Program Submission Form

AMERICAN INNS of COURT

Program Title: Case Law Changes And Developments Within The Practice of Law

Date Presented: November 9, 2017 Inn Year: 2017

Presenting Inn: C.H. Ferguson - M.E. White Inn of Court Inn Number:

Inn City: Tampa Inn State: Florida

Contact Person: Joseph T. King, Esq. Phone: 813-221-2626

E-mail Address:

Please consider this program for the Program Awards: Yes No This program is being submitted for Achieving Excellence: Yes No
(Submit within 60 days of presentation.)

Program Summary:

Be concise and detailed in summarizing the content, structure, and legal focus of your program. Please attach additional sheets if necessary.

A lecture, PowerPoint, and Q&A program designed to explore the development of technology within the practice of law. An examination of the professional and ethical challenges posed by the growth of digital technology as a necessary adjunct to the delivery of professional services.

Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office. ***Please check all that apply and include a copy of any of the existing materials with your program submission:***

Script	Articles	X Citations of Law	Legal Documents	Fact Pattern	List of Questions	Handouts
X PowerPoint Presentation	CD	DVD	Other Media *(Please specify)*			

Specific Information Regarding the Program:

Number of participants required for the program: 5 Has this program been approved for CLE? Yes No pending

Which state's CLE? How many hours: 1 X Pending Approved

Recommended Physical Setup and Special Equipment:

i.e., DVD and TV, black board with chalk, easel for diagrams, etc.:

Screen, laptop, 3 microphones, podium, panelist table

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on Inn members' response regarding the demonstration.

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category
Introducer of the program	Bencher
Speaker re: evolving tech	Associate
Introduction of featured speaker	Master
Guest speaker re: tech	-----
Soliciting questions	Barrister
Toastmaster	Pupil

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each item took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time
Introduction of program	5 minutes
PowerPoint describing tech evolution	10 minutes
Introduction of guest speaker	5 minutes
Guest speaker	30 minutes
Q&A	10 minutes
Closing toast	5 minutes

Program Awards: *Please complete this section **only** if the program is being submitted for consideration in the Program Awards.*

Describe how your program fits the Program Awards Criteria:

Relevance: How did the program promote or incorporate elements of our mission? *(To Foster Excellence in Professionalism, Ethics, Civility, and Legal Skills)*
Exploration of professional and ethical obligations posed by use of technology in the practice of law

Entertaining: How was the program captivating or fun? PowerPoint retrospective of evolution of technology for lawyers; stone tablets to iPads; from the Texas Instrument calculator to the iCloud.

Creative and Innovative: How did the program present legal issues in a unique way? Speaker weaved connections between ethical rules and published case decisions.

Educational: How was the program interesting and challenging to all members? Several practice pointers on securing confidentiality of client files

Easily Replicated: Can the program be replicated easily by another Inn? X Yes No This program is: X Original Replicated

Questions:

Please contact program library staff at **(703) 684-3590** or by e-mail at **programlibrary@innsofcourt.org**.

Please include ALL program materials. The committee will not evaluate incomplete program submissions.

Case Law Changes & Developments in Technology Within the Practice of Law

Presentation by: Judge Edward LaRose, Chief Judge; Lynn Cole, Esq.; Timothy C. Martin, Esq.; Greg Hearing, Esq.; Erin Dunnavant, Esq.; Jon Philipson, Esq.; Jessica Hoyer, Esq.; Bobby Bourgeois, Esq; Raymond A. James

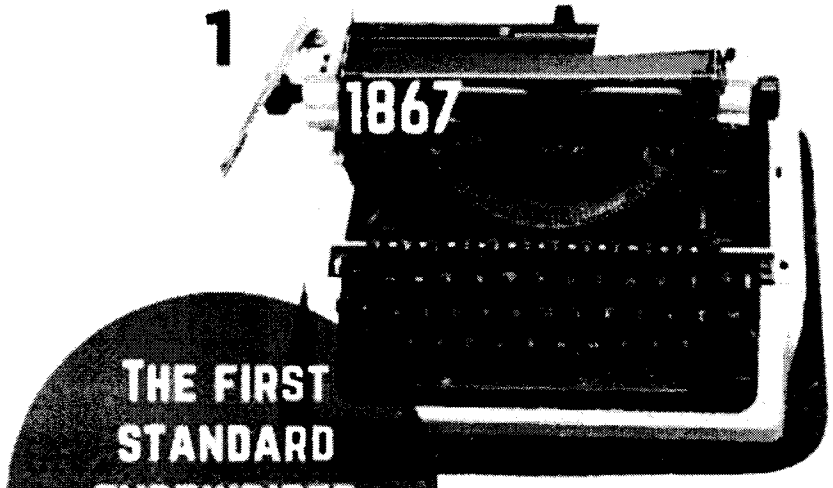
Guest Speaker: Joseph Corsmeier, Esq

10 Technologies That Changed the Practice of Law

https://www.mycase.com/blog/2014/07/10-technologies-changed-practice-law/

TYPEWRITERS

1



Mechanized the writing process and greatly increased transcription speed.

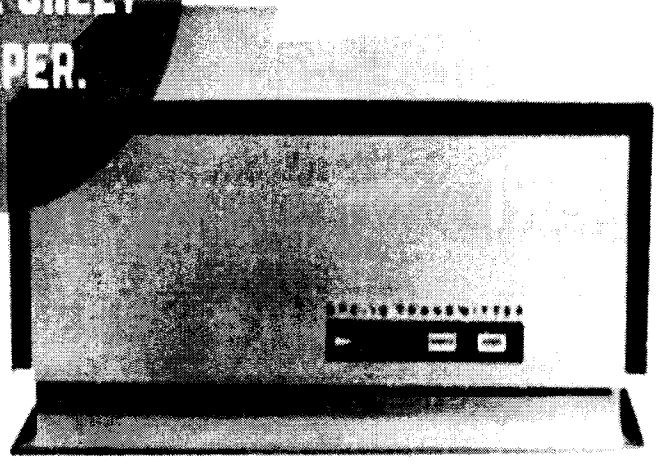
2 COPIERS

Eliminated carbon copies, saving time and reducing printing costs.

source: http://en.wikipedia.org/wiki/File:Xerox_914.jpg

TOOK 6 MINUTES TO FAX ONE SHEET OF PAPER.

3 FACSIMILIE MACHINES

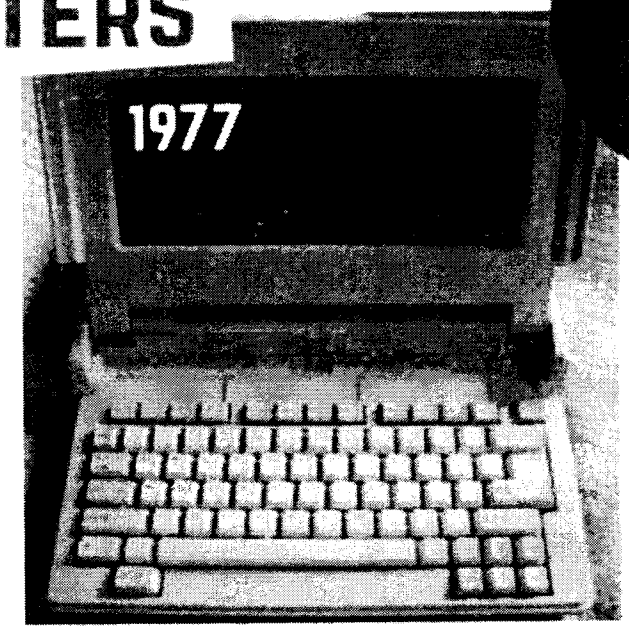


Increased communication speed and reduced mailing costs substantially.

