Judicial Ethics, Decision-Making and Social Media

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Judicial Ethics

Controlling authority for state judges:
1) The Code of Judicial Ethics as adopted by your state’s Supreme Court.
2) Advisory Opinions and Disciplinary Cases provide guidance on appropriate and inappropriate behavior.
3) State Judicial Ethics Committees publish opinions on proper judicial conduct.

Appropriate Judicial Discipline

- Provide sanctions sufficient to restore and maintain the dignity and honor of the judicial office
Judicial Discipline Options

Reprimand: public or private
Censure: public or private
Suspension: with or without pay
Removal from Office

Appropriate judicial demeanor is always a best practice principle.

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Judges Behaving Badly
2011 Statistics

According to the American Judicature Society:
8 judges were removed from office; 4 former judges were banned from serving in a judicial office.
11 judges retired or resigned to avoid official sanctions.
105 judges received public sanctions.
14 judges were suspended without pay (10 days to one year).

13 judges were publically censured.
43 judges were publically reprimanded
16 judges were publically admonished.
2 former judges were disbarred for conduct while in office.
7 judges were ordered to pay civil penalties for failure to file timely financial reports.
Judges Behaving Badly
Types of Misconduct

Discourteous courtroom behavior, e.g., angry with a litigant, belittling attorneys, using religious and ethnic slurs, abusing contempt power

Issuing judgments without conducting a hearing or providing for service of process

Ex parte communications and failure to disqualify

Judges sanctioned for DWI offenses

Road rage

Judges Behaving Badly
Types of Misconduct

Failing to inform a defendant of his rights

Failing to recuse due to conflict of interest

Charitable fund-raising at the courthouse including direct solicitation of attorneys

Sexually explicit comments in open court regarding a defendant mother’s shirt

Threatening public officials

Accepting money from private juvenile detention facility in exchange for sending juveniles there

Undignified conduct: demeaning/condescending toward litigants and court staff

Judicial Code of Ethics

Old code: 5 to 7 Canons

New code (2007): 4 Canons
In 2007, the ABA adopted a Revised Model Code of Judicial Ethics with changes in both form and substance.

- 22 states have approved a revised code: AK, AZ, AR, CO, CT, DE, HI, IA, IN, KS, MD, MN, MT, NE, NH, NM, NV, OH, OK, UT, WA, & WY.
- 4 states have approved partial revisions: ID, MA, MI & NY
- 4 states have issued report: ME, MO, ND, & TN
- 14 states have established committees to review their code: CA, GA, IL, KY, LA, MS, NJ, OR, PA, RI, SC, TX, VT, & WI (DC too).
- 6 states have no committee: AL, FL, NC, SD, VA & WV.

“New” ABA Code

Format Changes:
Four Canons state overarching principles that are given effect by Rules which follow.
A judge cannot be disciplined for violating a Canon without violating a Rule.
Of the 12 states that have approved a new code, advisory opinions are looking to the Rules for interpretation.

Major Code Changes

• Avocational Extrajudicial Activities (Canon 4 of the old code) has been reduced to Rules and Commentary: "Teach, write, speak about the law, the legal system, & the legal system".

• Canon 4B is subsumed to Commentary and deleted as a “black letter rule”.

Major Code Changes, cont.
Canon 1

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

This includes:
- Complying with the Law
- Promoting confidence in the Judiciary
- Avoiding Abuse and the Prestige of Office

Rule 1.3 Comment 1

Judges must not use their name, influence or prestige of their office to support private or personal causes. Judges also should not allow others to think that they are in a “special position” to influence decisions that judges will make.

Arkansas Judicial Discipline and Disability Com’n v. Proctor (2010 AR. 38)

Judge was removed from office after finding that he “willfully lent the prestige of a judicial office” to a private corporation when he prepared a “profit and loss” statement and presented it, as a judge, to a bank in order to determine the credit worthiness of a corporation that he started and was significantly involved with.
In the Matter of Sasso, (New Jersey 2009)

Judge said, “Do you know who I am? I’m the Bound Brook Judge....I can make problems for you,” when asked for his driver’s license and a credit card in order to start a tab at a local bar.

(Judge Rubin pulls this trick all the time!)

Judges and Social Media

Consider This . . .

