

COMMISSION ON RETIREMENT, REMOVAL AND DISCIPLINE

OPINION 186

Issue:

To what extent may a judge be involved in social media? May a judge use social media as part of a campaign for judicial office?

Discussion:

The Commission considers a judge's social media involvement to be under the same ethical requirements as any other public statements. That is, all the Code of Judicial Conduct's limitations apply such as avoiding impropriety, the appearance of impropriety, not lending the prestige of office to advance the private interests of others, making no statements indicating bias or prejudice based on race, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, making no statements that would impair the fairness of pending or impending matters in any court, or not being involved in charitable or political fundraising.

It is the Commission's further opinion that "friending," "unfriending", or "liking" in social media may not be determinative of whether a judge's impartiality is reasonably questioned. However, the use of these terms in a social media setting is a factor to consider in gauging the judge's relationship with the attorney, party or witness and whether recusal is required. As such disclosure to the attorneys and parties of the existence of a "friend", "unfriend", or "liking" social media relationship may be appropriate.

The Commission also understands the impossibility of policing all posts of all "friends" or of all "friends of friends" of the judge. Nonetheless, it is the Commission's view that a judge who participates in social media must make reasonable efforts to review such posts and sever or "unfriend" anyone whose conduct or postings would place the judge in position of appearing to endorse the above stated prohibited conduct.

When a judge chooses to use social media as part of the judge's election campaign, best practice would suggest that a separate public social media site be used. Such site should be limited to the judge's identity, qualifications, present position or other facts that are relevant to allowing the voters to make an informed decision. Such site may also be operated by the judge's campaign committee. The judge must take care to ensure that any postings on the judge's public site or any site operated by the judge's campaign committee conform to the restrictions of political activity and campaign conduct as outlined in the Code of Judicial Conduct. For example these sites must not misrepresent any facts, make pledges or promises of conduct in office other than the faithful and impartial performance of judicial duties or make statements that detract from the dignity of judicial office.

These public sites may be used to solicit publicly stated support or campaign contributions but such solicitations would again be subject to the restrictions of Code of Judicial Conduct.

Finally, while the Commission does not think that judicial involvement in social media is per se unethical, it is conduct that exposes the judge to unnecessary danger of engaging in conduct that may be violative of the Code of Judicial Conduct. If a judge chooses to nonetheless be involved in social media, it is the Commission's view that under a best practice consideration, the judge should limit the judge's "friends" to those persons for whom the judge would recuse in the event such persons appeared in the judge's court. Further, in order to limit the potential of ethical violations and the number of cases in which the judge might be required to recuse, the judge should take care to adjust the "privacy" setting of the judge's personal Facebook or other social media account such that it could be viewed only by those who are the judge's listed "friends" and not by the general public.

Dated: April 24, 2015.