

Judicial Demeanor On And Off The Bench: Ways The Wheels Fall Off



Shane Hutton
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct

OVERVIEW

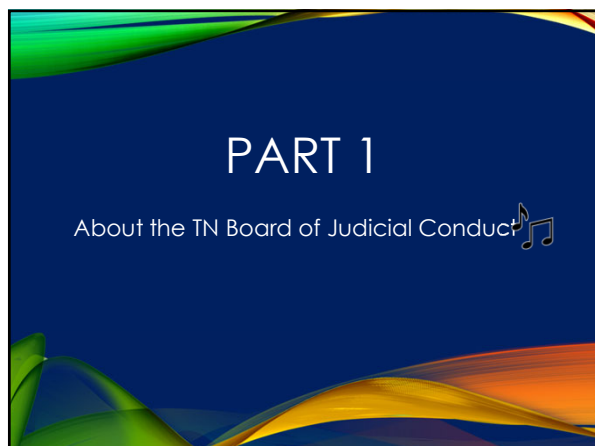
Part 1: Tennessee BJC 101

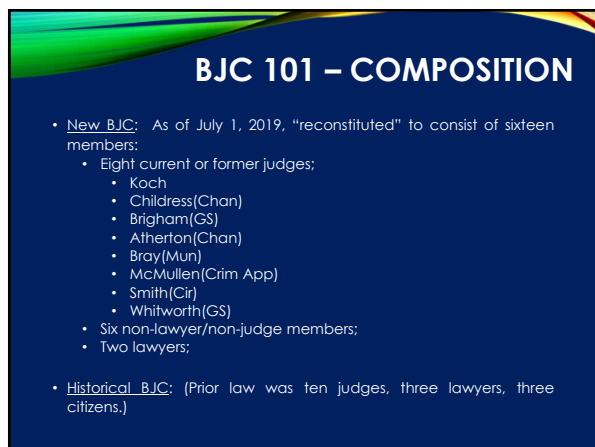
- **Composition**
Board Makeup | History | Terms | Selection | Structure
- **Jurisdiction**
Who & What are Included vs. Excluded
- **Sanctions**
Types | Criteria | Notable TN Updates 2020 & 2021

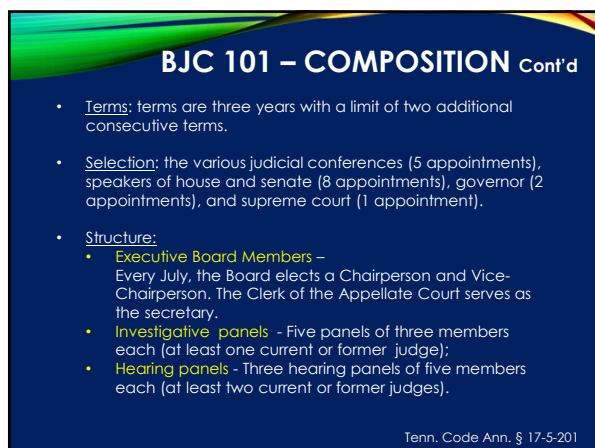
OVERVIEW – CONT'D

Part 2: Judges & Social Media

- Social Media 101
- Types
- Judges & Social
- What the States Say
- Privacy Settings
- Friending Do's & Don'ts
- Research Tool?
- Disqualifications & Social Friends
- To share or not to share....
- Posting Legal Advice
- Keep Your Politics & Preferred Charities to yourself
- Fundraising on Social Media
- Activity on Social Media







BJC 101 – JURISDICTION

Who is included?

- trial judges (including circuit, chancery, general sessions, probate, juvenile, and municipal judges)
- appellate judges and justices
- senior judges
- claims commissioners sitting by special appointment
- candidates for judicial office
- anyone else presiding over a court created by the legislature

BJC 101 – JURISDICTION Cont'd

Who is excluded?

- federal judges
- administrative law judges
- workers' compensation judges

What is included?

- Judicial behavior, not judicial decision-making



"Don't spread it around, but on the really tough ones, I just go with 'eenie, meenie, minie, moe.'"