Judge Jones loves social media. He wonders whether it is ethical to “friend” attorneys and others who work in the juvenile court. Your thoughts?

No judicial discipline cases involving Facebook, Twitter, LinkedIn, or other social networking sites in 2011, but judges are looking for guidance.

A judge may hold a social networking account and “friend” court staff but not attorneys, law enforcement officers, social workers, and others who may appear in the judge’s court.


The Code does not prohibit judges from joining social networking sites... taking care to conform your activities with the Code.

But, judge may not “friend” any attorneys who may appear before the judge because to do so creates the impression that those attorneys are in a special position to influence the judge.


A judge may interact on a social media site with attorneys who may appear before the judge but should not interact with attorneys who have cases pending before the judge.

**Less Restrictive**: Judges *may* "friend" attorneys who may appear before them while emphasizing that judges must exercise caution in their use of social networking.


**More Restrictive**: Judges are *directed not to* add lawyers who may appear before them in courts as "friends" on social networking sites or permit those lawyers to add them as "friends". The issue is not whether the lawyer actually is in a position to influence the judge, but the impression that the lawyer is in a position to influence the judge.

ABA Model Code of Judicial Conduct Formal Opinion 462, February 2013

"A judge who has an ESM (electronic social media) connection with a lawyer or party who has a pending or impending matter before the court must evaluate that ESM connection to determine whether the judge should disclose the relationship prior to, or at the initial appearance of the person before the court," according to the opinion. "Simple designation as an ESM connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person."

Excerpted from Court News Ohio, March 5, 2013
ABA Model Code of Judicial Conduct
Formal Opinion 462, February 2013, cont.

“A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge’s independence, integrity, or impartiality, or create an appearance of impropriety,” the opinion’s headnote states. An accompanying footnote points out that “the laws, court rules, regulations, rules of professional and judicial conduct, and opinions promulgated in individual jurisdictions are controlling.”

Excerpted from Court News Ohio, March 5, 2013

And in the Lovely State of Nevada

A criminal defense attorney who also served as a judge pro tem lost his pro tem position with the North Las Vegas Justice Court due to his postings on his MySpace page.

He listed his personal interests as “[b]reaking [his] foot off in a prosecutor’s ass and improving [his] ability to break [his] foot off in a prosecutor’s ass.”

Inquiry Concerning Turner, 76 So.3d 898 (Florida 2011)

Judge was removed from office for accepting a $30,000 campaign contribution from his mother, which greatly exceeded the statutory limit of $500. Also represented his mother in foreclosure proceedings. Offset Juvenile’s court costs in exchange for the juvenile’s earring.
Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Canon 2

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment (4) It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Canon 2

Rule 2.3 Bias, Prejudice and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

(B) A judge shall not by words or conduct manifest bias or prejudice, or engage in harassment based on but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation . . . and shall not permit others . . . subject to the judge’s direction and control to do so.
Canon 2
Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment [3] Prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters.

Consider This . . .

Social worker reports are not filed in a timely fashion. The Court, the parties and their attorneys are affected.
Is there anything you can do?

Timeliness of court reports relates to the orderly management of court proceedings and is under the authority of the court.

Canon 2
Rule 2.8 Decorum, Demeanor...

(A) A judge shall require order and decorum in proceedings . . .

(B) A judge shall be patient, dignified, and courteous . . . TO EVERYONE . . . and shall require similar conduct of EVERYONE . . . subject to the judge’s direction and control.
In the Matter of Fuller, 798 N.W.2d 408 (South Dakota 2011)
Judge removed for mistreating court employees, insulting lawyers, making insensitive racial and sexist jokes. Judge’s conduct was continual throughout his tenure.

Inquiry Concerning Peters, 715 S.E.2d 56 (Georgia 2011)
Judge removed for marijuana consumption, intimidating and aggressive behavior towards sister-in-law’s estranged husband, participation in local TV show and displaying unbecoming behavior and decorum.

Wielded a firearm in front of a colleague judge and exclaimed, “I’m not scared. Are you scared?”

Canon 2
Rule 2.9 Ex Parte Communication
(A) A judge shall not initiate, permit, or consider ex parte communication, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter except:
(1) . . . Scheduling, administrative, or emergency purposes provided:
(a) . . . no party will gain procedural, substantive, or tactical advantage . . . (b) . . . judge promptly notifies all other parties of the substance of the ex parte comm.

