

The Use by of Social Media by Judges in Israel

In 2012, the judicial branch in Israel addressed the use by judges of social media with the appointment of a committee that was asked to examine the matter submit recommendations to the Judges' Ethics Committee. The committee met with law and technology experts and conducted a comprehensive comparative review of arrangements that were established in other states. In 2013, the Advisory Committee published its conclusions, which were adopted by the Judges' Ethics Committee. A summary of the report that was published by the committee will be described below.

In the first part of the report, the committee elaborated on the changes that social media has made in the field of human communications. The committee also addressed the legal implications of use of social media and the internet, in general, including, for example, the need to adjust privacy laws to the changing times. The committee specified the difficulties created by the use of social media, including, the concern of infringement of privacy; the ability to profile social media users and to investigate their preferences; the risk that stems from the sense of anonymity that accompanies the use of the internet, in general, and certain social media, in particular, especially given the immediacy of response on social media; and the difficulty to control the information that is disseminated on social media. The committee also referred to the unique questions that emerge in the context of the use of social media by judges. For example, the committee addressed the characteristics of "friendship" on Facebook, and the question of the impact of such friendship on questions of disqualification of judges. The committee also addressed the possibility of influencing judges by exposing them to information which may prejudice the independence of their discretion; it referred to the concern that social media may be a platform to harm the legal system; and it elaborated on the concern that improper conduct on social media could harm the public's confidence in the legal system.

In the second part of the report, the committee reviewed the manner in which legal systems in other states have examined the matter of use of social media by judges. At that time, these were primarily states within the United States that had addressed the matter. The committee examined the arrangements that had been adopted in the states of New York, Florida, Ohio, California, South Carolina, Massachusetts, Kentucky, Oklahoma, Maryland and Tennessee. The committee also referred to publications in Canada in this matter and reviewed judicial decisions that had been resolved in the context of judges' use of social media. The committee stated that no decision to prohibit judges' use of social media had been adopted in any of the states that examined the matter, but certain limitations upon such use had been imposed.

In the third part of the report, the committee examined the Israeli Judges' Rules of Ethics (which were published in 2007) and was of the opinion that there is no need to formulate unique rules of ethics regarding the use by judges of social media, but rather that the existing rules of ethics should be interpreted in the spirit of the times. The committee stated that the Rules of Ethics outline rules for judicial conduct that are not restricted to judicial activity, but rather apply to judges in their entire daily activities, including in social interactions. The committee stated that the duty that is imposed upon a judge to "at all times place before his eyes the need to maintain the confidence of the public in the judicial branch" (Section 2(a) of the Rules of Ethics) necessitates exercising extra caution when using social media. As an example, the committee stated the duty of the

judges who connect to social media to examine the privacy settings of such social media and to meticulously define the scope of the privacy of their account. This is based on the assumption that the greater the number of "friends" who are exposed to the judges' activity on social media, the greater the diligence that is required with respect to the contents and messages that such judges include in their private account. Additionally, the committee elaborated on the interpretation of other rules of ethics, and the adjustment thereof to the use of social media.

In the last part of the report, the committee formulated recommendations regarding the use of social media by judges. At the outset, the committee was of the opinion that despite the risks involved, judges should not be prevented from using social media. This position was based on the understanding that social media constitutes an integral part of inter-personal communications in modern times. However, the committee was of the opinion that rules must be set as to the judges' use of social media, in order to decrease the risks that may stem from the use of social media. The specific recommendations of the committee were as follows:

Stating the Judicial Title: The committee suggested that the judges' use of social media shall be without stating their judicial title. This being in light of the fact that the use of social media is social and private by nature and does not relate to the judges' professional life.

Judicial Training: In the report, the committee stated the importance of conducting appropriate training for judges, based on the assumption that educated use of social media will prevent a significant part of the difficulties that emerge from the use thereof. Therefore, the committee recommended conducting lectures and study days regarding the use of social media, with respect to the ethical aspects and the practical aspects, including with respect to the technical characteristics of social media and the various privacy settings of leading social media.

"Friendships" with Lawyers: The committee was of the opinion that while judges are not required to shut down their social media account upon being appointed to the judiciary, they should be mindful of their social contacts in social media. The committee recommended that judges should confirm "friendship" only with lawyers who in any event do not appear before them due to their existing relationship. The committee stated that friendship with lawyers on social media, in and of itself, do not necessarily constitute a cause for automatic disqualification of judges, and added that the issue has been addressed by other states and has not yet been ruled upon in an unequivocal manner. The committee also stated that friendships on this level, as any other friendship, are subject to the ordinary rules of disqualification and preclusion, and may impact the duties of disclosure that apply to judges.

Restrictions on Use of Social Media: The committee was of the opinion that the use of social media should be restricted to personal use, upon which the Judges' Rules of Ethics shall apply. For example, it was stated in the report that judges must refrain from posting a picture or status which could harm their professional status or the public's confidence in the judiciary. The committee further stated that the prohibition of engaging in any form of political activity (as set forth in Rules 17 and 19 of the Rules of Ethics) also applies to activities in social media. Additionally, the committee stated that judges must refrain from expressions on social media regarding a matter that is

pending before them; that they must refrain from viewing social media pages of parties to a proceeding that is being held before them or of witnesses who are testifying before them and that the use of social media in order to receive information relating to a matter that is pending before them shall be prohibited.

Social Media as a Means of Communication: The committee suggested that the Rules of Ethics that prohibit direct contact between judges and the media also apply with respect to social media. Thus, it was suggested that judges shall not be permitted to post judgments that they wrote on social media and that the distribution of judgments be permitted solely through the Courts' Spokesperson. Additionally, it was suggested that judges not express their positions on professional matters through social media and not provide responses to matters that were published about them, other than through the Courts' Spokesperson.

The Involvement of the Courts' Administration's Computer Department: In its report, the committee also addressed the fact that the use of social media by judges may have security implications, including to organizational information. To this end, the committee suggested that the computer and information security department also be involved in preparing the study days for the judges and that it examine the options it has in order to protect the organizational information.

Developments since the Report was Filed

During 2018 the Advisory Committee was requested to update the report that had been published in 2013, in light of the many developments in the field, including the changes on social media and such use's subsequent legal changes. The Advisory Committee is expected to submit its conclusions by the end of April 2019.