

THE ROBED TWEETER: TWO JUDGES' VIEWS ON PUBLIC ENGAGEMENT*

Stephen Louis A. Dillard**
Bridget Mary McCormack***

For most of American history, the judge has been viewed as a different type of public servant. Unlike other public officials, judges are typically (and correctly) not considered politicians, and they are far less likely to interact with their constituents on a regular basis. Instead, they toil away in cloistered courthouses in relative anonymity, making decisions in civil and criminal matters of the utmost importance. But every so often, judges venture out into the real world to speak to the public about what they do. And while many of these public appearances are unquestionably motivated by a commitment to civic responsibility, elected judges feel a unique pressure to stay connected to the people they serve.

But there is a big difference between a judge speaking to lawyers at a CLE or community leaders at a chamber of commerce meeting, and a judge appearing at a campaign rally. Our sense is that the vast majority of elected judges intensely dislike campaigning. This is understandable. There is—at least at first blush—something unseemly about nonpartisan interpreters of the law campaigning in much the same way as candidates running for a legislative or executive office. The view that campaigning is antithetical to holding a judicial office is one iteration of a broader view that judges shouldn't be

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**Presiding Judge, Court of Appeals of the State of Georgia. See *Presiding Judge Stephen Dillard*, CT. OF APPEALS OF GA., https://www.gaappeals.us/biography/bio_judges.php?jname=Stephen%20Dillard (2019).

***Chief Justice, Michigan Supreme Court. See *Chief Justice Bridget Mary McCormack*, MICH. CTS., <https://courts.michigan.gov/Courts/MichiganSupremeCourt/justices/Pages/Chief-Justice-Bridget-Mary-McCormack.aspx> (2020).

actively engaging the public except in limited circumstances. And unsurprisingly, judges are far less inclined to engage the public than other elected officials.

But it doesn't have to be this way, and it shouldn't be. Now, more than ever, citizens are interested in understanding and following the judiciary; and technology has given judges unique, cost-effective tools to engage and educate the public. We hope to make the case that judges should take advantage of these technological advances and drastically rethink the role of a judge in the modern age.

To put it plainly, we think judges are making a serious mistake by continuing to stay largely disengaged from the people they serve. Our sense is that many judges do so because they believe "being out there too much" is unbecoming of a judge. But why? Doesn't the nature of a judge's public activity matter? If a judge is educating the people he or she serves about the judiciary or frequently engaging them in a way that promotes confidence in the judicial branch, how is that inappropriate?¹

In our view, it is long past time for judges to reimagine how they participate in their communities. They can (and we think should) engage and educate the people they serve on a regular basis. We judges need to shed our collective image as "stuffy, technologically challenged, and light on personality,"² and step out of our courtrooms and into the light of day. We are public servants, not disengaged robed philosophers, and the public has a right to know who we are and what we do.³ And in our view, one of the best ways for judges to effectively engage the people they serve is to embrace the ubiquitous social-media platforms other citizens use to communicate and interact with one another.

1. See *In re Slaughter*, 480 S.W.3d 842, 841 (Tex. Spec. Rev. 2015) (finding that a judge's social-media post was intended to educate the public about events occurring in the courtroom, which was consistent with the Preamble to the Code of Judicial Conduct).

2. David Lat, *Judges on Twitter: Is this a Problem?* ABOVE THE L. (Sept. 30, 2014), <https://abovethelaw.com/2014/09/judges-on-twitter-is-this-a-problem/>.

3. John G. Browning, *The Judge as Digital Citizen: Pros, Cons, and Ethical Limitations on Judicial Use of New Media*, 8 FAULKNER L. REV. 131, 154 (2016) (pointing out that "unless we want them to be philosopher-priests cloistered in their jurisprudential temples, judges need to be connected to society, with their work reflecting accessibility to the citizens they serve").

