



Use of Social Media by Judges

Discussion Guide for the Expert Group Meeting (5-7 November 2018, Vienna)

Social media platforms play an increasingly vital part of social life, communication and dissemination of information. They inevitably touch upon lives of most people, with judges being no exception. However, given the nature of judicial office, the use of social media by judges raises specific questions that should be addressed. This is because the way judges use social media may have an impact on the public's perception of judges and confidence in the judicial systems and can potentially lead to situations where judges are seen as biased or subject to outside influences. In addition, the use of social media also poses potential threats to judges' privacy, safety and may place judges under attack of negative comments and cyberbullying. In line with the Bangalore Principles of Judicial Conduct, judges should in all their actions have regard to the values of independence, impartiality, integrity and propriety, but at the same time should not be isolated from society and should strive to create an environment of open justice. How to find balance between these competing priorities in the ever-evolving world of technological advancements and communication means?

There is currently no consensus on judges' use of social media and most judiciaries' rules and regulations are silent on the topic. However, more attention is starting to be paid to the topic and several jurisdictions and regional bodies have put in place explicit rules or addressed the emerging questions in case law or advisory opinions. It can be observed from the existing sources that the opinions around the various aspects of the use of social media by judges vary and what is considered acceptable in one jurisdiction may not be acceptable in another. However, what links the various approaches is the underlying principle that judges should always have regard to the fundamental values of judicial independence, impartiality, integrity, propriety, equality and competence and diligence

With this in mind, it has been identified as one of the priority areas¹ for the work of the Global Judicial Integrity Network to look at the existing challenges and practices on the use of social media by judges and aim to develop a set of non-binding guidelines that could serve as a source of inspiration for judiciaries that are on the path of addressing the topic and inform judges of the various risks and opportunities in using social media. The Global Judicial Integrity Network, with the support of UNODC

¹ Declaration on Judicial Integrity (paragraph 8) adopted at the launch of the Global Judicial Integrity Network in April 2018, available at <https://www.unodc.org/ji/en/restricted/network-launch.html>; Workplan of the Global Judicial Integrity Network developed by the Advisory Board of the Network.



as its secretariat, has already embarked on this task and the following activities have taken place/are planned for the coming months on the topic of the use of social media by judges:

1. Desk review of existing regulations, guidelines, materials, cases and opinions on the issue.
2. Reference to the issue included in the first module of the e-Learning course on Judicial Ethics and Conduct, developed as part of the Judicial Ethics Training Tools².
3. Dissemination of an online global survey to judges and other relevant stakeholders with a view to collecting data and opinions on the various aspects of the use of social media by judges and gathering additional resources.
4. Organization of a dedicated global Expert Group Meeting with the aim to identify key issues, discuss existing practices, collect new information, consider the usefulness of non-binding guidelines on the topic and gather input for the possible content of such guidelines.
5. Dissemination of existing good practices and resources on the use of social media through the Network, in particular, its website www.unodc.org/ji.
6. Possible drafting of non-binding guidelines on the use of social media by judges.

The purpose of the present document is to serve as a discussion guide for the Expert Group Meeting on the Use of Social Media by judges that will take place on 5 to 7 November 2018 in Vienna. It compiles various existing relevant guidelines, materials, cases and opinions from across the world with a view to providing useful background information to sparkle discussions during the meeting. It also raises various questions related to the use of social media by judges that the participants could consider and share their views on.

The document does not aim to provide clear-cut answers to the questions it will raise. In addition, it should also be noted that the document is currently not comprehensive in its content. It is hoped that the Expert Group Meeting in November 2018 as well as other consultations within the context of the Global Judicial Integrity Network, such as the online survey disseminated in September 2018, will help gather a wealth of additional resources on the topic. It is planned that all the resources be later compiled and disseminated through the Network.

Bangalore Principles and the Commentary on the Bangalore Principles

Before looking at the existing relevant resources and practices on the use of social media by judges, attention should be paid to the 2002 Bangalore Principles of the Judicial Conduct, as the universally

² More information about the Judicial Ethics Training Tools is available at https://www.unodc.org/ji/en/judicial_ethics.html.

recognized principles of judicial conduct, and the detailed 2007 Commentary on the Bangalore Principles.³

When the Bangalore Principles and the Commentary were first drafted, social media platforms were in their infancy. As such, neither document makes any reference to the use of social media. Nevertheless, several principles and Commentary paragraphs touch upon judges' behaviour outside of court and are highly relevant for the present discussion. Among others, these include:

