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Social Media and Judicial Ethics Up-date

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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. *Judicial Conduct Reporter* (spring 2017). 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. *Judicial Conduct Reporter* (summer 2017).

Below are summaries of materials related to judicial ethics and social media issued since publication of the 2-part article.

- **Code provisions**
- **Judicial ethics advisory opinions**
- **Judicial discipline decisions**
- **Private judicial discipline**
- **Judicial election campaign-related advisory opinions and discipline decisions**
- **Disqualification caselaw**

Code provisions

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).

Effective July 2020, the **California Supreme Court** added commentary to Canon 2B the state's code of judicial ethics that states:

> If a judge posts on social networking sites such as Facebook or crowdsourced sites such as Yelp or TripAdvisor, the judge may not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others. For example, a judge may not comment on, recommend, or criticize businesses, products, or services on such sites if it is reasonably likely that the judge can be identified as a judge.

In new Ethical Principles for Judges adopted in 2021, the **Canadian Judicial Council** added several comments regarding social media:

- "Attempts to influence judges may come from many sources, including social media. Judges should be cautious in their communications on social media relating to matters that could come before the court. Also, their social media activities should be undertaken in ways that avoid compromising public confidence in the judiciary."
- "A judge's conduct, in and out of court, may be the subject of public scrutiny and comment. At the same time, judges have private lives and are entitled to enjoy, as much as possible, the rights and freedoms generally available to all. Nevertheless, judges accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. For example, judges should exercise caution in their use of social media. Judges should strive to strike a balance between the expectations of judicial office and their personal lives. In finding this balance, judges should be guided by these Ethical Principles."
- "Judges should avoid engaging in activities on social media that could reasonably reflect negatively on their commitment to equality."
- "Social media activities are subject to the overarching principles that guide judicial behaviour. Judges should be aware of how their activities on social media may reflect on themselves and upon the judiciary and should be attentive to the potential implications for their ability to perform their judicial role. Judges should also be attentive to and may wish to inform family members of the ways in which their social media activities could reflect adversely on the judge."
- "Communication by social media is more public and more permanent than many other forms of communication. It enables messages to be re-transmitted beyond the originators' control and without their consent. Comments or images intended for a

limited audience can be shared, almost instantaneously, with a vast audience and may create an adverse reaction far beyond what one may have considered possible. Social media can also create greater opportunities for inappropriate communications to judges from others."

- "Judges' communications and associations with others are commonly used as a basis for claims of lack of impartiality. Judges should be vigilant in minimizing reasonable apprehensions of bias arising from these communications and associations. This is all the more important, and difficult, in the age of social media. Judges who choose to use social media should exercise great caution in their communications and associations within these networks, including expressions of support or disapproval. This includes judges informing themselves about the functioning, and the application, of security and privacy settings appropriate to their use of social media."

Advisory opinions

With qualifications, judges may write reviews on crowd-sourced sites, such as Yelp, and use the "like" function on a social networking site. *California Judges Association Formal Opinion 78* (2020).

When an appellate justice learns that a staff member has posted a comment on social media that violates the canons, the justice should immediately take steps to remedy the violation, including at a minimum requiring the staff member to take all reasonable steps to have the post taken down and removed from the public domain. If the justice learns that an improper comment has already been viewed by the public, republished, or otherwise disseminated, the judge should, depending on the circumstances, instruct the staff member to correct or repudiate the comment on social media, particularly if the comment is demeaning, offensive, or otherwise undermines the dignity of the court. Appropriate training will help appellate court staff understand their role in maintaining public confidence in the integrity of the judicial system in their postings to social media. *California Oral Advice Summary 2020-37*.

Judges may use social media to make statements about the law, the legal system, or the administration of justice, including legislation affecting the judiciary or the legal system, but judges must exercise caution and restraint; should assume the widest possible audience due to lack of control over the dissemination and permanence of on-line statements; may not engage in prohibited social or political commentary; must carefully evaluate what they intend to post; and must continually monitor reactions to their statements and the social media forums they use. *California Expedited Opinion 2021-42*.