Some judges will surely disagree with us. Many judges are deeply uncomfortable with, and skeptical of, their colleagues using social media. We understand this apprehension and we will respond to it in this article.⁴ We will start with a judge's role as digital citizen before making the case for judicial engagement through social media, answer the common objections, and end with our own ideas about best practices. In doing so, we hope to persuade some of our dissenting colleagues to embrace social media as a means of communicating with and engaging the public.

I. THE JUDGE AS A DIGITAL CITIZEN

The judiciary is, in many respects, “the least understood branch of government.”⁵ And yet, it is the branch most people directly interact with and are personally impacted by on a daily basis. For example, Michigan’s district courts hear about three million cases each year,⁶ as do Georgia’s trial courts.⁷ Needless to say, each of those cases has at least two parties directly impacted by the litigation, and many others who are affected by the case outcome because those parties have families and neighbors. Nowhere near that many people interact directly with the other branches of government. Nevertheless, there is a troubling disconnect between the judiciary and the people it serves.

Suffice it to say, law and legal process can be intimidating, and even frightening to many people.⁸ Judges don’t always make it less so; in fact, judges have “long been criticized for

4. The high ethical standards imposed upon judges create “narrow confines” within which judges may operate, specifically in the context of social media. Agnieszka McPeak, *The Internet Made Me Do It: Reconciling Social Media and Professional Norms for Lawyers, Judges, and Law Professors*, 55 IDAHO L. REV. 205, 217 (2019).

5. Stephen Louis A. Dillard, #Engage: It’s Time for Judges to Tweet, Like, & Share, 101(1) JUDICATURE 10, 11 (2017), https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/judicature_101-1_dillard.pdf.

6. See 2018 Court Caseload Report, MICH. CTS., (2018), <https://courts.michigan.gov/education/stats/Caseload/reports/statewide.pdf> (scroll down eleven pages to “Statewide District Court Summary”).

7. Judicial Council of Georgia Administrative Office of the Courts, *Annual Report FY 2018*, available at <https://georgiacourts.gov/wp-content/uploads/2019/12/FY18.pdf> (providing 2017 statistics for all classes of trial courts in Georgia).

8. Dillard, *supra* note 5, at 11.

being inaccessible and a source of mystery to the public they serve.”⁹ The common view of the judiciary is that of “a wise but entirely detached body of individuals who sit on elevated benches, adorn themselves in majestic black robes (with gavels in hand), and dispassionately rule on the various and sundry disputes of the day (and do so largely out of the public eye).”¹⁰

We concede that this is a fair, broad-strokes assessment of the judiciary’s relationship with the public;¹¹ but we know our branch can and must do better. Judges are public servants, and we have a duty to educate the public about the judiciary’s unique role in our democracy, its decisionmaking processes, and what the public has a right to expect in our courthouses.¹² But to do this effectively, judges need to rethink how we (and our courts) engage with the public, get past our unease with technology, and fully embrace the social-media platforms those we serve use every day.¹³ The public wants, indeed craves, this greater engagement by the judiciary.¹⁴

There are, of course, many ways for judges to interact with the public outside of the courtroom. And the traditional methods of engagement remain worthwhile; it is important for judges to be actively involved in their local communities by speaking to schools and community organizations, as well as attending events where they will have an opportunity to stay connected to the people they serve. Judges will also, naturally, spend a significant amount of time with law students and lawyers. This is all time well spent. Judges can and should be leaders in their local and legal communities.

But there are only so many events a judge can attend, only so many hands a judge can shake, and only so much time in the

9. Browning, *supra* note 3, at 131.

10. Dillard, *supra* note 5, at 11.

11. *See id.*

12. *Id.*

13. *Id.*

14. *Id.* In 2017, sixty percent of respondents to polling by the National Center for State Courts agreed with the following statement: “Too many judges in (STATE) courts don’t understand the challenges facing people who appear in their courtrooms and need to do a better job of getting out into the community and listening to people.” *The State of State Courts*, NAT’L CENTER FOR ST. CTS. 7 (2018), https://www.ncsc.org/_data/assets/pdf_file/0029/16985/ncsc_sosc_2018_presentation_final.pdf (showing in addition that the results had dropped to a still unacceptably high fifty-two percent in the 2018 survey).