BJC 101 – SANCTIONS

Range of sanctions (any one **or** any combination):

- dismissal of complaint;
- reminder;
- private reprimand;
- public reprimand;
- deferred discipline agreement;
- impose limits/conditions on performance of duties, including cease and desist order;
- suspension (with pay);
- recommend removal from office;
- immediate suspension upon being charged with a felony.

BJC 101 – SANCTIONS Cont'd

Criteria for determining appropriate sanction:

- Whether the misconduct occurred in or out of courtroom;
- Whether the misconduct occurred while acting in official capacity;
- Whether judge acknowledged/recognized the misconduct;
- Whether the judge made an effort to change the conduct;


BJC 101 – SANCTIONS Cont'd

- Level of sanction imposed previously for same conduct;
- Existence of prior complaints;
- Effect of misconduct on integrity or respect for judiciary;
- Extent to which judge exploited judicial position for personal gain/satisfaction;
- Sanctions imposed on other judges for same or similar misconduct;

BJC 101 – SANCTIONS Cont'd

Nationwide Sanctions



<u>Judicial discipline in 2020-2021</u>		<u>Judicial discipline in 2020</u>
<ul style="list-style-type: none">• 13 removals from office• 49 resignations or retirements in lieu of disciplinary action• 28 suspensions• fines \$1,000 to \$2,000		<ul style="list-style-type: none">• 136 public censures, reprimands, admonishments, warnings (many more nonpublic)• mentoring, training, education, stress/anger management

PART 2
Judicial Ethics & Social Media



THE PITFALLS

1st things 1st ...

?

Do ethics rules apply to *personal* activities such as social media?

.....

50:50   

SURVEY SAYS



Survey Says ...

"Judges should maintain the dignity of judicial office at **all times**, and avoid both impropriety and the appearance of impropriety in their professional **and personal lives**."

Preamble, Tenn. Sup. Ct. R. 10.

Judges' Use...

May a judge use social media?

50:50

?

.....

50:50

?


?

x2

SURVEY SAYS




Survey Says ...



Yes, but with **great** caution.

Judges' Use...



"Lawyers who choose to post on social media must realize they are handling live ammunition."

In Re Sifton, 618 S.W.3d 288, 304 (Tenn. 2021).

WHAT ABOUT MY PRIVACY SETTINGS?

Privacy Settings...

What if my social media accounts are set to "private"?




.....





Survey Says ...



- "Even if a [social media] page has restricted access, the page should be considered as potentially available to the public and therefore the same rules apply."
- Although a judge can limit who has access to his/her social media account, he/she cannot control what those individuals do, innocently, inadvertently, or maliciously, to disseminate the judge's posts beyond the intended, limited audience.

Privacy Settings Gone Wild



Privacy...

In the Matter of Laurie Booras (Colo. March 11, 2019) (public reprimand and resignation).



- Following oral argument, Court of Appeals Judge Booras **emailed** a man she met online: "We had oral argument. . . . The little Mexican is going to write [the court's opinion] in favor of the plaintiffs and it looks like I am dissenting."
- **Held:** Judge Booras "obviously impaired harmony and trust among her co-workers, and particularly her relationship with the colleague at whom her 'little Mexican' comment was directed."

Privacy...

In the Matter of James Lamme (Tennessee, Nov. 15, 2019) (Public Reprimand).



- Judge Lamme maintained a private Facebook account. Somehow, his page became public.
- Posted a link to a controversial article and posted it to his Facebook wall.
- Judge Lamme did not author or endorse the article.

Privacy...

In the Matter of James Lamme - continued (Tennessee, Nov. 15, 2019) (Public Reprimand).

- **Posted** multiple images on his Facebook wall that reflected amount other things, a concern for the credibility of certain federal agencies, a position of athletes kneeling, and opposition to presidential candidates.
- **Held:** **Sharing** these types of social media posts undermines the public's confidence in the judiciary and creates the perception that cases have been pre-judged.

Privacy...

In Re Edward Bearse
(MN Board on Judicial Standards,
Nov. 24, 2015)
(public reprimand).



- Judge Bearse publicly commented on his Facebook page concerning cases which he was assigned as a Senior Judge.
- Thought his posts were available to only 80 close friends, but in fact they were available to the public.

