

**Informal Opinion 12-01**  
**August 31, 2012**

**Question:**

The Ethics Advisory Committee has received opinion requests from two judges about the use of social media. The Committee has elected to combine the two requests into one opinion because of overlapping issues. The questions can be summarized as follows:

- 1) May a judge be “friends” or accept “friend” requests on Facebook from lawyers who appear before the judge?
- 2) If a judge is “friends” with a lawyer on Facebook, does that require a judge to recuse from the lawyer’s cases?
- 3) May a judge identify him or herself as a judge on Facebook?
- 4) May a judge appear in his or her robes in a photo on Facebook?
- 5) May a judge “like” events, companies, institutions, etc., that advertise or post on Facebook?
- 6) If a judge “likes” an entity or activity, does that require the judge’s recusal in any case involving that event or entity?
- 7) May a judge be “friends” with individuals who are candidates for political office?
- 8) May a judge be “friends” with elected officials?
- 9) May a judge “follow” or “like” law firms or others in the legal profession?
- 10) May a judge follow an attorney on Twitter if that attorney might appear before the judge?
- 11) May a judge follow a particular blog on legal or political issues when those blogs are also followed by lawyers or politicians?
- 12) Once associated with an individual or entity, does a judge have a responsibility to continually monitor the comments and webpage contents of those individuals or entities to ensure that the judge is not associated with material that might reflect poorly on the judiciary?
- 13) If a judge may not identify him or herself as a judge on a webpage, may a judge use a pseudonym to post content. For example, if it is inappropriate to be identified as a judge in posting a restaurant review, may a judge use a pseudonym to post such content?
- 14) Is a judge required to always identify him or herself as a judge in order to avoid inappropriate ex parte communications?
- 15) May a judge post content related to personal pursuits and interests?
- 16) May a judge post comments and content on legal topics, particularly when such comments may be along side a post that would be inappropriate if made by a judge?
- 17) May a judge maintain a profile on LinkedIn?
- 18) May the LinkedIn profile identify the occupation of the judge?
- 19) May the LinkedIn profile identify the court on which the judge serves?
- 20) May a judge join LinkedIn groups, law related or otherwise, such as groups created specifically for those in the legal profession?

- 21) May a judge “recommend” someone on LinkedIn either at the judge’s initiation or at the individual’s request?
- 22) May the judge ask another person to “recommend” the judge?
- 23) If the judge does “recommend” someone, would the judge be required to enter recusal in a proceeding involving that individual?

**Discussion:**

One of the judges has provided detailed background on the bases for the judge’s request. This background provides helpful information in answering these questions and is repeated verbatim:

Prior to and since becoming a judge, I have participated in various forms of what is now known generically as “social media.” These Internet-based services generally provide content to participants as well as permit participants to post their own content to the Internet site involved. Examples of services I use include Facebook, Google+, Twitter, Flickr, Panoramio, Food52, Garmin Connect, Earndit, Yelp, Food Spotting, Four Square, and others.

A common feature of these sites is the ability to associate with other users. In the course of using a particular service, a user may choose to have the content posted by other users of the same [service] displayed when the first user visits the Internet site. Facebook users “friend” or “like” other users, thus electing to have content from those users displayed in their respective “feeds.” Twitter users “follow” other users, meaning they select other users whose “tweets” will appear in their Twitter feeds. Google+ users select others for various “circles,” again resulting in content from those others appearing on the users’ Google+ interface. Similar opportunities are available on Fickr and Panoramio to follow other users’ photo postings, on Food52 to follow recipes and cooking posts from other users, and on Garmin Connect or Earndit to follow others’ exercise and recreational activities.