- A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. (*Bangalore Principle 2.2*)
- A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. (*Bangalore Principle 4.6*)
- While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred on home, family and friends. The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. (*Commentary, paragraph 31*)
- A judge is not merely enriched by knowledge of the real world; the nature of modern law requires that a judge "live, breathe, think and partake of opinions in that world". [...] A judge who is out of touch is less likely to be effective. (*Commentary, paragraph 32*)
- The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge's behaviour on the bench or his or her associations and activities outside the court. (*Commentary, paragraph 52*)
- [...] a judge must avoid all activity that suggests that his or her decision may be influenced by external factors such as a personal relationship with a party or interest in the outcome of a case. (*Commentary, paragraph 55*)

³ For more information about the Bangalore Principles and the Commentary on the Bangalore Principles: <https://www.unodc.org/ji/resdb/index.aspx> and https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

- Everything—from a judge’s associations or business interests, to remarks that he or she may consider to be nothing more than harmless banter—may diminish the judge’s perceived impartiality. *(Commentary, paragraph 65)*
- [...] the issue of relations with the media is relevant. Three possible aspects of concern may be identified as follows: (a) The first is the use of the media (in or out of court) to promote a judge’s public image and career or to address the media’s possible reaction to a particular decision. For a judge to allow himself or herself to be influenced in either direction by the media would almost certainly infringe paragraph 1.1 of the Bangalore Principles, as well as other paragraphs, including 2.1, 2.2, 3.1, 3.2 and 4.1; (b) [...]; (c) The third aspect concerns comments, even in an academic article, on the judge’s or another judge’s decision. [...] Generally speaking, it is prudent for judges not to enter into needless controversy over past decisions, especially when the controversy may be seen as an attempt to add reasons to those stated in the judge’s published judgement. *(Commentary, paragraph 76)*
- Depending on the circumstances, a reasonable apprehension of bias might be thought to arise in the following cases: (a) If there is personal friendship or animosity between the judge and any member of the public involved in the case; [...] *(Commentary, paragraph 90)*
- A judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept a restriction on his or her activities that might be viewed as burdensome by the ordinary citizen. [...] This applies to both the professional and the personal conduct of a judge. The legality of a judge’s conduct, although relevant, is not the full measure of its propriety. *(Commentary, paragraph 114)*
- A judge should not, ordinarily, sit on cases involving a lawyer with whom he or she is socially or romantically involved, unless the appearance of the lawyer is purely formal or otherwise put on the record. [...] *(Commentary, paragraph 131)*
- A serving judge does not surrender the rights to freedom of expression, association and assembly enjoyed by other members of the community, nor does the judge abandon any former political beliefs and cease having an interest in political issues. However, restraint is necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge’s involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement. *(Commentary, paragraph 134)*
- A judge should not involve himself or herself inappropriately in public controversies. [...] It is equally important for judges to be seen by the public as exhibiting that detached, unbiased,

unprejudiced, impartial, open-minded and even-handed approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates—either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the Government—he or she will not be seen to be acting judicially when presiding as a judge in court. The judge will also not be seen as impartial when deciding disputes that touch on the subjects about which the judge has expressed public opinions; nor, perhaps more importantly, will he or she be seen as impartial when public figures or Government departments that the judge has previously criticized publicly appear as parties, litigants or even witnesses in cases that he or she must adjudicate. (*Commentary, paragraph 136*)

- There are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice or the personal integrity of the judge. However, even on these matters, a judge should act with great restraint. While a judge may properly make public representations to the Government on these matters, the judge must not be seen as lobbying Government or as indicating how he or she would rule if particular situations were to come before the court. Moreover, a judge must remember that his or her public comments may be taken as reflecting the views of the judiciary; it may sometimes be difficult for a judge to express an opinion that will be taken as purely personal and not as that of the judiciary in general. (*Commentary, paragraph 138*)
- A judge may participate in a discussion of the law for educational purposes and point out weaknesses in the law. [...] (*Commentary, paragraph 139*)
- A judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, both within and outside the judge's jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extrajudicial activities. Provided that this does not detract from the discharge of judicial obligations, and to the extent that time permits, a judge should be encouraged to undertake such activities. (*Commentary, paragraph 156*)
- A judge may engage in appropriate extrajudicial activities so as not to become isolated from the community. A judge may, therefore, write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities if such activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties. [...] In the final analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable observer, the judge has engaged in an activity that could objectively compromise his or her independence or impartiality or that might appear to do so. (*Commentary, paragraph 166*)

Use of Social Media by Judges - Yes or No?

One of the first topics to tackle is whether judges should or should not use social media.