Privacy...

In Re Edward Bearse – continued
(MN Board on Judicial Standards, Nov. 24, 2015)
(public reprimand).

- In a sex trafficking case, the judge commented that the state is prosecuting a pimp and the women will not cooperate.
- In a non jury case, the judge commented that a witness was a very vulnerable woman.
- Held: The judge's comments could be reasonably interpreted that the Judge has prejudged the cases.

Privacy...

In Re Lisa Whitmarsh
(NY Commission on Judicial Conduct,
Dec. 28, 2016)
(public reprimand).



- Judge Whitmarsh posted a comment on her public Facebook wall criticizing the investigation of a defendant.
- Liked several comments indicating that the investigation was "an abuse of our legal system" and "uncalled for."

Privacy...

In Re Lisa Whitmarsh - continued
(NY Commission on Judicial Conduct,
Dec. 28, 2016)
(public reprimand).

- Defense: Forgot that she set her privacy settings to public for an unrelated reason years earlier.
- Held: Judge Whitmarsh failed to act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary, and lent the prestige of the office to advance interest of another.

Privacy...

In Re Michael Maggio
(AR Judicial Discipline & Disability Comm.
Sept. 11, 2014)
(removal).



- A judge who decided to participate in social media must take ownership of his or her use and may not hide behind an alias.
- Judge posted inappropriate gender, race, and sexually related statement under a pseudonym "geauxjudge" on a public on-line fan site.


I'M NOT A JUDGE





Connections Case...


State v. Madden
2014 WL 931031
(Tenn. Crim. Ct. App. March 11, 2014)



- The trial judge had 205 Facebook "connections" with individuals at MTSU, including a State's witness.
- Trial judge was an MTSU graduate, received a distinguished alumni award, and was a substantial donor to MTSU.
- Defense: I didn't think it was public. Hacked.
- The trial court denied the motion to recuse.

Connections Case...


State v. Madden - continued
2014 WL 931031
(Tenn. Crim. Ct. App. March 11, 2014)



- Held: Simply establishing that a trial judge is acquainted with a lawyer or other person connected to a case does not, without more, suffice to establish an abuse of discretion in the denial of a recusal motion.
 - There must be some sort of a connection shown between the judge's relationship with a lawyer, party, or witness and some action taken in the case. A judge's online "friendships," just like his or her real life friendships, must be treated with a great deal of care.
- Concurring opinion looked at several factors
 - MTSU was not a party
 - Number of friends
 - Judge never met the witness

WON'T YOU BE MY NEIGHBOR

"A judge's online "friendships,"
just like his or her real life
friendships, must be treated with
a great deal of care."



BURNED BY SOCIAL MEDIA



Social Media Research...


 Can a judge use
social media for their
own case research?

.....





Survey Says ...



"A judge shall **not** investigate facts in a matter, independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed."

RJC 2.9(C)

WHAT THEY FOUND ON SOCIAL MEDIA





In Re Scott Johansen
(Utah Judicial Conduct, November 16, 2015)
(recusal).

- Removed a child from her lesbian foster parents and placed the child with a heterosexual couple.
- The judge relied on his own research of whether children do better when raised by a heterosexual couple.
- The judge's decision received widespread criticism. Several human right's organizations also called for his impeachment.
- The judge ultimately reversed his decision and recused himself.
- He retired shortly after the scandal. He was also publicly reprimanded in 1995 for slapping a 15-year-old boy in chambers.




In Re Hutchinson
(WA State Commission on Judicial Conduct,
Feb. 3, 1995)
(Public).


- Two men petitioned to have their names changed to female because they were going through gender reassignment therapy.
- After the judge declined to grant the petitions until the surgery was completed, the petitioners filed a motion for reconsideration. The judge then conducted an ex parte, independent factual investigation about gender reassignment surgery by communicating with several medical organizations without notice to the petitioners.



In Re Hutchinson - continued
(WA State Commission on Judicial Conduct,
Feb. 3, 1995)
(Public).