day. After all, a judge's job is already difficult and time consuming. So, how can a judge make his or her court widely accessible to the public and effectively communicate and build relationships with as many of his or her constituents as possible? Or, harder still: How can an appellate judge—a statewide public official—meaningfully engage with millions of constituents? This is where technology and social media can be a tremendous benefit. Indeed, the ability of a judge or court to use technology and social media to communicate with the public is revolutionary.¹⁵

But let's back up a bit: a judge's primary responsibility as a "digital citizen" begins with making sure that his or her court is as accessible as possible to the people it serves.¹⁶ And this starts with a court's website providing "citizens with increased access to the judicial process . . . through . . . effortless access to court records,"¹⁷ implementing an "effective digital marketing strategy" to ensure that "people find a court's website when they need it,"¹⁸ and making the website easy to navigate.¹⁹ A modern and easily accessible court website benefits judges and court staff, as well as the public, and informed litigants make legal processes more efficient and effective.

But one of the most important things a court can do to promote confidence in the judiciary is to open the virtual doors

15. To get an idea of just how revolutionary this technology can be, consider that Facebook had approximately 1.5 billion users worldwide by 2016 and Twitter was then processing approximately one billion tweets every forty-eight hours. Browning, *supra* note 3, at 131.

16. See ABA Standing Committee on Ethics & Professional Responsibility, *Formal Opinion* 462: *Judge's Use of Electronic Social Networking Media* 4 (2013), available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_462.authcheckdam.pdf [hereinafter *ABA Opinion 462*] (recognizing social media's "utility and potential as a valuable tool for public outreach"); see also Browning, *supra* note 3, at 154; Elizabeth Thornburg, *Twitter and the #So-Called Judge*, 71 SMU L. REV. 249, 259 (2018) (discussing social media's role in judicial elections).

17. *Court Website Design Resource Guide*, NAT'L CENTER FOR ST. CTS., <https://www.ncsc.org/Topics/Media/Court-Websites/Resource-Guide.aspx> (n.d.).

18. *JTC Resource Bulletin, Marketing a Court Website: Helping the Public Find the Court Online*, NAT'L CENTER FOR ST. CTS. 1 (July 22, 2018), https://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/2018-08-30%20Marketing%20a%20Court%20website_final.ashx.

19. See generally, e.g., *Navigation and Design*, NAT'L CENTER FOR ST. CTS., <https://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Technology/Web-Best-Practices/Navigation-and-Design.aspx> (n.d.) (collecting and discussing illustrative screen shots showing navigation features of several court websites).

of the courthouse to the public by livestreaming trial proceedings and appellate oral arguments. Both of our courts do this, and also make the proceedings available for later viewing on YouTube and Vimeo channels.²⁰ The response from trial judges, lawyers, and the public has been overwhelmingly positive. To be sure, there are times when only twenty or thirty people are viewing one of our oral arguments; but the number of people watching our courts on any given day is not important. What matters is that Georgians no longer have to drive to Atlanta to see the judges and justices of the appellate courts in action, and Michiganders no longer have to drive to Lansing to see its high court at work. Instead, they can sit in the comfort of their homes, offices, or anywhere else, and watch our oral arguments, understand what issues their courts are considering, and determine for themselves whether the judges and justices honor them with their service.

Although user-friendly court websites and livestreaming judicial proceedings have fairly broad support from judges, there is less enthusiasm for more direct engagement with the public via social-media platforms. Even so, social-media platforms have dramatically altered the way public officials and political candidates engage with the public. Judges, unsurprisingly, have been slow to embrace this new technological frontier.²¹ We hope to persuade our skeptical colleagues that the benefits of judges directly engaging the public on social-media platforms substantially outweigh the costs.

