

## Opinion 08-176

January 29, 2009

Digest: Provided that the judge otherwise complies with the Rules Governing Judicial Conduct, he/she may join and make use of an Internet-based social network. A judge choosing to do so should exercise an appropriate degree of discretion in how he/she uses the social network and should stay abreast of the features of any such service he/she uses as new developments may impact his/her duties under the Rules.

Rules: 22 NYCRR 100.2, 100.2(A); 100.3(B)(8); 100.4(A)(2), 100.4(G); 100.6(B); Opinions 07-141; 07-135; 06-149; 01-14 (Vol. XIX).

### Opinion:

A judge received an e-mail inviting him/her to join an online “social network” and inquires whether it is appropriate for him/her to accept that offer and participate.

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.

Although they vary in certain specific details, social networks generally allow users to reconnect with friends and family, discuss common interests, share photographs, and play games with each other. Other social networks, such as the one at issue in this inquiry, are more business-oriented in nature, with an almost-exclusive focus on professional networking and sharing of business-related information. The social network at issue would allow the judge to join an online community and interact with lawyers and litigants among many other users.

There are multiple reasons why a judge might wish to be a part of a social network: reconnecting with law school, college, or even high school classmates; increased interaction with distant family members; staying in touch with former colleagues; or even monitoring the usage of that same social network by minor children in the judge’s immediate family.

The Committee cannot discern anything inherently inappropriate about a judge joining and making use of a social network. A judge generally may socialize in person with attorneys who appear in the judge’s court, subject to the Rules Governing Judicial Conduct (the “Rules”) (*see* Opinion 07-141). Moreover, the Committee has not opined that there is anything per se unethical about communicating using other forms of technology, such as a cell phone or an Internet web page (*see e.g.* Opinion 07-135 [permitting use of a website in a judge’s campaign for office]). Thus, the question is not whether a judge can use a social network but, rather, how he/she does so.

The Rules require that a judge must avoid impropriety and the appearance of impropriety in all of the judge’s activities (*see* 22 NYCRR 100.2) and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (*see* 22 NYCRR 100.2[A]). Similarly, a judge shall conduct all of the judge’s extra-judicial activities so that they do not detract from the dignity of judicial office (*see* 22 NYCRR 100.4[A][2]).

What a judge posts on his/her profile page or on other users' pages could potentially violate the Rules in several ways. The Committee has, for example, advised that a court should not provide a link on its web page to an advocacy group for Megan's Law which listed the names and counties of residence for registered sex offenders (*see* Opinion 01-14 [Vol. XIX]; *but see* Opinion 07-135 [permissible to provide link to newspaper articles on judge's website, provided that they are dignified, truthful, and not misleading]). A judge should thus recognize the public nature of anything he/she places on a social network page and tailor any postings accordingly.

The judge also 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. In some ways, this is no different from adding the person's contact information into the judge's Rolodex or address book or speaking to them in a public setting. But, the public nature of such a link (i.e., other users can normally see the judge's friends or connections) and the increased access that the person would have to any personal information the judge chooses to post on his/her own profile page establish, at least, the appearance of a stronger bond. A judge must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a "close social relationship" requiring disclosure and/or recusal (*compare* Opinion 07-141 *with* Opinion 06-149).

Further, other users of the social network, upon learning of the judge's identity, may informally ask the judge questions about or seek to discuss their cases, or seek legal advice. As is true in face-to-face meetings, a judge may not engage in these communications. The Rules bar all judges from commenting publicly on pending or impending matters (*see* 22 NYCRR 100.3[B][8]). Likewise, a full-time judge may not practice law and can only act *pro se* or give uncompensated advice to a family member (*see* 22 NYCRR 100.4[G]). Part-time judges, to the extent permitted to practice law (*see* 22 NYCRR 100.6[B]), should be mindful of the public nature of communications via social networks.

The guidance set forth above is, and can only be, a non-exhaustive list of issues that judges using social networks should consider. The Committee urges all judges using social networks to, as a baseline, employ an appropriate level of prudence, discretion and decorum in how they make use of this technology, above and beyond what is specifically described above. It is not difficult to find many mainstream news reports regarding negative consequences and notoriety for social network users who used social networks haphazardly (*see e.g.* Helen A.S. Popkin, *Twitter Gets You Fired In 140 Characters Or Less*, <http://www.msnbc.msn.com/id/29796962/> [March 23, 2009, accessed April 10, 2009] [discussing dangers of postings about workplace on social networks]); *Facebook Post Gets Worker Fired*, <http://sports.espn.go.com/nfl/news/story?id=3965039> [March 9, 2009, accessed April 10, 2009] [discussing termination of NFL team employee for criticizing a player personnel move on Facebook]).

Finally, the Committee is also aware that the functions and resources available on, and technology behind, social networks rapidly change. Neither this opinion, nor any future opinion the Committee could offer, can accurately predict how these technologies will change and, accordingly, affect judges' responsibilities under the Rules. Thus, judges who use social networks consistent with the guidance in this opinion should stay abreast of new features of, and changes to, any social networks they use and, to the extent those features present further ethics issues not addressed above, consult the Committee for further guidance.