Judges should not use social media "to express support for or to protest current political issues," including "validat[ing], endors[ing], or 'lik[ing]' a person, image, or statement made by another," even if they do not use their titles. *Colorado Advisory Opinion 2020-2*.

A judge may discuss a court-based mental health diversion project on a video that will be used exclusively on a behavioral health entity's web-site and social media platform to educate the community about the program if the judge does not promote the entity. *Florida Advisory Opinion 2019-26*.

A judge may post the release date of a book the judge has written on Facebook or other social media. *Florida Advisory Opinion 2020-21*.

A judge may not post a congratulatory message on LinkedIn when a book written by the judge's spouse is released. *Florida Advisory Opinion 2021-14*.

A judge is strongly discouraged from using social media to post information about a charitable organization that has begun production of handmade robes as part of its mission to create careers for Baltimore citizens returning from prison. *Maryland Opinion Request 2021-3*.

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 views another judge's profile on Facebook and learns that it has posts about the 2020 presidential election and media coverage and bias, links to articles about politics, internet memes about politics, expressions of political opinions, and exchanges about politics with those who commented on the judge's profile or posts has actual knowledge of code violations that raise a substantial question regarding the other judge's fitness as a judge and is required to report it. *Massachusetts Letter Opinion 2021-1*.

Judicial officers may have social media accounts as long as their activity does not violate the code of judicial conduct. *Michigan Advisory Opinion JI-147* (2019).

Judges may support charitable organizations on social media. Judges must not publish their own charitable contributions on social media. Judges who are on charitable organizations' boards of directors may permit their position to be listed on the organizations' websites and social media. Judges may allow their names and photographs to be shown on the website or in the social media of a charitable organization. If a judge has reservations about being associated with any charitable organization, the judge should avoid the association, including through social media and other digital media used by the organization. *Michigan Advisory Opinion JI-148* (2019).

Judges should not expect that their use of social media will be the same as members of the general public. The mere fact that an attorney appearing before a judge in a pending case is a "connection" of the judge on a social networking site is not automatic grounds for

disqualification; in deciding whether to recuse, a judge should consider the frequency of the interaction (i.e., comments, shares, etc.). A judge should consider the frequency and the substance of their communications with a party on social media in deciding whether to recuse from a case involving that party. A judge may communicate through a social media account with an attorney who will be appearing before the judge in a pending case if the communication falls within one of the exceptions for ex parte communications. A judge may not "recommend" attorneys on LinkedIn or other social media sites. A judge may not support a business on social media. A judge may support a charitable organization on social media. *Michigan Judicial Social Media FAQs* (2020).

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*.

A judge may not write and publish an on-line review of a personal or professional vacation organized by a bar association or other professional organization even if the review is anonymous and does not refer to the judge's status. *New York Advisory Opinion 2019-87*.

A judge and a judicial association may publicly support or oppose proposed legislative or constitutional changes affecting court structure, court operations but should use discretion when expressing a position on social media. *New York Advisory Opinion 2019-120*.

Any statement by a judge on social media "should be professional, dignified, and calculated to preserve the high standards of the judicial office." A judge should be "mindful that even seemingly 'private' posts and messages can easily be captured by a screenshot and should follow the old adage 'don't put something in writing unless you want it read back in court.'" A judge should avoid posting content or making connections that will require frequent disqualification. Disqualification issues can arise if a judge posts content that raises reasonable concerns about the judge's impartiality, for example, posts that suggest racial, gender, political, or other bias against a particular class of persons or in particular types of cases. A social media connection to a party, lawyer, or witness appearing in a case without more is not enough to require disqualification, but a judge should consider factors such as the size of their social media network (whether it is "a small social network of close personal friends or a vast network of hundreds or even thousands of connections"), whether the connection is on a personal social media account or a campaign-related account, whether the judge regularly posts and exchanges messages with the person, when the social media connection was first formed, and whether the judge has contact with the person outside of social media. A judge must not publicly comment on the merits of pending cases on social media, engage in "running commentary on cases they hear," or mock litigants, witnesses, or lawyers. A judge should not post "inappropriate, lewd, profane, inflammatory, or unprofessional content." A judge should not on social media make false or misleading statements about or use demeaning, degrading, or insulting language towards a campaign opponent, other candidate, or political parties; use

social media during court time for campaign purposes; or post photos taken during official proceedings. *North Carolina Tips on the Use of Social Media* (2021).