source: http://en.wikipedia.org/wiki/File:Fax_machine_Canon_FAX-B150.jpg

4 DESKTOP COMPUTERS

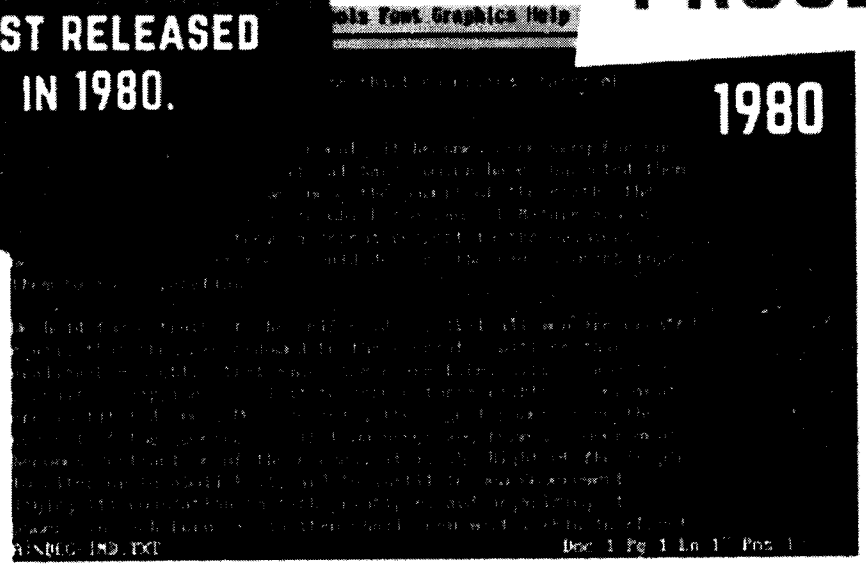
Revolutionized information and knowledge management and data storage.



THE FIRST COMPUTER FROM TANDY CORP. COST $600.

5 WORD PROCESSING

WORDPERECT WAS FIRST RELEASED IN 1980.



Made typewriters obsolete and greatly decreased the time needed to create and revise documents, saving time and money.

source: https://en.wikipedia.org/wiki/WordPerfect#/media/File:WordPerfect_5.1.png

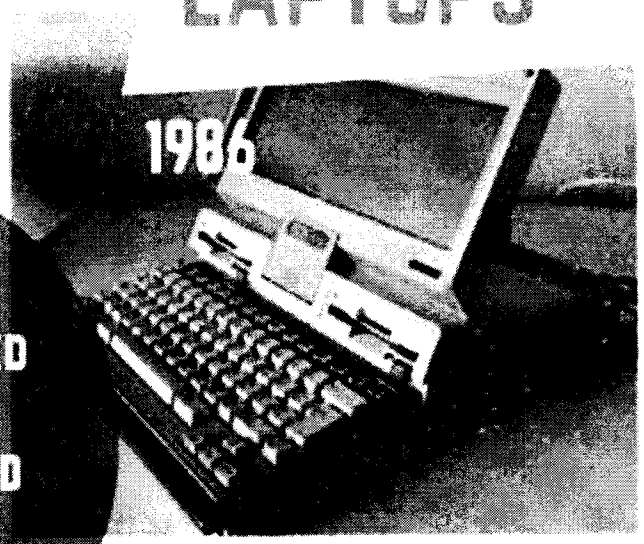
6 COMPUTERIZED LEGAL RESEARCH

Increased research speed and efficiency while eliminating the need to maintain costly law libraries.

BOTH LEXIS AND WESTLAW BECAME ACCESSIBLE VIA PCS IN 1983.

LAPTOPS

7



THE FIRST IBM LAPTOP WEIGHED 12 LBS., COST $1,995, AND HAD 256K RANDOM ACCESS MEMORY.

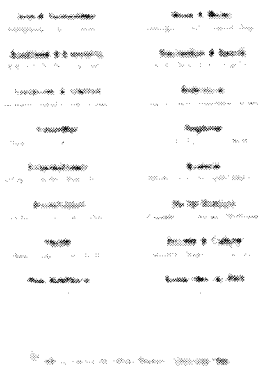
source: http://upload.wikimedia.org/wikipedia/commons/thumb/9/93/ibm-convert.ble.jpg/220px-ibm-convert.ble.jpg

Lawyers were no longer chained to their desks and could work from anywhere.

8 INTERNET

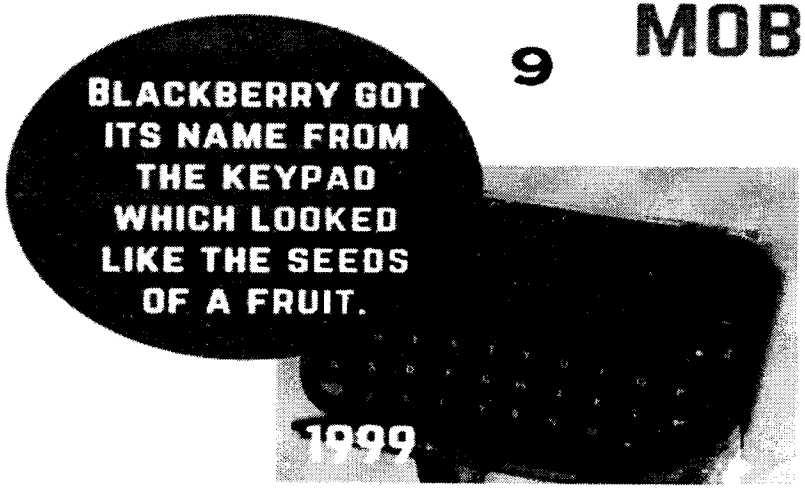
MID-1990S

Revolutionized communication, interaction, and the way that business was conducted.



IT TOOK THE RADIO 38 YEARS, THE TELEVISION 13 YEARS, AND THE WORLD WIDE WEB 4 YEARS TO REACH 50 MILLION USERS.

9 MOBILE REVOLUTION

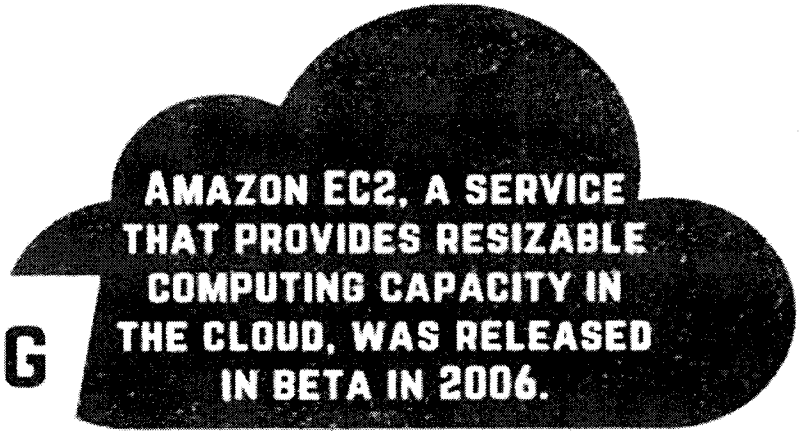


The first blackberry email pager.

2007

The first smartphone, the iPhone.