In some cases (such as Facebook “friends” or Google+ circles) the relationship has to be by mutual agreement-one must accept a Facebook “friend” before one’s content is then displayed for the other party. In other cases, a “follow” request does not require permission by the person publishing content on the web-the person desiring content simply opts to have a particular user’s content displayed. In some cases, the publishing user may choose whether to require permission for their content to be displayed or not. On Twitter, for example, a user can hide posts from the public, but allow followers permission to see them. Similarly, on Facebook, some users (generally businesses or celebrities) can set up an account that permits other users to “like” that publisher, again driving that publisher’s content to the user’s feed without permission from the business.

In some cases, other users of the service can view who another user has elected to associate with their feeds. In other words, other users with access to a given user's content can generally view the other users that person has decided to view as part of their feeds. To be specific, Twitter users who I have granted permission to "follow" me can view my profile and see who else follows me and who I follow. My Facebook "friends" can see who else I have "friended." In fact, Facebook encourages new associations by suggesting new friends based on a user's existing friends, and who they have, in turn, "friended."

The use of social media is becoming commonplace. Computers, laptops, tablets, and smartphones have made internet content and social media easily accessible and regularly viewed. Facebook has more than half a billion users worldwide. Twitter is used by media outlets, celebrities, politicians, and others to instantly update followers on current events. Individuals are able to access web sites on topics that interest them and individuals are able to post comments on those topics and read comments from others. Individuals can respond directly to the comments made by others. Although some of these activities may occur privately between individuals or small groups, much of this activity is widely accessible to, and capable of being viewed by, the public. The use of social media has become a topic of particular interest to judges because of the public nature of the activities and the multitude of topics on which comments may be posted and viewed. Social media are frequently used by the families and friends of judges, which raises questions about whether judges may use social media in the same manner as others.

A few states have issued ethics advisory opinions on judges' use of social media. These opinions have not addressed all of the questions listed above, but they may provide some guidance in answering the questions. The opinions have primarily addressed judges' use of Facebook and judges' contacts with lawyers or others on Facebook pages. Not surprisingly, the states have issued differing opinions on these topics.

The Florida judiciary has issued two ethics advisory opinions and those opinions are perhaps reflective of the minority view to date. In opinion number 2009-20, the Judicial Ethics Advisory Committee of the Florida Supreme Court answered two questions relevant to this opinion. The first question was whether "a judge may post comments and other material on the judge's page on a social networking site, if the publication of such material does not otherwise violate the Code of Judicial Conduct." The Florida committee answered this question in the affirmative. The second question was whether "a judge may have lawyers who appear before the judge as 'friends' on a social networking site and permit such lawyers to add the judge as their 'friend.'" The Florida committee answered that question in the negative.

The committee answered the first question in the positive because it addressed the mode of communication and not the substance, and this particular mode of communication in and of itself is not prohibited. In answering the second question in the negative, the committee stated:

The committee believes that listing lawyers who may appear before the judge as

“friends” on a judge’s social networking page reasonably conveys to others the impression that these lawyer “friends” are in a special position to influence the judge. This is not to say, of course, that simply because a lawyer is listed as a “friend” on a social networking site or because a lawyer is a friend of the judge, as the term friend is used in its traditional sense, means that the lawyer is, in fact, in a special position to influence the judge. The issue, however, is not whether the lawyer actually is in a position to influence the judge, but whether instead the proposed conduct, the identification of a lawyer as a “friend” on the social networking site, conveys the impression that the lawyer is in a position to influence the judge. The Committee concludes that such identification in a public forum where a lawyer may appear before the judge does convey this impression and therefore is not permitted.

The Ethics Committee of the Kentucky Judiciary issued an opinion that is perhaps representative of the majority position. The questions in that case were whether a judge may “participate in an internet-based social networking site, such as Facebook, LinkedIn, MySpace, or Twitter, and be friends with various persons who appear before the judge in court, such as attorneys, social workers, and/or law enforcement officials?” The committee stated that the answer to the question is a “qualified yes.” The committee stated that the designation of someone as a “friend,” by itself, does not reasonably convey to others an impression that the person is in a special position to influence the judge. The committee stated:

Judges have many extrajudicial relationships, connections and interactions with any number of persons, lawyers or otherwise, who may have business before the judge and the court over which he or she presides. These relationships may range from mere familiarity, to acquaintance, to close, intimate friendships, to marriage. Not everyone of these relationships necessitates a judge’s recusal from a case.