Judicial discipline decisions

Following a trial, the Alabama Court of the Judiciary removed a judge from office for, in addition to other misconduct, using several Facebook aliases to communicate with litigants in an effort to affect the outcome of a domestic relations case and engaging in a pattern of dishonesty and deception that included using Facebook aliases to communicate directly with litigants and to provide information to litigants in cases. *In the Matter of Blocton*, Final judgment (Alabama Court of the Judiciary December 10, 2021).

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).

The Arizona Commission on Judicial Conduct publicly reprimanded a part-time judge for using his judicial title/status in posts on the Facebook page for his campaign for sheriff. *Barth*, Order (Arizona Commission on Judicial Conduct June 10, 2020).

The Arizona Commission on Judicial Conduct publicly reprimanded a judge for, in addition to other misconduct, reviewing a social media post in which the spouse of a criminal defendant criticized him and then discussing the post in a minute order, describing its alleged inaccuracies, and requesting that it be corrected. *Staggs*, Order (Arizona Commission on Judicial Conduct November 17, 2020).

Pursuant to an agreement, the Arkansas Judicial Discipline & Disability Commission announced the resignation of a judge and his agreement to a permanent bar from holding judicial office in the state; the Commission had been prepared to charge the judge for failing to immediately recuse from all cases involving a female defendant with whom he was communicating on Facebook Messenger and by telephone, in addition to other misconduct. *Letter of resignation and prohibition from office (Throesch)* (Arkansas Judicial Discipline & Disability Commission May 1, 2020).

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).

The California Commission on Judicial Performance publicly admonished a judge for (1) participating in a Facebook group advocating for the recall of the county district attorney and (2) posting tweets, re-tweeting content, and liking tweets by others that expressed partisan viewpoints on controversial issues, suggested bias against particular classes of people, and were undignified and indecorous. *In the Matter Concerning O'Gara*, Decision and order imposing public admonishment (California Commission on Judicial Performance September 14, 2021) (https://tinyurl.com/3frvh9px).

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 Kentucky Supreme Court removed a judge for a wide variety of misconduct that included engaging in Snapchat conversations, some of which were sexual in nature, with a member of court staff and members of her guardian ad litem panel. *Gentry v. Judicial Conduct Commission*, 612 S.W.3d 832 (Kentucky 2020).

The Minnesota Board on Judicial Standards publicly reprimanded a judge for endorsing or opposing candidates for public office on his Facebook page by, for example, "liking" Donald J. Trump's Facebook page and posts on the page and posting screenshots of newspaper photos of himself piloting a boat in the Trump Boat Parade. *In the Matter of Quinn*, Public reprimand (Minnesota Board on Judicial Standards March 9, 2021).

Based on the judge's admissions, the Montana Supreme Court suspended a judge for 30 days without pay for, in addition to other misconduct, publicly endorsing 2 partisan candidates for non-judicial offices on her personal Facebook page and having endorsements from 2 partisan candidates and a political organization on her campaign Facebook page. *Inquiring Concerning Harada* 461 P.3d 869 (Montana 2020).

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- 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 formal complaint alleging that a 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).

Accepting an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly admonished a judge for (1) during his campaign, on his personal Facebook page, posting memes that propounded conspiracy theories, making disrespectful and undignified comments about laws he would be sworn to uphold as a sitting judge, and endorsing a candidate for the town council and (2) while a judge, on his personal Facebook page, posting comments on the release of a defendant he had arraigned, linking to articles critical of bail decisions in other cases, and commenting on one of those cases. *In the Matter of Schmidt*, Determination (New York State Commission on Judicial Conduct November 3, 2020).

