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## Should judges use social networking sites?

Sixty one percent of all adults online now use social networking sites like Facebook and Twitter, according to a recent report from the Pew Research Center called "Generations 2010." Of course, because of regulatory and professional ethical constraints, social networking isn't for everyone.

Which begs the question: Should judges use social media? If so, should limitations be placed on their interactions?

Since 2009, ethics commissions in a number of jurisdictions have struggled to address this issue, and the majority have concluded that judges can interact on social media sites with the lawyers that appear before them.

The minority view was expressed by the Florida Supreme Court's Judicial Ethics Advisory Committee in November 2009. In Opinion 2009-20, the committee concluded that although judges could join and participate on Facebook, becoming "friends" with attorneys who appeared before them was impermissible.

The committee reasoned that allowing judges to do so would give the impression that the attorney was in a position to exert special influence upon the judge. This determination was later reaffirmed by the committee in Opinion 2010-06.

Many commentators, myself included, have criticized this opinion, arguing that online connections are no different than those made offline. Certain types of offline interactions with judges have always been considered acceptable and are commonplace, such as lunching or golfing with a judge. Online "friend" connections are comparable to offline interactions and should not be forbidden simply because the medium for the interaction is different.

The committees in other jurisdictions that later addressed this issue agreed with this premise, issuing decisions grounded in the idea that online and offline interactions are comparable and should not be treated differently.

In essence, the majority of jurisdictions have concluded that it is generally permissible for judges to become online "friends" with attorneys appearing before them, as long as the judges are careful to avoid the appearance of impropriety, avoid *ex parte*

communications and otherwise ensure compliance with applicable ethical rules. (See the January 2009 Advisory Opinion 08-176 of the New York Advisory Committee on Judicial Ethics and the January 2010 Ethics Committee of the Kentucky Judiciary Opinion JE-119.)

Most recently, on Dec. 3, the Supreme Court of Ohio's Board of Commissioners on Grievances & Discipline tackled this issue in Opinion 2010-7. The board agreed with the majority of jurisdictions that have addressed this issue, concluding that: "A judge may be a "friend" on a social networking site with a lawyer who appears as counsel in a case before the judge. As with any other action a judge takes, a judge's participation on a social networking site must be done carefully in order to comply with the ethical rules in the Ohio Code of Judicial Conduct."

That's good news for judges already using social media, which, according to a recent study issued by the Conference of Court Public Information Officers (see: [www.ccpio.org/newmediareport.htm](http://www.ccpio.org/newmediareport.htm)), is a whopping 40 percent of all judges.

For those judges, and the lawyers that practice before them, it's heartening to see that the majority of ethics committees are issuing forward-thinking opinions that permit judges and attorneys to network both on and offline.

The Florida committee's minority determination, on the other hand, which fails to acknowledge the reality of the 21st century world in which lawyers and judges exist, is unlikely to withstand the test of time.

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