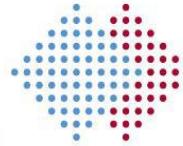


The Doha Declaration:  
PROMOTING A CULTURE  
OF LAWFULNESS



GLOBAL  
JUDICIAL  
INTEGRITY  
NETWORK

## **Discussion Guide:**

# **The Use of Social Media by Judges**



## Table of Contents

The Use of Social Media by Judges .....	3
Bangalore Principles of Judicial Conduct and its Commentary .....	5
Use of Social Media by Judges - Yes or No? .....	8
Judges' Identification on Social Media .....	10
Behaviour on Social Media and Content Shared.....	13
Friendships and Connections on Social Media .....	19
Use of Social Media for Evidence Gathering and Non-Legal Research .....	25
Privacy on Social Media .....	26
Training.....	29



# The Use of Social Media by Judges

## Discussion Guide<sup>1</sup>

Social media platforms play an increasingly vital part of social life, communication and dissemination of information. They inevitably touch the lives of most people, with judges being no exception. However, given the nature of the 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 might have an impact on the public's perception of judges and its confidence in the judicial systems. It 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 and safety and may place judges in a position to be under attack from negative comments or cyberbullying. In line with the Bangalore Principles of Judicial Conduct, judges should respect the values of independence, impartiality, integrity and propriety in all their actions, but at the same time they should not be isolated from society and should strive to create an environment of open justice. How can they find a balance between these competing priorities in the ever-evolving world of technological advancements and means of communication?

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 explicit rules in place or addressed the emerging questions in case law or advisory opinions. It can be observed from the existing sources that the opinions regarding 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 respect the fundamental values of judicial independence, impartiality, integrity, propriety, equality and competence and diligence.

With this in mind, judges' use of social media has been identified as one of the priority areas for the work of the Global Judicial Integrity Network.<sup>2</sup> This includes looking at the existing challenges and practices on the use of social media by judges and aiming to develop a set of non-binding guidelines that could serve as a source of inspiration for judiciaries that are beginning to address 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 as its secretariat, has embarked on this task and the following

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<sup>1</sup> The discussion guide was first draft to assist in the discussions held on 5-7 November 2018 at the UN Headquarters in Vienna at the Expert Group Meeting on the Use of Social Media convened by UNODC. The guide was later reviewed in early 2019 to incorporate the inputs collected at the expert group meeting and through an online survey disseminated by UNODC on the topic.

<sup>2</sup> 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.

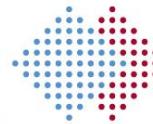


activities have taken place or are planned for the coming months on the topic of the use of social media by judges:

1. Desk review of existing regulations, guidelines, materials, cases and opinions on the issue.
2. Reference to the issue was included in the first module of the e-Learning course on Judicial Conduct and Ethics, developed as part of the Judicial Ethics Training Tools<sup>3</sup>.
3. Dissemination of an online global survey in English, French and Spanish 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. The survey was designed and disseminated to participants in September 2018 and closed in February 2019. The invitation to participate in the survey was sent to more than 2,000 members of the judiciary and 504 responses were received from 86 countries. The majority of participants were judges, magistrates, or judicial officers, but court staff, prosecutors, lawyers, members of the judicial administration, scholars, and members of NGOs and international organizations also participated in the survey.
4. Organization of a dedicated global Expert Group Meeting in November 2018, with the aim of identifying key issues, discussing existing practices and collecting new information on the topic. During this meeting, judicial and legal experts from different regions drafted an initial proposal for a set of guidelines on judges' use of social media, based on existing regional and national standards and experiences, including the Bangalore Principles of Judicial Conduct and its Commentary.
5. Drafting of non-binding guidelines on the use of social media by judges.
6. Collection of additional input and comments from the participants of the Global Judicial Integrity Network on the draft non-binding guidelines on the use of social media by judges. Once the consultation period is over, UNODC will compile the comments received and finalize the guidelines. The new text will be presented at the next High-Level Meeting of the Global Judicial Integrity Network, scheduled to take place on 18 and 19 November in Doha, Qatar.
7. Dissemination of existing good practices and resources on the use of social media through the Network, in particular, through its website: [www.unodc.org/ji](http://www.unodc.org/ji).

The purpose of the present document is to compile various existing relevant guidelines, materials, cases, and opinions from across the world with a view to providing useful background information on the most relevant thematic issues related to judges' use of social media.

<sup>3</sup> More information about the Judicial Ethics Training Tools is available at [https://www.unodc.org/ji/en/judicial\\_ethics.html](https://www.unodc.org/ji/en/judicial_ethics.html).



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. The content of this document aims to spark discussions among judges, members of the judiciary and other relevant stakeholders and disseminate the information compiled by the Global Judicial Integrity Network thus far on judges' use of social media.

