

FLORIDA SUPREME COURT

Judicial Ethics Advisory Committee

Opinion Number: 2012-12

Date of Issue: May 9, 2012

ISSUE

Whether a judge may add lawyers who may appear before the judge as "connections" on the professional networking site, LinkedIn, or permit such lawyers to add the judge as their "connection" on that site?

ANSWER: No.

FACTS

The Inquiring Judge notes the Committee's Opinion **09-20**, which concluded that it was not permissible for a judge to approve a lawyer who may appear before the judge as a "friend" on a social networking site such as Facebook. The Inquiring Judge asks whether the same restriction would apply to a judge approving such a lawyer as a "connection" on the professional networking site LinkedIn.

The Inquiring Judge submits that a distinction should be drawn between Facebook, where family and other personal relationships are fostered, and LinkedIn which is for the purpose of conducting professional networking. Therefore, the Inquiring Judge submits that "a judge's connection on LinkedIn with lawyers who may appear before the judge does not reasonably convey the impression to the public that a personal relationship of any kind necessarily exists between them." The Inquiring Judge states that the Committee in Opinion 09-20 "determined that judges cannot include lawyers as friends on certain social network sites because the term 'friends' conveys the traditional meaning of close affection.

DISCUSSION

The Committee did not determine in Opinion **09-20** that a judge's befriending a lawyer on Facebook "conveys the traditional meaning of close affection." ¹

To the contrary, the Committee based its opinion on Canon 2B, and its prohibition against a judge conveying or permitting others to convey the impression that they are in a special position to influence the judge.

The Committee based this conclusion on the following analysis:

With regard to a social networking site, in order to fall within the prohibition of Canon 2B, the Committee believes that three elements must be present. First, the judge must establish the social networking page. Second, the site must afford the judge the right to accept or reject contacts or "friends" on the judge's page, or denominate the judge as a "friend" on another member's page. Third, the identity of the "friends" or contacts selected by the judge, and the judge's having denominated himself or herself as a "friend" on another's page, must then be communicated to others. Typically, this third element is fulfilled because each of a judge's "friends" may see on the judge's page who the judge's other "friends" are. Similarly, all "friends" of another user may see that the judge is also a "friend" of that user. It is this selection and communication process, the Committee believes, that violates Canon 2B, because the judge, by so doing, conveys or permits others to convey the impression that they are in a special position to influence the judge.

The Committee also noted that although Facebook was the example used in the opinion, "the holding would apply to *any social networking site* which requires the member of the site to approve the listing of a 'friend' or contact on the member's site if (1) that person is a lawyer who appears before the judge, and (2) identification of the lawyer as the judge's 'friend' is thereafter displayed to the public or the judge's or lawyer's other 'friends' on the judge's or lawyer's page." (Emphasis supplied).

LinkedIn, together with Facebook and MySpace, are specifically identified by the Committee in Opinion **09-20** as examples of social networking sites.

As indicated in its subsequent Opinion **10-06**, the Committee thoroughly and thoughtfully considered its ruling in Opinion **09-20** and concluded by a vote of 9-3 that the prior opinion was correct.

In reviewing the issue once again, the Committee has considered its prior opinions and the opinions on the subject issued in other states. Cal. Judges Ass'n Judicial Ethics Comm., Advisory Op. 66; Mass. Supreme Judicial Court, CJE Op. 2011-6; Okla. Judicial Ethics Advisory Panel, Op. 2011-3; Sup. Ct. of Ohio Bd. of Comm'rs on Grievances & Discipline, Op 2010-7; N. Y. Advisory Comm. On Judicial Ethics, Op. 08-176; S. C. Advisory Comm. on Standards of Judicial Conduct, Op.; and Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119.

The Committee continues to believe that the process of selecting persons to be connections on LinkedIn, and the communication by the judge of the list of the judge's connections to others who the judge has approved, violates Canon 2B. The Committee does not believe that there is meaningful distinction in this regard between Facebook, and LinkedIn, a site used for professional networking, because the selection and communication process is the same on both sites.

The Inquiring Judge summarizes his proposed distinction between a Facebook friend and a LinkedIn connection by stating: "... LinkedIn is designed for business and professional networking, and offers a profile and options to network in a business sense. Facebook, on the other hand is designed more to connect family members and personal friends. As an example that illustrates the difference, when a person wants to know where an old colleague is working now, they would use LinkedIn; when they want to find out if that same colleague is married and if they have kids, they would use Facebook."

