

The Perils of Social Media for Judges  
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It was inevitable that, after lawyers flocked to social media, judges would follow. Unsurprisingly, stories of judicial misconduct are beginning to appear. But let us begin with the biggest news story of 2013 involving judges and social media.

### **ABA Formal Opinion 462**

In the most striking recent development, the American Bar Association issued Formal Opinion 462 on February 21, 2013. While it was not groundbreaking, it certainly reaffirmed the general trends among states which have looked the implications of judges using social media.

The fundamental conclusion was: “A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge’s independence, integrity, or impartiality, or create an appearance of impropriety.” The opinion notes that it does cover blogging, participation in listserves and messages board and interactive gaming.

Judges need to be mindful that their conduct should promote confidence in the judiciary, which means they need to realize that whatever they post might wind up almost anywhere. And they are urged to avoid establishing social media relations with people or entities where it might be thought that those contacts are in a position to influence the judge.

As the opinion notes, the trickiest part thus far has been determining whether judges may “friend” lawyers – and the states have varying opinions on this. If they do have lawyers who are social media friends, must they disclose that fact? Context is important here – is there truly a significant relationship? Is there anything about the relationship that would suggest any connection to a particular case? The opinion suggests that the affirmative need to disclose, whether the relationship is with an attorney, party or witness, would probably be rare.

If common sense dictates it, a judge may decide to disclose that the judge and a party, a party’s lawyer or a witness have a social media connection, but that the judge believes the connection has not resulted in a relationship requiring disqualification. Obviously, the judge is not compelled to search through all social media relationships for each case to determine whether a relationship might exist.

Truly, the essence of the four-page opinion is simply this: Be mindful of the existing rules regarding judicial ethical conduct and how they might apply to social media. If you had to boil it down to three words, it might be, “Use common sense.” Then again, common sense isn’t all that common, as some judges have proven.

## The 2012 CCPIO Report

The Conference of Court Public Information Officers released its third report on New Media's Impact on the Judiciary on August 2, 2012. According to the findings, 46.1% of judges use social media, with 86.3% of that number using Facebook and 20.6% using LinkedIn.

Elected judges are more likely to use social media though the study does not say why. We assume that social media elevates their public profiles and permits them to solicit contributions, either directly or by publicizing events at which monies are raised.

Asked to react to the statement, "Judges can use social media profile sites, such as Facebook, in their professional lives without compromising professional conduct codes of ethics," more than 45% still disagree. But the number of judges who agreed with that statement has more than doubled since the 2010 survey, suggesting that judges are beginning to warm to the notion of participating in social media.

In a similar fashion, judges indicated that they were also warming to the use of new technologies in the courtroom. They are also very much aware of how much social media impacts jurors: More than half (60%, up 4.5% from 2010) of judges report routine juror instructions that include some component about digital media use during trial. Now that's an amazing shift in numbers!

## Judicial Misadventures with Social Media

A North Carolina judge was reprimanded in 2009 when the judge friended an attorney on Facebook while he was presiding over a child custody case in which the attorney represented the father. There were posting about whether the father was having an affair, which led to the judge's post that he "had two good parents to choose from" and the lawyer's response: "I have a wise judge."

In January of 2013, Texas Judge Lee Johnson posted on his Facebook account about a star Texas A&M quarterback who was ticketed for speeding - the judge had graduated from a rival university. Perhaps chastised for the posting, Johnson then posted "I meant to say 'allegedly' speeding, my bad." The city manager apologized to football star Johnny Manziel and called the posting "insensitive and inappropriate." The judge has also reached out to apologize and an investigation into the judge's conduct is underway. And "my bad?" Seriously?

In 2010, a Georgia judge stepped down after he made contact via Facebook with a party appearing before him. Over the course of their social media relationship, they went to lunch, she borrowed money from him, they talked about her case, he visited her apartment, he advised her on case strategy and he released her on personal recognizance. When the details of the relationship became public, the judge resigned.

Judicial misconduct doesn't have to take place on social media to find its way there. In our era, judicial misconduct such as texting and adultery may find its way onto multiple social media platforms. Go to YouTube and search on Judge Wade McCree and you'll see what we mean. Don't do this at work!

What we have seen so far is likely only the tip of an ugly iceberg since it often takes a while for misconduct to come to light. As more and more judges board the social media train, we will probably see increasing news reports of judicial misconduct.

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