### Bangalore Principles of Judicial Conduct and its Commentary

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 Judicial Conduct, as the universally recognized principles of judicial conduct, and the detailed 2007 Commentary on the Bangalore Principles.<sup>4</sup>

When the Bangalore Principles and the Commentary were first drafted, social media platforms did not exist. 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*).

<sup>4</sup> For more information about the Bangalore Principles and the Commentary on the Bangalore Principles:

<https://www.unodc.org/ji/resdb/index.jspx>

and [https://www.unodc.org/ji/resdb/data/2006/220/the\\_bangalore\\_principles\\_of\\_judicial\\_conduct\\_ecosoc\\_resolution\\_200623.html?lng=en](https://www.unodc.org/ji/resdb/data/2006/220/the_bangalore_principles_of_judicial_conduct_ecosoc_resolution_200623.html?lng=en).



- “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*).
- “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?) Does this apply to all platforms or should there 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 can a balance be found 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 event that a judicial institution were to create an official account for a 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:

- “Blogging by members of the judiciary is not prohibited. However, office holders who blog (or who post comments on other people’s blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they



hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general" (*Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom*).

- "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 Texas, Op. 39, Court of Appeals, Dallas, Texas, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America*).
- "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*).
- "Social 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*).
- Adequate use of social media is a useful tool for the dissemination of institutional and personal content, if the judge complies with the Code of Conduct. (*Council of Notables, Costa Rica Judicial System, The use of social media, Recommendation, 1-2015, N3, 2015, Costa Rica*).<sup>5</sup>
- Judges must remember the need to reconcile their freedom of expression with their ethical obligations. They should avoid undermining the integrity and independence of the judiciary (*National School of Judges, Social Media and Judges: practice on Twitter, 1 May 2016, France*).<sup>6</sup>
- "Judges should act prudently when using public forums because the image of the institution relies on their behaviour" (*Judicial Services Division, Ministry of Justice, Guidelines for a*

<sup>5</sup> Summary of the original source in Spanish: *Por una parte, es conveniente que el juez utilice las redes sociales, lo cual y en muchas ocasiones viene propiciado por las instituciones de Gobierno de los jueces (supremas cortes, consejos de la magistratura o ministerios de justicia) así como por instancias supranacionales (comisión europea). El networking también contribuye a que los jueces se relacionen y enriquezcan humana y profesionalmente.* (*Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015, Costa Rica*).

<sup>6</sup> Unofficial translation of an original source in French: *Les juges [et magistrats] doivent se rappeler la nécessité de concilier leur liberté d'expression avec leurs obligations déontologiques. Ils doivent au premier chef, éviter de porter atteinte à l'intégrité et l'indépendance de la magistrature et du système judiciaire.* (*École nationale de la magistrature, Réseaux sociaux et magistrats : quelles pratiques sur Twitter?, 1 mai 2016, France*).



*reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017, France).<sup>7</sup>*

- “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*).<sup>8</sup>
- “Members of the judiciary are allowed to use social media and social media platforms as part of the freedom of expression that they have as citizens” (*Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018*).<sup>8</sup>
- “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 their real names? With nicknames? With or without their professional title? Are there any risks or advantages in using pseudonyms, identifying oneself as a judge, etc.?
- Do your answers to the previous questions differ depending on the type of social media in question? (For example, some social media platforms (such as LinkedIn) are based on the

<sup>7</sup> Unofficial translation of an original source in French: F.15 L’expression d’un magistrat ès qualités, quel que soit le support ouvert au public, nécessite la plus grande prudence, afin de ne pas porter atteinte à l’image et au crédit de l’institution judiciaire. Il en est de même de la publication, par des magistrats, de souvenirs professionnels personnels. (Direction des services judiciaires, Ministère de la Justice, *Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable*, F.15, juin 2017, France).

<sup>8</sup> Unofficial translation of an original source in French: Le Réseau reconnaît que les membres de la magistrature peuvent utiliser les réseaux et médias sociaux, composantes de la liberté d’expression de tout citoyen. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, *Les réseaux sociaux et la magistrature, Un magistrat branché: à quelles conditions?*, novembre 2018).



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 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 good practice for judges to have separate private and professional profiles?
- What personal information could be shared, and what personal information should 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:

- “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*).
- The use of social media during a hearing is incompatible with the judge’s duties. (*Superior Judicial Council, Disciplinary Council, Prosecution, 29 April 2014, France*).<sup>9</sup>
- “Judges shall not identify themselves as judges or members of the judiciary” (*Judiciary of England and Wales, Guide to Judicial Conduct, 2018, United Kingdom*).
- “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*).

In particular, different jurisdictions have elaborated further on the issue of the use of pseudonyms or anonymity by judges:

<sup>9</sup> Unofficial translation of an original source in French: *L'usage des réseaux sociaux pendant ou à l'occasion d'une audience est à l'évidence incompatible avec les devoirs de l'état de magistrat. Cet usage est d'autant plus inapproprié que les messages échangés peuvent être lus en temps réel par des personnes extérieures à l'institution judiciaire et qu'ils permettent d'identifier tant leurs auteurs que les circonstances de leur émission.* (*Conseil supérieur de la magistrature, Conseil de discipline des magistrats du parquet, 29 avril 2014, France*).