- Can/should judges use social media platforms? (Yes? Yes, but...? No?) All platforms or there should be any limitations concerning the type of platform?
- What are the risks for judges in using social media? What are the opportunities for judges in using social media? How to find balance between the two?
- If the answer to the first question is yes, should there be any restrictions placed upon judges?
- If restrictions should apply, should it be the responsibility of individual judges to assess whether certain behaviour on social media is (un)acceptable or should the issue be regulated by judiciaries (e.g. through codes of conduct, guidelines, circulars, etc.)?
- Are there any concrete judicial integrity-issues that you see arise when judges use social media?
- A distinction should probably be made between (a) personal social media accounts of judges; and (b) 'official' social media accounts that have been established by courts. Would your answers to the above-mentioned questions differ for each category? What happens in the case that the judicial institution creates an official account for the judge?
- Should individual judiciaries regulate the issue of the use of social media by judges? If yes, what do you see as the best way to do so? (e.g. circulars, guidelines, provisions in codes of conduct, training activities, etc.)

Several jurisdictions and regional bodies have addressed the issues raised:

- A judge may use electronic social media, but in doing so he or she shall have regard to the guiding principles of impartiality, judicial independence, and integrity and personal behaviour set out in the Council of Chief Justices' Guide to Judicial Conduct. Any conduct by a judge that would undermine these principles or create a perception of impropriety or bias shall be avoided. (*Chief Justice Allsop, Federal Court of Australia, Guidelines for Judges about using electronic social media, 6 December 2013, Australia*).
- “[s]ocial interactions of all kinds, including [the use of social media websites], can [. . .] prevent [judges] from being thought of as isolated or out of touch.” (*The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America*).



- Allowing Judges to use Facebook and other social media is also consistent with the premise that judges do not “forfeit [their] right to associate with [their] friends and acquaintances nor [are they] condemned to live the life of a hermit. In fact, such a regime would [. . .] lessen the effectiveness of the judicial officer.” (*Commission on Judicial Ethics, State Bar of Tex., Op. 39, quoted in The Texas at Dallas, Court of Appeals, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America*).
- Judges should act with the most prudence when using this public forum because the image of the institution relies on their behaviour. (*Direction des services judiciaires, Ministère de la Justice, Division of Judicial Services, Ministry of Justice, Du bon usage des réseaux sociaux à titre privé. Conseils pour une utilisation éclairée et responsable, Good practices for the private use of social media. Guidelines for a reasoned and responsible use, June 2017 (F.15), France*).
- Adequate use of social media is a useful tool for the dissemination of institutional and personal content, whenever the judge complies with the Code of Conduct. (*Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, Conclusion 3. Costa Rica*).
- The activity in social media that might be acceptable for the general public may be considered inappropriate for members of the judiciary due to the higher standard of integrity, candour and fairness reposed on them. (*Supreme Court, Office of the Court Administrator, All Judges and court personnel of first and second level court, OCA Circular N.173-2017, Proper use of social media, 2017, Philippines*).
- While judges are not prohibited from participating in online social networks, such as Facebook, Instagram or Snapchat, they should exercise restraint and caution in doing so. A judge should not identify himself or herself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code. (*Code of Judicial Conduct, Canon 3, Commentary 5, Idaho, United States of America*).
- The same Rules of the Code of Judicial Conduct that govern a judicial officer’s ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook. (*Code of Judicial Conduct, West Virginia, United States of America*).

Judges’ Identification on Social Media

- How should judges identify themselves on social media platforms? With real names? With nicknames? With/without their professional title? Are there any risks/advantages in using pseudonyms, identifying oneself as a judge, etc.?

- Do the answers to the previous questions differ depending on the type of social media in question? (For example, some social media (such as LinkedIn) are based on the premise of sharing professional details, while other media (like Snapchat or Pinterest) focus more on personal life and preferences and the use of real names is of less importance).
- How relevant is the fact of how 'public' a certain social media profile is? It may be one thing to have a profile (with personal/professional details) visible to your close family, and it may be another thing to have a public profile with hundreds (or more) followers.
- Is it a good practice for judges to have separate private and professional profiles?
- Which personal information could be shared, and which personal information should rather not be disclosed? (e.g. full name, date of birth, location, family relationships, contact information such as emails and telephone numbers, etc.).