(C) A judge shall not investigate the facts independently, and shall consider only the evidence presented...
In re Williams, Consent Order
(Georgia Judicial Qualifications Commission Nos.
Judge presiding over a drug court agreed to resign
and not hold judicial office again after formal
proceedings were initiated for judge’s practice of
holding drug court participants indefinitely without
a hearing and instituting a policy of delaying drug
court participants placement into treatment.

National Council of Juvenile and Family Court Judges

Williams (continued)
Showed favoritism to certain drug court
participants and used rude, abusive and
insulting language.

Engaged in ex parte communications.

National Council of Juvenile and Family Court Judges

Judge Cannot Contact an Expert Ex Parte
Juvenile court judge received a public reprimand for
ex parte communications with a therapist
regarding the merits of a case, adoption,
continued relationships with non-adopting
relatives, assessments, and the child’s best
interest. NE Comm. Jud. Qual. Case No. S-35-
0600001 (2006)

National Council of Juvenile and Family Court Judges
Disciplinary Counsel v. Squire  
(Ohio 2007)

Judge was suspended for, inter alia, conducting ex parte investigations on cases presented in her court. The judge argued that the decisions of judges in “specialized” courts that lie within the discretion of the judge should not be the subject of sanction.

DC noted specifically that - “There is no lowering of professionalism standards for judges in “specialized” courts, such as drug courts, mental health courts, and elder courts.”

And Yet . . . .
Canon 2
Rule 2.10 Judicial Statements on Pending and Impending Cases

(A) Judge **must not** make any public statements that might be expected to affect the outcome or impair the fairness of a matter in any court.

Public Reprimand of Terry (North Carolina, 2009)

“I have two good parents to choose from,” posted on Facebook to the father’s attorney in a custody dispute.

Canon 3

A judge **shall** conduct the judge’s personal and extrajudicial activities to **minimize the risk of conflict** with the obligations of judicial office.

- Rule 3.1 Extrajudicial Activities in General
- Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities
Canon 3
Rule 3.1 Extrajudicial Activities in General

Comment [1] Judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as speaking, writing, teaching, or participating in scholarly projects. (Formerly Cannon 4B)

Comment [2] Participation in both law-related and other extrajudicial activities help integrate judges into their communities, and further public understanding of and respect for courts and the judicial system.

Consider This ...

Judge Smith teaches a lot about the law, the legal system, and the administration of justice. But, he also procrastinates and has lots of cases under advisement. The litigants think he is well-meaning but wish he would just rule.

Is Carl at risk of judicial discipline?

In re Gerard, 631 N.W.2d 271 (Iowa 2001)

Prior admonishments for late filing or not filing a monthly report to the Supreme Court re cases under advisement for more than 60 days—problem continues.

Continued in spite of admonishment to engage in extra-judicial activities (teach at judge’s school), speak at legal & civic functions AND remained dilatory in completing assigned work.
Some pretrial rulings were delayed so long that criminal cases had to be dismissed. Delayed rulings resulted in delayed adoptions. Judge had a sexual relationship with an asst. cty. Atty. She appeared before him regularly. Intimate encounters occurred in various rooms of the courthouse.

Held: **Suspended 60 days without pay.**

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**Arkansas Judicial Discipline and Disability Com’n v. Proctor** (2010 Ark. 38)

Judge started and was heavily involved in an incorporated probation program called “Cycle Breakers”.

He collected fees, managed accounts, ran all meetings with probationers, and met with community leaders on behalf of Cycle Breakers.

Court said that his involvement “cast reasonable doubt on his capacity to act impartially as a judge.”

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**Canon 3 - Ethics Opinions**

- May speak to non-partisan civic, social or homeowners organization on judge’s role. Florida Advisory Opinion 77-21
- May appear on television or radio to discuss legal issues. Illinois Advisory Opinion 98-10
- May write a weekly column concerning the improvement of the law, legal system, or administration of justice. Texas Advisory Opinion 63
- May participate in non-profit video to educate teens about the court system. New York Advisory Opinion 98-141
Canon 3
Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Comment [4] An organization may identify a judge’s title or judicial office on letterhead used for fundraising or membership solicitation. The effect of this change is yet to be determined, but the prestige of judicial office may now be used for fundraising purposes.