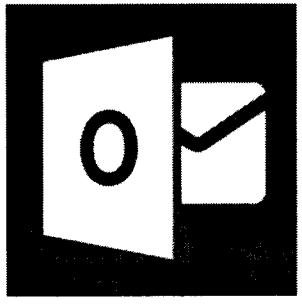
Smartphones and tablets made a truly mobile office possible, allowing lawyers to access case-related information from anywhere at anytime.

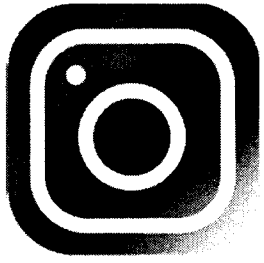


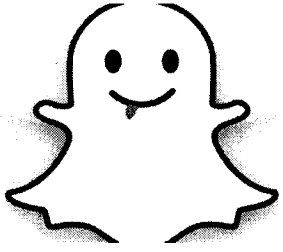
10 CLOUD COMPUTING REVOLUTION 2006

Cloud computing greatly increased computing power and efficiency while reducing computing costs, making the mobile revolution possible and leveling the playing field, allowing solo and small law firms to compete with larger firms in ways never before seen.

Present Day Technology Redefining Lawyers Ethics







Technology Ethics for Lawyers

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Technology competence

- Amendment to Comment to Rule 1.1, Model Rules of Professional Conduct
- Rule 1.1 Competence
- Comment- Maintaining Competence
- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
- Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications
- Revised Rule 6-10.3 **increases CLE requirements for Florida lawyers from 30 to 33 hours every three years and mandatory three hours must be in technology related areas/courses.**

Technology and ethics: e-portal filing

- Florida Bar Ethics Opinion 12-2 (June 22, 2012)
- Lawyers **may provide their log-in credentials to e-portal** to "trusted" nonlawyer employees for those employees to file court documents that have been reviewed and approved by lawyer, who remains responsible for filing. Lawyer must properly supervise the nonlawyer, **monitor nonlawyer's use of e-portal, and immediately change password if nonlawyer employee leave lawyer's employment or shows untrustworthiness in using e-portal.**
- Florida Bar Ethics Opinion 87-11 (Reconsid.) (June 27, 2014)
- A lawyer may permit nonlawyer to place lawyer's e-signature on electronic documents as permitted by Florida Rule of Judicial Administration 2.515 **only after reviewing and approving document to be signed and filed. Lawyer remains responsible for content of document.**

Technology and ethics: e-portal filing

- *In the Matter of: John A. Goudge*, No. 1024426, Commission No. 2012PR00085.
- Associate lawyer at Chicago law firm was responsible for contract cases from USDOJ to represent U.S. in debt collection cases involving student loans.
- Non-lawyer assistant(s) prepared complaints and exhibits and filed complaints and exhibits electronically with the District Court for the U.S. Northern District of Illinois' CM/ECF (e-filing) system.
- Confidential information was not redacted from exhibits and became viewable by public on court's website.
- Lawyer admitted failure to make reasonable efforts to supervise non-lawyer, expressed remorse, and received reprimand.

Remote digital access to electronic client files

- New York State Bar Ethics Opinion 1019 (8/6/2014)
- Law firm may provide lawyers remote access to client files so that lawyers can work from home as long as the technology used provides reasonable protection to client confidential information, or, if there is no reasonable protection, law firm must have informed consent of client.

Electronic/digital client file storage

- Florida Bar Ethics Op. 06-1 (April 10, 2006)
- Lawyers may store client files electronically unless a statute or rule requires the retention of original document, the original document is the property of the client, or destruction of a paper document adversely affects the client's interests. Files stored electronically must be readily reproducible and protected from inadvertent modification, degradation or destruction.

Cloud/digital computing

- Florida Bar Op. 12-3 (January 25, 2013)
- Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely. The lawyer should research the service provider to be used.

Outsourcing and protection of confidentiality in digital document transmission

- Florida Bar Op. 07-02 (January 18, 2008).
- Lawyers are not prohibited from using services of overseas provider for paralegal assistance as long as lawyer adequately addresses ethical obligations related to unlicensed practice of law, supervision of nonlawyers, conflicts of interest, confidentiality, and billing. Lawyer should aware of any obligations under law regarding disclosure of sensitive information of opposing parties and third parties.
- Law firm should have "contractual provisions addressing confidentiality and remedies in the event of breach, and periodic reminders regarding confidentiality."

Digital storage devices

- Florida Bar Ethics Op. 10-2 (September 24, 2010)
- Lawyers who use devices that have hard drives/storage media such as multi-function printers, copiers, scanners, and facsimile machines (and cell phones, laptops, and tablets) must take reasonable steps to ensure that client confidentiality is maintained and that the device is sanitized before disposition, including:
- (1) identify potential threats to confidentiality and implement policies to address potential threat to confidentiality;
- (2) take inventory of devices that have hard drives or other storage media;
- (3) supervise nonlawyers to ensure confidentiality is maintained; and
- (4) make sure that any confidential information is sanitized at end of use by requiring that vendor sanitizes after receiving the device and confirm or certify that the device was sanitizes.

Metadata

- "Mining" of metadata is not prohibited. (ABA Formal Op. 06-442)
- Florida Bar Ethics Op. 06-2 (September 15, 2006)
- Lawyer who sends document electronically should ensure confidentiality of all information in document, including metadata. Lawyer who receives electronic document **should not try to obtain information from metadata** that lawyer knows or should know is not intended for receiving lawyer.
- Lawyer who inadvertently receives confidential information via metadata in electronic document should notify the sender. Opinion does not address metadata contained in discovery documents.
- Florida Bar Rule 4-4.4(b)- Lawyer who receives document relating to representation of lawyer's client and knows or reasonably should know that document was inadvertently sent shall promptly notify sender.
- ABA Model Rule 4.4(b)- "obligates the receiving lawyer to notify the sender of the inadvertent transmission promptly" but "does not require the receiving lawyer either to refrain from examining the materials or to abide by the instructions of the sending lawyer." ABA Formal Op. 05-437).

Technology/Social media ethics issues

- Unintentionally creating an lawyer-client relationship (or alleged relationship) through lawyer's website
- ABA Formal Op. 10-457: by enabling communications between prospective clients and lawyers, websites may give rise to inadvertent lawyer-client relationships and trigger ethical obligations to prospective clients under the rules.
- Use of disclaimers in a lawyer's or a law firm's social media profile or in connection with specific posts may help avoid inadvertently creating attorney-client relationships (of course the lawyer's or law firm's online conduct and communications must be consistent with the disclaimer).
- South Carolina Ethics Op. 12-03: "[a]ttempting to disclaim (through buried language) an attorney-client relationship in advance of providing specific legal advice in a specific matter, and using similarly buried language to advise against reliance on the advice is patently unfair and misleading to laypersons."

Technology/Social media ethics issues

- Lawyers are prohibited from attempting to gain access to **non-public** social media content by dishonesty, deception, pretext, false pretenses, or an alias.
- *John J. Robertelli v. The New Jersey Office of Attorney Ethics (A-62-14) (075584)* (New Jersey Supreme Court 4/19/16), the NJ Supreme Court ruled that attorneys could be prosecuted for disciplinary rule violations for improperly accessing an opposing party's private Facebook page.
- Ethics opinions in Oregon (Op. 2013-189), Kentucky (Op. KBA E-434), New York State (Op. 843), and New York City (Op. 2010-2) conclude that lawyers (either themselves or through agents) are prohibited from engaging in false or deceptive tactics to evade social media users' privacy settings to reach non-public information.
- Ethics opinions by Philadelphia Bar Association (Op. 2009-02) and the San Diego County Bar Association (Op. 2011-2), among others, state that lawyers must affirmatively disclose reasons for communicating with third party.