The committee noted that “a designation of a ‘friend’ on a social networking site, does not in and of itself indicate the degree or intensity of a judge’s relationship with the person who is the ‘friend.’ The committee conceives such terms as friend, fan and follower to be terms of art used by the site, not the ordinary sense of those words.” The committee cautioned that social networking sites are “fraught with peril for judges” and that judges “may [not] participate in such sites in the same manner as the general public.”

Having considered the various sides of the issue, the committee determines that the majority position reflected by the Kentucky opinion is the most persuasive.

In issuing this opinion, it is important to answer the questions in a way that will also provide guidance in a landscape that is constantly changing. The Facebook of today may look completely different tomorrow or be replaced with a different social networking site that presents new questions. Throughout history, technology and social circumstances have continually evolved. The changes in and of themselves typically do not create problems for judges. The

changes simply create new circumstances under which judges must take care to avoid violating the Code of Judicial Conduct. The proliferation of social media creates new questions based primarily on the very public nature of the participant's comments and activities.<sup>1</sup> However, social media is ultimately an extension of public fora that already exist. In other words, the same principles that apply to judges in other public settings will apply to judges in the "virtual" setting. Although social media have a potentially much broader public reach, it would be difficult to conclude that a judge's activity in one public setting is prohibited if performed in a different setting. It would be difficult to state, for example, that the same comments made in a public meeting would be prohibited if posted on a public internet bulletin board. Similarly, whether a person is a "friend" that might require a judge's recusal is based on the same criteria as when an individual personally observes a judge's interactions with others.

In answering these questions, the most relevant rules in the Code of Judicial Conduct are 1.2, 1.3, 2.4, 2.9, 2.10, 2.11, 3.1, 3.10, and 4.1. The sheer number of relevant Code provisions is indicative of how, as noted by the Ethics Committee of the Kentucky Judiciary, "social networking sites are fraught with peril for judges." However, this is also indicative of how the problems presented by social media are simply the same problems that have existed in other social and public settings.

The overarching principles guiding judges' use of social networking sites are found in Rule 3.1. The rule states that judges shall not "participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality" or "participate in activities that will lead to unreasonably frequent disqualification of the judge." Because of the public nature of social networking, judges must ensure that their activities do not undermine public confidence in the judge or the judiciary. This is also reflected in Rule 1.2, which states that a judge "should act at all times in a manner that promotes-and shall not undermine-public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety or the appearance of impropriety." Other relevant provisions of the Code require a judge to prevent others from abusing the prestige of the judicial office (Rule 1.3), avoid external influences on the judge's judicial conduct, such as permitting others "to convey the impression that any person or organization is in a position to influence the judge." (Rule 2.4), avoid ex parte communications about pending or impending matters (Rule 2.9), refrain from making public statements about pending or impending cases (Rule 2.10), enter disqualification when the judge's impartiality might reasonably be questioned (Rule 2.11), refrain from giving legal advice (Rule 3.10), and maintain political neutrality (Rule 4.1).

The Committee also notes that, given the fact that the internet and social media are regularly used by the majority of individuals in the country, most individuals understand what it

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<sup>1</sup> The committee recognizes that a website such as Facebook allows users to restrict access to the users' websites, such as allowing access only to family members. The committee is nevertheless of the opinion that even if a Facebook page has restricted access, the page should be considered as potentially available to the public and therefore the same rules apply.

means to be a “friend,” or to be associated with another person on LinkedIn, or to post comments or material on a website.<sup>2</sup> There are also most certainly members of the public who do not personally use social media, but are nonetheless aware of the specifics on how to use social media. This opinion reflects the vantage point of the reasonable person who understands social media, which is the majority of the population. With this background, the committee addresses each of the questions in order. This opinion is ultimately general in providing answers to many of these questions, because the questions themselves are broad. More specific answers must await more specific questions regarding a judge’s intended activities.