Several jurisdictions have looked at these issues:

- Judges shall not identify themselves as judges or members of the judiciary. (*Judiciary of England and Wales, Guide to Judicial Conduct, 2018. United Kingdom*).
- You must also take care not to identify yourself as a judge or permit others to do so. Section 2B ("A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."); e.g., Commentary to Section 2B ("[J]udicial letterhead and the judicial title should not be used in conducting a judge's personal business."). (*The Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court, CJE Opinion No. 2011-6, 28 December 2011, United States of America*).
- A judge should not identify himself or herself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code. (*Code of Judicial Conduct, Idaho, United States of America*).
- A judge's behaviour using a pseudonym to post comments, some of them abusive, on a website about a case over which he had presided, constitutes a behaviour below the standard expected of a judicial office holder (*The Judicial Conduct Investigations Office, Statement from the Judicial Conduct Investigations Office, Recorded Jason Dunn-Shaw, Statement from the Judicial Conduct Investigation Office JCIO 15/17, 11 April 2017. United States of America*).
- Judges should not express opinions that could damage public confidence even on social media sites that are anonymous (*Bologna and Milan Global Code of Judicial Ethics, 2015, Approved at the International Conference of Judicial independence, organized by International*



Association of Judicial Independence and World Peace, held at the University of Bologna and at Bocconi University of Milano June 2015, 8.2.6.2.).

- [...] 6. A judge should bear in mind that he or she can never be certain as to where his or her communication might end up appearing, even if it was originally meant only for a limited circle of addressees. (*The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic*).

Behaviour on Social Media and Content Shared

- Which behaviour is acceptable/unacceptable for judges on social media? (in terms of linking/sharing/reacting/reposting information, etc.)
- Which topics and content of judges' social media activities might be (in)appropriate? (e.g. how about controversial issues, politics, issues related to the judiciary, legal opinions, advertising or promotion of goods or services, etc.?)
- What content might be (in)appropriate to share on social media with regard to court administration, hearings, cases, etc.?
- Which behaviour of judges on social media could possibly erode public trust and confidence in the judiciary?
- Which behaviour could possibly be misinterpreted or misrepresented by followers/friends/social media groups?
- Which views shared on social media could be seen to cast reasonable doubts on judges' ability to try an issue with an objective judicial mind?
- If judges have 'private' accounts open only to their family and friends, what restrictions, if any, should apply?
- If judges have 'public accounts', what restrictions, if any, should apply?
- Should judges respond to negative comments or criticism? Should they allow/disallow the comments section under their posts?
- Which restrictions should judges apply in terms of preserving their privacy and safety?
- Can Judges express their opinions on social media on judicial issues when these are related to the defence of judicial values?

For more questions relating to connections and interactions on social media, please refer to the following section of the paper.

Several jurisdictions have tried to address these issues:

- Not to use social media to write a personal diary. Not to add people to a conversation without introducing them. Pay attention to correct spelling. Refrain from posting advertising or political messages, which might be politically incorrect or prejudiced. Take part in closed groups. Not to give opinions on political issues. Not to share posts of hatred or violence. Not to share posts of alcohol consumption or nudity. Avoid posts that show off ostentation. (*Manual for the Magistrates' Use of Social Media, The Brazilian Magistrates Association, 2017, Brazil*).
- 1. All communications by a judge (posts, comments, photos, etc.) must respect the dignity of judicial functions and cannot cast doubt on his or her impartiality or independence. 2. A judge should not create relationships that would give an impression that they could affect a judge's decision-making. 3. A judge does not comment on ongoing court proceedings. 4. A judge does not provide legal advice. 5. A judge avoids political judgments (among others to support a candidate for a political function, does not 'like' political parties or movements, does not give an opinion on controversial political questions unless they concern justice matters). 6. A judge should bear in mind that he or she can never be certain as to where his or her communication might end up appearing, even if it was originally meant only for a limited circle of addressees. (*The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic*).
- Judges should be aware that they are not alone when using social media and shall remember that they would never be able to predict where their messages could be published, even if addressed to a confined list of recipients. (*The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic*).
- (Commenting on Extrajudicial Activities; Electronic Social Media; Facebook) Rule 1.2 of the Code states that a Judge "should act at all times in a manner that promotes public confidence in the [...] impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." (*The Connecticut Committee on Judicial Ethics, Informal Opinion on Extrajudicial Activities; Electronic Social Media; Facebook, 2013-06, 22 March 2013, United States of America*).