Technology/Social media ethics issues

- Client Facebook/social media privacy settings and removal of information
- Florida Bar Ethics Op. 14-1 (June 25, 2015)
- Personal injury lawyer may advise a client pre-litigation to change privacy settings on the client's social media pages so that they are not publicly accessible. If there is no violation of the rules or substantive law related to preservation and/or spoliation of evidence, lawyer also may advise client to remove information relevant to foreseeable proceeding from social media pages as long as social media information or data is preserved.
- NYC Lawyers Association Ethics Opinion 745 (2013)
- Lawyer may advise client to use highest level of privacy setting on client's social media pages and advise client to remove information from social media page prior to litigation, regardless of its relevance to a reasonably foreseeable proceeding, as long as removal does not violate substantive law regarding preservation and/or spoliation of evidence.

Technology/Social media ethics issues

- Revised Florida Bar advertising rules effective May 1, 2013
- all lawyer advertising is subject to the Bar rules, including lawyer and law firm websites, social networking and video sharing sites, and other digital media.
- lawyer and law firm websites are subject to advertising rules but pages do not have to be filed and approved by Bar.
- Bar Rule 4-7.11(a) explicitly includes "social networking and video sharing media" in the types of "media" covered by subchapter 4-7.
- Social media profiles, posts, and blogs can certainly be advertising
- Lawyer blogs should be informational and educational and may be considered to be advertisements if primary purpose is to obtain employment/clients

Technology/Social media ethics issues

- Disclosing privileged/confidential information on blog or other digital platform
- Illinois Supreme Court suspended assistant PD for 60 days for, inter alia, disparaging judges and blogging about clients and implying in post that client committed perjury. *In re Peshek*, M.R. 23794 (Ill. SC May 18, 2010).
- New York State Bar Association Ethics Op. 1032 (October 30, 2014) states that lawyers cannot reveal client confidences **solely to respond to former client's criticism on lawyer-rating website.**
- Georgia Supreme Court imposes reprimand on lawyer who violated attorney/client confidentiality in response to negative reviews that client had made on the internet "consumer Internet pages". *In the Matter of Margrett A. Skinner*, Case No. S14Y0661 (Ga. Supreme Court 5/19/14) .

Technology/Social media ethics issues

- Can judges and lawyers be "friends" on social media?
- Florida Judicial Ethics Opinion 2009-20 concluded that judge cannot friend lawyers on Facebook who may appear before judge because this may suggest that lawyer is in a special position to influence judge.
- Florida Ethics Opinion 2012-12 extended same rationale to judges using LinkedIn.
- Florida Judicial Ethics Opinion 2013-14 cautions judges about risks of using Twitter.
- *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2012) held that trial judge presiding over criminal case was required to recuse because judge was Facebook friends with prosecutor.
- *Law Offices of Herssein and Herssein, P.A. d/b/a Herssein Law Group and Reuven T. Herssein v. United Services Automobile Association* (Case No.: 3D17-1421). Judge's refusal to recuse in civil case when "friends" with opposing lawyer. 3rd DCA upheld judge's decision. Lawyer recently filed request with Florida Supreme Court to invoke discretionary jurisdiction and reverse.

Technology/Social media ethics issues

- Testimonials
- **Florida prohibits testimonials unless certain specific requirements are met.**
- Rule 4-7.13 Deceptive and Inherently Misleading Advertisements
- b) Examples of Deceptive and Inherently Misleading Advertisements. Deceptive or inherently misleading advertisements include, but are not limited to, advertisements that contain:
- (8) a testimonial:
  (A) regarding matters on which the person making the testimonial is **unqualified to evaluate;**
- (B) that is **not the actual experience** of the person making the testimonial;
- (C) that is not **representative of what clients** of that lawyer or law firm generally experience;
- (D) that has been **written or drafted by the lawyer**;
- (E) in exchange for which the person making the testimonial has been **given something of value**; or
- (F) that **does not include the disclaimer** that the prospective client may not obtain the same or similar results.

Using unencrypted e-mail to communicate with clients

- Florida Bar Ethics Opinion 00-4 (July 15, 2000)
- Sending an unencrypted is not ethical violation under normal circumstances (unless circumstances require encryption or client requests).

E-mails with cc or bcc to client

- NYSBA Ethics Op. 1076 (Dec. 2015)
- "Reasons Not to Use Either "cc" or "bcc" When Copying e-mails to the Client
- Although it is not deceptive for a lawyer to send to his or her client blind copies of communications with opposing counsel, there are other reasons why use of the either "cc:" or "bcc:" when e-mailing the client is not a best practice.
- As noted above, "cc" risks disclosing the client's e-mail address. It also could be deemed by opposing counsel to be an invitation to send communications to the inquirer's client. But see Rule 4.2, Cmt. [3] (Rule 4.2(a) applies even though the represented party initiates or consents to the communication).
- Although sending the client a "bcc" may initially avoid the problem of disclosing the client's email address, it raises other problems if the client mistakenly responds to the e-mail by hitting "reply all." For example, if the inquirer and opposing counsel are communicating about a possible settlement of litigation, the inquirer bccs his or her client, and the client hits "reply all" when commenting on the proposal, the client may inadvertently disclose to opposing counsel confidential information otherwise protected by Rule 1.6. See Charm v. Kohn, 27 Mass L. Rep. 421, 2010 (Mass. Super. Sept. 30, 2010) (stating that blind copying a client on lawyer's email to adversary "gave rise to the foreseeable risk" that client would respond without "tak[ing] careful note of the list of addressees to which he directed his reply")."

Employer lawyer's receipt of employee's e-mail communications with counsel

- ABA Formal Opinion 11-460 - Duty when Lawyer Receives Copies of a Third Party's E-mail Communications with Counsel (August 4, 2011)
- When an employer lawyer receives copies of an employee's private communications with counsel, which the employer properly found in the employee's business e-mail file or on the employee's workplace computer or other device, **neither Rule 4.4(b) nor any other Rule requires the employer's lawyer to notify opposing counsel of the receipt of the communications**. However, court decisions, civil procedure rules, or other law may impose such a notification duty, which a lawyer may then be subject to discipline for violating.

Lawyer's receipt of unsolicited information on website

- Florida Bar Ethics Opinion 07-3
- A person seeking legal services who sends information unilaterally to a lawyer has no reasonable expectation of confidentiality regarding that information. A lawyer who receives information unilaterally from a person seeking legal services who is not a prospective client within Rule 4-1.18, has no conflict of interest if already representing or is later asked to represent an adversary, and may use or disclose the information.
- Arizona Bar Ethics Opinion 02-04
- An attorney does not owe a duty of confidentiality to individuals who unilaterally e-mail inquiries to the attorney when the e-mail is unsolicited. The sender does not have a reasonable expectation of confidentiality in such situations. Law firm websites, with attorney e-mail addresses, however, should include disclaimers regarding whether or not e-mail communications from prospective clients will be treated as confidential.

Use of "expert" and "specialist" in lawyer advertising

- U.S. Northern District of Florida Judge Robert Hinkle ruled that the Florida Bar rule prohibiting lawyers from advertising that they are experts or specialists unless certified by the Bar was unconstitutional under the U.S. Constitution.
- No revised rules have been implemented and The Florida Bar's Board of Governors' has imposed moratorium on prosecution of lawyers under this rule (unless there are false statements).
- NYSBA Ethics Op. 1021 (9/12/2014)
- Law firm may not use a domain name that has the word "expert" with the law firm's area of concentration.