ABA Formal Opinion 08-452

A judge may participate in fund-raising activities on behalf of a court, including a “therapeutic” or “problem-solving” court, as long as the judge limits his/her participation to activities permitted by the code of judicial conduct. A judge may support or endorse a court’s grant applications to government agencies or private foundations for court-related projects only when it is clear that no political or business profit-making interest is involved. A judge must consider whether circumstances might suggest that individuals involved in the projects would obtain special influence before the judge.
More Advisory Opinions

A judge or chamber staff *may not* ask vendors or sponsors for donation to support a judicial leadership program, but staff of the administrative office of the courts may do so. Nevada Opinion JE11-014

A judge who is a member of a supreme court committee that drafted a brochure about the perception of fairness in the state’s courts *may not* directly solicit donations from bar associations to help defray brochure costs. Florida Opinion 2012-4

More Advisory Opinions

A judge whose name was listed as an honoree on invitation to an organization’s fund-raising event, contrary to assurances it was not a fund-raiser, should object in writing and insist that the organization send a retraction. Because the invitations requested significant donations beyond the cost of the event in honor of the honorees, the judge *should not* attend. New York Opinion 11-35

A judge *may not* meet privately with representatives of a victim’s advocacy group that wants to educate the judge about the group’s role in the community and establish a mutually respectful relationship with the court system. New York Opinion 11-85

Judge’s quote, name and title *must be removed* from fundraising solicitation letter. Nebraska Opinion 07-3

A judge’s spouse *may include* their co-owned residence in a garden walk that will raise funds for a community theater. Nebraska Opinion 12-2
Potential Conflicts with Judicial Ethics and Leadership

**Judicial Leadership:** exercising a proper judicial leadership role within the community to provide better services for children and their families.

**Ex Parte Communication & the judicial obligation to be impartial and avoid the appearance of impropriety.**

**Bias:** mitigating or eliminating all forms of real or perceived bias within the judicial system.

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Judicial Leadership

**GOAL:** Providing leadership for systems improvement in order to serve the best interest of children and their families while complying with the judicial code of ethics!

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Consider This . . .

Juvenile court judge wishes to improve practice in child abuse and neglect cases. She wants to call a meeting. Participants will include representatives from social service systems, prosecuting attorneys, attorneys for parents, GALs, CASA program, citizen review members, and others.

What are potential ethical issues?
Consider This . . .

The lawyers, case workers, CASAs, and others did not know their ASFA from a hole in the ground. Judge Mellow-Benevolent is getting really frustrated. He is ready to scream. Is there anything the judge can do? Are there any ethical issues?

Consider This . . .

The CASA director asks if you will do a training for CASA volunteers on testifying in court, evidentiary issues, and court process. Casa wants to know what the judge wants from CASA in abuse & neglect cases.

Is it ethical for you to do the training?

Consider This . . .

A juvenile/family court judge participates in Family Drug Court team meetings. The progress of parents are reported, discussed, and recommendations are made. The parents are not included and usually defense attorneys do not attend.

Are there judicial ethical issues? How might they be resolved?
Consider This . . .  
A SAMHSA grant opportunity for establishing a Family Drug Court requires the juvenile judge to provide a letter of support.

Is there a judicial ethical issue?

Consider this ...
A local Rotary Club has you to speak at their luncheon. Can you ask the Rotarians for items that would be helpful for your court? For example, back packs for kids going into foster care, books for parents to read to their children, books for kids to read, etc.

Is there an ethical issue?

Remember....
Judges are encouraged to engage in extra-judicial activities but must conduct their activities in such a way that minimizes the risk of conflict with their judicial obligations.

Rule 3.1

Judges are encouraged to participate in activities that promote public understanding and confidence in the judicial system.