- A judge must maintain dignity in every comment, photograph, and other information shared on the social network. As required by Jud. Cond. Rule 1.2, a Judge must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and must avoid impropriety and the appearance of impropriety. It should go without saying that upholding the law is a key component of maintaining the dignity of office. (*The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Guidelines for Ohio Judges who use social network sites, Opinion 2010-7, 3 December 2010, United States of America*).
- Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of contestant public scrutiny. A judge must, therefore, accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. (*The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, Judges' membership on internet-based social networking sites, 10 January 2010, United States of America*).
- Judges shall avoid expressing opinions that could damage public confidence in their own impartiality, or the judiciary in general. [...] It should be avoided to post information or photographs which could result in a risk to personal safety, such as details of holiday plans and information about the family. (*Judiciary of England and Wales, Guide to Judicial Conduct, 2013 and 2018, United Kingdom*).
- There have been instances where judges placed a disclaimer in their social media profiles stating that all the content or opinions expressed are only in their personal capacity. It might be a precautionary measure, nevertheless, some advisory opinions in the United States of America explained that the proposed disclaimers fail to cure the impression of having special influence (...) and there is no assurance that someone viewing the page would see or read the disclaimer. (*The Florida Supreme Court's Judicial Ethics Advisory Committee's Opinion 2010-06, 26 March 2010. (Reviewing Florida Advisory Opinion 2009-20). United States of America*).
- In the case of Colon Colon in Puerto Rico, a judge commented mockingly on social media about the parties of a case. It was considered as a violation of the principle of impartiality and a transgression of the ethical canons. (*Supreme Court Puerto Rico, Corte Suprema de Puerto Rico DTS 049 In Re: Colon Colon, 2017 TSPR 49. Violation of canons 19 and 23, United States of America*).
- Discriminatory comments with a racist overtone on social media amounted to impeachable conduct in the matter. (*Judicial Conduct Committee, 13 February 2017, South Africa*).



- Condemnation of a judge for, among other reasons, making sexist remarks in a public electronic forum. (*The Judicial Discipline and Disability Commission v. Maggio, Arkansas. 366, 440 S.W.3d 333, 2014, United States of America*).
- Dismissal of a judge for his sexist and political comments on Facebook. The Tribunal explained that a judge shall be an example of judicial independence and impartiality and keep the honour of the judicial career, both in their personal and professional life. (*Supreme Court Puerto Rico (Corte Suprema de Puerto Rico), In Re: Mercado Santaella, 2017, TSPR064. Violations of canons 2, 8, 23 and 28. United States of America*).
- When a judge presses a “Like” button or share a Tweet on social media, s/he is expressing his/her opinion. (*Supreme Court Puerto Rico (Corte Suprema de Puerto Rico), In Re: Mercado Santaella, 2017 TSPR064, United States of America*).
- A judge shall not endorse or oppose candidates for political positions. [...] (*The Connecticut Committee on Judicial Ethics, Informal Opinion on Extrajudicial Activities; Electronic Social Media; Facebook, 2013-06, 22 March 2013, United States of America*).
- Judges are recommended to use social media in a way that prevents the links between political parties and judges. [...] Judges shall not publish information or opinions about judicial processes that violate the rights of judicial system users. (*Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, 2015, Costa Rica*).
- Judge shall be aware that his/her manifestations could be manipulated or decontextualized. [...] A judge shall avoid sharing non-public information due to the fact that social media constitutes a public space. (*Iberoamerican Commission on Judicial Ethics, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015*).
- The repeated endorsement of political candidates in public fora and social media could lead to permanent retirement and future barred from judicial office. (*The New Mexico Supreme Court in the Matter of Hon. Phillip J. Romero, Pro Tempore Judge, No. 30,316, 13 February 2015, United States of America*).
- Judges cannot post Facebook updates and comments about the issues and the parties of pending cases. (*The Texas State Commission on Judicial Conduct, CJC No. 14-0820-DI & 14-0838-DIO, 20 April 2015, United States of America*).
- A judge should avoid participating in or being associated with discussions about matters falling within the jurisdiction of his or her court. This extends to postings by others regarding high profile cases or legal issues that could come before the court. Such communications could give the impression that other people or organizations are in a position to influence the judge. They could also raise concerns about the judge’s impartiality. (*The Arizona Supreme Court*



Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America).

- When sharing information, judges shall balance the consequences for him/herself, the image of other persons, other users, or the institution. (*Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, 2015, Costa Rica*).

Friendships and Connections on Social Media

→ Which connections on social media are (non-)problematic?

- Family
- Friends
- Fellow judges
- Court personnel
- Lawyers
- Prosecutors
- Other law enforcement personnel
- Parties to cases and their relatives
- Witnesses
- Reporting persons
- Experts
- Government officials
- Relatives of any of the above
- General public

→ Should 'online' friendships and connections be treated the same way as real-life friendships when it comes to disclosures / disqualifications / recusals?

→ For the categories listed above, which social media connections, if any, may potentially influence a judge's decision? Which connections, if any, may be seen by a reasonable observer as able to influence a judge?

→ Which type of interaction on social media platforms with the above-mentioned categories is (un)acceptable?

→ How relevant is the argument that many people that a judge interacts with on social media are potential court users and as such it is unrealistic to expect a judge not to be connected to them? Can a judge belong to any social media group or interact with persons that *might appear* in front of him or her in the exercise of his or her jurisdiction?