Digital ethics issues

- **ethics issues with text messaging with clients to discuss client matters**
- be sure you have permission to text the person
- texts are easily accessible on cell phone and not permanent
- **confidentiality issues with use of electronic devices in public**
- don't use public wi-fi in public place for confidential communications-use VPN
- keep your laptop/tablet secure - consider using privacy screen
- use built-in security features
- turn off sharing
- be aware of surroundings

The End

- Thanks and be careful out there!

Image Links

https://www.buzzfeed.com/jessicamisener/cool-things-you-probably-didnt-know-about-snapchat

https://www.designweek.co.uk/issues/12-18-june-2017/skype-rebrands-logo-bringing-line-microsoft-windows/

http://pngimg.com/imgs/logos/instagram/https://en.facebookbrand.com/assetshttps://brand.linkedin.com/visual-identity/logo

https://www.v3.co.uk/v3-uk/news/2395916/microsoft-delivers-outlook-for-ios-and-android-security-updates

https://www.lexisnexis.com/legalnewsroom/resized-image.ashx/__size/480x320/__key/communityserver-components-userfiles/00-00-00-45-78/lexisnexis_2D00_logo_2D00_335x189.pnghttps://

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EMERALD COAST UTILITIES AUTHORITY, Appellant,

v.

BEAR MARCUS POINTE, LLC; A FLORIDA LIMITED LIABILITY COMPANY, Appellee.

Case No. 1D15-5714.

District Court of Appeal of Florida, First District.

Opinion filed August 10, 2017.

An appeal from the Circuit Court for Escambia County, Gary L. Bergosh, Judge.

Bradley S. Odom and Richard D. Barlow of Odom & Barlow, P.A., Pensacola, for Appellant.

Major B. Harding and Erik M. Figlio of Ausley & McMullen, Tallahassee; William A. Fixel of Fixel & Willis, Tallahassee, for Appellee.

PER CURIAM.

In this appeal from an order denying its motion for relief from judgment pursuant to Florida Rule of Civil Procedure 1.540(b), appellant claims that the trial court abused its discretion in not vacating and reentering its order assessing attorneys' fees, which appellant alleged to have never received, so that appellant could file a timely notice of appeal. Finding no abuse of discretion, we affirm.

On March 18, 2014, the trial court rendered an order assessing attorneys' fees against appellant in an eminent domain proceeding. On March 20, 2014, the clerk of the court served the order by email sent to the email addresses designated by counsel for each party. On May 12, 2014, appellant filed a motion for relief from the order, requesting the trial court to vacate and reenter the order to allow appellant to file a timely notice of appeal because appellant did not receive a copy of the order until after expiration of the time to appeal.

At the hearing on appellant's motion, Lendy Davis, the IT director for the clerk of the court, testified that the log from the clerk's e-service system indicated that emails containing the order were sent to the primary and secondary email addresses designated by appellant's attorneys at 7:28 p.m. on March 20, 2014. The clerk's email server contacted the email server for the domain of these addresses and handed off the messages to the recipient server. Davis explained that if the email had not been accepted by the recipient server, an error message would have been generated notifying the clerk's office that the email had not been delivered. The log contained no such error message. Davis did not know what happened after the email was accepted by the recipient server.

William Hankins testified that he provided IT consulting services for appellant's counsel—the law firm of Odom & Barlow P.A.—beginning in 2007. In 2011, about two months after the firm installed its Microsoft Exchange server with a built-in email filtering system, the email filtering system was configured to drop and permanently delete emails perceived to be spam without alerting the recipient that the email was deleted. Hankins advised Richard Barlow that the firm's email system should not be configured to permanently drop and delete emails without alerting the recipient that the email was dropped because the built-in spam filtering on the server was very unreliable and created the risk of identifying and filtering legitimate emails as spam (false positives). Although Hankins believed that it was better to hire a third party that handled spam filtering on a full-time basis, Barlow rejected his recommendation to use a third-party vendor because he did not want to spend the extra money.

Hankins reviewed the transaction logs from the clerk's server to Odom & Barlow's server and concluded that the order assessing attorneys' fees was properly delivered to the Odom & Barlow server. Hankins opined that it was possible that the server deleted the email as spam. Importantly, in 2015, Hankins recommended that the firm get an

online backup system that would have cost approximately $700 to $1200 a year. This recommendation was rejected. Eventually, Hankins stopped working for Odom & Barlow because the firm rejected his recommendations.

Stephen Reyes testified that he was a shareholder in the firm of Saltmarsh, Cleveland & Gund and managed the information system consulting arms of the firm. Reyes reviewed the email log printouts provided by the clerk's office and saw no evidence that the clerk's office made any mistake or was negligent in the service of the emails in question. He also reviewed five work stations and a server at the law firm of Odom & Barlow did not find any of the emails, and did not find any evidence of destruction of the emails.

Reyes conceded that it was fairly unusual for a company to configure their system to not create any email logs and that if the server had been configured differently, he could have had complete logs from the period in question to determine whether the server had received the emails from the clerk's server. He also noted that the server was not configured to back up data or configuration files and that it was unusual for a business to operate a server system with absolutely no back up or disaster recovery process. If the server had backup data or configuration files, this would have provided information about additional emails and correspondence and changes in the email system itself. He suggested that a law firm that maintained confidential and highly sensitive information for clients have a backup or disaster recovery process.

Reyes could not make a definitive determination whether the emails from the clerk's office were received by Odom & Barlow's server because the firm did not maintain logs or archive or backup emails. If he had complete logs, he would have been able to determine whether the emails had been received. However, Reyes acknowledged that the absence of any error messages, bounce-backs, or retries in the clerk's server logs made it more likely that the emails were received by Odom & Barlow's server. Moreover, if Odom & Barlow's server had received other emails from the clerk's server, this would indicate that there was effective communication between the two systems. Given the totality of the information he had, Reyes believed that it was more likely than not that the server received the emails.

James Todd testified that he helped design, implement, and support email systems. Todd explained that when sending an email, the sending server would look up the recipient server and establish a connection with the recipient server to make sure it was there and accepting messages. If there were no issues, the recipient server would send an "okay" message for the sending server to transmit the data. Once the data was received, the recipient server would send an "okay" message letting the sending server know that it got the data. This activity was referred to as a "handshake," after which everything was under the control of the recipient. Todd testified that this was the equivalent of placing a piece of mail into a mailbox.

Todd reviewed the transaction logs from the clerk's server to Odom & Barlow's server and concluded that an email attaching an order assessing attorneys' fees was properly delivered to and received by the Odom & Barlow server on March 20, 2014, without any error messages or bounce-backs. According to Todd, after the handshake, an email went through any email filtering system that was in place. An email filtering system could be configured to delete emails perceived to be spam and to alert recipients of the receipt of email identified as spam. These settings were in the exclusive control of the email recipient. Thus, after a handshake occurred, the email could be filtered out as spam or delivered to the recipient.

Based on the information he reviewed, Todd concluded that the law firm of Odom & Barlow did not properly implement and utilize its email filtering system. It was his understanding that Odom & Barlow's email filtering system was set to drop and delete emails identified as spam. He did not recommend this setup to any business of any kind because it resulted in data loss. In fact, he testified that he would require the client to sign a waiver exonerating him from responsibility if the client insisted on implementing such an email filtering system.

