



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

TIPS ON THE USE OF SOCIAL MEDIA
March 2021

This tip sheet addresses the use of social media by individuals subject to the North Carolina Code of Judicial Conduct. It is intended to offer general guidelines, and is not an exhaustive review of all potential ethical issues involving the use of social media and its impact on perceptions of the judicial branch and of a particular judge's impartiality, integrity and independence. Judges are encouraged to contact the Commission for advice with specific questions or situations.

I. Use of Social Media Generally

The North Carolina Code of Judicial Conduct does not provide any specific rules relating to social media and judges are not barred from its use. Instead, social media use is evaluated according to the same standards as other communications and public statements by judges. Any statement by a judge, no matter what the platform, should be professional, dignified and calculated to preserve the high standards of the judicial office. This includes refraining from comments that call into question the judge's ability to be fair and impartial in certain classes of cases. Judges should also be mindful that even seemingly "private" posts and messages can easily be captured by a screenshot and judges should follow the old adage "don't put something in writing unless you want it read back in court." Judges and others should also be aware that there is a North Carolina State Bar ethics opinion, 2014 FEO 8, that provides that lawyers and judges may connect on LinkedIn, and lawyers may "endorse" the skills of a judge, but a judge may not "endorse" the skills of the lawyer.

Common concerns that arise from a judge's use of social media include:

- Judges are viewed as biased and unfair in court proceedings based on connections on social media to litigants, lawyers or witnesses appearing before them
- Judges are viewed as biased and unprofessional based on inappropriate posts and content

- Judges are viewed as concerned with political interests rather than commitment to the rule of law through *hyper-partisan political comments*
- Judges directly fundraise and request *donations for charities* or promote goods or services
- Judges obtain factual information outside of court through *ex parte or other communications*

These types of issues implicate a number of provisions in the Code of Judicial Conduct, including the following:

- **Canon 1:** a judge must “personally observe” standards of conduct to preserve the “integrity and independence of the judiciary”
- **Canon 2A:** a judge must “conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”
- **Canon 2B:** a judge must not allow “family, social or other relationships to influence the judge’s conduct or judgment”
- **Canon 2B:** a judge must not “convey or permit others convey the impression that they are in a special position to influence the judge”
- **Canon 3A(1):** a judge must not be swayed by “partisan interests, public clamor or fear of criticism”
- **Canon 3A(3):** a judge must be “patient, dignified and courteous” to litigants, lawyers, jurors, witnesses, lawyers and others
- **Canon 3A(4):** a judge must not knowingly initiate or consider *ex parte* or other communications
- **Canon 3A(6):** a judge must not make public comments about the merits of any pending federal or state case arising in North Carolina or addressing North Carolina law
- **Canon 3C:** a judge must disqualify in cases where “the judge’s impartiality may reasonably be questioned”
- **Canon 4C & 5B(2):** a judge may not “actively assist” an organization with fundraising

II. Disqualification Issues Related to Connections and Content on Social Media

Judges should avoid posting content or making connections that will require frequent disqualification. Canon 3C provides that disqualification is required when a judge’s impartiality could “reasonably” be questioned. Disqualification issues can arise because of *content* a judge posts on social media raising reasonable concerns about the judge’s impartiality in specific cases. For example, posts that suggest racial, gender, political or other bias against a particular class of

persons or in particular types of cases can raise reasonable concerns about the judge's ability to be fair and impartial while presiding in court.

Disqualification issues can also arise because of a judge's social media ***connection*** to a party, lawyer or witness appearing in court. Generally, a connection to someone on social media without more is not enough to raise a disqualifying conflict. A number of factors, however, can be considered in finding that disqualification is advisable. Among many factors to consider include the following:

- What is the size of the judge's social media network (i.e., is it a small social network of close personal friends or a vast network of hundreds or even thousands of connections)?
- Is the connection on a personal social media account or a campaign-related account?
- Does the judge regularly post and exchange messages with this person on social media?
- When did the judge first connect with the person on social media?
- Does the judge have contact with the person outside of social media?

III. Content that Undermines Public Confidence in the Impartiality, Integrity or Independence of the Judiciary

Beyond disqualification, content of posts can spell trouble of judges whether it relates to court proceedings or otherwise. Canon 3A(6) specifically prohibits comments about the merits of pending cases, but judges should also refrain from running commentary on cases they hear or worse, commentary mocking litigants, witnesses or lawyers. Canon 1 and Canon 2 require judges at all times, in their personal and professional lives, to observe standards of conduct that promote public confidence in the integrity, impartiality and independence of the judiciary. This includes conduct on social media. Inappropriate, lewd, profane, inflammatory or unprofessional content can easily degrade the dignity of the judicial office and raise legitimate questions about the judge's temperament and professionalism. Even in campaign-related posts, judges should be mindful to avoid:

- False or misleading statements about campaign opponents
- Using social media during court time for campaign purposes
- Posting photos on social media taken during official proceedings
- Demeaning, degrading or insulting language towards an opponent, other candidate or political parties