

Opinion 13-39

May 28, 2013

Dear Justice:

This responds to your inquiry (13-39) asking whether you must, at the request of the defendant and/or, his/her attorney, exercise recusal in a criminal matter because you are “Facebook friends” with the parents or guardians of certain minors who allegedly were affected by the defendant’s conduct. Despite the Facebook nomenclature (i.e., the word “friend”) used to describe these undefined relationships, you indicate that these parents are mere acquaintances and that you can be fair and impartial.

The Committee believes that the mere status of being a “Facebook friend,” **without more**, is an insufficient basis to require recusal. Nor does the Committee believe that a judge’s impartiality may reasonably be questioned (*see* 22 NYCRR 100.3[E][1]) or that there is an appearance of impropriety (*see* 22 NYCRR 100.2[A]) based **solely** on having previously “friended” certain individuals who are now involved in some manner in a pending action.

As the Committee noted in Opinion 11-125, interpersonal relationships are varied, fact-dependent, and unique to the individuals involved. Therefore, the Committee can provide only general guidelines to assist judges who ultimately must determine the nature of their own specific relationships with particular individuals and their ethical obligations resulting from those relationships. With respect to social media relationships, the Committee could not “discern anything inherently inappropriate about a judge joining and making use of a social network” (Opinion 08-176). However, the judge “should be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge’s court through a social network. . . [and] must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a . . . relationship requiring disclosure and/or recusal” (*id.*).

If, after reading Opinions 11-125 and 08-176, you remain confident that your relationship with these parents or guardians is that of a mere “acquaintance” within the meaning of Opinion 11-125, recusal is not required. However, the Committee recommends that you make a record, such as a memorandum to the file, of the basis for your conclusion. This practice, although not mandatory, may be of practical assistance to you if similar circumstances arise in the future or if anyone later questions your decision. Alternatively, If you need further assistance with your inquiry, please feel free to write or call us.

Enclosed, for your convenience, are Opinions 11-125 and 08-176 which address this issue.

Very truly yours,

George D. Marlow, Assoc. Justice
Appellate Div., First Dept. (Ret.)
Committee Chair

Encs.