Joe Fixel, lead counsel for appellee, testified that his firm filed a motion for attorneys' fees that was the subject of a hearing in January 2013. At the conclusion of the hearing, the trial court asked the parties to submit proposed orders. The court did not enter its own orders until March 2014. While they were waiting for the court to act, Fixel's office had a protocol where an assigned paralegal would check the court's website every three weeks to see if the

court had taken any action or entered any orders. Fixel also contacted opposing counsel, Richard Barlow, and suggested they file a joint motion for a case management conference to make sure the case had not slipped through the cracks. When Barlow categorically refused to join such a motion, he consulted with co-counsel who filed a motion for status conference. However, before the status conference occurred, the orders were received by email by all three attorneys and the paralegal who were assigned to the case at his firm. When the attorneys' fees award had not been paid within thirty days as ordered by the court, his paralegal contacted opposing counsel, whose office requested copies of the orders.

At the hearing, appellant argued that it was entitled to relief from the attorneys' fees order because it never received the order in time to file a timely appeal. Appellee responded that appellant was not entitled to relief because appellant's ability to file a timely appeal was not hindered by any action attributable to the trial court or the clerk, but was attributable to the actions of appellant's counsel. Afterwards, the trial court entered an order denying relief. This appeal followed.

Under Florida Rule of Civil Procedure 1.540(b), Florida courts have discretion to set aside a final judgment, decree, order, or proceeding based on "mistake, inadvertence, surprise or excusable neglect." Handel v. Nevel, 147 So. 3d 649, 651 (Fla. 3d DCA 2014). In Pompi v. City of Jacksonville, 872 So. 2d 931 (Fla. 1st DCA 2004), this court held that the appellants' failure to file a timely appeal constituted excusable neglect entitling appellants to relief from judgment under rule 1.540(b) where appellants' counsel made a mistake in reading the file stamp on the judgment, which was much less noticeable than the recording stamp. Id. at 933. While agreeing that the clerk bore no responsibility for counsel's error, this court noted "the fact that a deputy court clerk made precisely the same mistake when reporting the filing date on the telephone is at least some indication that counsel's error was excusable." Id.

Subsequently, in Hollifield v. Renew & Co., Inc., 18 So. 3d 616 (Fla. 1st DCA 2009), this court observed that the trial court had no authority to grant relief from judgment where the neglect in failing to take a timely appeal occurred entirely within the office of the party's counsel and no action attributable to the court or its personnel contributed to counsel's neglect to take a timely appeal. Id. at 617 (citing David M. Dresdner, M.D., P.A. v. Charter Oak Fire Ins. Co., 972 So. 2d 275, 280 (Fla. 2d DCA 2008)). In doing so, this court distinguished Pompi, "whose holding applied to cases where the court or court staff substantially contributed to counsel's failure to file a timely notice of appeal." Id.

We agree with appellant that this language is dicta in light of the true holding in Hollifield that rule 1.540(b) did not authorize the trial court to grant relief from an interlocutory order. Id. However, because we conclude that appellant failed to demonstrate any excusable neglect, it is unnecessary to address whether rule 1.540(b) requires proof that some action attributable to the court or its personnel contributed to counsel's neglect to take a timely appeal.

"Excusable neglect is found `where inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir.'" Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304, 307 (Fla. 4th DCA 2010) (quoting Somero v. Hendry Gen. Hosp., 467 So. 2d 1103, 1106 (Fla. 4th DCA 1985)). However, "[t]he law requires certain diligence of those subject to it, and this diligence cannot be lightly excused." John Crescent, Inc. v. Schwartz, 382 So. 2d 383, 385 (Fla. 4th DCA 1980). "A conscious decision not to comply with the requirements of law cannot be `excusable neglect' under the rule or any other equivalent requirement." Peterson v. Lake Surprise II Condo. Ass'n, 118 So. 3d 313 (Fla. 3d DCA 2013). Likewise, gross neglect is not excusable. Brivis Enters., Inc. v. Von Plinski, 8 So. 3d 1208, 1209 (Fla. 3d DCA 2009); Hornblower v. Cobb, 932 So. 2d 402, 406 (Fla. 2d DCA 2006); Lehner v. Durso, 816 So. 2d 1171, 1173 (Fla. 4th DCA 2002); Otero v. Gov't Emps. Ins. Co., 606 So. 2d 443, 444 (Fla. 2d DCA 1992).

Although appellant claims that its counsel received no notice of the order assessing attorneys' fees until after expiration of the time to appeal, Lendy Davis, William Hankins, and James Todd testified that they reviewed emails logs from the clerk's server and concluded that the emails attaching the order assessing attorneys' fees were electronically served by the clerk's office on March 20, 2014, and received without error by Odom & Barlow's

server. Although Stephen Reyes testified that he could not make a definitive determination whether the emails were received by Odom & Barlow's server because the firm maintained neither email logs nor archive or backup emails, he conceded that it was more likely than not that the server received the emails. Based on this evidence, the trial court could conclude that the order assessing attorneys' fees was received by Odom & Barlow's server, which was the equivalent of placing a physical copy of the order in a mailbox.

In addition, testimony was presented that the spam filter of Odom & Barlow's server was deliberately configured in such a way that it could delete legitimate emails as spam without notifying the recipient, despite Odom & Barlow being warned against this configuration. Specifically, William Hankins advised against this configuration because the built-in spam filtering on the server was very unreliable and created the risk of identifying and filtering legitimate emails as spam. Hankins also recommended that Odom & Barlow hire a third party to handle spam filtering on a full-time basis and purchase an online backup system. However, these recommendations were rejected because the firm did not want to spend the additional money. Stephen Reyes noted that the server had the ability to generate email logs, but was specifically configured not to create logs in order to save drive space.

Based on this testimony, the trial court could conclude that Odom & Barlow made a conscious decision to use a defective email system without any safeguards or oversight in order to save money. Such a decision cannot constitute excusable neglect. See Beguer v. Nat'l City Bank, 46 So. 3d 1199 (Fla. 4th DCA 2010) (reversing an order setting aside a default final judgment based on excusable neglect where the bank's inaction was not the result of a "system gone awry," but rather of a "defective system altogether").

Finally, testimony was presented that opposing counsel, Joe Fixel, had a protocol where an assigned paralegal would check the court's website every three weeks to see if the court had taken any action or entered any orders. If Odom & Barlow had a similar procedure in place, the firm would have received notice of the order assessing attorneys' fees in time to appeal. The neglect of Odom & Barlow's duty to actively check the court's electronic docket was not excusable. See Yeschick v. Mineta, 675 F.3d 622, 629-30 (6th Cir. 2012) (holding that counsel's neglect in not checking the docket was not excusable because the parties had an affirmative duty to monitor the docket to keep apprised of the entry of orders that they may wish to appeal); Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 413 (4th Cir. 2010) (holding that counsel's computer problems did not constitute excusable neglect where counsel failed to actively monitor the court's docket or find some other means by which to stay informed of docket activity).

Moreover, Fixel also contacted Richard Barlow about filing a joint motion for a case management conference. Had Barlow not rejected this request, it is likely that Odom & Barlow would have received notice of the order assessing attorneys' fees in time to appeal. In short, there was an absence of "any meaningful procedure in place that, if followed, would have avoided the unfortunate events that resulted in a significant judgment against" appellant. Hornblower, 932 So. 2d at 406. Accordingly, the trial court did not abuse its discretion in denying appellant's rule 1.540(b) motion.

AFFIRMED.