- “[...] guidance also applies to blogs which purport to be anonymous. This is because it is impossible for somebody who blogs anonymously to guarantee that his or her identity cannot be discovered” (*Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom*).
- “A judge must not express an opinion, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This also applies to blogs which purport to be 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, June 2015, 8.2.6.2.*).
- “The alleged anonymity granted by certain social media platforms cannot liberate judges from their duties, in particular their obligations of discretion, impartiality, and neutrality” (*Superior Judicial Council, Discipline Council, Prosecution, 29 April 2014, France*).<sup>10</sup>
- A judge using a pseudonym to post comments, some of them abusive, on a website about a case over which he presided, constitutes 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*).<sup>11</sup>
- Judges should avoid disclosing information related to their professional activity and should respect confidentiality. The use of pseudonyms might help to protect judges' identities because when using their name, judges could be easily identified, and their activity tracked in a simple search on Google. (*Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017, France*).<sup>12</sup>

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<sup>10</sup>Unofficial translation of an original source in French: *Le prétendu anonymat qu'apporteraient certains réseaux sociaux ne saurait affranchir le magistrat des devoirs de son état, en particulier de son obligation de réserve, gage pour les justiciables de son impartialité et de sa neutralité.* (*Superior Judicial Council, Discipline Council, Prosecution, 29 April 2014, France*). Also mentioned at : *Conseil supérieur de la magistrature, Conseil de discipline des magistrats du siège, 30 avril 2015* and at *Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France*.

<sup>11</sup>Summary of the original source in English.

<sup>12</sup>Unofficial translation of an original source in French: [...] *D'éviter de divulguer toute information liée à son activité professionnelle, et de respecter les règles de discréction. Evidemment l'utilisation d'un pseudo sera le plus protecteur car votre seul nom permet de vous identifier sur Google par les décrets de nomination qui y sont diffusés.* (*Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France*).



## Behaviour on Social Media and Content Shared

- Which behaviour is acceptable/unacceptable for judges on social media? (in terms of linking/sharing/reacting/re-posting information, etc.)
- Which topics and content of judges' social media activities might be (in)appropriate? (e.g. what 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 as casting reasonable doubt on a judge's ability to try an issue with an objective judicial mind?
- If judges have "private" accounts open only to their family and friends, which restrictions, if any, should apply?
- If judges have "public accounts", which 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:

- "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*).

- 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*).<sup>13</sup>)
- "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*).
- "Judicial office holders who maintain blogs must adhere to this guidance and should remove any existing content which conflicts with it forthwith. Failure to do so could ultimately result in disciplinary action. It is also recommended that all judicial office holders familiarize themselves with the new IT and Information Security Guidance which will be available shortly" (*Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom*).
- "[...] 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" (Commenting on Extrajudicial Activities; Electronic Social Media; Facebook, Rule 1.2) (*The Connecticut Committee on Judicial Ethics, Informal Opinion on Extrajudicial Activities; Electronic Social Media; Facebook, 2013-06, 22 March 2013, United States of America*).

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<sup>13</sup> Summary of the original source in English.



- 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*).<sup>14</sup>
- 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*).<sup>15</sup>
- “While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public” (*Antonio M. Lorenzana v. Judge Ma. Cecilia I. Austria, RTC, Br. 2, Batangas City, A.M. No. RTJ-09-2200, April 2, 2014, Philippines*).
- “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*).
- It is recommended that judges use social media in a way that prevents linkages 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*).<sup>16</sup>
- Judges should be aware that their manifestations could be manipulated or decontextualized. Judges shall avoid sharing non-public information due to the fact that social media constitutes

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<sup>14</sup> Summary of the original source in English.

<sup>15</sup> Summary of the original source in English.

<sup>16</sup> Unofficial translation of an original source in Spanish: *Recomendación. De acuerdo con lo señalado, se enlistan los puntos esenciales de la presente recomendación: iv) Evitar crear o participar en perfiles, grupos o páginas de sitios que se utilicen para el intercambio de opiniones sobre beligerancia política o partidaria; v) No realizar publicaciones en redes sociales (texto, fotografías u otros) que contengan información u opiniones sobre los procesos judiciales que vulneren la dignidad, los derechos, la seguridad u otros derechos propios, de otras personas servidoras o usuarias. (Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015, Costa Rica)*.



a public space. (*Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015*).<sup>17</sup>

