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October 17, 2017

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Texas Supreme Court Justice Don R. Willett to the United States
Court of Appeals for the Fifth Circuit

Dear Chairman Grassley and Ranking Member Feinstein:

I write to express my strong support for the nomination of Don R. Willett to the U.S. Court of Appeals for the Fifth Circuit.

I first worked with him fourteen years ago at the Office of the Texas Attorney General, where I was part of a litigation team that also included now-Senator Cruz. It was my first post-clerkship legal job and I was the most junior lawyer on the team, and both Justice Willett and Senator Cruz were thoughtful mentors—giving me opportunities to do meaningful work, offering constructive feedback, and encouraging my career progression.

I subsequently returned to the Texas Supreme Court as a staff attorney, and again got the chance to work with Justice Willett when he was appointed and then elected to the bench. His record on the bench makes it clear that he is extraordinarily intelligent, highly productive, and a brilliant writer. After I left my position at the Court and entered academia, I have continued to read his opinions—they are clear, logical, and excellent teaching tools for law students. What has impressed me even more than Justice Willett's intelligence, however, is his personal integrity, kindness, and rock-solid judgment. There is no one I would trust more to exercise impartial judgment and to uphold the rule of law.



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Of course, Justice Willett is also a prolific Tweeter. In teaching Professional Responsibility, I use Justice Willett's facility with social media as an example of the ethical integration of new technology. Two years ago, my casebook co-authors and I included Justice Willett's social media efforts in a "Profile in Attorney Professionalism," which I have attached to this letter. Through his social media outreach, Justice Willett is able to connect with a much larger community and to de-mystify the judiciary. His posts consistently uphold professional values and comport with the canons of judicial ethics, while offering civics lessons interspersed with gentle humor.

In short, Justice Willett's qualifications for a seat on the U.S. Court of Appeals for the Fifth Circuit are unparalleled. His distinguished record of public service, outstanding judicial career, consistent demonstration of personal integrity, and fundamental kindness make him an outstanding choice to fill the vacancy. I strongly urge his confirmation by the Senate.

Sincerely,

A handwritten signature in cursive script, reading "CRobertson".

Cassandra Burke Robertson

AMERICAN
CASEBOOK
SERIES

PROFESSIONAL
RESPONSIBILITY IN THE
LIFE OF THE LAWYER

Second Edition



Carl A. Pierce, Judy M. Cornett,
Alex B. Long, Paula Schaefer
& Cassandra Burke Robertson

suggests, of course, is that, in some circumstances, a lawyer who is personally prohibited from having sex with an organizational constituent by Rule 1.8(j) would also have been prohibited from doing so by Rule 1.7. This would be a personal interest conflict, and at a minimum would require consent of an organizational constituent other than the lawyer's sexual partner. It might, however, even arise to a non-consentable conflict. Given the change to Rule 1.10 noted above, such a conflict would not be automatically imputed to others lawyers in the firm, but it would be imputed to them if the personal interest of the prohibited lawyer presents a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm. While one could probably work such a plot line into a novel about corporate legal intrigue—*e.g.*, senior partner having illicit affair with CEO in circumstances in which CEO is engaged in misconduct that the lawyer might have to reveal to the board of directors by Rule 1.13(b)—the likelihood of such happenings in real life is sufficiently low that it should not be necessary to add sexual relationships to the firm's conflicts data base. More than enough said.

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Profile of attorney professionalism. Lawyers and judges are often nervous about their use of social media, and rightfully so; cautionary tales abound of attorneys who have disclosed their clients' confidential information online, inadvertently created a risk of liability by offering legal advice without giving the matter due care, or engaged in improper electronic communications with prospective jurors or opposing parties. Nonetheless, these risks do not mean that lawyers should avoid communicating through social media. Lawyers and judges can benefit personally and professionally from maintaining a connection to the public, and social media makes that connection easier than ever before.

The following examples show that lawyers can use social media to offer information and humor and to reflect their personality while maintaining a high level of professionalism:

- Texas Supreme Court Justice Don Willett was featured in the New York Times for his prolific use of Twitter. See Jesse Wegman, *Some Judicial Opinions Require Only 140 Characters: Justice Don Willett of the Texas Supreme Court Lights Up Twitter*, N.Y. TIMES (Sept. 24, 2014). Justice Willett is careful to avoid commenting on matters that might come before his court, and also avoids controversial issues and partisan commentary, focusing instead on family, sports, and general current events. His posts often reflect his sense of humor ("sometimes corny and often funny," according to the *Times*). Before he makes a post, he reports that "[u]sually what goes through my mind before I hit the

tweet button is, did I misspell or mis-grammatize anything, but also, is this worth polluting the interwebs with for posterity?" *Id.* Justice Willett finds social media to be a good way of keeping in touch with voters (judges in Texas must run for election), and has stated that he believes candidates who avoid social media are committing "political malpractice." *Id.* His Twitter handle is @JusticeWillett.

- Attorney Jessica Mederson, a partner at Hansen Reynolds Dickinson Crueger LLC in Wisconsin, also uses Twitter; in a recent article on social media, she commented that "I've met several other e-discovery lawyers on Twitter, as they retweet my posts and I retweet theirs. I've actually been at e-discovery conferences since I joined Twitter where I'm having conversations on Twitter with other conference attendees." Jessica C. Mederson, *5 Tips to Love and Live with Your Blog*, WISC. LAW., June 2014. In addition, Mederson writes for two separate blogs. The first, "e-Discovery Matters," at <http://www.e-discoverymatters.com/>, covers recent developments in electronic discovery. It provides a service to practicing lawyers by "analyz[ing] the court decisions and government actions/laws/regulations impacting e-discovery issues in U.S.-based litigation." Mederson has also teamed up with attorney Josh Gilliland to write a second blog, "The Legal Geeks," at <http://thelegalgeeks.com/blog/>. Mederson and Gilliland offer a lighthearted take on the legal side of geekdom, covering "everything from Dune to Battlestar Galactica to the Rule Against Perpetuities." The blog makes occasional forays into legal ethics issues—in one post, Mederson analyzes the constitutional protections for some of the more amusing and outlandish lawyer ads found on YouTube. *Who You Gonna Call? 1-800-LawRocks*, at <http://thelegalgeeks.com/blog/?p=7534>. In another post, Gilliland asks "Can Daredevil Ethically Accept Iron Man's Gift of Sight?" See <http://thelegalgeeks.com/blog/?p=7767>. Gilliland analyzes that question under the California code and rules of professional conduct—but after studying this chapter, you should be able to analyze whether the answer would be the same under Model Rule of Professional Conduct 1.8.