MAKAR, JAY, and M.K. THOMAS, JJ., CONCUR.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

CASE NO.: 3D17-1421
L.T. No.: 2015-015825-CA-43

LAW OFFICES OF HERSSEIN AND HERSSEIN, P.A. D/B/A/ HERSSEIN LAW GROUP AND REUVEN T. HERSSEIN

Petitioners,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION,

Respondent
_____/

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Petitioners invoke the discretionary jurisdiction of the Supreme Court to review the decision of this court rendered October 2, 2017, pursuant to Article V, § 3(b)(4), Fla. Const., and Rule 9.030(a)(2)(A)(iii) and (iv). The decision expressly and directly affects a class of constitutional or state officers, all Article V judges in Florida, **and** the decision expressly and directly conflicts with the decision of another district court of appeal on the same question of law.

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REUVEN T. HERSSEIN, ESQ.
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By: /s/ Maury L. Udell
MAURY L. UDELL, ESQ.
FBN 121673

Attorneys for Petitioners

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail this **17th** day of **October 2017** on:

The Honorable Beatrice Butchko (bbutchko@jud11.flcourts.org)
Miami Dade County Courthouse
73 West Flagler Street
Room 303
Miami, FL 33130

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Co-Counsel for Respondent, USAA

Third District Court of Appeal

State of Florida

Opinion filed August 23, 2017.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-1421
Lower Tribunal No. 15-15825

Law Offices of Herssein and Herssein, P.A., etc., et al.,
Petitioners,

vs.

United Services Automobile Association,
Respondent.

A Case of Original Jurisdiction – Prohibition.

Herssein Law Group, and Reuven Herssein, for petitioners.

Shutts & Bowen LLP, and Frank A. Zacherl and Patrick G. Brugger, for respondent.

Before FERNANDEZ, LOGUE, and SCALES, JJ.

LOGUE, J.

The Law offices of Herssein and Herssein, P.A. (Herssein Firm) and Reuven Herssein, petition this court for a writ of prohibition to disqualify the trial court judge

below. We deny the petition. Although Petitioners raise three grounds, we write only to address the petitioners' argument that the trial court judge should be disqualified because the judge is a Facebook "friend" with a lawyer representing a potential witness and potential party in the pending litigation.

The Herssein Firm sued its former client, United Services Automobile Association (USAA), for breach of contract and fraud. In the course of the litigation, Herssein accused one of USAA's executives of witness tampering and has indicated that the executive is a potential witness and a potential defendant. In response, USAA hired Israel Reyes, an ex-circuit court judge, to represent the executive.

On June 8, 2017, the Herssein Firm filed a motion to disqualify the trial judge. The motion is based in part on the fact that Reyes is listed as a "friend" on the trial judge's personal Facebook page. In support of the motion, Iris J. Herssein and Reuven Herssein, president and vice president of the Herssein Firm, signed affidavits in which they swore, "[b]ecause [the trial judge] is Facebook friends with Reyes, [the executive's] personal attorney, I have a well-grounded fear of not receiving a fair and impartial trial. Further, based on [the trial judge] being Facebook friends with Reyes, I . . . believe that Reyes, [the executive's] lawyer has influenced [the trial judge]." The trial court denied the disqualification motion, and the Herssein Firm filed this petition for writ of prohibition.

The test for determining the legal sufficiency of a motion for disqualification is whether "the facts alleged (which must be taken as true) would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial." Molina v. Perez, 187 So. 3d 909, 909 (Fla. 3d DCA 2016) (quoting Brofman v. Fla. Hearing Care Ctr., Inc., 703 So. 2d 1191, 1192 (Fla. 4th DCA 1997)). Our review of the facts focuses on "the reasonable effect on the party seeking disqualification, not the subjective intent of the judge." Haas v. Davis, 37 So. 3d 983, 983 (Fla. 3d DCA 2010) (quoting Vivas v. Hartford Fire Ins. Co., 789 So. 2d 1252, 1253 (Fla. 4th DCA 2001)).

The issue in this case is therefore whether a reasonably prudent person would fear that he or she could not get a fair and impartial trial because the judge is a Facebook friend with a lawyer who represents a potential witness and party to the lawsuit. At the outset, we note as a general matter, that "allegations of mere 'friendship' with an attorney or an interested party have been deemed insufficient to disqualify a judge." Smith v. Santa Rosa Island Auth., 729 So. 2d 944, 946 (Fla. 1st DCA 1998). Indeed, the Florida Supreme Court has noted:

> There are countless factors which may cause some members of the community to think that a judge would be biased in favor of a litigant or counsel for a litigant, e.g., friendship, member of the same church or religious congregation, neighbors, former classmates or fraternity brothers. However, such allegations have been found legally insufficient when asserted in a motion for disqualification.

MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332, 1338 (Fla. 1990). And as Justice Overton explained in denying a request for recusal, "[i]f friendship alone with a lawyer or member of a firm is a basis for disqualification, then most judges in rural and semi-rural areas and many in metropolitan areas would be subject to disqualification in a large number of cases." Hayes v. Rogers, 378 So. 2d 1212, 1220 (Fla. 1979).

Nevertheless, this authority does not foreclose the possibility that a relationship between a judge and a lawyer may, under certain circumstances, warrant disqualification. Indeed, in Domville v. State, 103 So. 3d 184 (Fla. 4th DCA 2012), the Fourth District held that recusal was required when a judge was a Facebook "friend" with the prosecutor. The Fourth District based its holding on a 2009 Judicial Ethics Advisory Committee Opinion. Fla. JEAC Op. 2009-20 (Nov. 17, 2009). In its Opinion, the Committee advised that judges were prohibited from adding lawyers who appear before them as "friends" on their Facebook page or from allowing lawyers who appear before them to add them as "friends" on the lawyers' Facebook pages. The Committee focused on the fact that a judge on Facebook has an active role in accepting or rejecting potential "friends" or in inviting another to accept them as "friends." Id. "It is this selection and communication process," the Committee advised, "that violates Cannon 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." Id.

A minority of the Committee disagreed. The minority believed that "the listing of lawyers who may appear before the judge as 'friends' on a judge's social networking page does not reasonably convey to others the impression that these lawyers are in a special position to influence the judge." Id. They reasoned "the term 'friend' on social networking sites merely conveys the message that a person so identified is a contact or acquaintance; and that such an identification does not convey that a person is a 'friend' in the traditional sense, i.e., a person attached to another person by feelings of affection or personal regard." Id.

In 2010, the Committee advised that candidates for judicial office may add lawyers as "friends" on a social networking site even if those lawyers would later appear before them should the candidate be elected. Fla. JEAC Op. 2010-05 (March 19, 2010). It also reaffirmed, however, the advice in its 2009 advisory opinion that a judge may not be Facebook "friends" with a lawyer who appears before her, although a minority believed the committee should recede from its 2009 opinion. See Fla. JEAC Op. 2010-06 (March 26, 2010).

More recently, the Fifth District signaled disagreement with the Fourth District's Domville decision. In Chace v. Loisel, 170 So. 3d 802, 803-04 (Fla. 5th DCA 2014), the Fifth District held that, in a dissolution of marriage case, a judge

who sent the wife a Facebook friend request during the proceedings, which the wife rejected, made an ex-parte communication and was required to recuse himself. In so ruling, however, the Fifth District noted, "[w]e have serious reservations about the court's rationale in Domville." Id. Defining the word "friend" on Facebook as a "term of art," the Fifth District explained:

> A number of words or phrases could more aptly describe the concept, including acquaintance and, sometimes, virtual stranger. A Facebook friendship does not necessarily signify the existence of a close relationship. Other than the public nature of the internet, there is no difference between a Facebook "friend" and any other friendship a judge might have. Domville's logic would require disqualification in cases involving an acquaintance of a judge. Particularly in smaller counties, where everyone in the legal community knows each other, this requirement is unworkable and unnecessary. Requiring disqualification in such cases does not reflect the true nature of a Facebook friendship and casts a large net in an effort to catch a minnow.

