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NCSC
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Social Media and Judicial Ethics Up-date

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NCSC Center for Judicial Ethics

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Social media and judicial ethics: Part 1

[*Judicial Conduct Reporter \(spring 2017\)*](#)

Social media and judicial ethics: Part 2

[*Judicial Conduct Reporter \(summer 2017\)*](#)

A 2-part article analyzing the advisory opinions and discipline decisions on social media and judicial ethics was published in the spring and summer 2017 issues of the *Judicial Conduct Reporter*. Part 1 was a general introduction to the topic and a discussion of issues related to judicial duties: “friending” attorneys, disqualification and disclosure, ex parte communications and independent investigations, and comments on pending cases. Part 2 covered off-bench conduct: conduct that undermines public confidence in the judiciary, commenting on issues, abusing the prestige of office, providing legal advice, disclosing non-public information, charitable activities, political activities, and campaign conduct.

Below are summaries of code of judicial conduct revisions, judicial ethics advisory opinions, judicial discipline decisions, and disqualification caselaw since publication of the 2-part article.

- [Code changes](#)
- [Advisory opinions](#)
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- [Disqualification caselaw](#)

Code changes

In October 2018, the California Supreme Court added [commentary to Canon 2A of the state’s code of judicial ethics](#) that states.

A judge must exercise caution when engaging in any type of electronic communication, including communication by text or email, or when participating in online social networking sites or otherwise posting material on the Internet, given the accessibility, widespread transmission, and permanence of electronic communications and material posted on the Internet. The same canons that govern a judge's ability to socialize in person, on paper, or over the telephone apply to electronic communications, including use of the Internet and social networking sites. Those canons include, but are not limited to Canon 2B(2) (lending the prestige of judicial office), 3B(7) (ex parte communications), 3B(9) (public comment on pending or impending proceedings), 3E(2) (disclosure of information relevant to disqualification), and 4A (conducting extrajudicial activities to avoid casting doubt on the judge's capacity to act impartially, demeaning the judicial office, or frequent disqualification).

Advisory opinions

A judicial candidate may not establish a Facebook page that would request individuals to sign petitions to permit the candidate to qualify without paying the fee otherwise required by law, but a committee of responsible persons may do so as long it is clear that the Facebook page is not maintained by the candidate personally. [*Florida Advisory Opinion 2017-24*](#).

A judicial candidate may post, share, promote, or send to her social media friends her campaign kick-off party invitation if it does not solicit contributions or support but may not share an invitation to the campaign's "Kickoff Fundraiser" or her campaign's social media web-site if the web-site suggests that the viewer contribute to or support the candidate or provides a link for contributions and support. [*Florida Advisory Opinion 2019-22*](#).

When a judge knows that a lawyer appearing before the judge is a former Facebook friend, disclosure is not presumptively required, but the judge should consider the nature of the particular relationship to determine whether disclosure is warranted based on the nature of the former on-line friendship, the extent of any other relationship between the judge and the lawyer, and the personal information the judge posted that the lawyer might use to convey the impression of special access to the judge. [*Massachusetts Letter Opinion 2018-3*](#).

A judge who receives a social media message from the victim's first-degree relative that contains substantive discussion of the case must disclose the ex parte communication to all parties, but recusal is not required and is within the judge's discretion if a request is made. [*New York Advisory Opinion 2017-53*](#).

Judicial discipline decisions

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for mocking a litigant in posts on his Facebook page; the Commission also ordered the judge to delete the post and to review an advisory opinion. [Urie, Order](#) (Arizona Commission on Judicial Conduct June 12, 2018).

Based on a stipulation, the California Commission on Judicial Performance publicly censured a former commissioner and barred him from receiving an assignment, appointment, or reference of work from any California state court for (1) posts and re-posts on his public Facebook page that reflected, among other things, anti-Muslim sentiment, anti-immigration sentiment, anti-Native American sentiment, anti-gay marriage and transgender sentiment, anti-liberal and anti-Democrat sentiment, anti-black sentiment, opposition to then-presidential candidate Hillary Clinton, accusations against President Barack Obama, a lack of respect for the federal justice system, and contempt for the poor and (2) representing to his presiding judge and the Commission that he had taken the posts down when that was not true, although he believed the posts were no longer publicly viewable. [In the Matter Concerning Gianquinto, Decision and order](#) (California Commission on Judicial Performance August 22, 2018).