- The repeated endorsement of political candidates in public fora and on social media could lead to judges' permanent retirement and being barred from holding judicial office in the future. (*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*).<sup>18</sup>
- 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*).<sup>19</sup>
- When sharing information, judges must balance the consequences for themselves, 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*).<sup>20</sup>
- “Do not use social media to write a personal diary. Do not add people to a conversation without introducing them. Pay attention to correct spelling. Refrain from posting advertisements or political messages, which might be politically incorrect or prejudiced. Take part in closed groups. Do not give opinions on political issues. [...] Do not share hateful or violent posts. Do not share posts about alcohol consumption or containing nudity. Avoid posts that are ostentatious” (*Manual for the Magistrates’ Use of Social Media, The Brazilian Magistrates Association, 2017, Brazil*).<sup>21</sup>
- Dismissal of a judge for his sexist and political comments on Facebook. The Tribunal explained that a judge must be an example of judicial independence and impartiality and uphold the honour of the judicial career, both in their personal and professional life. (*Supreme Court Puerto Rico, in Re: Mercado Santaella, 2017, TSPR064. Violations of canons 2, 8, 23 and 28. United States of America*).<sup>22</sup>

<sup>17</sup> 9.Tomar en cuenta que cualquier actuación, imagen o manifestación, puede ser documentada y hecha de conocimiento público por medio de las redes sociales. (*Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015*).

<sup>18</sup> Summary of an original source in English.

<sup>19</sup> Summary of an original source in English.

<sup>20</sup> Unofficial translation of an original source in Spanish.

<sup>21</sup> Unofficial translation of an original source in Portuguese: Aqui, destacamos seis pontos que consideramos essenciais a serem observados não apenas por magistrados, mas por qualquer indivíduo que utilize as mídias digitais: Utilizar as redes sociais como diário pessoal; Adicionar pessoas desconhecidas sem se apresentar; Não se manifestar publicamente sobre questões de natureza político-partidária nas redes sociais ; Não compartilhar publicações que sugerem incentivo à violência; Não postar cenas de nudez e uso de bebidas alcoólicas; Não publicar postagens que denotem ostentação. (*Manual da AMB para Magistrados o uso das redes sociais, Associação dos Magistrados Brasileiros, 2017, Brasil*).

<sup>22</sup> Summary of an original source in Spanish.



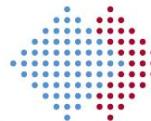
- When a judge presses a “like” button or shares a Tweet on social media, they are expressing their opinion. (*Supreme Court Puerto Rico, in Re: Mercado Santaella, 2017, TSPR064, United States of America*).<sup>23</sup>
- 1. All communications by a judge (posts, comments, photos, etc.) must respect the dignity of judicial functions and cannot cast doubt on his or her impartiality or independence. [...] 3. A judge should not comment on ongoing court proceedings. 4. A judge should not provide legal advice. 5. A judge should avoid political judgments (among others to support a candidate for a political function, should not “like” political parties or movements, should not give an opinion on controversial political questions unless they concern justice matters). (*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*).<sup>24</sup>
- Discriminatory comments with a racist overtone on social media amounted to impeachable conduct in the disciplinary proceedings. (*Judicial Conduct Committee, in the matter of Vuyani Richmond Ngalwana, Black Lawyers Association, Police and Prisons Civil Rights Union, Okyerebea Ampofo-Anti and Others, Ahmed Kathrada Foundation, Gillian Schutte, Ms Liezl van der Merwe, South African Human Rights Commission, the Progressive Professionals Forum and Judge Maria Mabel Jansen, 13 February 2017, South Africa*).<sup>25</sup>
- 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, DTS 049, in Re: Hon. Eric Colon Colon, 31 March 2017 TSPR 49. Violation of canons 19 and 23, United States of America*).<sup>26</sup>
- The judicial councils should adopt guidelines or ethical principles for the use of social media by judges within their jurisdictions based upon the following parameters: i) when using a social network or social media, the judge shall at all times comply with the ethical principles that apply to him or her, act with independence, impartiality and preserve the integrity and image of the judiciary and the judges; ii) the use of social media should not interfere in the

<sup>23</sup> Summary of an original source in Spanish.

<sup>24</sup> Unofficial translation of an original source in Czech and Russian: Závěry k působení soudce na sociálních sítích: 1) Všechny projevy soudce (příspěvky, komentáře, fotografie aj.) musí zachovávat důstojnost soudcovské funkce a nesmí vzbuzovat pochybnosti o jeho nestrannosti či nezávislosti. 3) Soudce nekomentuje probíhající soudní řízení. 4) Soudce nedává právní rady. 5) Soudce se vyhýbá politickým hodnocením (mj. podpoře konkrétního kandidáta na politickou funkci, „nelajkuje“ politické strany či hnutí, nevyjadřuje se ke kontroverzním politickým otázkám, netýkají-li se justice).

<sup>25</sup> Summary of an original source in English: In reaching the decision that the complaints must be investigated and reported on by a Tribunal, the Committee took into account, inter alia that: i) “the statements have received widespread publicity and provoked genuine outrage in a fair cross section of individuals and organisations in this country”.