Id.

We agree with the Fifth District that "[a] Facebook friendship does not necessarily signify the existence of a close relationship." We do so for three reasons. First, as the Kentucky Supreme Court noted, "some people have thousands of Facebook 'friends.' " Sluss v. Commonwealth, 381 S.W.3d 215, 222 (Ky. 2012). In Sluss, the Kentucky Supreme Court held the fact that a juror who was a Facebook "friend" with a family member of a victim, standing alone, was not enough evidence to presume juror bias sufficient to require a new trial. In Sluss, the juror in question had nearly two thousand Facebook "friends." Id. at 223. Another recent out-of-state

case involved a trial judge with over fifteen hundred Facebook "friends" who was allegedly a Facebook friend with a potential witness, a local university basketball coach, who himself had more than forty-nine hundred Facebook "friends." State v. Madden, No. M2012-02473-CCA-R3-CD, 2014 WL 931031, at *1-2 (Tenn. Crim. App. Mar. 11, 2014) (holding trial judge did not abuse his discretion under Tennessee law in refusing to recuse himself because he was allegedly Facebook "friends" with potential witness).[1]

Second, Facebook members often cannot recall every person they have accepted as "friends" or who have accepted them as "friends." In a recent case, a student, who had over one thousand Facebook "friends," did not know he was a Facebook "friend" with another student he was accused of assaulting. Furey v. Temple Univ., 884 F. Supp. 2d 223, 241 (E.D. Pa. 2012). In another case, a juror did not recognize a victim's name even though a member of the victim's family was one of her over-a-thousand Facebook "friends." Slaybaugh v. State, 47 N.E.3d 607, 608 (Ind. 2016) (affirming trial court's denial of mistrial when "juror testified she was a realtor, had more than 1000 'friends' on Facebook—most of whom she had

[1] See, e.g., Mocombe v. Russell Life Skills & Reading Found., Inc., No. 12-60659-CIV, 2014 WL 11531914, at *1 (S.D. Fla. Oct. 31, 2014) (noting "Plaintiff had more than 5,000 Facebook friends."); Banken v. Banken, No. A11-2156, 2013 WL 490677, at *9 (Minn. Ct. App. Feb. 11, 2013) (noting a party had "more than 1000 friends" on Facebook).

'friended' for networking purposes—but she had not recognized the victim's name during voir dire, did not recognize the victim when she testified, and did not know the victim or her family").[2]

Third, many Facebook "friends" are selected based upon Facebook's data-mining technology rather than personal interactions. Facebook data-mines its members' current list of "friends," uploaded contact lists from smart phones and computers, emails, names tagged in uploaded photographs, internet groups, networks such as schools and employers, and other publicly or privately available information. This information is analyzed by proprietary algorithms that predict associations. Facebook then suggests these "People You May Know" as potential "friends."[3]

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[2] Because Facebook members sometimes cannot be expected to know everyone they have accepted as "friends" or who have accepted them as "friends," the American Bar Association, when advising judges that they should disclose Facebook friendships when appropriate, expressly advised that a judge need not review his or her list of "friends" when doing so. American Bar Association, Judge's Use of Electronic Social Networking Media, Formal Opinion 462 (Feb. 21, 2013) ("[N]othing requires a judge to search all of the judge's ESM [electronic social media] connections if a judge does not have specific knowledge of an ESM connection that rises to the level of an actual or perceived problematic relationship with any individual.").

[3] Facebook, Where do People You May Know suggestions come from? https://www.facebook.com/help/163810437015615?helpref=search&sr=1&query=how%20does%20facebook%20come%20up%20with%20friend%20suggestions (visited August 2, 2017).

The use of data mining and networking algorithms, which are also revolutionizing modern marketing and national security systems, reflects an astounding development in applied mathematics; it constitutes a powerful tool to build personal and professional networks; and it has nothing to do with close or intimate friendships of the sort that would require recusal. This common method of selecting Facebook "friends" undermines the rationale of Domville and the 2009 Ethics Opinion that a judge's selection of Facebook "friends" necessarily "conveys or permits others to convey the impression that they are in a special position to influence the judge."

To be sure, some of a member's Facebook "friends" are undoubtedly friends in the classic sense of person for whom the member feels particular affection and loyalty. The point is, however, many are not. A random name drawn from a list of Facebook "friends" probably belongs to casual friend; an acquaintance; an old classmate; a person with whom the member shares a common hobby; a "friend of a friend;" or even a local celebrity like a coach. An assumption that all Facebook "friends" rise to the level of a close relationship that warrants disqualification simply does not reflect the current nature of this type of electronic social networking.

In fairness to the Fourth District's decision in Domville and the Judicial Ethics Advisory Committee's 2009 opinion, electronic social media is evolving at an exponential rate. 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 designation of a person as a "friend" on Facebook does not differentiate between a close friend and a distant acquaintance. Because a "friend" on a social networking website is not necessarily a friend in the traditional sense of the word, we hold that the mere fact that a judge is a Facebook "friend" with a lawyer for a potential party or witness, without more, does not provide a basis for a well-grounded fear that the judge cannot be impartial or that the judge is under the influence of the Facebook "friend." On this point we respectfully acknowledge we are in conflict with the opinion of our sister court in Domville.

Petition denied.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

OCTOBER 02, 2017

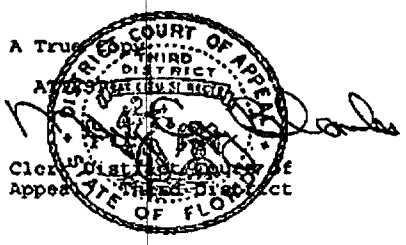
LAW OFFICES OF HERSSEIN AND HERSSEIN, P.A., etc., et al.,
Appellant(s)/Petitioner(s),
vs.
UNITED SERVICES AUTOMOBILE ASSOCIATION,
Appellee(s)/Respondent(s),

CASE NO.: 3D17-1421

L.T. NO.: 15-15825

Upon consideration, petitioners' motion for rehearing and certification is hereby denied. FERNANDEZ, LOGE and SCALES, JJ., concur.

Petitioner's motion for rehearing en banc is denied. LINDSEY, J., recused.



cc: Manuel A. Garcia-Linares, Patrick G. Brugger, Maury L. Udell, Reuven T. Herssein, Frank A. Zacherl, Hon. Beatrice Butchko

la

DISTRICT COURT OF APPEAL
THIRD DISTRICT
2001 S.W. 117 AVENUE
MIAMI, FLORIDA 33175-1716

TELEPHONE (305) 229-3200

October 17, 2017

Re: Law Offices of Herssein and Herssein, P.A. etc., et al.,
v.
United Services Automobile Association
Appeal No.: 3D17-1421
Trial Court No.: 15-15825
Trial Court Judge:

Dear Mr. Tomasino:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

_____ The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this Court and is also attached.

__X__ The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.

_____ Petitioner/Appellant has previously been determined insolvent by the circuit court or our court in the underlying case.

_____ Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee is required because:

_____ Summary Appeal (Rule 9.141)
_____ Unemployment Appeal Commission
_____ Habeas Corpus
_____ Juvenile Case
_____ Other:

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

MARY CAY BLANKS
Clerk, Third District Court of Appeal

By: Barbara Kelley