Accepting an agreed statement of facts, the New York State Commission on Judicial Conduct publicly censured a judge for publicly supporting the teachers at her daughter's school in litigation with the board of education by making public comments about issues and individuals involved in the litigation in person, by email, and on social media platforms in which she was publicly identified as a judge; providing legal information and advice to parents at the school; signing advocacy letters; speaking about the litigation with members of the board of education; joining teachers' union counsel outside the courtroom prior to a case conference; and executing an affidavit that was filed in the litigation. *In the Matter of Panepinto*, Determination (New York State Commission on Judicial Conduct December 9, 2020).

Accepting an agreed statement of facts, the New York State Commission on Judicial Conduct publicly admonished a judge for posting on his Facebook page 2 photographs of himself wearing a sheriff's uniform and personal comments expressing his appreciation for law enforcement officers and describing his appearance at a "Back the Blue" event. *In the Matter of Peck*, Determination (New York State Commission on Judicial Conduct March 19, 2021).

Accepting a stipulation based on the judge's affirmation that he has vacated his office and will not seek or accept judicial office in the future, the New York State Commission on Judicial Conduct concluded its investigation of allegations that a judge had conveyed the impression of bias against LGBTQ individuals and had public posts on his personal Facebook page expressing anti-LGBTQ bias, anti-Muslim bias, and bias in favor of law enforcement and against criminal

defendants; posts of political content; and posts commenting on pending cases, including the murder trial of former Minneapolis Police Officer Derek Chauvin. *In the Matter of Knutsen,* Decision and order (New York State Commission on Judicial Conduct June 10, 2021).

Adopting the recommendation of the Judicial Standards Commission, which was based on stipulations, the North Carolina Supreme Court publicly censured a former judge for a pattern of inappropriate and sexual communications on Facebook with numerous women, many of whom were involved in matters pending in his district; engaging in these inappropriate communications while on the bench and frequently taking breaks, continuing cases, and recusing himself to have conversations or physical encounters that he arranged on Facebook; making misrepresentations and misusing the prestige of office to solicit assistance from law enforcement during an investigation of an attempt to extort him by one of the women; and making material misrepresentations to the Commission. *In re Pool*, 858 S.E.2d 771 (North Carolina 2021).

Based on the report of the Board of Professional Conduct, the Ohio Supreme Court suspended a judge for 6 months without pay for communicating with a litigant on Facebook Messenger and on the phone about 4 cases pending before the judge; the Court stayed the suspension conditioned on the judge completing at least 3 hours of continuing judicial education on ex parte communications or appropriate use of social media by judicial officers, refraining from further misconduct, and paying the costs of the proceedings. *Disciplinary Counsel v. Winters* (Ohio Supreme Court August 18, 2021).

Based on the report of the Board of Professional Conduct, which was based on stipulations, the Ohio Supreme Court suspended a judge for 6 months for communicating inappropriately with a court reporter on Facebook and by text and phone calls, with the entire suspension stayed conditioned on the judge receiving 8 hours of training on sexual harassment and refraining from further misconduct. *Disciplinary Counsel v. Berry* (Ohio Supreme Court November 3, 2021).

Accepting an agreement for discipline by consent, the South Carolina Supreme Court suspended a judge for 18 months without pay for soliciting funds for the Red Cross on his Facebook page, in addition to other misconduct. *In the Matter of Johns*, 864 S.E.2d 546 (South Carolina 2021).

Based on an agreement, the Tennessee Board of Judicial Conduct publicly reprimanded a judge for sharing partisan posts on Facebook on issues such as the credibility of certain federal agencies; professional athletes kneeling during the national anthem; the effect of undocumented immigrants on the economy; the Democratic party platform; support for or opposition to presidential candidates; the Black Lives Matter movement; media bias; fatal shootings by police officers; anti-Jihadist sentiment; transgender bathrooms and boys in girls' locker rooms; and undocumented immigrants voting in Virginia. *Lammey* (Tennessee Board of Judicial Conduct November 15, 2019).