- Would the answers to the above questions change if we do not talk about direct connections, but for example about sharing of common groups/communities/friends/interests on social media?
- Which connections on social media, if any, should require disclosure/disqualification/recusal?

Several judiciaries have tried to respond to these questions:

- A friend is a friend? Not necessarily, a social network friend may or not be a friend in the traditional sense of the word. (*The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, p2, United States of America*).
- 'Friend', 'fan' and 'follower' are social media terms of art that do not carry the ordinary sense of those words. (*The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, 10 January 2010, United States of America*).
- A Facebook friendship may actually amount to mere acquaintanceship. [...] Only objective manifestation of a close and personal relationship could constitute a violation of the Bangalore principles guiding to consequences, as disqualification. (*European Judicial Training Network, Themis competition 2015. Judges and Social Media: Managing the risks, Semi Final D, Judicial Ethics and Professional Conduct, Team Greece 3, 23-26 June 2015, Czech Republic. p.10-11*).
- Judges may join social networking sites such as Facebook, LinkedIn, and Twitter, and may be friends with lawyers, law enforcement officers and others who appear before them, with limitations. [...] Whether a judge must disclose a social relationship or disqualify from a case depends on the closeness of the relationship but being designated a friend on a social network does not by itself convey an impression of a special relationship. (*The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, 10 January 2010, United States of America*).
- The Committee believes that the mere status of being a "Facebook friend," without more, is an insufficient basis to require recusal. Nor does the Committee believe that a judge's impartiality may reasonably be questioned (see 22 NYCRR 100.3[E][1]) or that there is an appearance of impropriety (see 22 NYCRR 100.2[A]) based solely on having previously "friended" certain individuals who are now involved in some manner in a pending action. (*The New York State Advisory Committee on Judicial Ethics, Opinion 13-39, 2013, United States of America*).

- Context is significant. Simple designation as a [social media] connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person. [...] Merely designating someone as a 'friend' on Facebook does not show the degree or intensity of a judge's relationship with a person. [...] Judges shall act carefully and evaluate the meaning of adding a person as a contact in a social network. [...] If that connection includes current and frequent communication, the judge must very carefully consider whether that connection must be disclosed. (*The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America*).
- A judge shall not establish relationships that might be perceived as potentially influencing judicial decisions or create the impression that the other party is in a special position to influence the judge. (*The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by Judges, Prague, 24 March 2017, Czech Republic*).
- It is immaterial whether the person actually is in such a position, it is the possible impression that matters. We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril'. (*The Oklahoma Advisory Opinion 2011-3, 2011, United States of America*).

Connections with lawyers

- Judges should apply the total exclusion of lawyers or other legal professionals as contacts on social media. (*Iberoamerican Commission on Judicial, Uso ético de las redes sociales Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015; Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, 2015, Costa Rica*).
- The friendship of judges on social media with advocates is discouraged. (*High Court of Jammu and Kashmir at Srinagar, Chief Justice's Secretariat, Circular, N8, 27 August 2015, India*).
- The Committee is of the opinion that the Code prohibits judges from associating in any way on social networking web sites with attorneys who may appear before them. Stated another way, in terms of a bright-line test, judges may only "friend" attorneys as to whom they would recuse themselves when those attorneys appeared before them. (*The Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court, CJE Opinion No. 2011-6, 28 December 2011, United States of America*).
- Judge may not add as friends lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The judge's acceptance of a lawyer as a friend would convey the impression, or allow others to convey the impression, that a person is in a special position to influence the judge, even if that is not true. (*The Florida Supreme Court's Judicial Ethics Advisory Committee's, Opinion 2009-20, 17 November 2009, United States of America*).



- Lawyers and others could list themselves as followers of a judge (or the campaign committee of a judge, the official Facebook page of a tribunal) and it can create the perception of influence over the judge's decision. (*The Florida Supreme Court's Judicial Ethics Advisory Committee's Opinion 2010-06, 26 March 2010. (Reviewing Florida Advisory Opinion 2009-20), United States of America*).
- The judge may join a social network, even one which includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must defriend the lawyer when the lawyer has a case before the judge. [...] A number of factors can be used to determine the appearance of impropriety when judges and lawyers are friends on social media: i) the nature of the particular social media page, ii) the number of friends the judge has (with a lower number suggesting a closer relationship), iii) the judge's practice as to accepting "friendship" requests, and iv) how regularly the particular "friend"-lawyer appears before the judge. [...] Regardless of the nature of the social network, the judge shall always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. [...] Judge shall de-friend the lawyer when the lawyer appears in a case before the judge. (*The Judicial Ethics Committee of the California Judges Association, Opinion 66, 23 November 2010, United States of America*).
- A judicial official should not become a social networking "friend" of attorneys who may appear before the judicial official. [...] A judicial official should disqualify himself or herself from a proceeding when the judicial official's social networking relationship with a lawyer is likely to result in bias or prejudice concerning the lawyer for a party or the party. (*The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America*).
- Judges are not required to automatically disqualify themselves from cases in which lawyer Facebook friends appear, but they shall evaluate each situation individually. [...] Recusal is more likely when the lawyer is in the "close friend" category. [...] In the cases in which the friendship between a lawyer and a judge could lead to the appearance of bias or undue influence and raised to sufficient concern for disqualification, simply defriending is not an adequate response. (*The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America*).