<sup>26</sup> Summary of an official source in Spanish.



judicial exercise. (*Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018*).<sup>27</sup>

- “They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This guidance also applies to blogs which purport to be anonymous. [...] Judges should also be wary of: 2. posting information which could result in a risk to personal safety. For example, details of holiday plans and information about family” (*Judiciary of England and Wales, Guide to Judicial Conduct, 2013 and 2018, United Kingdom*).
- The members of the judiciary are allowed to use social media platforms as any other citizen and as a part of their right to freedom of expression. Prudence and diligence should apply when using social media, in order to balance freedom of expression and respect for the ethical obligations of the judge: impartiality, independence and the respect for the secrecy of deliberations. Social media use cannot create prejudice in the image of justice. Furthermore, judges have the obligation to ensure that they understand the advantages, disadvantages and risks of the use of social media, for personal or professional purposes and consequently adapt their behaviour (*Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018*).<sup>28</sup>
- “Recommendations on the use of social media by individual judges: i) represent respectfully the judiciary; ii) avoid political and commercial comments; and iii) never comment on pending

<sup>27</sup> Unofficial translation of an official source in French: *Que les conseils de la magistrature adoptent des lignes directrices ou principes déontologiques sur l'utilisation des réseaux ou médias sociaux pour les magistrats relevant de leur juridiction, en s'inspirant des paramètres suivants : i) lorsqu'il s'exprime ou utilise un réseau ou média social, le magistrat se conforme en tout temps aux principes déontologiques qui s'imposent à lui, à son indépendance, à son impartialité et à son devoir de réserve notamment et il préserve l'intégrité et l'image de la magistrature et du système judiciaire ; ii) l'utilisation des réseaux ou médias sociaux ne doit pas interférer dans l'exercice de ses fonctions judiciaires.* (*Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrat branché : à quelles conditions?, novembre 2018*).

<sup>28</sup> Unofficial translation from an original source in French: *Le consensus semble établi sur le fait que les membres de la magistrature qui, comme tous les autres citoyens, jouissent de la liberté d'expression, peuvent utiliser les réseaux et médias sociaux. Cette utilisation implique toutefois prudence et vigilance, afin de concilier liberté d'expression et respect des obligations déontologiques attachées à la qualité de magistrat. Elle doit notamment s'inscrire en conformité avec les devoirs d'impartialité, d'indépendance et de réserve et avec le respect du secret du délibéré. Elle ne peut porter atteinte à l'image de la justice. Aussi les magistrats ont-ils l'obligation de s'assurer qu'ils comprennent les avantages, les inconvénients et les risques que comporte l'utilisation des réseaux sociaux, à titre personnel ou professionnel, et d'adapter leur conduite en conséquence.* (*Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrat branché : à quelles conditions?, novembre 2018*).



cases" (*Recommendations on use of social media by individual judges: Central and Eastern European context, Central and Eastern European Law Initiative, CEELI Institute*).

## 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

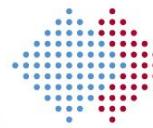
→ Should “online” friendships and connections be treated the same way as real-life friendships when it comes to disclosures/disqualifications/recusals?

→ 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 who 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 mean direct connections, but instead sharing 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*).<sup>29</sup>
- 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 in itself convey the 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*).<sup>29</sup>
- “‘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*).
- “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*).
- “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

<sup>29</sup> Summary of the original source in English.



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*).

- "To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate –regardless of whether it is a personal matter or part of his or her judicial duties – creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public" (*Antonio M. Lorenzana v. Judge Ma. Cecilia I. Austria, RTC, Br. 2, Batangas City, A.M. No. RTJ-09-2200, 2 April 2014, Philippines*).
- "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*).
- "[...] 2. A judge should not create relationships that would give an impression that they could affect a judge's decision-making" (*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*).<sup>30</sup>

#### Connections with lawyers

- "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 could 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*).<sup>31</sup>

<sup>30</sup> Unofficial translation from an original source in Czech and Russian: Závěry k působení soudu na sociálních sítích: 2) Soudce si nemá vytvářet takové vztahy, které by mohly vzbudit dojem, že mohou ovlivnit soudcovo rozhodování..

<sup>31</sup> Summary from the original source in English.



- “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*).
- 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*).
- “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 lawyers who are their 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 raises concerns sufficient for disqualification, simply un-friending is not an adequate response. (*The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America*).<sup>32</sup>
- “The Belgian High Council of Justice declared the complaint of a defendant as well-founded against a magistrate who pronounced the judgment condemning him, as this magistrate was a friend on Facebook of the lawyer of the opposite party and the comments posted by the

<sup>32</sup> Summary of an original source in English.



magistrate on the lawyer's public Facebook profile testified to an incontestable intimacy between them. In the opinion of the Superior Judicial Council, this intimacy had legitimately been perceived by the complainant as a lack of 'objective' impartiality" (*High Council of Justice, Report on the handling of complaints 2014, 18 June 2015, Belgium*).<sup>33</sup>