II. MAKING THE CASE FOR ENGAGEMENT

We have become two of the more outspoken advocates for judges engaging those they serve on social-media platforms. Our primary reasons are transparency and public education. Judges owe the citizens they serve information about

20. See *View Archived Oral Arguments*, CT. OF APPEALS OF GA., https://www.gaappeals.us/oav/oral_arguments.php (2019); *View Archive of Oral Arguments*, MICH. CTS., <https://courts.michigan.gov/courts/michigansupremecourt/oral-arguments/video-archive/pages/default.aspx> (2020) (including link to court's YouTube channel).

21. But see Katrina Lee, *Your Honor, on Social Media: The Judicial Ethics of Bots and Bubbles*, 19 NEV. L.J. 789, 790 (2019) (“Increasingly, judges sitting in county, state, and federal courts in the United States have joined the ranks of social media users.”).

the role of the judiciary in our tripartite system of government (as well as the separation of powers), our system of appointing and electing judges, the training judges receive, the structure and operation of our judicial system, the judicial decision-making process, and what rights “we the people” have in relation to the judicial system.²²

The judiciary plays a critical role in the daily lives of the people of our states, and we believe they are entitled to this information. By engaging citizens on social-media platforms we can demystify the judicial branch and give the public direct access to their government.²³ And when we do it well, we can increase the public’s confidence in the judiciary.

Social-media platforms are an effective way to educate the public—in our cases primarily Georgians and Michiganders—about the judiciary. We each regularly use social media platforms to advise the public when our courts are hearing oral arguments, and provide links to the livestreams and case descriptions.²⁴ We provide links to press releases issued by our courts. We educate the public about our courts’ deadlines and processes. We highlight job openings at our courts, and post photos and information about events we attend in our official capacities. We post links to our opinions, scholarly articles and essays, and other informative writings. All of this, it seems to us, enhances the public’s understanding of and respect for the work of our courts. In this regard, social media becomes a “high-octane tool to boost civic awareness.”²⁵

The boost to transparency and public education is reason enough to engage those we serve, but we have been surprised and delighted by the tremendous additional benefits we derive from our online presences. For example, we have built

22. Dillard, *supra* note 5, at 11.

23. Thornburg, *supra* note 16, at 259 (“[Social media] . . . provides judges with a higher profile, allows outreach to voters, helps make judges (and thus courts) seem more accessible, and (if desired) allows judges to announce their positions on legal issues.”).

24. We both have professional Twitter accounts, Facebook pages, LinkedIn pages, and Instagram accounts. Our courts and many of our colleagues also have a presence on some of these social-media platforms.

25. Shoshana Weissmann, *Online and On the Bench, the “Tweeter Laureate of Texas” Is All About Judicial Engagement*, WASH. EXAMINER (Sept. 17, 2015), <https://www.washingtonexaminer.com/weekly-standard/online-and-on-the-bench-the-tweeter-laureate-of-texas-is-all-about-judicial-engagement>.

meaningful friendships with judges in other jurisdictions and been given opportunities for learning that were not otherwise available to us. Specifically, we have benefited from online and offline discussions with our colleagues in other jurisdictions, discovering new and more efficient ways of doing some parts of our work, which we have incorporated in our own courts to provide better service to those we serve. Put another way, judicial relationships developed through social-media platforms have created a live national learning lab.

And the opportunity to mentor young lawyers and law students through social media is also uniquely rewarding. Because social media interaction and reach is scalable to infinity, it creates opportunities for mentorship that are otherwise not achievable. For example, we can highlight articles that provide helpful information to students and young lawyers. We can also hold question-and-answer sessions on a general topic of interest (*e.g.*, legal writing or oral-argument tips), and countless young lawyers or law students benefit tremendously from this direct engagement with judges. We have also each had the opportunity to answer unsolicited, appropriate public questions from students and lawyers, as well as private messages from students and lawyers seeking academic or career advice. We both believe that judges have a duty to mentor law students and young lawyers, and social-media platforms allow us to do this in ways we never could have imagined before.

Social media also provides a platform for professionalism and nonpartisan issues we care deeply about. For example, our views about civility and kindness receive far broader airing and engagement when expressed on Twitter than in any single, in-person public appearance. And these views are then echoed by others who share them with new audiences. Likewise, positive stories about what our courts are doing can reach far more people far more efficiently through social media.