Rule 2.1 Comment [2]
A juvenile court judge may participate on a panel designed to train foster parents as long as the panel consists of representation from all entities involved in juvenile cases. Utah Informal Opinion 06-4

A judge may accept an appointment as a member of a local drug and alcohol abuse council that performs only advisory functions in developing a plan to meet substance abuse needs of the jurisdiction. Maryland Judicial Ethics Opinion 2004-24

A judge may serve on a board of directors of a not-for-profit organization for “drug court” professionals organized pursuant to supreme court direction. Illinois Advisory Opinion 01-10

A judge may consult in the writing of a federal grant application for instructional material on establishing a problem-solving court for child support services. North Carolina Opinion 2010-3

A judge may serve as an advisor for a bar association conference even if the bar will raise funds from sponsors as long as the judge’s name is not used in connection with fund raising or as an inducement. Massachusetts Opinion 2011-1

Always do right. This will gratify many and astonish the rest. *Mark Twain*
National Council of Juvenile and Family Court Judges

Education, publications, research, and policy development to improve court systems and to raise awareness of the issues that affect children and families including child abuse, delinquency, custody, substance abuse, and family violence.

Join NCJFCJ today and be a part of our efforts to improve justice for children and families. Visit www.ncjfcj.org.

A few of the things the National Council of Juvenile and Family Court Judges has been working on since 1937:

- Respect
- Security
- Safety
- Justice
- Love
- Responsibility

76th NCJFCJ Annual Conference
Seattle, WA
July 14-17, 2013
Please Join Us!

NCJFCJ members lead the development and implementation of policy and practice for our nation’s children and families seeking justice. Not only does membership provide a direct link to key stakeholders and access to a talented network of professionals, but it is also part of a community of colleagues working toward the common goal of giving every family and child in the judicial system access to fair, equal, effective, and timely justice. Become a member today, and together, we can lead the change in our communities and across the nation.
Thank you!

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A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge’s independence, integrity, or impartiality, or create an appearance of impropriety.¹

In this opinion, the Committee discusses a judge’s participation in electronic social networking. The Committee will use the term “electronic social media” (“ESM”) to refer to internet-based electronic social networking sites that require an individual to affirmatively join and accept or reject connection with particular persons. ²

Judges and Electronic Social Media

In recent years, new and relatively easy-to-use technology and software have been introduced that allow users to share information about themselves and to post information on others' social networking sites. Such technology, which has become an everyday part of worldwide culture, is frequently updated, and different forms undoubtedly will emerge.

Social interactions of all kinds, including ESM, can be beneficial to judges to prevent them from being thought of as isolated or out of touch. This opinion examines to what extent a judge’s participation in ESM raises concerns under the Model Code of Judicial Conduct.

Upon assuming the bench, judges accept a duty to “respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.”³ Although judges are full-fledged members of their communities, nevertheless, they “should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens….⁴ All of a judge’s social contacts, however made and in whatever context, including ESM, are governed by the requirement that judges must at all times act 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.”⁵ This requires that the judge be sensitive to the appearance of relationships with others.

The Model Code requires judges to “maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.”⁶ Thus judges must be very thoughtful in their interactions with others, particularly when using ESM. Judges must assume that comments posted to an ESM site will not remain within the circle of the judge’s connections. Comments, images, or profile information, some of which might prove embarrassing if publicly revealed, may be electronically transmitted without the judge's knowledge or permission to persons unknown to the judge or to other unintended recipients. Such dissemination has the potential to compromise or appear to

¹ This opinion is based on the ABA Model Code of Judicial Conduct as amended by the ABA House of Delegates through August 2012. The laws, court rules, regulations, rules of professional and judicial conduct, and opinions promulgated in individual jurisdictions are controlling.
² This opinion does not address other activities such as blogging, participation on discussion boards or listserves, and interactive gaming.
³ Model Code, Preamble [1].
⁴ Model Code Rule 1.2 cmt. 2.
⁵ Model Code Rule 1.2. But see Dahlia Lithwick and Graham Vyse, "Tweet Justice," SLATE (April 30, 2010), (describing how state judge circumvents ethical rules prohibiting ex parte communications between judges and lawyers by asking lawyers to "de-friend" her from their ESM page when they're trying cases before her; judge also used her ESM account to monitor status updates by lawyers who appeared before her), article available at http://www.slate.com/articles/news_and_politics/jurisprudence/2010/04/tweet_justice.html.
⁶ Model Code, Preamble [2].
compromise the independence, integrity, and impartiality of the judge, as well as to undermine public confidence in the judiciary. 7

