

4-1-2011

Why Can't We Be Friends - A Judicial Clerk's Guide to Social Networking

Kate Crowley

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>



Part of the [Legal Profession Commons](#)

Recommended Citation

Kate Crowley, *Why Can't We Be Friends - A Judicial Clerk's Guide to Social Networking*, 14 RICH. J.L. & PUB. INT. 641 (2010).
Available at: <http://scholarship.richmond.edu/pilr/vol14/iss4/6>

This Editorial is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepositary@richmond.edu.

EDITORIAL

WHY CAN'T WE BE FRIENDS? A JUDICIAL CLERK'S GUIDE TO SOCIAL NETWORKING

*By Kate Crowley**

Synopsis: With the growing popularity of social media, there is an ever-increasing chance that attorneys will commit an ethics violation or other lapse of discretion online. This article provides an overview of social networking and provides guidance for how judicial clerks—and all attorneys—can keep themselves in line when going online.

Most people have heard the tale of the S.S. Minnow and its ill-fated three-hour tour.¹ But how many have heard the tale of Antonio D. Hill, a man on trial for allegedly using a gun to assault two men in Florida?² For those unfamiliar with the trial, Assistant State Attorney Brandon White composed a song to the tune of the *Gilligan's Island*³ theme, as a primer:

Just sit right back and you'll hear a tale, a tale of a fateful trial that started from this court in St. Lucie County. The lead prosecutor was a good woman, the 2nd chair was totally awesome. Six jurors were ready for trial that day for a four hour trial, a four hour trial.

* Kate Crowley is a research attorney at the Kansas Court of Appeals. She graduated cum laude from UMKC School of Law in 2009 with honors in pro bono/public service. She would have written a better biographical footnote, but she was busy checking her Facebook page, Twitter account and blog.

1. *Gilligan's Island* (CBS television broadcast 1964–67).

2. Melissa E. Holsman, *Deputy Under Investigation in St. Lucie Mistrial; Facebook Ditty Gets Assistant State Attorney in Hot Water*, TCPALM (Stuart, FL), Apr. 21, 2010, available at <http://www.tcpalm.com/news/2010/apr/21/deputy-under-investigation-in-st-lucie-trial/>.

3. SHERWOOD SCHWARTZ & GEORGE WYLE, THE BALLAD OF GILLIGAN'S ISLE (EMI U Catalog 1964).

The trial started easy enough by then became rough/
The judge and jury confused,/If not for the courage of the
fearless prosecutors/The trial would be lost, the trial would
be lost./The trial started Tuesday, continued till
Wednesday and then Thursday/With Robyn and/Brandon
too,/The weasel face/The gang banger defendant/The
Judge, clerk, and Ritzline/ Here in St. Lucie.

So this is the tale of the trial/it's going on here for a
long, long time,/The prosecutors will have to make the
best of things,/It's an uphill climb./The New Guy and
Robyn/Will do their very best,/To make sure justice is
served/In the hornets nest./No rules of evidence or
professionalism/Not a single ounce of integrity/Like My
Cousin Vinny,/No ethics involved, no ethics involved.

So join us here each week my friends,/You're sure to
get a smile,/From 6 jurors, a weasel face and two
prosecutors,/Here in St. Lucie County.⁴

White posted the song to Facebook, an online social networking site.⁵ At the end of the song, Assistant State Attorney Robyn Stone commented: “Hahahah – Brandon and I are in the trial from hell—it is just unbelievable – Brandon has been awesome—Brandon I love your poem”⁶ White’s song is one of many social media-related mistakes public-service attorneys have made in recent years.⁷ The prevalence of such errors may be due in part to the fact that attorneys often explore social media sites in a vacuum of guidelines to regulate their use. This editorial will (1) cover some of the common social networking sites that pose potential problems for clerks, (2) demonstrate how social networking can be used and misused by attorneys, and (3) provide a possible set of rules to guide the use of social media sites by judicial clerks.