Moreover, we are convinced that engagement in social media enhances our ability to do our jobs. That is, there is a basic competency reason for engaging the public on social-media platforms. Indeed, given the plethora of technological issues before our courts and the pervasive use of social media by most Americans, how can a judge effectively do his or her job

without having some basic understanding of how social media works?

Finally, for elected judges there is simply no substitute for the connections and relationships social media allows you to form with the people you serve. Voters who follow judges on these platforms feel closer to them and more invested in their judicial careers. And a judge's participation on social media enhances and amplifies other public appearances and outreach that he or she makes. Speeches, podcasts, and articles by judges can all be promoted in a more effective way via social-media platforms.

Judges who engage the public on social media are also more likely to establish a national presence. Judge Don Willett of the United States Court of Appeals for the Fifth Circuit is currently on hiatus from social media,²⁶ but before his nomination to the federal judiciary, he was the most prominent judge on any social-media platform.²⁷ Or, as he was fond of saying, the "most avid judicial tweeter in America," which he likened to being "the tallest munchkin in Oz."²⁸ His tweets were "smart, humorous, and informative"; and he "quickly established a national reputation on social media as a result of his ability to strike the proper balance between accessibility and appropriate judicial decorum."²⁹ As a justice on the Supreme Court of Texas, then-Justice Willett had around 105,000 followers on Twitter.³⁰ These are staggering numbers for a state judge, even one serving on the highest civil court of Texas; and he has retained a sizeable following on both Twitter (102,000) and Facebook (20,000) during his hiatus.³¹ Importantly, this

26. See Ken Herman, *Herman: Twitter Silence from Texas Tweeter Laureate*, STATESMAN (updated Sept. 25, 2018, 8:53 AM), <https://www.statesman.com/news/20171017/herman-twitter-silence-from-texas-tweeter-laureate>.

27. See Thornburg, *supra* note 16, at 299–300.

28. Dillard, *supra* note 5, at 12.

29. *Id.*

30. Thornburg, *supra* note 16, at 260 n.49.

31. See Judge Don Willett (@JusticeWillett), TWITTER, <https://twitter.com/JusticeWillett/followers>; Justice Don Willett (@JusticeDonWillett), FACEBOOK, <https://www.facebook.com/JusticeDonWillett/>.

exposure gave Judge Willett a national platform that he could use to promote civics education.³²

After Judge Willett, the follower count for non-celebrity judges drops precipitously. In fact, the threshold is so low that we are among the judges with the most followers.³³ And even at these levels, we can have a national voice on nonpartisan issues that we care about, like civility, professionalism, judicial transparency, and, of course, the benefits of judges using social media to engage with those they serve. In fact, because federal judges generally do not engage in social media,³⁴ state judges can and do occupy the field. As a result, we state judges are far more likely than our federal counterparts to have national voices on issues of great importance to the legal profession.³⁵

III. ANSWERING THE CONCERNS³⁶

One of the objections to judges using social-media platforms is the possibility (or even likelihood) of a gaffe or misstep being amplified.³⁷ Fair enough. But a viral moment can happen to any public official, regardless of whether that person

32. Chuck Lindell, *Texas Judge Laments Civic Illiteracy*, MIDLAND REP. TELEGRAM (Jan. 14, 2017), <https://www.mrt.com/news/education/article/Texas-judge-laments-civic-illiteracy-10856651.php>.

33. Judge Dillard has 17,600 followers, Judge Stephen Dillard (@JudgeDillard), TWITTER, <https://twitter.com/JudgeDillard/followers>, and Chief Justice McCormack has over 8000, Chief Justice McCormack (@BridgetMaryMc), TWITTER, <https://twitter.com/BridgetMaryMc/followers>.