1) May a judge be “friends” or accept “friend” requests from lawyers who appear before the judge?

Answer: Yes. Being friends with someone is not a violation of the Code of Judicial Conduct. Furthermore, the designation of someone as a “friend” on a website such as Facebook does not indicate that the person is a friend under the usual understanding of the term. Many Facebook users have hundreds and even thousands of “friends.” Whether someone is truly a friend depends on the frequency and the substance of contact, and not on an appellation created by a website for users to identify those who are known to the user.

2) If a judge is “friends” with a lawyer on Facebook, does that require a judge to recuse from the lawyer’s cases?

Answer: Maybe. Disqualification is not automatically required simply because a judge and a lawyer are “friends” on Facebook. Being a “friend” of a judge on Facebook does not automatically create the appearance that the lawyer is in a special position to influence the judge. Lawyers and judges frequently interact in public and private settings. Those interactions create opportunities for lawyers to attempt to influence judges. However, they don’t necessarily create, or appear to create, special positions of influence. Because the committee considers a site such as Facebook to be another public setting, simple interaction as “friends” does not create a special position of influence, nor does it create an appearance of a special position to influence. Being “friends” is one factor to consider when deciding whether recusal is necessary. If the judge and lawyer frequently interact on Facebook then that may require the judge’s recusal in cases involving that lawyer. By communicating frequently, a judge may create the appearance that the

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<sup>2</sup> According to the website [www.internetworldstats.com](http://www.internetworldstats.com), the percentage of the population in the United States that uses the internet is approximately 80% and the number of Facebook users is approximately 50%.

lawyer has a special position in relation to the judge. The frequency and substance of the contacts will be determinative.

3) May a judge identify him or herself as a judge on Facebook?

Answer: Yes. A judge may identify him or herself as a judge on Facebook.

4) May a judge appear in his or her robes in a photo on Facebook?

Answer: Yes. A judge may post a photograph of the judge in his or her robes provided that the photograph was taken in an appropriate setting where wearing the robe would otherwise be appropriate, such as in the judge's chambers. When posting to a webpage, the photograph must be displayed in a context that does not undermine the integrity of the office.

5) May a judge "like" events, companies, institutions, etc., that advertise or post on Facebook?

Answer: Yes. A judge may "like" events, companies, institutions, etc. on Facebook.

6) If a judge "likes" an entity or activity, does that require the judge's recusal in any case involving that event or entity?

Answer: No. Liking an event, activity, or entity does not automatically require the judge's recusal. The term "like" is created by the website and the term itself does not import much about the judge's thoughts. A judge is not required, for example, to enter recusal in a case involving the financial institution where the judge does his or her banking, unless the judge has an ownership interest in the institution or another interest that could be substantially affected by the outcome of the case. (See the definition of "economic interest" in the terminology section of the Code of Judicial Conduct, and Madsen v. Prudential Federal Savings & Loan Ass'n, 767 P.2d 538 (Utah 1988)). The judge "likes" the financial institution enough to bank there, but that simple fact does not require recusal. A judge frequently displays his or her preferences, such as through the car the judge drives, the church the judge attends, the university events the judge attends, or the stores where the judge shops. These public displays of preferences do not automatically require disqualification from cases involving the manufacturer of the vehicle, the university, the religious organization, or the businesses. "Liking" something does not constitute a detailed statement about the judge's thoughts on a particular entity or subject.

7) May a judge be "friends" with individuals who are candidates for political office?