There are obvious differences between in-person and digital social interactions. In contrast to fluid, face-to-face conversation that usually remains among the participants, messages, videos, or photographs posted to ESM may be disseminated to thousands of people without the consent or knowledge of the original poster. Such data have long, perhaps permanent, digital lives such that statements may be recovered, circulated or printed years after being sent. In addition, relations over the internet may be more difficult to manage because, devoid of in-person visual or vocal cues, messages may be taken out of context, misinterpreted, or relayed incorrectly. 8

A judge who participates in ESM should be mindful of relevant provisions of the Model Code. For example, while sharing comments, photographs, and other information, a judge must keep in mind the requirements of Rule 1.2 that call upon the judge to act in a manner that promotes public confidence in the judiciary, as previously discussed. The judge should not form relationships with persons or organizations that may violate Rule 2.4(C) by conveying an impression that these persons or organizations are in a position to influence the judge. A judge must also take care to avoid comments and interactions that may be interpreted as ex parte communications concerning pending or impending matters in violation of Rule 2.9(A), and avoid using any ESM site to obtain information regarding a matter before the judge in violation of Rule 2.9(C). Indeed, a judge should avoid comment about a pending or impending matter in any court to comply with Rule 2.10, and take care not to offer legal advice in violation of Rule 3.10.

There also may be disclosure or disqualification concerns regarding judges participating on ESM sites used by lawyers and others who may appear before the judge. 9 These concerns have been addressed in judicial ethics advisory opinions in a number of states. The drafting committees have expressed a wide range of views as to whether a judge may “friend” lawyers and others who may appear before the judge, ranging from outright prohibition to permission with appropriate cautions. 10 A judge who has an ESM connection with a lawyer or party who has a pending or impending matter before the court must evaluate that ESM connection to determine whether the judge should disclose the relationship prior to or at the initial appearance of the person before the court. 11 In this regard, context is significant. 12 Simple

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7 See Model Code Rule 1.2 cmt. 3. Cf. New York Jud. Eth. Adv. Op. 08-176 (2009) (judge who uses ESM should exercise appropriate degree of discretion in how to use the social network and should stay abreast of features and new developments that may impact judicial duties). Regarding new ESM website developments, it should be noted that if judges do not log onto their ESM sites on a somewhat regular basis, they are at risk of not knowing the latest update in privacy settings or terms of service that affect how their personal information is shared. They can eliminate this risk by deactivating their accounts.


10 See discussion in Geyh, Alfini, Lubet and Shaman, JUDICIAL CONDUCT AND ETHICS (5th Edition, forthcoming), Section 10.05E.

11 California Judges Assn. Judicial Ethics Comm. Op. 66 ( need for disclosure arises from peculiar nature of online social networking sites, where evidence of connection between lawyer and judge is widespread but nature of connection may not be readily apparent). See also New York Jud. Eth. Adv. Op. 08-176 (judge must consider whether any online connections, alone or in combination with other facts, rise to level of close social relationship requiring disclosure and/or recusal); Ohio Opinion 2010-7 (same).

12 Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-06 (2010) (judge who is member of voluntary bar association not required to drop lawyers who are also members of that organization from organization’s ESM site; members use the site to communicate among themselves about organization and other non-legal matters). See also Raymond McKoski,
Because of the open and casual nature of ESM communication, a judge will seldom have an affirmative duty to disclose an ESM connection. If that connection includes current and frequent communication, the judge must very carefully consider whether that connection must be disclosed. When a judge knows that a party, a witness, or a lawyer appearing before the judge has an ESM connection with the judge, the judge must be mindful that such connection may give rise to the level of social relationship or the perception of a relationship that requires disclosure or recusal.\textsuperscript{14} The judge must remember that personal bias or prejudice concerning a party or lawyer is the sole basis for disqualification under Rule 2.11 that is not waivable by parties in a dispute being adjudicated by that judge. The judge should conduct the same analysis that must be made whenever matters before the court involve persons the judge knows or has a connection with professionally or personally.\textsuperscript{15} A judge should disclose on the record information the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification even if the judge believes there is no basis for the disqualification.\textsuperscript{16} For example, a judge may decide to disclose that the judge and a party, a party’s lawyer or a witness have an ESM connection, but that the judge believes the connection has not resulted in a relationship requiring disqualification. However, nothing requires a judge to search all of the judge’s ESM connections if a judge does not have specific knowledge of an ESM connection that rises to the level of an actual or perceived problematic relationship with any individual.