34. See generally Douglas Nazarian & Barbara Berensen, *To Tweet or Not to Tweet*, 101(4) JUDICATURE 70, 70 (2017) (suggesting that federal judges are discouraged from social media engagement by Advisory Opinion No. 112 of the Judicial Conference Committee on Code of Conduct, issued in April 2017); see also Committee on Codes of Conduct, *Advisory Opinion No. 112: Use of Electronic Social Media by Judges and Judicial Employees in 2B GUIDE TO JUDICIARY POL'Y* 224 (2017), available at https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02-2019_final.pdf.

35. See Thornburg, *supra* note 16, at 272–73 (recognizing that state judges generally maintain greater flexibility in commenting on, or responding to comments about, allegations concerning the judge's conduct in different contexts).

36. See *id.* at 288 (providing an overview of concerns associated with a judge's use of social media).

37. *Id.* at 269 (detailing three primary limitations on judicial speech—based on the code of conduct for federal judges—that translate to limitations and concerns for social media use).

is on social media.³⁸ Indeed, given the ubiquitous nature of cellphones, we're all likely to end up on social-media platforms whether we want to be there or not; and it will not always be positive when others are doing the posting.

So, avoiding social media won't save you from technologically amplified missteps; those just come with the modern territory. The question for judges, then, is how best to handle an unflattering or unfair post when it happens. And we believe the best way to stop any attempt to take our words or actions out of context is to have an established, positive presence on social media. That is, the best defense is a good offense. A strong social-media presence allows you to help control and protect your reputation and image as a public official.

Another common objection to judges having an active social-media presence is that it is demeaning to the office.³⁹ We think this objection misunderstands the platforms. It is not the medium, but rather the content on the medium, that can be demeaning. Judges control their own platform content, just as they control what is said during their own in-person appearances. If that content is substantive and genuine, it will enhance the office and the public's confidence in the judiciary, just as a substantive and genuine in-person appearance would.⁴⁰

A variation on this concern is that having a social-media presence somehow undermines the public perception that a judge is impartial. Put differently, by social media superstar David Lat, no less: "Judges who are formal, dry, and tight-lipped off the bench convey a strong sense of objectivity to the public and the litigants who appear before them."⁴¹ To this concern too our answer is, once again: it depends on the content. An impartial and independent judiciary is critical to our system

38. *Id.* at 290–91 (citing John C. Blue, *A Well-Tuned Cymbal? Extrajudicial Political Activity*, 18 GEO. J. LEGAL ETHICS 1, 59–60 (2004)).

39. Browning, *supra* note 3, at 135 (observing that courts have warned that certain conduct, especially on social media, "can easily be misconstrued and create an appearance of impropriety") (quoting State v. Thomas, 376 P.3d 184, 198 (N.M. 2016)).

40. *Id.* at 154 ("[T]here is nothing wrong with a judge sharing true and publicly available information about proceedings via social media, so long as the judge otherwise adheres to judicial canons and refrains . . . from making any comment that might call into question the judge's impartiality.").

41. Lat, *supra* note 2.

of government, and any remark that undermines that value is costly. And there are plainly topics that judges should avoid altogether.⁴² But posting about issues that do not compromise impartiality and independence can enhance public trust in judges and the judiciary.⁴³ Social media is just another (and far more effective) means for judges to communicate with the public; and if the substance of a judge's remarks is positive and informative, we fail to see why these platforms should be shunned.⁴⁴ To do so is to reject a primary means of communication used by most citizens, and that would be a serious mistake.⁴⁵ Judges are different, but they're not special. In our view, judges need to be directly accessible and accountable to the people we serve; and social-media platforms allow us to do this in a unique and efficacious way.⁴⁶

IV. BEST PRACTICES

So, let's assume that we have convinced every judge reading this article to begin the process of establishing a social-media presence. How do you decide what to post and how to interact with the public online? What are some rules of thumb for engaging those you serve? What are the pitfalls to avoid? These are all common and valid questions asked by colleagues who are interested in joining ever-growing online communities.

When we created our judicial Twitter accounts, neither of us gave much thought about how to use this platform—or others, like Facebook and Instagram—beyond informing the

42. Thornburg, *supra* note 16, at 269 (“While there are few [judicial] rules [of ethics] that specifically address social media use, the rules governing judicial speech apply to digital media just as they would to a speech to the local chamber of commerce.”).