- Judges should completely exclude lawyers or other legal professionals as contacts on social media. (*Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015*).<sup>34</sup>
- The friendship of judges on social media with lawyers is discouraged (*High Court of Jammu and Kashmir at Srinagar, Chief Justice's Secretariat, Circular, N8, 27 August 2015, India*).<sup>35</sup>

#### **Connections with prosecutors**

- "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*).<sup>36</sup>
- The exchange of tweets (between judges and prosecutors) constitutes distrust in the neutrality of the judge. (*National Appeal, Chamber IV on Criminal and Corrective matters, 9 August 2013 c. 4139/2013, Argentina*).<sup>37</sup> 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

<sup>33</sup> Unofficial translation of an original source in French : Voir en ce sens la décision prise le 15 mai 2014 par le Conseil supérieur de la Justice belge – à l'intermédiaire de sa Commission d'avis et d'enquête – qui a déclaré fondée la plainte d'un justiciable à l'encontre d'un magistrat ayant prononcé le jugement le condamnant alors que ledit magistrat était ami sur Facebook de l'avocat de la partie adverse et que les commentaires postés par le magistrat sur le profil public Facebook de cet avocat témoignaient d'une incontestable intimité entre eux. Cette intimité a légitimement, à l'estime du CSJ, pu être perçue par le plaignant comme un défaut d'impartialité « objective » au sens de l'article 6 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales, garantissant à toute personne le droit d'accès à un tribunal indépendant et impartial. (Conseil supérieur de la Justice, Rapport sur le traitement des plaintes 2014, 18 Juin 2015, Belgique).

<sup>34</sup> Unofficial translation from an original source in Spanish: 3. El juez debe evaluar el significado que tiene admitir o no admitir a una persona a su universo de contactos en el marco de una red social, restringiendo de manera absoluta cualquier comunicación con aquellas personas que como partes o como abogados y otros profesionales de la justicia litiguen en un asunto del que en ese momento esté conociendo el juez. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).

<sup>35</sup> Summary of an original source in English.

<sup>36</sup> Summary of an original source in English.

<sup>37</sup> Summary of an original source in Spanish: Sala VI de la Cámara Nacional de Apelaciones en lo Criminal y Correccional, 9 agosto 2013 c. 4139/2013, Argentina.



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*).<sup>38</sup>

#### **Connections with parties and their relatives**

- Reprimands and suspensions are also contemplated for the cases in which judges are in contact with family members of people facing trial in 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*).<sup>39</sup>
- “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” (*Court of Appeals, Dallas, Texas, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America*).
- A judge is not required to disqualify themselves 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 that of a mere “acquaintance”. This friendship in 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*).<sup>40</sup>
- If a judge is following an organization or liking its profile online on social media, the judge might have to consider if they should disqualify themselves in a case where the organization appears as a litigant (*The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America*).<sup>41</sup>
- Judges shall not try to friend request the parties in a case 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*).<sup>42</sup>

#### **Connections with witnesses and reporting persons**

<sup>38</sup> Summary of an original source in English.

<sup>39</sup> Summary of an original source in English.

<sup>40</sup> Summary of an original source in English.

<sup>41</sup> Summary of an original source in English.

<sup>42</sup> Summary of an original source in English.



- Online relationship between judges and witnesses and/or confidential informers, in the event they are known, could be an ethical violation. Online relationships could cause the disqualification of a judge, but only if the circumstances of the case and the kind of relationship is determined to be 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*).<sup>43</sup>

#### Common groups/friends/interests

- Facebook connections, belonging to the same group (for instance sports clubs) does not automatically disqualify a judge from a case (*The Tennessee Court of Criminal Appeals, in State v. Madden, WL 931031, 2014, United States of America*).<sup>44</sup>
- “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*).

#### 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 when using social media for research on case-related information, are there any real-life situations that you consider to not be so clear-cut?
- What advice should judges follow in this regard?
- Are there any practical problems that may arise in this area?

Some jurisdictions and institutions have tried to respond to these questions:

- “Judges [...] must avoid using any ESM site to obtain information regarding a matter before them” (*The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America*).

<sup>43</sup> Summary of an original source in English.

<sup>44</sup> Summary of an original source in English.



- Judges shall not independently research case matters while the party's hearing is ongoing (*North Carolina Judicial Standards Commission, Public reprimand of Terry, 1 April 2009, United States of America*).<sup>45</sup>
- "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 their 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/not allow comments' sections under their posts?

Several judiciaries have tried to respond to these questions:

- "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

<sup>45</sup> Summary of an original source in English.



consult the Committee for guidance” (*The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America*).