As recommended by the Judicial Qualifications Commission, the Florida Supreme Court removed a judge from office for statements in e-mail advertisements and on Facebook that implied that her opponent was unfit for judicial office because he was a criminal defense attorney, for example, stating, "Attorney Gregg Lerman has made a lot of money trying to free Palm Beach County's worst criminals. Now he's running for judge!" *Inquiry Concerning Santino*, 257 So. 3d 25 (Florida 2018).

Based on an agreement, the Kentucky Judicial Conduct Commission publicly reprimanded a judge for sharing a news story on her Facebook account with the comment, "This murder suspect was RELEASED FROM JAIL just hours after killing a man and confessing to police." [In re the Matter of McLaughlin, Agreed order public reprimand](#) (Kentucky Judicial Conduct Commission June 12, 2018).

The Nevada Commission on Judicial Discipline publicly reprimanded a former judge for her campaign's posting of a photoshopped picture of herself and an actor on her campaign Facebook page, misleading the public into believing that Dwayne "the Rock" Johnson had endorsed her re-election, and for subsequently commenting on the post. [In the Matter of Almase, Findings of fact, conclusions of law, and imposition of discipline](#) (Nevada Commission on Judicial Discipline October 22, 2018).

Accepting a stipulation based on the judge's resignation and agreement not to seek or accept judicial office in the future, the New York State Commission on Judicial Conduct closed its investigation of a complaint that a judge had made public comments on Facebook criticizing public officials and a state gun regulation and conveying bias in favor of law enforcement and against a political organization, a social activist group, and members of a religious group. [In the](#)

[Matter of Clarkin, Decision and order](#) (New York State Commission on Judicial Conduct December 8, 2017).

Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly admonished a non-lawyer judge for entering a property without the owner's permission, taking photographs of the property, posting the photos on Facebook with disparaging comments about the owner, and failing to promptly remove the post despite assuring the Commission that he would do so. [In the Matter of Fisher, Determination](#) (New York State Commission on Judicial Conduct June 26, 2018).

Accepting a stipulation based on the judge's resignation and agreement not to seek or accept judicial office in the future, the New York State Commission on Judicial Conduct concluded a proceeding against a former non-lawyer judge, who waived confidentiality to the limited extent that the stipulation can become public; the Commission had filed a formal complaint alleging that the judge had posted on "his Facebook account a picture of a noose with the annotation, 'IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT AGAIN.'" [In the Matter of Canning, Decision and Order](#) (New York State Commission on Judicial Conduct September 12, 2019).

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting campaign advertisements for other candidates on his Facebook page and sitting in the campaign tent of 3 candidates during the election. [Public Reprimand of Lopez](#) (Texas State Commission on Judicial Conduct June 6, 2018).

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for posting on his Facebook page a meme endorsing the extermination of Muslims and statements "railing" against liberals. [Public Reprimand of Burkeen](#) (Texas State Commission on Judicial Conduct February 21, 2018).

The Texas State Commission on Judicial Conduct publicly admonished a judge for organizing a school supply drive using court staff and advertising it in Facebook posts, solicitating donations to an individual in a Facebook post, and advertising his donation of a rifle to a charitable organization's raffle in a Facebook post. [Public Admonition of Metts](#) (Texas State Commission on Judicial Conduct October 3, 2018).

The Texas State Commission on Judicial Conduct publicly warned a judge for affirmatively allowing a photo constituting an endorsement of a candidate for county commissioner to be posted on his Facebook page. [Public Warning of Madrid](#) (Texas State Commission on Judicial Conduct April 3, 2019).

Based on the findings and recommendation of the Judicial Conduct Commission, the Utah Supreme Court suspended a judge for 6 months without pay for, in addition to other misconduct, asking in a Facebook post about then-presidential candidate Donald Trump: "Is the fact that the IRS has audited you almost every year when your peers hardly ever or never

have been, something to be proud of? What does that say . . . about your business practices?” *In re Kwan*, 443 P.3d 1228 (Utah 2019).

Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct has publicly admonished a judge for a post on his Facebook page encouraging people to attend a charity pancake feed. [In re Svaren, Stipulation, agreement, and order](#) (Washington State Commission on Judicial Conduct December 7, 2018).

