The Arizona Code of Judicial Conduct does not impose a per se disqualification requirement in cases where a litigant or lawyer is a “friend” or has a similar status with a judge through social or electronic networks, but the Supreme Court strongly urges disclosure of the connection, even if the judge believes there is no basis for disqualification, so that the parties at least have the opportunity to determine whether they want to attempt to have the judge disqualified.

Given the superficiality of many (most?) Facebook “friendships,” and the one-way nature of the communications, it is not unreasonable to question whether the Wisconsin appellate court was perhaps too hard on the trial judge. Appellate judges routinely sit in judgment of trial judges with whom they have meaningful personal relationships. Justice Byron White went skiing with Attorney General Robert Kennedy while the latter was a party in cases that were before the former, including cases that Mr. Kennedy personally argued. In refusing to recuse himself from a case in which his friend Vice-President Dick Cheney was a party, Justice Antonin Scalia famously wrote regarding the basis for the recusal (accompanying Mr. Cheney on a duck hunt to which they were transported on Mr. Cheney’s government plane): “If it is reasonable to think that a Supreme Court Justice can be bought so cheap, the Nation is in deeper trouble than I had imagined.”

The case law/rules on judicial friendships with litigants makes a distinction between public officials who are parties in their official capacity (as Kennedy and Cheney were), and litigants who are parties in their personal capacity. Nevertheless, the Wisconsin trial judge could be forgiven for thinking that Justice Scalia’s comment could just as easily apply to him. How many lawyers representing the opposing party would feel more comfortable with the Kennedy/Cheney facts instead of the Wisconsin facts?

Either way, all of you Facebookers who are on the bench, or who plan to be one day, should consider alternative methods to obtain the approval of others for going to the gym or looking great in your latest selfie. The good news is that the canons of judicial ethics do not as of yet place any restriction on befriending dogs as a viable, and often less messy, alternative to befriending (on Facebook or otherwise) the litigants that appear before you.

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