



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Expedited Opinion¹ 2021-042

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**SOCIAL MEDIA POSTS ABOUT THE LAW, THE LEGAL SYSTEM, OR THE
ADMINISTRATION OF JUSTICE**

I. Question

A judicial officer who would like to make statements on Facebook concerning legislation related to the law, the legal system, and the administration of justice asks the

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) issues **Expedited Opinions**, formerly known as **Oral Advice Summaries**, pursuant to California Rules of Court, rule 9.80(i)(1) [eff. Jan. 1, 2021]. Expedited Opinions are issued to requesting judicial officers following a discretionary decision by CJEO to address the ethical issues raised in an expedited process that does not include posting draft opinions for public comment, as required for CJEO Formal Opinions. CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and the public regarding judicial ethics.

Committee on Judicial Ethics Opinions (CJEO) to review those posts and advise whether they are permissible under the California Code of Judicial Ethics. While the committee declines to comment on specific social media posts, it provides the following guidance for permissible use of social media to make law-related statements.

II. Advice Provided

Judges may use social media to make statements relating to the law, the legal system, or the administration of justice, but should consider the following when posting or engaging with others online: (1) the same standards for judicial communications that apply in face-to-face settings apply with equal force to online statements and social media posts; (2) due to lack of control over the dissemination and permanence of online statements, judges must exercise caution and restraint and should assume the widest possible audience; (3) while statements concerning the law, the legal system, or the administration of justice are generally permissible, judges may not engage in prohibited social or political commentary on social media; and (4) judges must carefully evaluate what they intend to post and continually monitor their social media communications and posts to ensure public confidence in the integrity, independence, and impartiality of the judiciary.

III. Discussion

Social media has become a pervasive form of communication and socialization in daily life. Social media is commonly used to share information, network, connect with friends, and express opinions. Judges are no exception to the popularity of social media. (Epps & Warren, *Resisting Shiny Trinkets in This New Digital Age: Judicial Interaction with Media Platforms* (Aug. 2019) 58 *Judges' J.* 28, 30 [as of 2016, surveys showed that approximately 40 percent of judges use social media]; Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 78 (2020), p. 3 (CJA Opn. No. 78) [observing that more and more judges are expected to engage in social media over time].)

With social media permeating nearly every aspect of personal and professional life, it is understandable that judges have questions regarding how to use social media without violating

the California Code of Judicial Ethics.² In general, social media is governed by the same rules that govern statements made in any other context. However, there are certain ethical pitfalls associated with social media, such as the loss of control over and permanence of statements, that distinguish it from other forms of communication. For guidance, the committee provides the following standards and cautions concerning the use of social media to express opinions related to the law, the legal system, or the administration of justice.

A. The Code Applies Equally to Traditional and Online Conduct

In 2018, the California Supreme Court amended the code to recognize that judicial use of social media is governed by the same ethical rules that govern judicial conduct in any other setting. “The same canons that govern a judge’s ability to socialize and communicate in person, on paper, or over the telephone apply to electronic communications, including use of the Internet and social networking sites.” (Advisory Com. com. foll. canon 2 and 2A; CJA Opn. No. 78, *supra*, p. 3 [the same rules apply to a judge’s online conduct that apply in any other context]; *State v. Thomas* (N.M. 2016) 376 P.3d 184, 198 [limitations on judicial conduct apply with equal force to virtual actions and online conduct].)

While the same rules apply in traditional and online environments, there are important differences for judges to consider. For example, on social media, a person making a statement does not always have control over who can view the statement, responses or reactions to the statement, how widely or in what manner the statement is shared or repeated by third parties, how long the statement is retained on a particular format, or whether the statement can be modified or deleted. For this reason, the code instructs judges to use caution in online communications. (Advisory Com. com. foll. canons 2 and 2A [judges should exercise caution due to the accessibility, widespread transmission, and permanence of material posted on the internet]; Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 66 (2010), pp. 3–4 (CJA Opn. No. 66) [the use of social media technology poses unique issues, such as loss of control over the dissemination of content and the permanence of statements made in cyberspace]; CJA

² All further references to the code, terminology, canons, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Opn. No. 78, *supra*, p. 8 [social media users cannot control the use or lifespan of their communications; even platforms intended to display messages for a brief period of time do not guarantee that posts will be removed].)

While the committee advises vigilance and caution, it is not always practical or preferable to avoid social media altogether. Social media is a powerful tool for making and maintaining connections, both personal and professional, and for community participation. Judicial involvement in the community makes for engaged and socially aware judges, which is to be encouraged. (Advisory Com. com. foll. canon 4A [complete separation from extrajudicial activities is neither possible nor wise, and judges should not become isolated from the community in which they live].) Just as judges should not be isolated from their physical communities, judges are not prohibited from engaging in online communities. In addition, while they are subject to restrictions and limitations on extrajudicial activities, judges are not required to give up their personal lives or individual opinions. (Advisory Com. com. foll. canon 2 and 2A [judges must expect to be the subject of constant public scrutiny and therefore must accept restrictions on their conduct that might be viewed as burdensome]; canon 5 [judges are entitled to personal views on political issues and not required to surrender their rights or opinions as citizens]; CJA Opn. No. 66, *supra*, p. 4 [a judge’s participation in social media does not per se violate the canons].)