Based on the judge's consent, the Tennessee Board of Judicial Conduct suspended a judge for 30 days without pay and publicly reprimanded him for, on social media, engaging in sexual conversations with and soliciting pictures from women, including a legal professional employed at a law firm that conducts business in his court and a former litigant in a child custody matter before him. *Re Young* (Tennessee Board of Judicial Conduct October 5, 2020). The suspension was held in abeyance provided no meritorious complaints are filed against the judge for any type of misconduct during the remainder of his current term.

The Tennessee Board of Judicial Conduct publicly reprimanded a judge for providing a "legal tip of the day" on Facebook, such as, "when stealing stealth is key" or remember that "the goal of criminal and bad behavior is to get away with it," in addition to other misconduct. *Webb* (Tennessee Board of Judicial Conduct November 5, 2021).

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).

Agreeing with the State Commission on Judicial Conduct, a Texas Special Court of Review publicly admonished a judge for publicly endorsing a candidate for director of an electric cooperative and authorizing the use of his name, title, and likeness on materials supporting her candidacy in mailings and on social media. *In re Oakley*, Opinion (Texas Special Court of Review October 25, 2019).

The Texas State Commission on Judicial Conduct publicly warned a judge for endorsing on his Facebook page the campaign of his brother for the school board. *Public Warning of Saucedo* (Texas State Commission on Judicial Conduct December 5, 2019).

The Texas State Commission on Judicial Conduct publicly admonished a judge for making at least 8 posts on her judicial Facebook page congratulating 12 attorneys on winning jury verdicts in her court and lauding their results and professional backgrounds; the Commission also ordered that she obtain 4 hours of instruction with a mentor. *Public Admonition of Gonzalez* (Texas State Commission on Judicial Conduct March 18, 2020), *review requested*.

The Texas State Commission on Judicial Conduct publicly warned a judge for disparaging another judge's bond determination on Facebook and referring to the other judge's family in doing so; the Commission also ordered the judge to receive 2 hours of instruction with a mentor. *Public Warning of Crow and Order of Additional Education* (Texas State Commission on Judicial Conduct October 28, 2020).

The Texas Commission publicly warned a judge for her Facebook activities in support of a friend's campaign for city council and a court clerk's acceptance of a donation to her campaign at the courthouse; the Commission also ordered the judge to receive 2 hours of instruction with a mentor. *Public Warning of Woodard and Order of Additional Education* (Texas State Commission on Judicial Conduct October 28, 2020).

The Texas State Commission on Judicial Conduct publicly warned a judge for publicly disparaging another judge's bond determination on Facebook and referring to the other judge's family in doing so; the Commission also ordered the judge to receive 2 hours of instruction with a mentor. *Public Warning of Crow and Order of Additional Education* (Texas State Commission on Judicial Conduct October 28, 2020)

The Texas State Commission on Judicial Conduct publicly warned a judge for posting on Facebook support for judicial candidates, opposition to candidates for other offices, a negative comment about Scientology, and a meme about border crossings; the Commission also ordered the judge to obtain 2 hours of instruction on racial sensitivity with a mentor. *Public Warning of Baca Bennet and Order of Additional Education* (Texas State Commission on Judicial Conduct August 16, 2021) (http://www.scjc.state.tx.us/media/46842/baca-bennett18-0388-et-alpubwarn-oae-81621.pdf).

Based on the judge's resignation and agreement to be disqualified from judicial service in the state, the Texas State Commission on Judicial Conduct agreed not to pursue further disciplinary proceedings against a former justice of the peace; in a notice of formal proceedings, the Commission had alleged that the judge, in addition to other misconduct, made Facebook posts or allowed posts to appear on her Facebook page that (a) promoted, advertised, and/or expressed her support for consumer products, businesses, and other commercial endeavors; (b) indicated her support for and association with law enforcement, the Blue Lives Matter movement, and the U.S. Border Patrol; (c) expressed her contempt or disdain for criminal defendants; (d) promoted fundraising efforts by civic, charitable, and educational organizations and made directed solicitations for personal and local causes; and (e) promoted the campaigns of several candidates for public office. *Fernandez*, Voluntary agreement to resign from judicial

office in lieu of disciplinary action (Texas State Commission on Judicial Conduct October 22, 2021).