- “Automatic privacy settings. Often it is possible to raise privacy settings 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, June 2015*).
- Judges should use high-level security measures on social media, such as passwords, firewalls and anti-malware to prevent identity theft, or against phishing (*Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015*).<sup>46</sup>
- Judges should disable geo-localization when posting or using applications, and delete telephone numbers, or their birthday (*Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, June 2017, France*).<sup>47</sup>
- 6. A judge should bear in mind that they can never be certain as to where their 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*).<sup>48</sup>

<sup>46</sup> Unofficial translation from an original source in Spanish: 8. Hacer uso de medidas de seguridad informática de alta seguridad (contraseñas, antivirus, antimalware, prevención contra la suplantación de la identidad — antiphishing—, entre otros. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).

<sup>47</sup> Unofficial translation from an original source in French : [...] lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisation de ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés [...] dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo) [...] vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France).

<sup>48</sup> Unofficial translation from an original source in Czech and Russian : Závěry k působení soudce na sociálních sítích: 6) Soudce by měl mít na paměti, že si nemůže být nikdy jist, kde všude se jeho komunikace objeví, byť původně byla určena jen omezenému okruhu adresátů.



- “The Judicial Services Division elaborated a series of rules to be followed by judges: i) adjust confidentiality settings of social media profiles (Facebook, Twitter, Myspace, Copain d'avant..) to avoid communications being visible to all and regularly check security settings which are sometimes modified without previous notice; ii) adjust the settings of the social media account so that the profile does not appear in search engines' results (Google, Yahoo, etc.); iii) when using online messages, do not use the geolocation option; iv) in the case of using a smartphone or a tablet with a camera, adjust the settings to prevent the geolocation data in the photo; v) do not publish personal information, such as date of birth, telephone number, address, contact details, or holiday dates, and check before publishing if the backgrounds of photos/videos may reveal personal information; vi) evaluate adding a person as a friend, based upon the fact that photos and profiles could be fake. Only accept people who they know; vii) keep in mind that any information online is public and exists for all time; viii) make relatives aware of the appropriate use of social networks and the risks involved” (*Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017, France*).<sup>49</sup>
- “Judicial office holders are encouraged to bear in mind that social networking creates a public profile and is probably best avoided whilst in office. If you do use social networks, bear in mind that the spread of information and the use of technology means it is increasingly easy to undertake ‘jigsaw’ research which allows the piecing together information from various sources. Under no circumstances should special category data be placed on any social network.  
i) Try to ensure that information about your personal life and your home address is not available online. A simple way of checking can be by typing your name into an internet search engine such as Google. You may also want to talk to your family about social networking systems, such as Facebook, where personal details which carry some risk (for example, holiday absences) can unwittingly be put into the public domain. ii) Be wary of publishing more

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<sup>49</sup> Unofficial translation of an original source in French : *Les règles d'or de la prudence que la DSJ a souhaité diffuser sont les suivantes : i) de régler les paramètres de confidentialité de son profil (Facebook, twitter, Myspace, Copain d'avant...) afin d'éviter que les publications ne soient visibles de tous et prendre soin de vérifier régulièrement ces paramétrages qui sont parfois modifiés sans préavis ; ii) de régler les paramètres de son compte afin que son profil ne figure pas dans les résultats des moteurs de recherche (Google, Yahoo, etc.); iii) lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisation ; iv) dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo); v) de ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés ; vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles ; vi) de bien évaluer les personnes acceptées comme "amis". Les photos et les profils sont souvent trompeurs. N'accepter que des personnes connues ; vii) de garder à l'esprit que toute information publiée sur Internet est persistante ; viii) de sensibiliser ses proches sur une utilisation adaptée des réseaux sociaux et les risques encourus.* (*Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France*).



personal information than is necessary. In particular phone numbers, dates of birth and addresses are key pieces of information for identity fraudsters. Other users probably don't need to know such details – if any contacts do need them send them to individuals separately" (*Lord Chief Justice of England and Wales. Senior President of Tribunals. Data Protection and IT Security. The Responsibilities of the Judiciary, Use of social networking, 21. Version 1/2018, 25 May 2018, United Kingdom*).

- "[...] i) Check your privacy settings. You can restrict access to your profile to ensure your information is kept to a restricted group. ii) Check the terms and conditions of any sites you sign up to ensure you are aware of who owns data posted on the site and what the owners of the site can do with your data. iii) We are aware that some judicial office holders hold non-commercial directorships. In such cases, Companies House will need the individual's home address. This information is shared with third parties. You can, however, request that such information is not divulged" (*Lord Chief Justice of England and Wales. Senior President of Tribunals. Data Protection and IT Security. The Responsibilities of the Judiciary, Use of social networking, 21. Version 1/2018, 25 May 2018, United Kingdom*).

## Training

- Should judges be trained on the use of social media?
- Should judges' relatives be trained?
- If yes, in which 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.)

Several judiciaries have tried to respond to these questions:

- The courts can provide training and/or guidelines to judicial officers' families, in addition to training for 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*).<sup>50</sup>

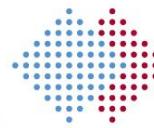
<sup>50</sup> Summary of an original source in English.