4. Posting of Brandon White to Facebook, <http://www.tcpalm.com/news/2010/apr/21/read-assistant-state-attorney-brandon-whites-faceb/> (Apr. 21, 2010, 15:01 EST) [hereinafter Read Facebook].

5. Holsman, *supra* note 2; Facebook, www.facebook.com (last visited Aug. 4, 2010).

6. See Read Facebook, *supra* note 4.

7. See *infra* Part II.

WHAT IS SOCIAL NETWORKING?⁸

A. Facebook

Facebook is a social networking site used internationally by millions of people in order to supplement existing real-time social interaction with friends, colleagues, and family; maintain those relationships virtually when face-to-face interaction lapses; and even establish new relationships with other users.⁹ Like most social networks, users create a profile, submitting biographical information like their educational histories, their political and religious persuasions, birthdates, and any other personal minutiae that they desire, as well as photo and video albums.¹⁰

Facebook's profile offers a unique feature: the wall—a space where the user and all his friends may comment, or post links, pictures, or video. Unless the user modifies his privacy settings, the wall is open to all public viewing.¹¹ Users most often choose to limit the availability of their pages to their “friends”—other users who have requested and received permission to view the user's Facebook page, and who in turn give the user access to view their pages.¹²

To give some context for this level of relationship, know that it is common for a Facebook user to have several hundred, or even a thousand “friends.” So “friending” someone on Facebook is hardly the same level of involvement as inviting them to move in with you, or even inviting them to dinner or a ball game.¹³

The second salient feature that Facebook has to offer is the “news feed”—the user's homepage, which notifies the user of the most recent postings by other “friends” on their respective walls. Thus, when a user updates his wall with a post, not only will it be publicly accessible to those who seek out his profile, but it will also be “news”—situated prominently on the homepages of all his friends.

8. This editorial covers social networking through Facebook, Twitter and blogs. There are many other social networking sites popular with attorneys—LinkedIn, for example—that I have excluded because they do not involve posting personal information as much as these three sites.

9. See Facebook Info, <http://www.facebook.com/facebook?v=info> (last visited Apr. 6, 2011).

10. See *id.*

11. See Editorial, Alice Mathias, *The Fakebook Generation*, N.Y. TIMES, Oct. 6, 2007, available at <http://www.nytimes.com/2007/10/06/opinion/06mathias.html>.

12. Tread Carefully With Social Media [Web 2.0 redux], <http://pr4lawyers.blogspot.com/2010/01/tread-carefully-with-social-media-web.html> (last visited Aug. 4, 2010).

13. *Id.*

B. Twitter

Twitter is in effect a distillation of the Facebook concept: users post thoughts on their profiles in increments of 140 characters or fewer, also known as “tweets,” and those thoughts are logged real-time on a central homepage with the posts of other people that the user is following.¹⁴ Users choose to “follow” other users (or request permission, if the other users have restricted profiles).¹⁵ Because Twitter operates with a focus on developing a diverse and readable homepage to the exact liking of the individual user, there is not the same automatic reciprocal quality to “following” that there is with “friending” on Facebook. Thus, a user may choose to follow somebody else but that other person may not want the user’s posts to appear on his home page, and may not opt to follow the user in return. Twitter accounts do not generally provide as much personal information about users as Facebook.¹⁶ Once sent, a tweet cannot be deleted or retracted, as the website stores a record of everything.¹⁷ Furthermore, tweets can be copied and posted, or even “retweeted,” by other users.¹⁸

C. Blogs

A web log—or “blog”—is a “hierarchy of text, images, media objects and data, arranged chronologically, that can be viewed in an HTML browser.”¹⁹ Essentially, a blog is like an online diary or journal, except usually written for a public audience.²⁰ Unlike Twitter, bloggers are free to post as much or as little content as they like. However, “[m]ost weblog posts are short, a paragraph or two.”²¹ Like Facebook and Twitter, most blogs exist in perpetuity in an archive.²² Additionally, like Facebook and Twitter, blogs readers can interact with the blogger by commenting on the

14. Twitter Frequently Asked Questions, <http://support.twitter.com/groups/31-twitter-basics/topics/104-welcome-to-twitter-support/articles/13920-frequently-asked-questions> (last visited Apr. 6, 2011).