That said, judges must be mindful of how the public may perceive social media activity and refrain from any online statements or communications that call into question the impartiality of the judiciary. (Canon 2 [judges shall not make public statements that are inconsistent with the impartial performance of judicial office]; Advisory Com. com. foll. canon 2 and 2A [judges must avoid impropriety in all activities; the test for impropriety is whether a person aware of the facts would reasonably entertain a doubt about judicial integrity, impartiality, or competence].) For instance, judges should carefully consider whether online friendships or participation in certain online groups or forums suggest that they have allowed “family, social, political, or other relationships” to influence their judgment or convey the impression that anyone is in a special position to influence them. (Canon 2B(1); CJA Opn. No. 66, *supra*, pp. 7–11 [judges must exercise caution when engaging in online “friendships,” especially with lawyers, and should not

interact on social media with lawyers in pending cases].) Judges must also ensure that online statements and social media posts do not lend judicial prestige to benefit anyone’s personal or pecuniary interest. (Canon 2B(2); CJA Opn. No 78, *supra*, p. 9 [a judge should refrain from reviewing businesses online when the judge’s identity can be ascertained and be circumspect when “liking” other’s posts about products or businesses].)

When posting comments online, judges must carefully consider the canons and the potential hazards of social media to strike a balance between the restrictions on judicial conduct and the expression of personal opinions.

B. Online Conduct Is Inherently Public Conduct

Judges must assume that all statements made on social media platforms will reach the widest possible audience regardless of whatever viewing restrictions or privacy settings a judge applies. This is because it is sometimes difficult for social media users to discover how the technology works, the technology does not work exactly as advertised, the technology’s default settings change over time, or some combination of the foregoing. (CJA Opn. 66, *supra*, p. 3 [describing the varying degrees of Facebook privacy settings and noting that certain information is available even to people who are not “friends” with a judge]; Browning, *Should Judges Have a Duty of Tech Competence?* (2020) 10 St. Mary’s J. Legal Malpractice & Ethics 176, 180-185 [describing judicial discipline for engaging in inappropriate posts on Facebook or Twitter due to lack of familiarity with the websites’ privacy settings].)

In fact, several judges disciplined for online behavior mistakenly believed that they had taken necessary precautions to protect the privacy of their statements. (Com. on Jud. Performance, Ann. Rep. (2018) Public Censure of Former Commissioner Joseph J. Gianquinto, pp. 33–34 (Public Censure of Gianquinto) [judge’s lack of knowledge regarding how to remove content from social media site did not excuse code violations]; *Inquiry Concerning Krause* (Fla. 2015) 166 So.3d 176, 177–178 [judge’s intention to keep comments private on social media did not excuse misconduct]; *Judicial Discipline and Disability Commission v. Maggio* 440 (Ark. 2014) S.W.3d 333, 334 [judge disciplined for statements made on social media even though a pseudonym was used].) Even if a judge takes steps to keep his or her social media statements

private or limited to a select group of viewers, social media platforms and the sophistication of online viewers are evolving so rapidly that even the most technologically proficient users may have difficulty keeping pace with the privacy features, sharing capabilities, or hacking vulnerabilities of each site. (*In re Complaint of Judicial Misconduct* (3d Cir. 2009) 575 F.3d 279, 291–294 [federal judge admonished for not adequately securing his personal server to prevent public access to sexually explicit files, which embarrassed and undermined public confidence in the judiciary in violation of federal codes of conduct].)

A judge’s online statements and social media posts are particularly likely to draw heightened attention when a judge is engaging in discourse on controversial subjects or current events. (Advisory Com. com. foll. canons 2 and 2A [judges are expected to be the subject of constant public scrutiny and are therefore subject to increased restrictions]; CJEO Formal Opinion 2020-014 (2020), *Judicial Participation in Public Demonstrations and Rallies*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 5 (CJEO Formal Opinion 2020-014) [given intense societal focus on racial justice and equity issues, a judge’s participation in social protests was likely to draw public scrutiny].) Thus, the committee advises judges to assume that any statements they make on social media are public statements, potentially subject to scrutiny, and to use discretion and heightened caution when online.