- The judge determined:
 - This would pose a risk to those who "send their daughters into the ladies' restroom."
 - "I personally feel that this whole procedure is immoral. It evidences a mentally ill and diseased mind[.]"
- Held: The Commission found that expert medical testimony clearly established that the judge's conclusions based on his investigation were incorrect or, at best, disputed. The Commission also found that the judge's moral pronouncements and demeaning statements deprived the petitioners of an impartial and unbiased forum.

 on Social...



- This WA case illustrates why independent factual investigations, like ex parte communications, are prohibited.
- This ban ensures that cases are tried in the courtroom and judicial decisions are based on evidence in the record where the parties can contest its accuracy, reliability, and credibility and appellate courts can review it.

DISQUALIFICATION

YOU'RE
OUTTA
HERE!

Disqualification...

- Disqualification is not necessarily required when an attorney with whom a judge has an online connection appears in a case, but that the connection is one factor in deciding whether your impartiality might be questioned.
- A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

Disqualification Cont'd...

Clemmons v Nesmith,
2017 WL 480705,
(Tenn. Ct. App., Feb 6, 2017)



- The parties filed two motions to recuse which were both denied by the court. The second was based upon an allegation that the trial judge had an ex parte conversation with another judge and opposing counsel at a Christmas party.
- Held: Affirmed the trial court's decision to deny the recusal. The vague allegation that the trial judge and counsel met at a holiday party, without more is not enough. There was no indication that the case was discussed or that the interaction was anything more than passing social contact. The mere existence of a friendship between a judge and an attorney is not sufficient, standing alone, to mandate recusal.

Disqualification Cont'd...



- Use good judgment when attending holiday parties, birthday parties, lake outings, sports events, lunches, trips/vacations with attorneys, business people, etc.
- Disclose the relationship.

Friend is a person with whom you share a strong bond	Acquaintance is someone who is known but who is not a close friend
Know intimate details of each other	Know each other slightly
Often hang out with each other	Do not interact often
Help each other	Are not obliged to help



To Post or not to Post...

Can a judge comment on their professional work & personal life on social media?

.....

50:50



Survey Says ...

"A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court[.]"

RJC 2.10(A)

Like all rules, this rule applies to a judge's activity on social media.

"Judges should maintain the dignity of judicial office **at all times**, and avoid both impropriety and the appearance of impropriety in their professional **and personal lives**."

Preamble, Model Code of Judicial Conduct.

PENDING CASE COMMENTARY

...EXAMPLES...

Posting | Pending...

In Re Steve Urie
 (AZ Commission on Judicial Conduct,
 June 12, 2018)
 (Public Reprimand).

- The judge posted an exchange on his Facebook page of a conversation with a litigant in his court room during an eviction proceeding. In the post he referred to the individuals as "landlord" and "tenant." The post included incriminating statements made by the tenant.
- In response to a friend asking if this was a true story, the Judge responded, "Yes. It goes without saying but the tenant wasn't the brightest bulb in the chandelier."
- Held:** Because the case had concluded, it was not a comment on a pending or impending case. However, the comment did fail to promote the public confidence in the independence, integrity, and impartiality of the judiciary.

GO ON, TELL THEM I ATE
 YOUR HOMEWORK.
 THEY'LL NEVER BELIEVE
 YOU...

Posting | Pending...

In Re Gerald Williams
 (AZ Commission on Judicial Conduct,
 Mar. 21, 2022)
 (Public Reprimand).

- The judge posted a picture of a motion in which a litigant requested an extension to complete defensive driving school because his puppy ate his paper work.
- Held:** The Judge intent was to mock the request and failed to promote public confidence in the independence, integrity, and impartiality of the judiciary.

Posting | Pending...



Clay County, et al. v Purdue Pharma L.P. et al., 2022 WL 1161056 (Tenn. Ct. App., April 20, 2022)

- Following a hearing, the trial judge gave an interview to an online legal blog commenting that the discovery violations were "the worst case of document hiding[.]"
- He took to social media and asked why national media was contacting his office about a case and local media is not interested.

Posting | Pending...

Clay County, et al. v Purdue Pharma L.P. et al., 2022 WL 1161056 (Tenn. Ct. App., April 20, 2022)

- Made other social media comments that he was trying to ban opioids.
- The trial judge denied the motion to recuse but entered an order on sanctions prior to ruling on the motion to recuse.