15. *Id.*

16. *Id.*

17. *Id.* Although Twitter stores all tweets, users are only able to view the 3200 most recent tweets sent from their account. *Id.*

18. *Id.*

19. Posting of Dave Winer to Weblogs at Harvard Law, <http://blogs.law.harvard.edu/whatmakesaweblogaweblog.html> (June 18, 2003, 09:56 EST).

20. Codex, Introduction to Blogging, http://codex.wordpress.org/Introduction_to_Blogging (last visited Apr. 6, 2011).

21. *Id.*

22. *Id.* Individual blog posts are assigned a permalink and are permanently stored on an archive page. *Id.*

posting.²³ Of these three social networking avenues, blogs seem to be more widely used in the legal profession, as the slightly more narrative structure may appeal to a wider range of attorneys.²⁴

HOW IS SOCIAL MEDIA MISUSED?

The growing popularity of social networking sites demonstrates that people are increasingly “comfortable revealing every facet of their lives online, from their favorite pizza to most frequent sexual partners.”²⁵ Lawyers have already witnessed the intervening force of social networking upon their clients’ cases. Some brief examples include: a 17-year-old DWI defendant who posted a photo labeled “drunk in Florida” online a month after killing her boyfriend in a car crash;²⁶ a woman from Tennessee who allegedly violated a protective order by “poking” another woman on Facebook;²⁷ and the increasing number of divorce lawyers who are using social media to investigate their clients’ spouses.²⁸ Even attorneys working within the judiciary have come around to the idea that it is acceptable to participate in this virtual exhibitionism.²⁹ While such behavior may be ill advised for anyone, it appears particularly inappropriate for those working in the public sector.³⁰ According to Elizabeth K. Englander, professor of psychology at Bridgewater State College in Massachusetts, the appeal of

23. *Id.*

24. *See, e.g.*, Library of Congress Legal Blawg Archive, <http://www.loc.gov/law/find/web-archive/legal-blaws.php> (last visited Apr. 7, 2011).

25. Laura M. Holson, *Tell-All Generation Learns to Keep Things Offline*, N.Y. TIMES, May 8, 2010, at A1.

26. Debra Cassens Weiss, *DWI Defendant Goes to Jail After Posting “Drunk in Florida” Facebook Photo*, A.B.A. J., Jan. 28, 2010, available at

http://www.abajournal.com/news/article/dwi_defendant_goes_to_jail_after_posting_drunk_in_florida_facebook_photo/.

27. Martha Neil, *Did Court Order Ban Facebook “Poke”?*, A.B.A. J., Oct. 13, 2009, available at http://www.abajournal.com/news/article/did_court_order_ban_facebook_poke/. To “poke” someone on Facebook is to send an electronic alert to a user’s account notifying him or her that he or she has been virtually “poked.” *See* Facebook Help Center, <http://www.facebook.com/help/?search=poke> (last visited Apr. 6, 2011).

28. Stephanie Chen, *Divorce Attorneys Catching Cheaters on Facebook*, CNN, June 1, 2010, <http://www.cnn.com/2010/TECH/social.media/06/01/facebook.divorce.lawyers/index.html?hpt=Sbin>.

29. Holson, *supra* note 25; *see* Debra Cassens Weiss, *Blogging Assistant PD Accused of Revealing Secrets of Little-Disguised Clients*, A.B.A. J., Sept. 10, 2009, available at

http://www.abajournal.com/weekly/blogging_assistant_pd_accused_of_revealing_secrets_of_little-disguised_clie

30. *See generally* Weiss, *supra* note 29.

this manner of communication “is sort of like the mob effect.... You feel like you’re one in a million, and so who will ever notice you?”³¹ However, other attorneys, clients and disciplinary officials are noticing.