C. Online Statements Concerning the Law, the Legal System, or Administration of Justice

The code generally permits judges to engage in activities concerning “the law, the legal system, or the administration of justice” provided those activities do not violate other provisions in the code. (Canons 4B, 4C & 5D.) The reasoning behind this broad permission is that judges are “specially learned in the law” and therefore in a “unique position to contribute to [its] improvement.” (Advisory Com. com. foll. canon 4B.) When applied to online activities, it is permissible for judges to use social media to comment on legislation affecting the judiciary or legal system, so long as the commentary would not violate other canons or rules. (Canon 5D.) For example, statements must not: (1) undermine public confidence in the judiciary or suggest bias (canons 1, 2 & 2A); (2) relate to pending matters or potential pending matters (canon 2A);

(3) stray into unlawful activities or demean the judicial office (canons 2A & 4A(2)); (4) constitute prohibited political activities (canon 5); (5) convey a special position of influence or use title to promote the interests of others (canon 2B(1) & (2); or (6) interfere with the performance of judicial duties (canons 3 & 4A(3)). (Com. on Jud. Performance, Ann. Rep. (2017) Public Admonishment of Judge Jeff Ferguson, pp. 2–3 [judge admonished for making statements on a social media page about an attorney’s sexual affairs with reckless disregard for the truth, which compromised the integrity of the court and demeaned the judicial office].)

The code does not precisely define the law, the legal system, or the administration of justice, and an overly broad interpretation could sweep nearly any sociopolitical topic within its ambit. (Terminology, Law, the Legal System, or the Administration of Justice; CJEO Expedited Opinion 2021-041 (2021), *Service on a Governmental Task Force*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 3–5 (CJEO Expedited Opinion 2021-041) [acknowledging the challenges in interpreting the phrase]). Judges must therefore exercise caution to ensure that public statements directly relate to the law, the legal system, or the administration of justice rather than their personal social or political views. (Canon 5 [judges shall not engage in political activity inconsistent with the independence, integrity, or impartiality of the judiciary]³; Public Censure of Gianquinto, *supra*, pp. 33–34 [judge disciplined for statements relating to presidential policies, immigration, racial issues, and political views]; *In re Kwan* (Utah 2019) 443 P. 3d 1228, 1232, 1237–1239 [judge suspended for social media posts extensively criticizing a sitting president, among other violations]; N.Y. Advisory Com. on Jud. Ethics, Advisory Opinion No. 2019-120 [a judge may publicly support legislative and constitutional changes affecting court structure and operations but should use caution when expressing opinions on social media].)

The distinction between permissible statements concerning the law, the legal system, or the administration of justice and prohibited political statements may not be a bright line. However, this committee has previously advised that conduct is more likely to fall within the

³ Canon 5A specifically prohibits judges from engaging in partisan politics, such as holding office in a political organization, publicly endorsing nonjudicial candidates, or fundraising for nonjudicial campaigns. (Canon 5A (1)–(3).) Any social media post that publicly endorses a nonjudicial candidate or political organization is expressly prohibited.

scope of the law, the legal system, or the administration of justice when it pertains to “purely administrative issues, such as court budgets, facilities, and docketing impacts” rather than “the more substantive end of the policy spectrum.” (CJEO Expedited Opinion 2021-041, *supra*, p. 4.) Thus, statements regarding court impacts are more likely to fall within the safe harbor of the law, the legal system, or the administration of justice than general policy-related statements not directly linked to the courts. The committee advises that this same guidance applies whether engaging in public activities in traditional settings or in the social media context.

Finally, judges choosing to use social media must engage in a two-step process to ensure continued compliance with the code. First, they must carefully evaluate their own statements, using the guidelines above, before deciding to post something on social media. (See Discussion, *ante*, at pt. III.B. and III.C.) Second, they must monitor reactions to their statements and the social media forums they use. For example, if a judge’s social media posts trigger online posts or comments that devolve into discussions undermining the judge’s impartiality or demeaning the judicial office, the judge must use his or her best efforts to delete those posts. Or, just as in physical public forums, if the social media site itself suggests bias or impropriety, a judge may need to leave that site entirely. (CJEO Formal Opinion 2020-014, *supra*, p. 2) [judges must remain vigilant and be prepared to leave a demonstration or rally if remaining might result in a violation of their judicial duties or interfere with judicial obligations].) While it may not be feasible to track every social media page they have commented on or change the conduct of online contacts, a judge must make reasonable efforts to monitor social media pages or threads associated with the judge and take action to remedy any statements that compromise the integrity of the judiciary. (Canons 1 & 2A [judges must act to preserve public confidence in the integrity, independence, and impartiality of the judiciary]; Com. on Jud. Performance, Ann. Rep. (2018) Private Admonishment 2, p. 27 [judge admonished for failing to diligently monitor social media associated with the judge’s name].)

IV. Conclusion

Social media has become a pervasive form of communication and socialization in our society, and the use of social media by judges is understandably growing. Judges choosing to participate in social media platforms must exercise caution and abide by the same ethical rules

that apply to in-person statements. In addition, judges must be mindful that they do not retain complete control over the technology, dissemination, or permanence of content and should assume the broadest possible audience. As in traditional settings, judges may comment on matters pertaining to the law, the legal system, or the administration of justice, provided they do not engage in prohibited political commentary or violate other canons in the code. Judges must expect public scrutiny when using social media, make reasonable efforts to monitor their online activities, and be prepared to leave virtual environments that undermine the integrity, independence, or impartiality of the judiciary.



This expedited advice opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. rule 1(a), (b).) It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions expressed in this opinion are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a).)