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for maintaining a Facebook page on which materials supporting his wife's campaign for county commissioner appeared, in addition to other misconduct. *Public Reprimand of Alvarez and Order of Additional Education* (Texas State Commission on Judicial Conduct October 29, 2021).

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for, in addition to other misconduct, after conducting an inquest for a friend, posting on Facebook: "I receive the phone call early this morning for an inquest. It's very hard when it's a friend, as I still have to do my job. Now sitting outside the house in my car. I'm finding it really hard not to break down. This world lost a GREAT WOMAN today in Bastrop as God has taken another angel too add to the kingdom that awaits us all. Rest in Peace Kat Stewart Handy." *Public Reprimand of Thomson* (Texas State Commission on Judicial Conduct October 29, 2021).

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 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 publicly admonished a supreme court justice 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).

The West Virginia Judicial Investigation Commission publicly admonished a judge for comments she made on her Facebook page about a pharmacist arrested for destroying COVID-19 vaccine dosages and about the siege at the U.S. Capitol. *Public Admonishment of Jackson* (West Virginia Judicial Investigation Commission February 24, 2021).

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*, 930 N.W.2d 252 (Wisconsin 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 2020 annual report, the California Commission on Judicial Performance stated that it had privately admonished a judge for maintaining an email account and social media accounts with identifying information that cast doubt on the judge's capacity to act impartially and for posting a comment on social media that improperly used the judge's title and position to promote the pecuniary interest of another.

In 2021, Louisiana Judiciary Commission privately cautioned a judge for social media activity that conveyed an appearance of partiality.

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 2020 annual report, the Michigan Judicial Tenure Commission stated that it had cautioned a judge for a Facebook comment on a pending case about which there was significant public interest based in part on misinformation; although the judge had intended the post "to reassure and inform the public," it had appeared to be "a promise or commitment regarding how the judge would rule in the future with respect to the issues that had generated the public interest" and created the appearance that "the judge had allowed public pressure to affect

their impartial future performance of adjudicative duties, although there was no indication that the judge actually was influenced by any public sentiment."

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 2019 annual report, the New York State Commission on Judicial Conduct stated that it issued a letter of dismissal and caution to 1 judge for allowing inappropriate comments to be posted on his Facebook account and to 1 judge for making an inappropriate Facebook post concerning a candidate for elected office.

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.

The Texas State Commission on Judicial Conduct privately admonished a judge who posted "Hope you burn in hell" on a company's Facebook page.

The Texas State Commission on Judicial Conduct privately admonished a judge for making several Twitter comments critical of the district attorney's office and local law enforcement agencies; the Commission also ordered the judge to receive additional education.

The Texas State Commission on Judicial Conduct privately warned a former judge for advertising on his Facebook page for and performing weddings in a manner that suggested his provision of those services came by virtue of his being a judge, when in fact, he was not authorized to perform such services as an associate judge.

The Texas State Commission on Judicial Conduct privately warned a judge for stating on his Facebook page that he would refuse to officiate same-sex weddings if asked and reiterating that position in a subsequent statement to the media, casting doubt on his capacity to act impartially to persons appearing before him as a judge due to their sexual orientation.

The Texas State Commission on Judicial Conduct privately warned a former judge for using her social media in a manner that could be perceived as advancing the private interests of herself or others, authorizing the use of her name to endorse other candidates for public office, or conveying the impression that others were in a special position to influence her.

Judicial election campaign-related advisory opinions and discipline decisions

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*.

A judicial candidate's campaign committee may maintain a Facebook page and post on the candidate's behalf communications written in the first person about, for example, campaign events, candidate appearances, public speeches, and the candidate's qualifications provided the "first person" communications do not seek or solicit financial support or public statements of support. *Florida Advisory Opinion 2020-10*.