In Illinois, former public defender Kristine Ann Peshek blogged that her client lied to her—and the court—about using drugs.³² Peshek wrote: “Huh? You want to go back and tell the judge that you lied to him, you lied to the pre-sentence investigator, you lied to me?”³³ Peshek also wrote on her blog that “one judge was clueless and another was an —hole. She also wrote that one client was ‘taking the rap for his drug-dealing dirtbag of an older brother’ and said another was ‘stoned’ while in court.”³⁴ A disciplinary complaint was filed against Peshek on August 25, 2009.³⁵ In another example from this author’s personal life, a judicial clerk friend once posted a series of status updates about an ongoing jury trial.³⁶ One status opined that “there’s nothing like being hit on by jurors....”³⁷ A friend assured her that “its ok if their [sic] hot!!! and have a good job!!!”³⁸ Hopefully, said clerk did not follow this advice.³⁹

In addition to exposing lawyers to questions of ethical violations, posting information can cause other professional consequences. Texas State Judge Susan Criss likes to monitor Facebook to “keep tabs on lawyers.”⁴⁰ On one occasion, a prosecutor asked for a weeklong continuance to purportedly attend a funeral, but subsequently Criss saw photos on Facebook of the lawyer drinking and riding motorcycles—not quite funerary behavior.⁴¹ Criss denied the prosecutor’s later request for a month-long continuance.⁴²

Of course, social media can be valuable to lawyers—so long as they use it properly. Social media may be particularly valuable for private-practice

31. Chen, *supra* note 28.

32. Weiss, *supra* note 29. Peshek’s blog, “The Bard Before the Bar—Irreverent Adventures in Life, Law, and Indigent Defense,” was inaccessible online.

33. *Id.*

34. *Id.*

35. *Id.*

36. Printout on file with author.

37. *Id.*

38. *Id.*

39. Flirting between a judicial clerk and juror, in the courtroom, could give the appearance of impropriety. See *infra* Part III.

40. Tresa Baldas, *Lawyers’ Ethical Stumbles Increase Online*, NAT’L L.J., May 11, 2010, available at <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202457938246>.

41. *Id.*

42. *Id.*

attorneys, as it can help to expand professional networks and open up opportunities.⁴³ Social media can also help to humanize law firms and attract potential clients.⁴⁴

Those benefits do not really apply to judicial clerks, who do not need to attract clients or create opportunities for a law firm. The social networking aspect of social media may still be of personal value to public service attorneys as they can connect with other attorneys and friends.⁴⁵ But because of social media's limited practical value to public-service attorneys, and because of the potential hazards of social media, judicial clerks should be even more careful about what they do and say online. No definitive rules exist to govern judicial clerks' actions online and having such a set of guidelines in place would give public service attorneys a framework within which to work, and may help avoid mistakes like those detailed above.

HOW CAN SOCIAL NETWORKING BE USED BY JUDICIAL CLERKS?

Online posting by attorneys are more than likely no different “than what happens around a pitcher of beer in a sports bar.”⁴⁶ Although attorneys haven't arguably been making similar mistakes for years, “now they're making the same old mistakes—soliciting for sex, slamming judges, talking trash about clients—online, leaving a digital trail for bar counsel to follow.”⁴⁷ Social media websites often save digital indiscretions forever, and they are usually available for public viewing.⁴⁸ Because people do not always “think through the consequences of putting things like this down on paper,” the proposed set of rules below may serve as a guide for judicial clerks who use social media. These proposed rules are designed for providing guidance to clerks who network online in order to help them avoid the embarrassment—and possible disciplinary action—that can follow improper posting.⁴⁹

