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NCSC
National Center for State Courts
Center for Judicial Ethics

Social Media and Judicial Ethics

Compiled by Cynthia Gray, Director

NCSC Center for Judicial Ethics

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Social media and judicial ethics: Part 1

Judicial Conduct Reporter (spring 2017) (<http://tinyurl.com/y99relfw>)

Social media and judicial ethics: Part 2

Judicial Conduct Reporter (summer 2017) (<https://tinyurl.com/y8mdda4d>)

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 opinions and cases since publication of the article.

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* (<http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2017/2017-24.html>).

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* (<https://www.mass.gov/opinion/cje-opinion-no-2018-03>).

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* (<http://www.nycourts.gov/ip/judicialethics/opinions/17-53.htm>).

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) (<http://www.azcourts.gov/portals/137/reports/2018/18-119.pdf>).

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) ([https://courts.ky.gov/commissionscommittees/JCC/Documents/Public Information/PublicReprimandMcLaughlin061218.pdf](https://courts.ky.gov/commissionscommittees/JCC/Documents/Public%20Information/PublicReprimandMcLaughlin061218.pdf)).

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) (<http://www.cjc.ny.gov/Determinations/F/Fisher.William.J.2018.06.26.DET.pdf>).

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) (<http://www.scjc.state.tx.us/media/46679/lopezleonel16-0513-muand16-0540-mufinalpubrep6618.pdf>).

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) (<http://www.scjc.state.tx.us/media/46666/burkeen17-0381-copubrepwebsite.pdf>).

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) (<http://wvmetronews.com/wordpress/wp-content/uploads/2017/11/Hall-114-2017-3.pdf?x43308>).