- Training on the use of social media is a necessity nowadays for judges. The Judicial Training Centres shall provide training on social media applications and the ethical implications of using them (*Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015*).<sup>51</sup>
- “Recommendations: Creating mandatory education programmes 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, 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*).
- “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*).
- The working group recommends these measures for magistrates: i) promoting training sessions for judges within their jurisdictions, allowing for the better understanding of social media and good knowledge of the risks related to their use, in particular in relation to the ethical principles; ii) elaborating upon rules to respond to personal criticism of judges (offensive or defamatory comments) on social media platforms, or the use of the judge’s name by a third person without his or her consent; iii) providing support to judges to answer their questions regarding the use of social media, for instance, the possibility to consult in complete confidentiality the authorities of their court, an ethics committee or a discussion forum for any issues related to the use of social media (*Francophone Network of the Judicial Council*,

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<sup>51</sup> Unofficial translation of an original source in Spanish: 2. Es necesario que los Poderes Judiciales contemplen la posibilidad de brindar, por medio de escuelas judiciales y otros centros de capacitación, enseñanza adecuada para familiarizar a los servidores de la justicia con las características y posibilidades de cada red social y sus implicancias éticas. Especial énfasis cabe poner en el alcance potencial de las redes y la escasa o nula posibilidad de quien participa de ellas de restringir la comunicación de los datos, opiniones o perfiles, que ingrese a la red. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).



*Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018).<sup>52</sup>*

- “Training on the use of social media [...] could include, for example, the ways in which social networks and social media are used, including the parameters that ensure confidentiality and security, and the fact that: i) social media is not an adequate platform to comment on a pending case; ii) offensive comments, even in the form of humour, regarding race, sex, sexual orientation, origin, etc, are to be avoided; iii) judges should avoid conflicts, hostile communications, and damage to reputation; iv) comments, photos, and videos that may affect the image of the judiciary are always improper; v) judges should not report their assets; vi) if the judge is a friend of a lawyer or expert, judges should preserve their impartiality or independence; vii) judges should express themselves on social media with prudence and understand the risks of social profiling; and viii) judges should avoid using their title as judges on social media profiles, except in institutional communications or with their colleagues” (*Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018*).<sup>53</sup>

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<sup>52</sup> Unofficial translation of an original source in French : *Le Groupe de travail recommande les conseils de la magistrature : i) favorisent l'instauration de sessions de formation pour les magistrats relevant de leur juridiction, permettant une meilleure maîtrise des réseaux et médias sociaux et une connaissance suffisante des risques attachés à leur utilisation, notamment sur le plan déontologique (voir l'annexe au présent rapport) ; ii) élaborent des règles<sup>36</sup> pour répondre aux critiques personnelles formulées contre des magistrats (propos offensants ou diffamatoires) publiées sur les réseaux ou médias sociaux ou à l'utilisation, sur les réseaux ou médias sociaux, par une tierce personne, de leur nom ou de leur titre, sans leur consentement; iii) offrent un soutien aux magistrats pour répondre à leurs interrogations dans leur utilisation des réseaux et médias sociaux, comme la possibilité de consulter, au besoin et en toute confidentialité, les autorités de leur tribunal, un comité d'éthique ou un forum de discussion pour toute question ou problématique relative à l'utilisation des réseaux ou des médias sociaux. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrat branché : à quelles conditions?, novembre 2018).*

<sup>53</sup>Unofficial translation of an original source in French : *La formation sur l'utilisation des réseaux et médias sociaux pourrait notamment porter, à titre d'illustration, sur les modalités d'utilisation des réseaux et médias sociaux, notamment les paramètres assurant la confidentialité et la sécurité, et sur le fait que : i) un réseau ou média social n'est pas un forum approprié pour commenter une cause en cours ou un jugement rendu ; ii) les commentaires offensants (race, sexe, orientation sexuelle, origine, etc.), même sous la forme de l'humour, sont à proscrire ; iii) le magistrat doit éviter les conflits, les communications hostiles et les atteintes à la réputation ; iv) les commentaires, les photos et vidéos pouvant porter atteinte à l'image de la magistrature sont en tout temps inappropriées ; v) le magistrat doit éviter de faire état de son patrimoine ; vi) lorsqu'il est ami avec des avocats ou des experts, le magistrat doit veiller à préserver son impartialité et son indépendance ; vii) le magistrat doit faire preuve d'une grande prudence lorsqu'il se manifeste sur les réseaux et médias sociaux, compte tenu des risques de profilage social ; viii) le magistrat évite d'utiliser son titre de magistrat, sur un réseau ou un média social, sauf dans ses communications institutionnelles ou avec ses collègues. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrat branché : à quelles conditions?, novembre 2018).*



- “Recommendations on the use of social media by individual judges: i) protect your personal data; and ii) educate your family and friends; iii) Use social media to educate people iv) keep educating yourself about social media” (*Recommendations on use of social media by individual judges: Central and Eastern European context, Central and Eastern European Law Initiative, CEELI Institute*).