Judicial candidates may include on campaign websites or social media pages a video of the candidate personally describing their experience, qualifications, and similar subjects; an invitation to potential followers to watch the campaign website for updates and to submit questions to the candidate; and personal requests for support in both English and Spanish as long as the candidate does not ask for donations or other financial support and the candidate's answers to voters' questions do not constitute promises of future conduct or other prohibited statements. *Florida Advisory Opinion 2020-13*.

A judicial candidate may post a message asking for votes and support in social media groups that are composed of politically active individuals but that do not appear to be sponsored by any particular political organization. *Florida Advisory Opinion 2020-16*.

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 stipulations of fact about the judge's campaign flyers and digital placards on Facebook, a hearing panel of the Kansas Commission on Judicial Conduct ordered a judge to cease and desist from using photos of himself or his dog in his courtroom in campaign materials and from making misleading statements about his opponent. *Inquiry Concerning Hatfield* (Kansas Commission on Judicial Conduct July 16, 2021).

A judge who is a candidate for election may use her personal social media accounts to notify the public of campaign fund-raising events and seek financial support. *Maryland Advisory Opinion Request 2019-30*.

A judge, who is a candidate for election, may use her personal social media accounts to notify the public of campaign fund-raising events and seek financial support. *Maryland Advisory Opinion Request 2019-30*.

Judicial officers and judicial candidates may advertise their own campaigns on personal or professional social media accounts but may not use those accounts to solicit or accept campaign contributions. A judicial candidate's campaign committee may solicit contributions through social media platforms. *Michigan Advisory Opinion JI-147* (2019).

A judge may support a judicial candidate on social media. *Michigan Judicial Social Media FAQs* (2020).

Based on the judge's admissions, the Montana Supreme Court suspended a judge for 30 days without pay for, in addition to other misconduct, publicly endorsing 2 partisan candidates for non-judicial offices on her personal Facebook page and having endorsements from 2 partisan candidates and a political organization on her campaign Facebook page. *Inquiring Concerning Harada* 461 P.3d 869 (Montana 2020).

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).

In its 2019 annual report, the New Mexico Judicial Standards Commission stated that it had issued a cautionary letter to a judge who allegedly shared posts on the judge's Facebook campaign page for a non-partisan election that identified the political parties of the judge and the judge's opponent.

Based on an agreed statement of facts and recommendation, the New York State Commission on Judicial Conduct publicly censured a judge for, during her 2018 election campaign, liking or replying to crude comments on Facebook by her supporters about her election opponent, in

addition to other misconduct. *In the Matter of VanWoeart*, Determination (New York State Commission on Judicial Conduct March 31, 2020).

Subject to generally applicable limits on campaign speech and conduct, a judicial candidate may permit their campaign committee to establish a Twitter account to keep voters and community leaders informed about events, to direct them to the campaign website, and to "follow" the candidate's opponent and/or other candidates. *New York Advisory Opinion 2021-40*.

In its 2017 annual report, the Pennsylvania Judicial Conduct Board stated that it issued letters of caution to 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).

The Kentucky Court of Appeals remanded a medical malpractice case for the trial court judge to determine if her Facebook friendship with one of the defendants and the defendant's connections to her judicial election campaign were so extensive as to require her recusal. *Andress v. Lape* (Kentucky Court of Appeals September 18, 2020).

Finding that "the extreme facts of this case rebut the presumption of judicial impartiality and establish a due process violation," the Wisconsin Supreme Court held that a serious risk of actual bias had been created in a custody dispute when, while his decision was pending following a contested hearing, the trial judge accepted a Facebook "friend request" from the mother; she interacted with him, including "liking," "loving," or commenting on at least 20 of his Facebook posts; and she "shared" and "liked" third-party posts about domestic violence, which was an issue in the case. *In re Paternity of B.J.M.*, 944 N.W.2d 542 (Wisconsin 2020).