Connections with prosecutors

- It would also violate Rule 1.2 for a Judge to be a "friend" of the local sheriff's (or other local law enforcement officials') Facebook page or to "like" such a page. [...] Because the sheriff's office regularly participates in matters before most courts, such associations are ethically



problematic. (*The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America*).

- The exchange of tweets (between judges and prosecutors) constitutes a mistrust in the neutrality of the judge. (*National Appeal Chamber IV on Criminal and Corrective, Sala VI de la Cámara Nacional de Apelaciones en lo Criminal y Correccional, 9 August 2013 c. 4139/2013, Argentina*).
- Judges shall consider if disqualifying themselves if they are friends of the prosecutor on social media, and if based on the friendship, it is sufficient to create a fear that the defendant would not receive a fair and impartial trial. (*The Florida District Court of Appeal, Fourth District, in Domville v. State, WL 3826764 Fla. Dist. Ct. App., 4th Dist., 2012, United States of America*).

Connections with parties and their relatives

- Judges shall not try to friend request the parties to the process on social media. (*The Florida District Court of Appeal, Fifth District, in Chace v. Loisei, So. 3d, 39 Fla. L. Weekly D221, 2014 WL 258620, 2014, United States of America*)
- Reprimands and suspensions are also contemplated for the cases in which judges are in contact with family members of people facing trial on their court if the communication is related to the case. (*Georgia Commission on Judicial Qualifications, Inquiry Concerning Judge J. William Bass, Sr., Docket No. 2012-31, 18 March 2013, United States of America*).
- Merely designating someone as a “friend” on Facebook “does not show the degree or intensity of a judge’s relationship with a person.” ABA Op. 462. One cannot say, based on this designation alone, whether the judge and the “friend” have met; are acquaintances that have met only once; are former business acquaintances; or have some deeper, more meaningful relationship. Thus, the designation, standing alone, provides no insight into the nature of the relationship. (*The Texas at Dallas, Court of Appeals, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America*).
- Judge is not required to disqualify from a criminal case just because the judge is Facebook friends with the parents of some minors affected by the defendant's conduct if the social relationship is mere "acquaintance". [...] This friendship by itself does not establish grounds for calling a judge’s impartiality into question nor create an appearance of impropriety. [...] A memorandum for the file stating the basis for concluding that recusal is not necessary, in case questions arise later. (*The New York State Advisory Committee on Judicial Ethics, Opinion 13-39, 2013, United States of America*).
- If a judge is following an organisation or a liking its profile online on social media, the judge might have to consider if s/he disqualified himself/herself in a case where the organisation

appears as a litigant. (*The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America*)

Connections with witnesses and reporting persons

→ Online relationship between judges and the witnesses and/or confidential informers in a case they are knowing could be an ethical violation. [...] Online relationships could reach the disqualification of a judge, but only if the circumstances of the case and the kind of relationship could determine an ethical violation. (*The Tennessee Court of Criminal Appeals, in State v. Ferguson, James Curwood Witt, Jr. Tenn., 2014 WL 631246, 2014, United States of America*).

Common groups/friends/interests

→ A Judge must not foster social networking interactions with individuals or organizations if such communications will erode confidence in the independence of judicial decision making. [...] For example, frequent and specific social networking communications with advocacy groups interested in matters before the court may convey such impression of external influence. (*The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, United States of America*).

→ Facebook connections, belonging to the same group (for instance sports club) does not automatically disqualify the judge for the case. (*The Tennessee Court of Criminal Appeals, in State v. Madden, WL 931031, 2014, United States of America*).

Use of Social Media for Evidence Gathering and Non-Legal Research

→ While there is a general consensus in the existing approaches that a judge should not use social media for research on case-related information, are there any real-life situations that you consider not so clear-cut?

→ What advice should judges follow in this regard?

→ Are there any practical problems that may arise in this area?

→ Judges must avoid the use of social media to obtain information regarding a matter before them. (*The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America*).

