinion warns of the danger of appearing to endorse a candidate by clicking an “approve” or “like” button on the candidate’s social media site. It also advises judges to pay close attention to privacy settings so that a permissible private expression of opinion about a candidate does not become public.

This paper may be used for educational purposes without permission.  
Use for commercial purposes or without acknowledgement is prohibited.  
© 2015, School of Government, University of North Carolina at Chapel Hill.