43. Posting of Lauren Pesko to LAWYERIST. <http://lawyerist.com/even-lawyers-can-be-social/> (Apr. 2, 2010).

44. *Id.*

45. *Id.*

46. Holsman, *supra* note 2.

47. Baldas, *supra* note 40.

48. Holsman, *supra* note 2.

49. Of course, some may argue that the best social networking rule for judicial clerks may be to avoid social media sites altogether. While this may be true, it may not be a viable option for many attorneys, especially younger ones, who use social media to stay in touch with friends or family across the country. See Holson, *supra* note 25. Barring that, attorneys should control the privacy settings on their social media profiles, and ensure that they know exactly whom they are sharing information with and who those people are, in turn, sharing information with. Certainly there are other considerations not

Employers addressing the kinds of online mistakes recounted in this article should not merely wait for infractions to use as “training moment[s]” to guide future behavior,⁵⁰ but should warn against this type of behavior in advance. Employers are largely blameless for taking a reactive approach to online mistakes; they may assume, and rightly so, that lawyers should know better. But because lawyers have demonstrated that such is not the case, employers should start taking more proactive steps.

Of course, the first step toward preventing online mistakes is to “self-censor.” All attorneys and, in particular, judicial clerks should ask themselves if they really want to post a particular status or picture before doing so, and if they feel comfortable knowing that their bosses, clients or the public at large could see the item in question. Surely, White never intended for his Gilligan’s Island spoof to ever be seen by those outside his close circle of family and friends, but it made its way into the media spotlight. Some may suggest posting anonymously: “Post under a pseudonym; set up a new e-mail address for receiving responses... and use a tool that obscures your I.P. address, like Tor, the onion [sic] router. If you do all this a prospective employer would need to work very hard to associate the comment with you.”⁵¹ However, when it comes to remaining anonymous online, “[y]ou can try, but there are no guarantees.”⁵²

The second step, short of implementing a set of rules such as those laid out below, is for courts and judges to be more hands-on in reminding clerks that their online postings can reflect back on their employers. Upon orientation and training, employers should instruct new clerks to refrain from making inappropriate postings online in order to maintain their own personal dignity and the dignity of their positions. All attorneys need reminding, possibly through continuing legal education seminars or staff meetings, that they should conduct themselves properly online.

After these discretionary steps, however, this author advises that courts implement a set of rules to guide clerks’ online behavior. Any set of rules

addressed in this article that all lawyers should have in mind when going online. See James M. McCauley, *Blogging and Social Networking for Lawyers: Ethical Pitfalls*, 58 VA. LAW. 24, 25 (2010), available at http://www.vsb.org/docs/valawyermagazine/v10210_ethics.pdf. Those considerations pertain more to the area of professional responsibility, and include subjects like client confidentiality, trial publicity, and rules regulating attorney advertising, among other things. See *id.*; see also MODEL RULES OF PROF’L CONDUCT (1983).

50. Holsman, *supra* note 2.

51. Part I: Answers to Questions About Internet Privacy, <http://bits.blogs.nytimes.com/2010/07/26/part-i-answers-to-questions-about-internet-privacy/?scp=3&sq=questions%20about%20internet%20privacy&st=Search> (July 26, 2010, 13:50 EST).

52. *Id.*

should first include a definition of social networking, considering the following factors. The definition needs to cover all currently existing social media, thus requiring some flexibility in light of the ever-changing nature of the online landscape. Furthermore, employers will most likely want to exclude online activities that are functionally equivalent to real-world private communication.⁵³

Federal judicial clerks receive guidance from the Code of Conduct for Judicial Employees⁵⁴ (“Code”), but not every state has adopted such a code for its clerks.⁵⁵ Nevertheless, the Code provides a good starting place for clerks who want to regulate their own social-media use or courts aiming to institute a set of standard regulations for social media use by employees. Generally, drafting a code to regulate online conduct is especially challenging given the constant flux of terminology, websites, and Internet trends. Due to the fluid nature of online interactions, the suggestions below are written in generalities, meant to encompass social media uses for at least a few years.

