

Ethics

Judges advised to keep some attorneys off personal Web pages

December 11, 2009

By: Susannah A. Nesmith

Florida's Judicial Ethics Advisory Committee prompted a flurry of defriending on Facebook when the group concluded judges should not be Facebook friends with attorneys who appear before them.

Hector Lombana, a prominent Coral Gables attorney who is active on Facebook and in judicial elections, said he was "dropped like a hot potato" by all his friends on the bench but understands.

"Litigants can see people being Facebook friends, and all of the sudden there will be 10,000 motions to recuse because somebody's friends with one side or the other," he said.

Miami-Dade Circuit Judge Maxine Cohen Lando posted a status update on her Facebook page advising she was dropping a whole bunch of people from her friend list because of the advisory opinion issued Nov. 17.

"I understand from my daughters that when you defriend anyone, it's a highly offensive act," she said, noting she really only uses Facebook to keep up with some high school friends. "I just wanted to let everyone know so no one was offended."

She had to defriend a couple dozen lawyers, leaving only three criminal defense attorneys on her list of friends. Lando hears civil cases. She said she agreed with the opinion and felt it was appropriate for judges to avoid any possible appearance of bias.

The state committee said "friending" someone on Facebook poses an appearance of conflict and could lend the weight of the robe to others. Judicial Canon 2B strictly prohibits judges from doing anything that might "lend the prestige of judicial office to advance the private interests of the judge or others."

The ruling did not address Facebook in particular, instead referring to all social networking sites and saying the primary problem is the sites allow others to see who someone's friends are.

"It is this selection and communication process, the committee believes, that violates Canon 2B because the judge by so doing conveys or permits others to convey the impression that they are in a special position to influence the judge," the committee wrote.

Tony Alfieri, an ethics professor at the University of Miami School of Law and head of the Center for Ethics and Public Service, said the ruling protects the appearance of judicial impartiality.

"The integrity and independence of the judiciary as democratic values depend in large part on the good-faith efforts of the judiciary to not only act impartially, but appear to act impartially," he said. "Any public or private forum that suggests to the contrary can harm the standing of the judiciary and therefore do harm to the tripartite democratic system that is American democracy."

Web Extra: [Panel's opinion](#)

Miami-Dade judicial candidate Milton Hirsch said the opinion, which approves of Internet networking in judicial election campaigns, will give him an excuse to get off Facebook, which he finds time-consuming and boring, once he's no longer a candidate. The ruling states judicial candidates can use social networking during their campaign and can have things like Facebook

fan pages.

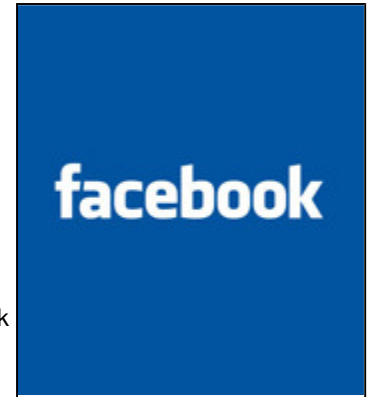
"Sartre said hell is other people. Sartre never met Facebook," Hirsch said. "I understand the [committee's] concern, and it will be no problem for me. The only reason I'm on Facebook is because I'm a candidate."

Miami-Dade Circuit Judge Scott Silverman, who served for 10 years on the committee and chaired it for two, said the issue poses complicated ethical questions, especially now that so many organizations, including some he's a member of, use sites like Facebook to communicate with members.

"I now have to defriend the organization because of the associated lawyers. It's problematic," he said. "The courts are always grappling with technology because what we do is we generally look at the past to help us decide what the law is. We do that by looking at cases, by reviewing past statutes. Technology is prospective. It results in a clash between the past and the future."

Some attorneys also found problems with the ruling.

"I think everybody's a little too sensitive. Judges can't have friends? I mean state judges take campaign contributions from



attorneys who appear before them,” Miami criminal defense attorney David O. Markus said.

“This seems out of proportion to what really is occurring. I suspect the rules are being made by people who don’t understand the computer era.”

Miami-Dade Assistant State Attorney Abbe Rifkin looked at it from a prosecutor’s perspective and reasoned that if a judge crossed a line on Facebook, at least there would be evidence to prove that.

“I don’t understand why we can be friends in real life and not have our conversations monitored, but we can’t be friends in cyberspace where our conversations are monitored and can be reproduced,” she said.

A minority on the committee believed judges should not be precluded from having lawyer friends on social networking sites.

“The minority concludes that social networking sites have become so ubiquitous that the term ‘friend’ on these pages does not convey the same meaning that it did in the pre-Internet age; that today the term ‘friend’ on social networking sites merely conveys the message that a person so identified is a contact or acquaintance,” the ruling stated.

Miami-Dade Circuit Judge Stanford Blake, administrative chief for the criminal division, said he agreed with the minority because judges are charged with ruling on the law and the facts of the case regardless of their individual biases.

“I practiced for 21 years. When I took the bench, if I could not have had a case with someone in front of me who was my ‘friend’ even within the meaning of Facebook, I would have had a caseload of two,” he said. “I don’t think my colleagues or the public would have appreciated that.”

The opinion is advisory, and judges may chose to ignore it, but advisory opinions are considered when judges are accused of violating the judicial canons.

The ruling did not address whether judges can be social networking friends with people who appear before them as defendants or plaintiffs, as happened recently in the case of suspended Miami City Commissioner Michelle Spence-Jones who is charged with improperly funneling public money to her personal business. Spence-Jones was friends on Facebook with Circuit Judge Yvonne Colodny until she was assigned her criminal case. Colodny quickly defriended the embattled commissioner and announced her action in court.

Several judges said the ruling makes it easier for them to keep their Facebook world private.

“It made me more comfortable in rejecting people who ask to be friends. I used to just ignore them,” Miami-Dade Circuit Judge Lawrence Schwartz said. “This makes it easier to say no without being offensive.”

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