Posting | Pending...

Clay County, et al. v Purdue Pharma L.P. et al., 2022 WL 1161056 (Tenn. Ct. App., April 20, 2022)



- **HELD:** The Court of Appeals found that by engaging in the extra-judicial conduct, Judge Young positioned himself "publicly as an interested community advocate and voice for change in the larger societal controversy over opioids" rather than "an impartial adjudicator presiding over litigation." *Clay County, No. E2022-00349-COA-T10B-CV, 2022 WL 1161056, at *4 (Tenn. Ct. App. Apr. 20, 2022).*
- Accordingly, the court found that Judge Young's removal from the case, a major opioid case involving numerous parties and more than a billion dollars, was necessary to protect public confidence in the judiciary.

Posting | Pending...

In Re Jonathan Young (TN Board of Judicial Conduct, July 26, 2022) (30 day suspension).

- Judge Young made several public comments about a pending opioid case.
- Liked several comments from his Facebook page related to the case.
- In a separate adoption case, he solicited explicit pictures, and met with a female litigant on multiple occasions, and had sex on one occasion. He also offered the litigant legal advice.
- Defense: As a judge I have a constitutional right to say and do as I please in the media and on social media platforms concerning cases assigned to his court.

Posting | Pending...

In Re Jonathan Young (TN Board of Judicial Conduct, July 26, 2022) (30 day suspension).

- Held: That the comments on a pending case and the inappropriate sexual relationship constitute meritorious complaints to trigger an agreed upon 30-day suspension from the prior public reprimand which also involved using social media to send inappropriate messaging ranging from flirtatious to overtly sexual to multiple women including a litigant that had a child custody case in his court.

POLITICS ON SOCIAL MEDIA



Politics...

In the Matter of Matthew Quinn
(Minn. Board of Judicial Standards
Mar. 9, 2021)
(reprimand).



- Judge Quinn posted and reacted to Facebook posts endorsing and opposing candidates for President.
- Posted photographs of himself wearing a MAGA hat and piloting a boat displaying Trump flags in a "Trump Boat Parade" on the Mississippi River.




Politics...

In the Matter of Matthew Quinn
(Minn. Board of Judicial Standards Mar. 9, 2021)
(reprimand).

- "Liked" a Facebook post that stated "I will never support Biden ever . . . he's been in politics for 49 years . . . no wonder why the U.S. has so many problems."
- "Liked" a post that stated "Joe Biden is a disgrace."
- Commented "Dipsh*t Biden. Oops."

Politics...

Held: Judge Quinn's Facebook activities:

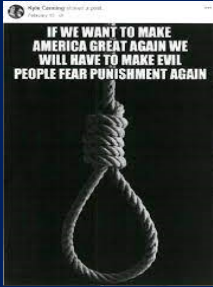


- (1) endorsed and opposed nonjudicial candidates for public office and
- (2) abused the prestige of judicial office to advance the personal or economic interests of others, i.e., participation in the Trump Boat Parade was a "flagrant example."

Politics...

In the Matter of Canning (Resignation).

- Judge posted this picture on his Facebook wall



CHARITY SUPPORT ON SOCIAL MEDIA



**In the Matter of Johns, 864 S.E.2d 546,
(S.C. 2021)
(18 month suspension w/o pay).**

- For his birthday Probate Judge Kenneth Johns posted the following message on his Facebook wall.....



Charitable Activities...



"For my birthday this year, I'm asking for donations to American Red Cross. I've chosen this nonprofit because of food, water, and much more provided for those affected by Hurricane Florence in NC & SC."



Charitable Activities...

**In the Matter of Johns, 864 S.E.2d 546,
(S.C. 2021)
(18 month suspension w/o pay).**

- Held: This conduct violated Rule 1.3 which states a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or other.
- Exception: Judges can solicit contributions from members of their family, or from judges over whom the judge does not exercise supervisory or appellate authority. RJC 3.7(A)(2)

Charitable Activities...

In the Matter of James Metts,
(TX Oct. 3, 2018)
(Public Reprimand).