Canon 2 of the Code provides that “[a] staff attorney should not engage in any activities that would put into question the propriety of his conduct in carrying out the duties of his office.”⁵⁶ While it is common for social media users to post personal details online, judicial clerks may want to do more self-editing than others because of the nature of their jobs.⁵⁷ Arguably, the language of this Canon does not need to be amended to encompass social media postings because it says “any activities.”⁵⁸ However, clerks may need a gentle reminder that “any activities” includes posting to social media or networking sites.⁵⁹

If courts were to create a comprehensive code for judicial clerks’ social media use, Canon 2 could be modified as follows:

53. JUD. CONF. COMM. ON CODES OF CONDUCT, RESOURCE PACKET FOR DEVELOPING GUIDELINES ON USE OF SOCIAL MEDIA BY JUDICIAL EMPLOYEES 9–11 (2010), *available at* <http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/SocialMediaLayout.pdf> [hereinafter RESOURCE PACKET]. For example, social networking guidelines should probably exclude things akin to private in-person conversations or mailings, such as direct messages on Twitter (private messages to other Tweeters) or messages between two people on Facebook, as well as personal email messages.

54. CODE OF CONDUCT FOR JUDICIAL EMPLOYEES § 310.10 (2001), *available at* <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch03.pdf> [hereinafter CODE OF CONDUCT].

55. For a list of ethical codes adopted by various states’ courts, see Ethics Codes USA, <http://www.courtethics.org/Ethics%20Codes%20USA.htm> (last visited Apr. 6, 2011).

56. CODE OF CONDUCT, *supra* note 55, at Canon 2.

57. Holson, *supra* note 26.

58. CODE OF CONDUCT, *supra* note 55, at Canon 2.

59. *Id.*

A judicial clerk should not engage in any online activities that would put into question the propriety of the clerk's conduct in carrying out the duties of the clerk's office.

Such a provision would supply clerks with the basic guidance needed to avoid general mistakes.

Canon 5 of the Code states: "A judicial employee should refrain from partisan political activity... should not make speeches for or publicly endorse or oppose a partisan organization or candidate... should not solicit funds for or contribute to a political organization, candidate, or event."⁶⁰ This rule prohibits clerks from wearing political buttons and displaying political signs or bumper stickers.⁶¹ Courts should apply this rule to electronic endorsements of partisan political candidates or causes as well. Many clerks have probably violated this rule online, even if they adhere to it in the real world. For example, a clerk once posted on Facebook: "Please help [congressional candidate] reach 1,000 donors by 2010. I don't normally post this like this, which should tell you how strongly I feel about [the candidate] as a person and a candidate."⁶² The post included a link that friends could use to contribute to the candidate's campaign.⁶³

If clerks are not allowed to post political signs on real or personal property, they should not be allowed to make similar postings to social media sites. What is a Facebook wall if not a virtual front yard? A judicial clerk's online endorsement of a partisan candidate seems more troubling than a judicial clerk putting up a yard sign at home. For example, on Facebook, people who can see a user's profile probably know a lot about that user—"your location, your gender, your age, *your occupation*, and maybe even your tastes in everything from food to music."⁶⁴ Contrast such familiarity with the most common viewers of yard signs: people driving down the street. Thus, impropriety arises when an online friend views a public endorsement from a judicial clerk, because online friends are more likely to know the clerk's occupation and may think he or she is using occupational prestige as clout for supporting a particular candidate or cause.

Accordingly, courts could modify Canon 5 for inclusion in a code of online conduct as well:

60. *Id.*, at Canon 5.