Nothing in Opinion 09-10, or in the Committee's subsequent opinion on the subject, Opinion **10-06**, indicates that a judge may not post information about the judge on a website, be it Facebook (who the judge is married to or the names of children) or LinkedIn (where the judge attended college or law school, etc.).

If a judge wishes to post such information (and the information is not otherwise prohibited by the Code), people trying to locate the judge could search Facebook or LinkedIn or any other site for this purpose.

As explained above, it is the process of selection of "friends" or "connections" by the judge, and the fact that the names of those "friends" or "connections" are then communicated -- often, but not always, selectively to others -- that violates Canon 2B, because by doing so the judge conveys or permits others to convey the impression that they are in a special position to influence the judge.

On LinkedIn, under the default settings, a person's profile lists only the number of connections (and not their names) to persons who have not been accepted as "connections." If a visitor to the site is thereafter accepted by the member as a "connection," that visitor can thereafter view the names (and professional information) of the member's connections.

The Committee has reviewed with particular interest California Opinion Number 66, which concludes that it is permissible for a judge to accept a lawyer as a Facebook "friend" or LinkedIn "contact" if that lawyer *may* appear before the judge. The California committee goes on to opine however that a judge may not approve the lawyer, or have a lawyer as a friend or contact, if the lawyer has a case pending before the judge.

This approach would require each judge who had accepted a lawyer as a friend or connection to constantly scan the cases assigned to the judge, and the lawyers appearing in each case, and "defriend" or delist each lawyer upon a friend or connection

making an appearance in a case assigned to the judge.

By contrast, we noted in Opinion **09-20** that "The inquiring judge has asked about the possibility of identifying lawyers who may appear before the judge as 'friends' on the social networking site and has not asked about the identification of others who do not fall into that category as 'friends'. This opinion should not be interpreted to mean that the inquiring judge is prohibited from identifying any person as a 'friend' on a social networking site. Instead, it is limited to the facts presented by the inquiring judge, related to lawyers who may appear before the judge. Therefore, this opinion does not apply to the practice of listing as 'friends' persons other than lawyers, or to listing as 'friends' lawyers who do not appear before the judge, either because they do not practice in the judge's area or court or because the judge has listed them on the judge's recusal list so that their cases are not assigned to the judge."

That approach, with the judge making a determination on whether or not a lawyer *may* appear before the judge, based on the characteristics of the lawyer's practice and the jurisdiction of the judge's court, appears more feasible than one that contemplates a judge constantly approving, deleting, and reapproving lawyers as "friends" or "connections" as their cases are assigned to, and thereafter concluded or removed from, a judge.

For the reasons stated in Opinion **10-06**, one member continues to dissent.

REFERENCES

Fla. Code Jud. Conduct, Canon 2A.

Fla. JEAC Ops. **10-06** and **09-20**.

Cal. Judges Ass'n Judicial Ethics Comm., Advisory Op. 66; Mass. Supreme Judicial Court, CJE Op. 2011-6; Okla. Judicial Ethics Advisory Panel, Op. 2011-3; Sup. Ct. of Ohio Bd. of Comm'rs on Grievances & Discipline, Op. 2010-7; N. Y. Advisory Comm. On Judicial Ethics, Op. 08-176; S. C. Advisory Comm. on Standards of Judicial Conduct, Op.; and Ethics Comm. of the Ky. Judiciary, Formal Op. JE-119.

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate.

Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. See *Petition of the Committee on Standards of Conduct Governing Judges*, 698 So. 2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualifications Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. See *Id.*

The Committee expresses no view on whether any proposed conduct of an inquiring judge is consistent with substantive law which governs any proceeding over which the inquiring judge may preside. The Committee only has authority to interpret the Code of Judicial Conduct, and therefore its opinions deal only with the issue of whether the proposed conduct violates a provision of that Code.

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Copies furnished to:

Inquiring judge (Name of the Inquiring Judge deleted)

Justice Peggy Quince

Thomas D. Hall, Clerk of Supreme Court

All Committee Members

Executive Director of the J.Q.C.

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1. The minority of the Committee, in reaching a contrary result, concluded that designating a person as a friend on Facebook "does not convey that a person is a 'friend' in the traditional sense, i.e., a person attached to another person by feeling of affection or personal regard."