→ Judges shall not independently research the parties of a case they are knowing. (*North Carolina Judicial Standards Commission, Public reprimand of Terry, 1 April 2009, United States of America*).

- A Judge should not view a party's or witness' page on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge. [...] The ease of finding information on a social networking site should not lure the judge into investigative activities in cases before the judge. (*The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, United States of America*).
- A judicial official should not view parties' or witnesses' pages on a social networking site and should not use such a site to obtain information regarding a matter before the judge. (*The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America*).

Privacy on Social Media

- Which behaviours and insights should judges develop when it comes to privacy and safety on social media platforms (for themselves, their family and the judiciary)?
- As already asked above, should judges limit access to social media accounts? What are the opportunities/risks of 'public' profiles? Should judges have both personal and professional social media accounts?
- Should judges allow/disallow comments sections under their posts?

- Judges who choose to participate in online social networks should be very cautious. A Judge should not participate in an online social networking site without being familiar with that site's privacy settings and how to modify them. (*The Judicial Ethics Committee of the California Judges Association, Opinion 66, 23 November 2010, United States of America*).
- A Judicial Official should be aware of the contents of his/her social networking profile page, be familiar with the site's policies and privacy controls, and stay abreast of new features and changes. To the extent that those features raise further ethical issues, a Judicial Official should consult the Committee for guidance. (*The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America*).
- Majority of the privacy settings are automatic and judges shall raise them, when possible, within social media forums. (*Judiciary of England and Wales, Guide to Judicial Conduct, 2018, p. 20, United Kingdom*).
- 8.2.4 A Judge must check privacy settings and restrict access to their profile to ensure information is kept to a restricted group. 8.2.5 A Judge must check the terms and conditions of any sites to which he or she signs up and ensure they are aware of who owns data posted

on the site and what the owners of the site can do with their data. (*Bologna and Milan Global Code of Judicial Ethics, 2015, Approved at the International Conference of Judicial independence, organized by International Association of Judicial Independence and World Peace, held at the University of Bologna and at Bocconi University of Milano June 2015*).

- Judges should use high-level security measures on the social media, such as passwords, firewalls, antimalware to prevent the impersonation, or against phishing. (*Iberoamerican Commission on Judicial Ethics (Comisión Iberoamericana de ética judicial), Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015*).
- Judges might disable the geo-localisation when posting or using applications, delete telephone numbers or his/her birthday. (*Direction des services judiciaires, Ministère de la Justice, (Division of Judicial Services, Ministry of Justice), Du bon usage des réseaux sociaux à titre privé. Conseils pour une utilisation éclairée et responsable (Good practices for the private use of social media. Guidelines for a reasoned and responsible use), June 2017 (F.15), France*).

Training

- Should judges be trained on the use of social media?
- Should judges' relatives be trained?
- If yes, in what areas? (e.g. risks and opportunities in the use of social media; restrictions on the use of social media; privacy settings; integrity and ethical issues; technical aspects; evaluation of content as potential evidence)
- In what format? (e.g. in-person; webinars; e-Learning; brochures; etc.)

- Training on the use of social media is a necessity nowadays for judges and that the Judicial Training Centres shall provide training on social media applications and the ethical implications of using them. (*Iberoamerican Commission on Judicial Ethics, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015*).
- *Recommendations*: Creating mandatory education programs to address the advantages, disadvantages and risks of the use of social media in personal and professional contexts for all judicial officers; Creating one-on-one or small group on-site training programs to address the advantages, disadvantages and risks of the use of social media by judicial officers in personal and professional contexts. (*Canadian Centre for Court Technology, Centre Canadien de technologie judiciaire, The Use of Social media by Canadian Judicial Officers, A Discussion Paper of the Canadian Centre for Court Technology, May 2015. F. Recommendations, Section 4-7, Canada*).



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- The courts can provide training and/or guidelines to judicial officers' families, in addition to training to judicial officers, regarding 'ethical issues and potential security concerns' associated with social media. (*Utah State Courts, Social Media Subcommittee of the Judicial Outreach Committee, Report and Recommendations for Judges Using Social Media, 18 October 2011, United States of America*).
- Family members of a judge and court staff should be alerted to the circumstance that their discussion of, or comment about, cases coming before the judge requires consideration. A judge might be quite unaware of a family member's use of social media. But members of the public may assume that material emanating from a member of a judge's family or from court staff is attributable to the judge, or reflects the judge's views. Like a judge, members of the judge's family should be alert to the possibility of a connection through social media with someone involved in a case before the judge. (*Australasian Institute of Judicial Administration Incorporated, Guide to Judicial Conduct, March 2017, 3rd Edition, chapter IX*).