61. FED. JUD. CTR., MAINTAINING THE PUBLIC TRUST: ETHICS FOR FEDERAL JUDICIAL LAW CLERKS 20 (2002), available at [http://www.fjc.gov/public/pdf.nsf/lookup/Ethics01.pdf/\\$file/Ethics01.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Ethics01.pdf/$file/Ethics01.pdf).

62. Printouts on file with author.

63. *Id.*

64. Harry McCracken, *Five Facebook Annoyances—and How to Fix Them*, FOXNEWS, May 25, 2010, <http://www.foxnews.com/scitech/2010/05/25/fix-facebook-annoyances/> (emphasis added).

A judicial employee should refrain from partisan political activity online or in person; should not make online postings that publicly endorse or oppose a partisan organization or candidate and should not align any online profile or personal website with a partisan organization or candidate; should not solicit funds for or contribute to a political organization, candidate, or event; and should not otherwise actively engage in partisan political activities online.⁶⁵

This would mean that clerks cannot “like” political candidates or parties, or otherwise endorse parties or candidates on their social media profiles. Judicial clerks have already accepted that their jobs require them to generally avoid partisan political activities in real life—it should be little hardship to make them understand that this prohibition extends to their activities online as well.

Surely, courts could adopt more of the Canons to a code of online conduct for judicial clerks and create new provisions to address web-specific concerns. For example, Canon 3 of the Code provides that federal clerks “should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public.”⁶⁶ Courts could modify this to regulate clerks’ postings to message boards or online forums with profiles that identify them as a judicial clerk. People who post to online discussions—sometimes called “trolls”—often feel freer to use inflammatory language, probably because of the feeling of anonymity on the Internet.⁶⁷ For a clerk to make such postings online could be seen as inappropriate, even if the clerk is not acting in her official capacity at the time.

Courts may also want to determine what kinds of blanket restrictions they will place on clerks’ social networking use. For example, can clerks state their profession on their Facebook profiles? Can clerks maintain blogs that reveal basics information regarding their professional lives, so long as they do not disclose confidential information? Will there be exceptions for social networking sites approved by the court, such as professional association or career building sites?⁶⁸

65. This canon in particular may pose challenges upon interpretation. For example, Facebook users can become a “fan” of political candidates. On Twitter, users can “follow” political candidates. Is one more acceptable than the other? Or are they both unacceptable? To be safe, users should probably keep any fan pages private on their Facebook account, and possibly avoid following a political candidate on their Twitter account if that account links to any personal information or email that makes the user easily identifiable in real life.

66. CODE OF CONDUCT, *supra* note 55, at Canon 3(C).

67. See Definition of Troll, <http://onlineslangdictionary.com/definition+of/troll> (last visited Mar. 2, 2011).

68. RESOURCE PACKET, *supra* note 54, at 13–14.

CONCLUSION

Of course, the first step toward preventing online mistakes is for people to act as their own personal censors. Additionally, attorneys should remember to change social media privacy settings so that only “friends” can see what they post, keeping in mind that it only takes one indiscreet person within a circle of online friends to make once personal postings extremely public.⁶⁹ This is a prudent consideration for all lawyers, not just judicial clerks, to remember.

Next, employers should take more proactive steps to regulate lawyers’ online postings. The proposed guidelines in this article can help steer the discussion with clerks, and serve as a template for a more formal set of rules, should courts wish to establish them in a more official capacity.

The very nature of a clerk’s job requires dignity and common sense, both online and in the real world. As social media changes the way all people in modern society interact, a set of guidelines, coupled with greater self-control online, can help clerks—and all attorneys—stay out of trouble. Otherwise, the dignity of this profession may be lost./The dignity may be lost.⁷⁰

69. “[E]ven if you quit Facebook, other people can still spill your personal information online without your consent. Friends can still write comments about you and post photos. And thanks to photo-recognition technology, even untagged images of you can be identified.” Part I: Answers to Questions About Internet Privacy, *supra* note 52.

70. To the tune of THE BALLAD OF GILLIGAN’S ISLE, see *supra* note 3.