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Judge's Response to Facebook Message Showed No Bias, According to Appeals Court

A judge in Texas appears to have handled an ethics dilemma on Facebook in textbook fashion. The judge was presiding over a criminal case involving defendant William Scott Youkers, who was sentenced to eight years in prison for assaulting his girlfriend. Youkers moved for a new trial on the ground that the judge's Facebook friendship with the girlfriend's father created both actual and apparent bias. According to Youkers, the judge failed to disclose a private Facebook message he received from the father that – ironically – had sought leniency for Youkers.

The Texas court of appeals [rejected](#) Youkers' request. According to the opinion, upon receiving the Facebook message, the judge immediately advised the father that his message violated the ex parte communication rules. He then placed a copy of the message in the court files, disclosed it to the lawyers, including Youkers' attorney, and reported the incident to the state's judicial conduct commission.

The ABA and several state judicial ethics committees have issued opinions concerning the use of social media by judges, with varying results. ABA Formal Op. 462 (2013) concluded that judges “may participate in electronic social networking,” even with those who appear before them in court, as long as they “comply with the 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.” Thus, a social media connection, by itself, will not necessarily require recusal.

Several states, including New York, have taken a similar view. A 2009 opinion issued by the New York Judicial Ethics Committee approves the use of social media by judges, but advises appropriate discretion. See N.Y. Jud. Ethics Comm. Informal Op. 08-176 (2009). Like the ABA opinion, the New York opinion does not prohibit judges from establishing social media connections with those who appear before them in court, but cautions judges to “be mindful of the appearance created” by such connections and to consider whether they “rise to the level of a ‘close social relationship’ requiring disclosure and/or recusal.” *Id.*; see also Md. Jud. Ethics Comm. Formal Op. 2012-07 (2012) (social media connection with a lawyer, absent other connections, will not generally require recusal); Ohio Bd. Of Comm'rs on Grievances and Discipline Formal Op. 2010-7 (2010) (judges may have social media

connections with lawyers as long as relationship otherwise comports with ethics rules); Ky. Jud. Ethics Comm. Formal Op. JE-119 (2010) (judges should consider whether social media connection with lawyer, along with other factors, requires disclosure or recusal); S.C. Jud. Dep't Adv. Comm. on Standards of Jud. Conduct Op. 17-2009 (magistrate judge may have social media connections with lawyers as long as they do not discuss anything related to judge's judicial position).

Other states have taken a more draconian approach, prohibiting any social media connections between judges and those who appear before them in court. See, e.g., Okla. Jud. Ethics Adv. Panel Op. 2011-3 (2011) (judges may not "friend" anyone who appears before them in court); Mass. Jud. Ethics Comm. Op. 2011-6 (2011); Cal. Judges Ass'n Jud. Ethics Comm. Op. 66 (2010); Fla. Jud. Ethics Adv. Comm. Formal Op. No. 2009-20 (2009).

As the Texas court observed, permitting judges to use social media is "consistent with the premise that judges do not 'forfeit [their] right to associate with [their] friends and acquaintances nor [are they] condemned to live the life of a hermit.'" The opinion also noted that social media platforms are a way for judges to "remain active in the community." They also function as campaign tools for judges who, in Texas, are elected officials. In fact, the judge testified that his Facebook friendship with the father occurred solely because they were running for office at the same time and there was no relationship between them beyond their social media connection.

As social media use continues to grow, we will likely see more incidents like this – where judges or lawyers receive ex parte or other improper communications from well-meaning but misguided individuals. The judge's conduct serves as a shining example of how to handle such communications.