Answer: Yes. A judge may be "friends" with individuals who are candidates for political office. Again, this in and of itself is not sufficient to fall within prohibited political activity under Rule 4.1. Many judges have friendships with individuals who are running for office. Being "friends" with a candidate does not automatically constitute endorsement of that individual

for office, which is the standard in Rule 4.1. The judge must simply be careful about any statements that the judge makes on the webpage that might create an appearance of endorsement. Also, many individuals who are candidates for office have a Facebook page specifically designed to promote the individual's candidacy. A judge may not be a "friend" on that type of webpage, as that may constitute endorsement.

8) May a judge be "friends" with elected officials?

Answer: Yes. A judge may be friends with elected officials.

9) May a judge "follow" or "like" law firms or others in the legal profession?

Answer: Yes. A judge may follow or like law firms or others in the legal profession. In Formal Opinion 98-1, the Judicial Council recognized that judges may socialize with attorneys, such as by having lunch with attorneys or attending a law firm's open house. Social interaction between judges and attorneys occurs in other public settings. A judge may "like" a law firm enough to attend an open house or have lunch with one of the partners, and that degree of interaction does not automatically create perceptions of bias. As noted above, "liking" something or someone does not convey much about the judge's thoughts on a topic. A simple designation on a webpage, without more, does not create an appearance of bias. As noted, a judge may be required to avoid posting comments when liking or following a firm, but the designation of "liking" something does not otherwise convey much meaning.

10) May a judge follow an attorney on Twitter if that attorney might appear before the judge?

Answer: Yes. Similar to the answer above, following an attorney on Twitter does not automatically create issues. If the judge were to begin receiving ex parte communications, for example, that would create problems and the judge could no longer follow that particular attorney.

11) May a judge follow a particular blog on legal or political issues when those blogs are also followed by lawyers or politicians?

Answer: Yes. Simply following a blog that is also followed by politicians or those in the legal profession does not create issues for a judge. Judges and lawyers frequently read the same legal materials, distributed by the same sources. A blog is not that much different.

12) Once associated with an individual or entity, does a judge have a responsibility to continually monitor the comments and webpage contents of those individuals or entities to ensure that the judge is not associated with material that might reflect poorly on the judiciary?

Answer: No. A judge is not required to monitor other webpages. A judge has a responsibility to monitor his or her own activities to ensure that the judge is not associated with material that reflects poorly on the judiciary. However, a judge is not required to continually monitor the websites of others. If a judge happens to review a website with which the judge is associated, and the website contains questionable content, the judge may be required to disassociate from the site. The question of what might be considered “association” and what might be considered questionable content will have to await a more specific fact situation.

13) If a judge may not identify him or herself as a judge on a webpage, may a judge use a pseudonym to post content. For example, if it is inappropriate to be identified as a judge in posting a restaurant review, may a judge use a pseudonym to post such content?

Answer: Yes. As noted above, a judge may identify him or herself as a judge on websites, provided that the identification is in an appropriate context. However, a judge should not use his or her title when posting something such as a restaurant review because that may create the appearance that the judge is using the prestige of the judicial office to advance the interests of a for-profit entity. There is no legitimate reason for using the title in such a situation.

The Committee recognizes that on many websites users participate under “screen names” or pseudonyms. In fact, users are sometimes required to use a pseudonym. Judges may post comments under such a screen name. In posting comments, a judge should operate under the assumption that those who view the judge’s comments will know that the commenter is a judge and therefore the judge must be careful in his or her comments to ensure that the comments do not undermine public confidence in the judiciary.

14) Is a judge required to always identify him or herself as a judge in order to avoid inappropriate ex parte communications?

Answer: No. A judge is not required to always identify him or herself as a judge. If a judge inadvertently receives ex parte communications, then the judge must take appropriate action, the same as in any other situation in which ex parte communications are inadvertently received. This may require recusal or notifying other parties of the communication.

15) May a judge post content related to personal pursuits and interests?

Answer: Yes. A judge may post content on personal interests and pursuits.