- Justice of the Peace Metts organized an Annual School Supply Drive.
 - His Facebook posts provided a list of school supplies or cash donations **in lieu of supplies.**
 - The Facebook posts directed people to drop off donations at the courthouse.
- Created a GoFundMe account to help repair a Montgomery County resident's driveway.

Charitable Activities...


In the Matter of James Metts,
(TX Oct. 3, 2018)
(Public Reprimand).

- Held: The judge misused county resources to conduct the school supply drive and lent the prestige of the office to advance the private interest of Ms. Lilley to get her driveway paved.

Charitable Activities...

In the Matter of David Svaren,
(WA Dec. 7, 2018)
(Public Reprimand).

- Judge Svaren attended a pancake fundraiser to benefit the victims killed in a mass shooting that happened at a local mall.



Post:

"The Burlington FD Pancake Feed is happening now and 100% of the proceeds go to benefit the families of the victims of the [mass shooting.] Please consider attending, it runs until noon today."

Charitable Activities...

In the Matter of David Svaren,
(WA Dec. 7, 2018)
(Public Reprimand).

- Held: That he abused the prestige of judicial office to advance the personal or economic interest of others.
- The prohibition against judicial solicitation of money **does not reflect on the worthiness or virtue** of the charity in question. The Code of Judicial Conduct has a **bright line rule** against a judge soliciting funds – no matter how noble the case – in order to avoid misuse of the judicial office.

Charitable Activities...

In the Matter of Mary Yu,
(WA Dec. 7, 2018)
(Public Reprimand).

- "Shared" the following post on her Facebook page:

"Join Lifelong for Dining Out For Life on April 26! On Thursday, April 26, raise your fork for Dining Out For Life! Join Lifeline at one of 90 restaurants in the Greater Seattle Area who are set to donate 30-50% of their proceeds to vital programs that support people facing serious illness and poverty in our community. <https://www.diningoutforlife.com/seattle>"

Charitable Activities...

In the Matter of Mary Yu,
(WA Dec. 7, 2018)
(Public Reprimand).

- Authored the following post on her Facebook page encouraging people to buy a homeless newspaper called the "Real Change." She encouraged people to commit to buying the paper each week.



Charitable Activities...

In the Matter of Mary Yu, (WA Dec. 7, 2018) (Public Reprimand).

- **Defense:** She did not think she was violating the code and wanted to pass along information about the activities of these organizations.
- **Held:** The prohibition in the solicitation of funds is to avoid the misuse of judicial office. The rule addresses **three concerns**: judge may intimidate people in to making contributions; judges may trade on the prestige of their office; and donors may expect favors in return for their donation.

"TALKING" ON SOCIAL MEDIA



Said it on Social...

In the Matter of Kohout (West Virginia Oct. 7, 2016) (censured & banned from seeking judicial office).

- Judicial candidate **posted** on Facebook:
 - Middle Easterners are "camel bangers" and "ragheads"
 - "White women who date black men are trash and ruined."
 - State-employed receptionists are "dumb."

Said it on Social...

In Re Josie Fernandez
(TX Commission on Judicial Conduct, Sept. 22, 2021)
(resigned).

- Judge Fernandez had FB posts expressing support for:
 - products and businesses
 - Blue Lives Matter movement (including wearing a Blue Lives Matter pin on her robe)
 - United States Border Patrol

Said it on Social...

In Re Josie Fernandez
(Texas Commission on Judicial Conduct, Sept. 22, 2021)
(resigned).

- candidates for public office
- disdain for criminal defendants, including reposting mug shots with derogatory comments
- nude selfie sent to her boyfriend (who was married) which became widely disseminated

What They Said on Social Media

In the Matter of VanWoeart
(N.Y. Commission on Judicial Conduct March 31, 2020)
(censured).

- Judge Michelle VanWoeart was censured after she reacted on her campaign Facebook page to others' posts about her opponent, another judge.
- She "liked" a post stating "time to take out the trash!!!" in reference to her opponent, Judge Norm Miller.



Said it on Social...

In the Matter of VanWoeart
(N.Y. Commission on Judicial Conduct March 31, 2020)
(censure).