43. Browning, *supra* note 3, at 154 (pointing out that “there is nothing wrong with a judge sharing true and publicly available information about proceedings via social media, so long as the judge otherwise adheres to judicial canons and refrains from commenting on the evidence, parties, witnesses, or counsel, or from making any comment that might call into question the judge’s impartiality”).

44. *Id.* at 153–54 (detailing a case study of a Special Court of Review’s order recognizing that “communications and interaction via social media are no different . . . than more traditional forms of communication” (quoting *In re Slaughter*, 480 S.W.3d 842, 847 (Tex. Spec. Ct. Rev. 2015))).

45. *Id.* at 133 (noting that “[p]unishing judges for reaching out to and connecting on social media with the community they serve is not the answer”).

46. *Id.* at 154.

public about speaking engagements and court-related events.⁴⁷ We were apprehensive in all the ways some of our colleagues continue to be. We worried about being misconstrued and upholding the dignity of the offices we hold. As a result, our approaches to social media have been works in progress. But we have developed some rules that guide our online engagement. Some are firm, some less so.

A. Stating the Obvious: Abiding by the Canons of Judicial Conduct

It makes sense to start with the obvious: the canons of judicial conduct apply to judges engaging the public online just as they do “in real life.”⁴⁸ As a result, some of our decisions are easy.⁴⁹ For example, we do not discuss pending cases or issues that might come before us.⁵⁰ Just as in any other setting, judges should not directly or indirectly comment on matters before them or likely to come before them.⁵¹ Relatedly, judges should

47. See, e.g., Judge Stephen Dillard (@JudgeDillard), TWITTER (Apr. 15, 2011, 8:56 p.m.), <https://twitter.com/JudgeDillard/status/59057475231563776> (“[I am] looking forward to speaking to the West Metro GTLA on April 28th.”).

48. Thornburg, *supra* note 16, at 269.

49. The ABA has opined that 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.” ABA Opinion 462, *supra* note 16. The California Supreme Court recently added the following commentary to Canon 2A of its state code of judicial ethics:

A judge must exercise caution when engaging in any type of electronic communication, including communication by text or email, or when participating in online social networking sites or otherwise posting material on the Internet, given the accessibility, widespread transmission, and permanence of electronic communications and material posted on the Internet. 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. These canons include, but are not limited to, Canons 2B(2) (lending the prestige of judicial office), 3B(7) (ex parte communications), 3B(9) (public comment on pending or impending proceedings), 3E(2) (disclosure of information relevant to disqualification), and 4A (conducting extrajudicial activities to avoid casting doubt on the judge’s capacity to act impartially, demeaning the judicial office, or frequent disqualification).

CAL. CODE OF JUD. ETHICS Canon 2A cmt. (amended 2018) (footnotes omitted).

50. Thornburg, *supra* note 16, at 269.

51. *Id.*

not discuss cases they have already decided, or any other internal deliberations related to a specific case or controversy.⁵² If judges do this on social-media platforms in violation of numerous judicial canons, it unquestionably would cause the public to lose confidence in the judiciary.⁵³

Judges should also not engage in partisan politics. We understand that some states require judges to affiliate with a political party (not our states, and we are thankful), but even then, a judge should make every effort to avoid being perceived as a political actor. This is not always easy.⁵⁴ Indeed, even in states with nonpartisan judicial elections (like Georgia and Michigan), judges still have to campaign, network, and seek the support of voters across the political spectrum. But most importantly, judges want the lawyers and citizens who come before them to have confidence that they are going to be given a fair shake, regardless of any political affiliation they might have. And the public wants the same.⁵⁵ In our view, it is critical to convey to the people we serve that we are not beholden to any political party or special-interest group. So, how can a judge effectively communicate this to the public?