16) May a judge post comments and content on legal topics, particularly when such comments may be alongside a post that would be inappropriate if made by a judge?

Answer: Maybe. A judge may post comments and content on legal topics, unless the comments show a bias toward an issue that may come before the judge’s court or the comment could be considered legal advice. A judge may post comments even if the comments might

appear in the same post as comments that would be inappropriate if made by a judge. However, if the public might associate the judge with a particular comment in a way that would undermine the judge's impartiality, such as a judge specifically taking a position adopting a poster's comments on a legally or politically controversial topic, then such a post would be inappropriate.

17) May a judge maintain a profile on LinkedIn?

Answer: Yes. A judge may maintain a profile on LinkedIn.

18) May the LinkedIn profile identify the occupation of the judge?

Answer: Yes. A judge may identify him or herself as a judge.

19) May the LinkedIn profile identify the court on which the judge serves?

Answer: Yes. The profile may also identify the judge's court.

20) May a judge join LinkedIn groups, law related or otherwise, such as groups created specifically for those in the legal profession?

Answer: Yes. A judge may join law related or other groups.

21) May a judge "recommend" someone on LinkedIn either at the judge's initiation or at the individual's request?

Answer: Maybe. A judge is not automatically prohibited from recommending someone on LinkedIn. Judges are permitted to write letters of recommendation, for example, and this would be somewhat similar. There are, however, restrictions placed on judges when writing letters of recommendation. A judge may be prohibited from writing a letter if the recommendation will be directly received by an individual or entity that regularly appears in the judge's court. There may be a perceived coercive effect on someone who regularly appears before the judge. However, recommendations on LinkedIn are usually not specifically directed toward individuals and therefore this aspect typically won't be an issue.

A judge may not, however, "recommend" someone who regularly appears before the judge. A recommendation on LinkedIn is different from being a "friend" on Facebook, or "liking" the attorney, because the recommendation may be perceived as an endorsement of the person's skills and credibility. LinkedIn is a professional networking site and the purpose of recommendations is to promote the professional careers of members. A judge may "recommend" attorneys who don't appear before the judge or individuals in other professions. A judge may also recommend someone who has worked for the judge, such as a law clerk.

22) May the judge ask another person to “recommend” the judge?

Answer: Maybe. A judge may ask another person to recommend the judge if the judge is seeking another judicial position. When judges are seeking judicial positions, they often ask others to provide recommendations. However, if the judge is seeking a position outside of the judiciary, such as at a law firm upon the judge’s retirement, then the judge should not seek a recommendation while still occupying the judicial office.

23) If the judge does “recommend” someone, would the judge be required to enter recusal in a proceeding involving that individual?

Answer: Maybe. If the judge recommends someone on LinkedIn, the judge is not automatically required to enter recusal. If the recommendation is, for example, for a law clerk who has worked for the judge, then the recommendation is based on the judge’s working relationship with the individual and is not based on court performance. Recusal is not automatically required. As noted above, however, recommending someone on LinkedIn is different from liking someone on Facebook because of the stronger statement it makes about the skills of the individual. Recusal would therefore be required when the judge is recommending the attorney based on the judge’s interactions with the attorney in court. Because judges must avoid activities that result in frequent disqualifications, judges should not recommend attorneys or others who regularly appear before the judge.

**Conclusion:**

In answering the above questions, it may have been simpler to answer most in the negative. This would have created a bright line for judges to follow. However, social media have become so prevalent and in many ways an important form of communication. Similar to other public settings, judges should be permitted to enter. Once they have entered, judges must be cautious. However, most of the activities and statements contained in the questions are very minimal. They are not the types of activities and statements that would create issues in other public settings. There must be more. There may be times when actions will be prohibited or will otherwise have consequences requiring the judge to act. As judges participate in social media, the committee encourages judges to submit opinion requests dealing with more specific factual situations.