

Opinion 14-05

March 13, 2014

Digest: It is impermissible to host a court website on a social network that will display third-party advertisements in connection with the court's page.

Rules: 22 NYCRR 100.0(S); 100.1; 100.2; 100.2(A); 100.2(C); 100.3(B)(3); 100.4(A)(2); Opinions 12-35; 10-120; 08-176; 01-14.

Opinion:

A town/village judge asks whether his/her court may establish a Facebook page, to be maintained by the court clerk, in order to post certain information for the public.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always promote public confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must maintain the dignity of judicial office at all times, both while performing his/her judicial duties (*see* 22 NYCRR 100.3[B][3]) and when engaging in permissible extra-judicial activities (*see* 22 NYCRR 100.4[A][2]). A judge must not lend the prestige of judicial office to advance the private interests of the judge or others, and must not convey or permit others to convey the impression they are in a special position to influence the judge (*see* 22 NYCRR 100.2[C]). Finally, a judge must also uphold the judiciary's integrity and independence (*see* 22 NYCRR 100.1); and the Rules Governing Judicial Conduct further specify that "[a]n 'independent' judiciary is one free of outside influences or control" (22 NYCRR 100.0[S]).

The Committee has previously advised that, if a town or village judge concludes his/her justice court is not adequately included on either the Unified Court System's website or the local municipality's website, the judge may create and maintain an independent justice court website, subject to certain limitations (*see* Opinions 12-35; 01-14). Indeed, the Committee has encouraged judges to make their court calendars available online, whether "on the municipality's and/or the court's website, or on bar association websites," subject to all applicable statutory provisions concerning confidential information, sealed records, and redaction of protected information such as defendants' addresses and dates of birth (*see* Opinion 10-120).

However, the Committee has not previously considered whether a judge may establish a court website on a commercially available social network such as Facebook. As the Committee has previously explained:

Social networks, as they are commonly known, are Internet-based meeting places where users with similar interests and backgrounds can communicate with each other. Users create their own personal website - a profile page - with information about themselves that is available for other users to see. Users can establish "connections" with other users allowing increased access to each other's profile, including, in many cases, the ability to contact any connections the other user has and to comment on material posted on each other's pages.

(Opinion 08-176 [also noting that “the functions and resources available on, and technology behind, social networks rapidly change”]).

The Committee notes that, while many aspects of a social network could prove problematic for a court website, the present opinion will focus on one aspect that appears to be inherent in the economic model underlying Facebook and other social networks which are offered at no charge to their users and depend on paid third-party advertisements for their continued operation. A user who creates a website on a social network which follows this economic model can be confident that the network has a strong economic incentive to sell and display third-party advertisements in connection with his/her website, without consulting the user. The advertisements are typically dynamic, in that they may change to reflect a particular user’s browsing history, and interactive, in that they invite users to navigate away from the visited page and explore other goods or services.

In the Committee’s view, a court’s institutional website should not display third-party advertisements, as this may create an appearance that the court itself is subject to outside influences or control and thereby undermine the court’s dignity and independence (*see* 22 NYCRR 100.0[S]; 100.1; 100.2[C]; 100.3[B][3]; 100.4[A][2]). Therefore, the inquiring judge should not establish a court website on Facebook.