**Judges’ Use of Electronic Social Media in Election Campaigns**

Canon 4 of the Model Code permits a judge or judicial candidate to, with certain enumerated exceptions, engage in political or campaign activity. Comment [1] to Rule 4.1 states that, although the Rule imposes "narrowly tailored restrictions" on judges' political activities, "to the greatest extent possible," judges and judicial candidates must "be free and appear to be free from political influence and political pressure."

Rule 4.1(A)(8) prohibits a judge from personally soliciting or accepting campaign contributions other than through a campaign committee authorized by Rule 4.4. The Code does not address or restrict a judge’s or campaign committee’s method of communication. In jurisdictions where judges are elected, ESM has become a campaign tool to raise campaign funds and to provide information about the candidate.\textsuperscript{17} Websites and ESM promoting the candidacy of a judge or judicial candidate may be


\textsuperscript{14} See, e.g., New York Judicial Ethics Advisory Opinion 08-176, supra n. 8. See also Ashby Jones, “Why You Shouldn’t Take It Hard If A Judge Rejects Your Friend Request,” WALL ST. J. LAW BLOG (Dec. 9, 2009) (“‘friending’ may be more than say an exchange of business cards but it is well short of any true friendship”); Jennifer Ellis, “Should Judges Recuse Themselves Because of a Facebook Friendship?” (Nov. 2011) (state attorney general requested that judge reverse decision to suppress evidence and recuse himself because he and defendant were ESM, but not actual friends), available at http://www.jlellis.net/blog/should-judges-recuse-themselves-because-of-a-facebook-friendship/.

\textsuperscript{15} See Jeremy M. Miller, “Judicial Recusal and Disqualification: The Need for a Per Se Rule on Friendship (Not Acquaintance),” 33 PEPPERDINE L. REV. 575, 578 (2012) (“Judges should not, and are not, expected to live isolated lives separate from all potential lawyers and litigants who may appear before them.... However, it is also axiomatic that justice, to be justice, must have the appearance of justice, and it appears unjust when the opposing side shares an intimate (but not necessarily sexual) relationship with the judge.”).

\textsuperscript{16} Rule 2.11 cmt. 5.

\textsuperscript{17} In a recent survey, for judges who stood for political election, 60.3% used social media sites. 2012 CCPIO New Media and Courts Survey: A Report of the New Media Committee of the Conference of Court Public Information Officers (July 31, 2012), available at http://ccpio.org/blog/2010/08/26/judges-and-courts-on-social-media-report-released-on-new-medias-impact-on-the-judiciary/.
established and maintained by campaign committees to obtain public statements of support for the judge's
campaign so long as these sites are not started or maintained by the judge or judicial candidate personally. 18

Sitting judges and judicial candidates are expressly prohibited from "publicly endorsing or
opposing a candidate for any public office." 19 Some ESM sites allow users to indicate approval by applying
"like" labels to shared messages, photos, and other content. Judges should be aware that clicking such
buttons on others' political campaign ESM sites could be perceived as a violation of judicial ethics rules
that prohibit judges from publicly endorsing or opposing another candidate for any public office. 20 On the
other hand, it is unlikely to raise an ethics issue for a judge if someone "likes" or becomes a “fan” of the
judge through the judge's ESM political campaign site if the campaign is not required to accept or reject a
request in order for a name to appear on the campaign's page.

Judges may privately express their views on judicial or other candidates for political office, but
must take appropriate steps to ensure that their views do not become public. 21 This may require managing
privacy settings on ESM sites by restricting the circle of those having access to the judge’s ESM page,
limiting the ability of some connections to see others, limiting who can see the contact list, or blocking a
connection altogether.

Conclusion

Judicious use of ESM can benefit judges in both their personal and professional lives. As their use
of this technology increases, judges can take advantage of its utility and potential as a valuable tool for
public outreach. When used with proper care, judges' use of ESM does not necessarily compromise their
duties under the Model Code any more than use of traditional and less public forms of social connection
such as U.S. Mail, telephone, email or texting.

candidates for judicial or other public office in letters or other recorded forms of communication, the judge should
exercise reasonable caution and restraint to ensure that his private endorsement is not, in fact, used as a public
endorsement.").