

Legal ruling: Facebook 'friends' aren't necessarily real friends

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A new AI tool created to help identify certain kinds of substance abuse based on a homeless youth's Facebook posts could provide homeless shelters with vital information to incorporate into each individual's case management plan. Credit: CC0 Public Domain

Facebook "friends" aren't always real friends - at least legally.

That was the finding Wednesday of an [appeals court](#) on a specific Facebook-related legal question: whether a Miami [judge](#) needed to recuse herself because one of the attorneys involved in a case in her [court](#) is a Facebook "friend."

The answer, in a 10-page opinion that takes a remarkably nuanced look at social media, is: No.

The ruling notes that Facebook data mining and algorithms lead to people accepting friend requests from people they barely know, or are acquainted with purely from professional circles.

"Electronic social media is evolving at an exponential rate," 3rd District Court of Appeals Judge Thomas Logue wrote in the unanimous opinion. "Acceptance as a Facebook 'friend' may well once have given the impression of close friendship and affiliation. Currently, however, the degree of intimacy among Facebook 'friends' varies greatly."

The legal fight over Facebook friendship isn't over. An appeals court in Palm Beach earlier ruled to the contrary - meaning the Florida Supreme Court could very well decide the true legal meaning of social-media friendship.

But for now, social-media savvy judges in Miami can breathe a little easier.

"This decision brings much needed fresh air to an issue that has led some lawyers and judges greatly to overreact. The word "[friend](#)" has many meanings," said New York University law professor Stephen Gillers, an expert in legal ethics. "Recusal is justified only when the friendship is so close that the public would reasonably question whether the judge would be able to rule against the lawyer."

The law has long allowed judges with a "mere friendship" with attorneys in real life to remain on a case. But in recent years, social media has further complicated the ethics of a profession that strives for impartiality amid the messy nature of real-life relationships.

Many legal ethics expert advise judges to get off social media all together to avoid any questions of inappropriate relationships. "My own feeling is that it's something that can only cause trouble for a judge," said Bob Jarvis, an ethics law professor at Nova Southeastern University. "I don't see any upside in a judge having a social-media presence."

But there is no hard-and-fast rule barring judges from having fellow lawyers as connections on social-media.

In 2009, Florida's Judicial Ethics Advisory Committee said judges should be prohibited from having lawyers who may appear before them as Facebook friends - but later acknowledged it is OK for candidates to do so if the judges are using social media to campaign for the elected office.

The Palm Beach appeals court, in 2012, ruled a judge had to disqualify himself because he was Facebook friends with the prosecutor on a criminal case.

In Miami, the state attorney's office has cautioned prosecutors "to be mindful" about their Facebook relationships with judges they have cases in front of.

In the case decided Wednesday, the legal row began with a lawsuit over unpaid legal bills.

The Miami law firm Herssein and Herssein sued its former client, the United Services Automobile Association. The case was assigned to

Circuit Judge Beatrice Butchko. Former Miami-Dade circuit judge Israel Reyes was hired to represent one of the association's executives.

Lawyers Reuven and Iris Herssein asked Butchko to recuse herself because she is Facebook friends with Reyes, saying they had a "well-grounded fear of not receiving a fair and impartial trial." Butchko, however, declined and the Hersseins appealed.

The appeals court disagreed that the Facebook relationship was enough to warrant recusal, pointing out that some Facebook users have hundreds of "friends," some of whom they may not even remember accepting as "friends."

"An assumption that all Facebook 'friends' rise to the level of close relationship that warrants disqualification simply does not reflect the current nature of this type of electronic social networking," Logue wrote.

Whether Herssein appeals the decision remains to be seen.

Some legal experts hailed Wednesday's opinion.

But ultimately, the Florida Supreme Court will have to establish a rule or guidelines on social-media use by judges, said Jarvis, the Nova Southeastern ethics expert.

"I don't expect a 60-year-old judge to be on [social media](#), but as you get younger judges who grew up with this stuff, the issue can only become more intense," Jarvis said.

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