- She replied "thank you" to a comment on her campaign Facebook page which described her opponent as "Dirt Bag Norm" and "this SH*T HEAD."
- She "liked" a comment on her campaign Facebook page that stated, "I'd like to shove [campaign] flyers up Norm's butt!"

Said it on Social...

In the Matter of VanWoeart (N.Y. Commission on Judicial Conduct March 31, 2020).



- Held: Judge VanWoeart "failed to meet [high judicial standards] when she responded favorably to crude social media comments about her judicial opponent. By her conduct, respondent undermined the dignity and integrity of the judiciary."

Said it on Social...

In Re John Throesch
(Ark. Judicial Discipline Commission, May 1, 2020)
(resigned).



- Judge Throesch told a defendant with traffic tickets in his court on Facebook that he would look into her "traffic stuff and see what we can do."
- "We need to talk so I know [how] to help u." Message me first thing in the morning."
- sent the judge explicit pictures of herself

Said it on Social...

In Re John Throesch
(Ark. Judicial Discipline Commission,
May 1, 2020)
(resigned).

- requested "additional photographs of the same nature"
- "Make sure you don't tell anyone ur talking to me for lots of reasons."

Best Practices...

Do not

- investigate the facts using social media
- comment about a case, litigant, lawyer, witness, law firm, on social media
- "friend" a lawyer who appears before you (alternatively "friend" all lawyers)
- "friend" a litigant
- advance the economic or personal interests of another (i.e., praise/criticize a business, law firm, etc.)

Best Practices...

Do not

- use a profile picture in your judicial robe
- get political
- assume that using a pseudonym will prevent someone from discovering the sender is a judge
- assume private electronic communications will remain private

Best Practices...

“Don’t say anything online that you wouldn’t want plastered on a billboard with your face on it.”

Best Practices...



Guiding Principle:

While judges may utilize social media, they must “at all times remain conscious of the solemn duties they may later be called upon to perform.”

State v. Madden, 2014 WL 931031, at *8 (Tenn. Crim. App. March 11, 2014).

What They Said In Their Personal Lives

In the Matter of David Ferguson (West Virginia Sup. Ct., April 22, 2020) (90-day suspension).

Judge Ferguson was fishing with his father and received a citation for catching too many fish.

- threw down his court ID
- exclaimed “these charges ain’t going nowhere” and he would be contacting the officers’ supervisors
- defense – incident was “entirely personal”

What They Said In Their Personal Lives

In the Matter of David Ferguson (West Virginia Sup. Ct., April 22, 2020) (90-day suspension).

Held: "This case is about much more than catching extra fish. . . . [The judge] acted in a completely inappropriate, belligerent, and coercive manner."



What They Did In Their Personal Lives

In the Matter of Adams, Bell, and Jacobs (Indiana)(30 and 60-day suspensions).



What They Did In Their Personal Lives

In the Matter of Adams, Bell, and Jacobs (Indiana)(30 and 60-day suspensions).

Held: The judges "engaged in judicial misconduct by appearing in public in an intoxicated stated and behaving in an injudicious manner and by becoming involved in a verbal altercation." The three judges took action that "discredited the entire Indiana judiciary . . . and gravely undermined public trust in the dignity and decency of Indiana's judiciary."

What They Said to **Litigants**

In Re William Watkins, 757 S.E.2d 594 (West Virginia 2013) (four-year suspension without pay).

- told a woman seeking an order of protection against her husband to "Shut Up!" because she was "shooting off [her] fat mouth"
- "You stupid woman."

Held: "When a judge insults, ridicules, or disparages counsel, the parties, jurors, or witnesses, it is clearly misconduct."

What They Said to **Litigants**

In the Matter of Kenneth Gorski, 937 N.W.2d 609 (Wisc. 2020) (reprimand).

Judge Gorski "lost his temper" with a pro se litigant and said: "Stop, now, just stop with that! Jesus. Come on. That's getting old, that's really getting old. . . . Why can't you just be quiet?"

Held: "We trust that the reprimand we impose today will cause [the judge] to . . . treat those who come before him with patience, dignity, and courtesy."

