



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2013-06 (March 22, 2013)**

**Extrajudicial Activities; Electronic Social Media; Facebook**

**Rules 1.2, 1.3, 2.1, 2.4, 2.10, 2.11, 3.1, 3.10 & 4.1**

**Issue:** May a Judicial Official participate in an internet-based social networking site (a type of electronic social media or “ESM”) such as Facebook? If participation is permissible, what restrictions apply?

**Background:** The inquiring Judicial Official is a newly confirmed Judicial Official who, prior to attaining that position, was an active Facebook member. The Judicial Official asks whether he/she may re-activate his/her Facebook account and resume participation. (The Judicial Official’s account was deactivated during the pendency of this inquiry.)

Facebook is an internet-based social networking site where acquaintances and other users with similar interests and backgrounds can communicate with each other. All users must register before using the site, after which they may create a personal profile, add other users as “friends”, and exchange messages. Additionally, users may join common-interest user groups, organized by workplace, school or college, or other activities or interests, and categorize their “friends” into lists such as “People from Work” or “Closer Friends”.

Users can create profiles with photos, lists of personal interests, contact information, and other personal information. They can communicate with acquaintances and other users through private or public messages or by means of a chat feature. They can also create and join interest groups and “like pages”, some of which are maintained by organizations as a means of advertising. When using a mobile device with location services, users can share their location with others by using Facebook’s “check-in” feature.

Facebook enables users to select their own privacy settings and to select individuals who can see specific parts of their personal profile page. Facebook requires a user’s name and profile picture (if applicable) to be accessible by everyone, but allows users to control who sees other information they have shared, as well as who can find them in searches.

The reasons for joining ESM networks include, but are not limited to, reconnecting with former 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 user’s immediate family. In ABA Formal Opinion 462

(February 21, 2013), the ABA recognizes that “[s]ocial interactions of all kinds, including [electronic social media], “can be beneficial to judges to prevent them from being thought of as isolated or out of touch.”

**Response:** Rule 1.2 of the Code states that a judge “should act at all times in a manner that promotes public confidence in the ... impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 1.3 states that a “judge shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.”

Rule 2.1 states that “[t]he duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.”

Rule 2.4 (b) states that a “judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”

Rule 2.4 (c) states that a “judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge’s judicial conduct or judgment.”

Rule 2.10 sets forth the restrictions on judicial speech.

Rule 2.11 requires disqualification “in any proceeding in which the judge’s impartiality might reasonably be questioned including, but not limited to, the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer or personal knowledge of the facts that are in dispute in the proceeding....

Rule 3.1 states that “when engaging in extrajudicial activities, a judge shall not:

- (1) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (2) participate in activities that will lead to frequent disqualification of the judge;
- (3) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;
- (4) engage in conduct that would appear to a reasonable person to be coercive; or
- (5) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”

Rule 3.10 states that a judge shall not practice law.

Rule 4.1 sets forth the limitations regarding political activities.

Although participating in social networking sites and other ESM clearly is fraught with peril for Judicial Officials because of the risks of inappropriate contact with litigants, attorneys, and other persons unknown to the Judicial Officials and the ease of posting comments and opinions, the Code does not prohibit such participation. Accordingly, the Committee unanimously determined that a Judicial Official may participate in ESM (such as Facebook), subject to the following conditions:

(1) A Judicial Official must maintain dignity with respect to every comment, photograph and other information shared on a social networking site. Rule 1.2

(2) A Judicial Official must not foster social networking interactions with individuals or organizations if such communications erode confidence in the independence of judicial decision-making. Rule 1.2

(3) A Judicial Official should not post any material that could be construed as advancing the interests of the judge or others. For example, a Judicial Official's profile page should not link to, endorse or "like" commercial or advocacy websites. Rule 1.3

(4) A Judicial Official should not form relationships with persons or organizations that may convey an impression that these persons or organizations are in a position to influence the Judicial Official. Rule 2.4

(5) A Judicial Official should not become a social networking "friend" of attorneys who may appear before the Judicial Official. Rule 1.2

(6) A Judicial Official should not become a social networking "friend" of law enforcement officials, social workers or any other persons who regularly appear in court in an adversarial role, but may add court staff as "friends." Rule 1.2

(7) A Judicial Official should not make comments about any matters pending or impending before any court in accordance with Rule 2.10

(8) A Judicial Official should not view parties' or witnesses' pages on a social networking site and should not use such a site to obtain information regarding a matter before the judge. Rule 1.2

(9) A Judicial Official should disqualify himself or herself from a proceeding when the Judicial Official's social networking relationship with a lawyer is likely to result in bias or prejudice concerning the lawyer for a party or the party. 2.11

(10) A Judicial Official may not give legal advice to others on a social networking site. Rule 3.10

(11) A Judicial Official should not engage in political activities on social networking sites. Some examples include, but are not limited to, the following: (a) a judicial official should not publicly endorse or oppose a candidate for public office, (b) a judicial official should not “like” a political organization’s Facebook page or create links to political organizations’ websites and (c) a judicial official should not post a comment on a proposed legislative measure or a controversial political topic. Rule 4.1

(12) A Judicial Official should be aware of the contents of his/her social networking profile page, be familiar with the site’s policies and privacy controls, and stay abreast of new features and changes. To the extent that those features raise further ethical issues, a Judicial Official should consult the Committee for guidance.

Given the circumstances of the inquiring Judicial Official’s deactivated Facebook account, the Committee concluded that, if the Judicial Official chooses to participate in ESM, the best course of action would be for the Judicial Official to terminate permanently the existing account and start anew. If this course of action cannot be accomplished, the Judicial Official should edit his/her profile page upon reactivation to ensure that it is in compliance with the conditions of this opinion in every respect. This includes, but is not limited to, removing inappropriate contacts, photos, links, comments, petitions, “friending,” and “Check In” postings. A Judicial Official should monitor closely new developments with respect to the ESM and keep abreast of applications instituted by the site managers. The Judicial Official also should monitor his/her participation with respect to maintaining appropriate dignity as well as insuring the precedence of the judicial office.

The Committee noted, as a security concern as much as an ethical concern, that judges who choose to participate should be mindful of the significant security/privacy concerns that such participation entails. It has been reported that data collected using Facebook “likes” alone allows researchers to predict accurately certain qualities and traits concerning users. In addition, accessing Facebook via a mobile device without certain security features enabled, may let other participants know a user’s physical location at any given time.

In reaching its opinion, the Committee considered ABA Formal Opinion 462 (February 21, 2013); Florida Ethics Advisory Committee Opinions 2010-06 & 2009-20; Massachusetts CJE Opinion 2011-6; Oklahoma Judicial Ethics Opinion 2011-3; New York Ethics Opinions 07-135 & 08-176; and California Judicial Ethics Committee Opinion 66.

[Connecticut Committee on Judicial Ethics](#)

Editorial note: This summary was amended on 10-3-19 to correct the quoted language of subsections (3), (4) and (5) of Rule 3.1.