

Lawyers & Judges: Be Careful Who You Friend



An interesting appellate decision from Florida recently addressed the issue of whether a judge who was a Facebook friend with the prosecuting attorney should be disqualified because of the “friend” status. Applying a Florida Judicial Ethics Advisory Committee opinion, Florida’s Fourth District Court of Appeal held that the judge should be disqualified under Florida Code of Judicial Conduct Canon 2B (“A judge shall not ... convey or permit others to convey the impression that they are in a special position to influence the judge.”)

In Domville v. State, — So.3d —, 2012 WL 3826764 (Fla. App. 2012), the defendant moved to disqualify the trial court judge because the judge and the prosecuting attorney were Facebook friends. *Id.* at *1 (“Petitioner Pierre Domville moved to disqualify the trial judge. The motion was supported by an affidavit averring that the prosecutor handling the case and the trial judge are Facebook ‘friends.’ This relationship caused Domville to believe that the judge could not ‘be fair and impartial.’”). The trial court denied the motion and Domville appealed.

The appellate court reversed the trial court and concluded that “[A] judge’s activity on a social networking site may undermine confidence in the judge’s neutrality. Judges must be vigilant in monitoring their public conduct so as to avoid situations that will compromise the appearance of impartiality.” *Id.* at *2. And since Domville had “alleged facts that would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial,” *id.*, the appellate court reversed the trial court and disqualified the trial court judge.

It is worth noting that the decision relied heavily on a Florida Judicial Ethics Advisory Committee opinion that concluded:

[T]he Florida Code of Judicial Conduct precludes a judge from both adding lawyers who appear before the judge as “friends” on a social networking site and allowing such lawyers to add the judge as their “friend.” The Committee determined that a judge’s listing of a lawyer as a “friend” on the judge’s social networking page-“[t]o the extent that such identification is available for any other person to view”-would violate Florida Code of Judicial Conduct Canon 2B.

The Committee further noted that Canon 2B is typically violated when the following factors are met:

1. The judge must establish the social networking page.
2. The site must afford the judge the right to accept or reject contacts or “friends” on the judge’s page, or denominate the judge as a “friend” on another member’s page.
3. The identity of the “friends” or contacts selected by the judge, and the judge’s having denominated himself or herself as a “friend” on another’s page must then be communicated to others.

Obviously, accepting a Facebook “friend” invite from a lawyer would trigger all of these factors, making it pretty clear that the practice should be avoided. The decision will have limited precedential effect outside of Florida, particularly where it swings on a state-based ethics opinion.

That said, **the takeaway** is, given that most states have judicial canons that prohibit judges from engaging in acts that may appear to affect their objectivity, it would not be surprising to see this issue raised with similar results in other jurisdictions.

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