Based on a stipulation and agreement, the Washington State Commission on Judicial Conduct has publicly admonished Supreme Court Justice Mary Yu for 2 posts soliciting support for non-profit organizations. [In re Yu, Stipulation, agreement, and order](#) (Washington State Commission on Judicial Conduct December 7, 2018).

The West Virginia Judicial Investigation Commission publicly admonished a judge for posting on his Facebook page a photo showing him conducting an initial appearance. [Public Admonishment of Hall](#) (West Virginia Judicial Investigation Commission October 31, 2017).

Based on the findings and recommendation of a judicial conduct panel, the Wisconsin Supreme Court suspended a former judge from eligibility for appointment as a judge for 3 years for a “pattern of obsessive conduct about whether [the court manager] liked him as a friend” and actions that were meant to intimidate her or to retaliate against her for reporting his conduct, including sharing information about the court manager on Facebook, complaining that she had “defriended” him on Facebook, and posting to his Facebook page that “[t]he sh— is not over. I might have an employee termination today. Not mine,” and “ Few things are sadder than a co-worker who refuses to return a Merry Christmas greeting out of spite,” clear references to the court manager. [Judicial Commission v. Kachinsky](#) (Wisconsin Supreme Court July 9, 2019).

Private judicial discipline

In its [2016 annual report](#), the Arizona Commission on Judicial Conduct stated that it had advised a judge to thoroughly familiarize himself with the applicable rules of criminal procedure and to refrain from viewing social media postings that could lead to inadvertent ex parte communications and/or acquisition of factual information outside of the record.

In its [2018 annual report](#), the California Commission on Judicial Performance stated that it had (1) privately admonished a judge who failed to diligently monitor social media associated with the judge’s name, in addition to other conduct; (2) issued an advisory letter to a judge who engaged in misconduct in connection with a social media account, in addition to other conduct; and (3) issued an advisory letter to a judge who made a comment on social media about a matter over which the judge did not preside and made no effort to preclude or avoid the use by others of the prestige of the judicial office or the judge’s title.

In its [2018 annual report](#), the Michigan Judicial Tenure Commission stated that it had privately admonished a judge for using her position to promote a novel she had written, including failing to ensure that her agent did not refer to the judge's position in a tweet promoting the book.

In its [2017 annual report](#), the New York State Commission on Judicial Conduct stated that it issued a confidential cautionary letter to a judge who made inappropriate comments on Facebook

In its [2018 annual report](#), the Pennsylvania Judicial Conduct Board stated that it had issued letters of counsel to 2 judges who presided over preliminary proceedings in criminal cases when the judges were Facebook friends with the victim, the victim's mother, the victim's grandparents, the arresting officer, and/or others involved in the cases.

In its [2017 annual report](#), the Pennsylvania Judicial Conduct Board stated that it issued letters of caution to (1) a judge who made posts on a social media site that appeared to endorse policy positions of a political party and re-posted a photographic advertisement of a local fund-raising event for a charitable institution; (2) a non-candidate judge who publicly endorsed the re-election of another magisterial district judge by social media post, mistakenly believing the post was private; and (3) 2 judges who, while standing for re-election, publicly endorsed on social media the re-election of another magisterial district judge who was not a candidate for the same judicial office and who did not appear on the same ballot.

Disqualification caselaw

The Florida Supreme Court held that a Facebook "friendship" with an attorney appearing before a judge, standing alone, did not constitute a legally sufficient basis for disqualification, disagreeing with [Florida Advisory Opinion 2009-20](#) which advised that a judge may not be Facebook "friends" with lawyers who may appear before the judge. [Law Offices of Herssein and Herssein v. United Services Automobile Association](#), 271 So. 3d 889 (Florida 2018).

The Chief Justice of the Kentucky Supreme Court disqualified a trial judge from a lawsuit brought by the Attorney General against the state Secretary of Labor because the judge had "liked" a Facebook post supporting the Attorney General's campaign for governor. [In re Commonwealth of Kentucky, ex rel. Beshear and Jefferson County Teachers Association v. Dickerson](#) (Kentucky Supreme Court September 27, 2019).

Reversing an order granting a mother's motion regarding custody, physical placement, and child support payments, the Wisconsin Court of Appeals held that an undisclosed Facebook connection between the judge and the mother that was created while the motion was pending demonstrated an objective bias, rebutting the presumption that the judge was impartial and violating due process. [In re the Paternity of B.J.M.](#), 925 N.W.2d 580 (Wisconsin Court of Appeals 2019).