What They Said to **Criminal Defendants**

In Re Jeffrey Bennett (CA Commission on Judicial Performance, March 25, 2020) (censure).

Judge Bennett was addressing an African-American defendant in court whom he believed was being evasive in his answers.

"Stop shucking and jiving."

What They Said To Court Staff

In the Matter of Barbara Roberts (CA Commission on Judicial Performance, Feb. 18, 2021) (admonition).

When her internet service went down during court, Judge Roberts yelled to staff: "This isn't working! This isn't working! Fix it immediately!"

She left the bench and stomped down the hallway and went into her office and slammed the door.

Held: The judge "engaged in significant and repeated abusive conduct toward staff."

What They Said About Other Judges

In the Matter of Nakita Blocton (Ala. Ct. Jud. Dec. 10, 2021) (removed from office).

To a colleague: "Uncle Tom."

To another colleague: "Fat bit**h."

To a court employee: "Heifer."

Ordered staff to give her their personal cellphones and passwords so she could delete information relevant to the investigation by disciplinary authorities.

What They Said to Women

In Re John Laettner (CA Commission on Judicial Performance, Nov. 6, 2019) (removed from office).

While presiding over a domestic violence case, Judge Laettner said, "I can take judicial notice that women can drive you crazy. You know, a judge could get in trouble for [saying] something like this."

Told female litigants they were "pretty" or "beautiful."

What They Said to **Women**

In Re John Laettner (CA Commission on Judicial Performance, Nov. 6, 2019) (removed from office).

To a court reporter: "You are hot."

To jurors: "Would enjoy looking at" the court reporter instead of the "heavyset, pudgy" public defender.

To a litigant with tattoos: "I always wonder what fat people are thinking when they get tattoos."

What They Said About **Family**

In Re Joyce Tomlinson (TN Board of Judicial Conduct, Feb. 1, 2021) (resigned in lieu of formal charges).

Judicial Commissioner Tomlinson engaged in a "tense and angry discussion" with sheriff's deputies about a pending criminal case involving her granddaughter.

- sarcastic, argumentative, raised her voice, and banged her hands on the table

What They Said About **Family**

In Re Joyce Tomlinson (TN Board of Judicial Conduct, Feb. 1, 2021) (resigned in lieu of formal charges).

- threatened to call the investigating officer's family
- dared the officer to stop her on the street
- taunted the officer by commenting that he was afraid of her even though he had a gun

What They Said About **Family**

In Re Joyce Tomlinson (TN Board of Judicial Conduct, Feb. 1, 2021) (resigned in lieu of formal charges).

Standard - a judge shall not permit family, social, political, financial or other interests or relationships to influence the judge's judicial conduct or judgment. Rule 2.4(B).

Standard - a judge shall not abuse the prestige of judicial office to advance the personal interests of the judge or others. Rule 1.3.

What They Said to **Attorneys**

In Re John Murphy (Fl. Sup. Ct., Dec. 17, 2015) (removed from office).

Judge Murphy stated to a public defender who was a "highly unlikeable lawyer," "if I had a rock I would throw at it you right now. Stop pissing me off. Just sit down."

When the lawyer refused to sit down, the judge shouted: "If you want to fight, let's go out back and I'll just beat your ass."

What They Said to **Attorneys**

In Re John Murphy (Fl. Sup. Ct., Dec. 17, 2015) (removed from office).

The two men left the courtroom and fought in the hallway, after which the judge returned to the courtroom and resumed calling his docket.

Held: "Judge Murphy's total lack of self-control and grievous misconduct became a national spectacle, an embarrassment not only to himself but also to Florida's judicial system. . . . [He] is unfit to serve."

How will you respond to the difficult/disrespectful lawyer or litigant?

"Regardless of how frustrating or disrespectful a participant in a legal proceeding may be, the judge cannot reciprocate. To the contrary, the more difficult the situation, the more important it is for the judge to remain dignified and composed and not be drawn into an escalating argument."

Reprimand – TN (2020)



"[E]very time a judicial officer engages in misconduct, he or she spends the goodwill of the judiciary as a whole."

In re Kwan, 443 P.3d 1228, 1238 (Utah 2019).