First, we never directly or indirectly comment on political issues or critique politicians. We believe judges should stay as far away as possible from politics and the issues that animate partisan politics. Offering a personal opinion on issues that divide the public—abortion, immigration reform, the death penalty, and the like—in especially partisan ways is entirely out

52. *Id.* at 271–72. In addition to not responding to commentary about our own cases, we also strongly caution judges against highlighting articles or other online commentary about them. *Id.* at 272–73 (“It is safer, perhaps, for one judge to defend another than for the judge under attack to exercise digital self-defense.”). We believe that a judge’s opinions should speak for themselves.

53. *Id.* at 288.

54. Browning, *supra* note 3, at 135 (observing that courts have warned that certain conduct, especially on social media, “can easily be misconstrued and create an appearance of impropriety,” especially in the context of judicial election campaigns (quoting *State v. Thomas*, 376 P.3d at 198).

55. See Mem. from GBA Strategies to Nat’l Ctr. of St. Cts., *2018 State of the State Courts—Survey Analysis* 2 (Dec. 3, 2018), available at https://www.ncsc.org/_data/assets/pdf_file/0020/16157/sosc_2018_survey_analysis.pdf (stating in a summary of its polling that “State Courts remain a trusted institution across party lines”); see also *The State of State Courts*, *supra* note 14 (noting that the number of respondents who said that “fair and impartial” describes state courts well or very well increased seven percentage points from 2017 to 2018).

of bounds.⁵⁶ We also avoid controversial legal topics like “court packing,” confirmation hearings for nominees to the Supreme Court of the United States, or whether a particular case heard by the Court was correctly decided.

There is still plenty of room for commentary on nonpartisan issues that matter to the legal profession. But even then, judges must be careful in what we say and how we say it.⁵⁷ For example, one hotly contested issue among lawyers and judges is whether the Supreme Court of the United States should televise its oral arguments. Because we strongly believe judges are public servants and that our proceedings should be as open and accessible as possible, we have spoken out in favor of the Supreme Court changing its policy and livestreaming its oral arguments.⁵⁸ But before we did so, we carefully considered whether it was appropriate to express an opinion about how another court—especially one that reviews our “homework”—operates. Ultimately, we decided to use our social-media platforms to respectfully urge the Supreme Court to reconsider its policy because the overwhelming transparency and educational benefits from airing such proceedings justified doing so. Other judges might make a different choice, but we are confident that our commentary on this issue fell well within the expectations of the judicial canons.

Second, we recommend a neutral policy for following people on Twitter or accepting friend requests on Facebook or similar social-media platforms. Although we think it is illogical for anyone to believe that we would treat someone more favorably in a case because that person is a Twitter follower or Facebook friend, there are things a judge can do to further diminish the notion that such an online connection is worthy of concern. For example, anyone can follow our official Facebook pages and we follow back any Twitter follower from our home

56. Thornburg, *supra* note 16, at 290.

57. Browning, *supra* note 3, at 154.

58. We feel the same way about the federal courts of appeals and the federal district courts too, and in fact, Chief Justice McCormack submitted written testimony to the U.S. House of Representatives in support of such a change in policy. See Letter from Hon. Bridget M. McCormack, C.J., Mich. Sup. Ct., to U.S. House Comm. on the Judiciary (Sept. 24, 2019), available at <https://docs.house.gov/meetings/JU/JU03/20190926/110028/HHRG-116-JU03-20190926-SD002.pdf>.

states.⁵⁹ As the saying goes, if everyone is special, then no one is special.⁶⁰ We also use this home-state policy for political and nonprofit groups; our Twitter followers come from both major

59. If a judge has a personal Facebook or Instagram account, our recommendation is that it should either be relatively private and limited to family members and close friends or used to accept all requests from people who live in your area of representation. The latter is Judge Dillard's policy. He accepts friend and follow requests on Facebook and Instagram from any Georgian.

60. It is this single issue that most judges worry about. *See generally* John G. Browning, *Why Can't We Be Friends? Judges' Use of Social Media*, 68 U. MIAMI L. REV. 487 (2014). Many of our colleagues assume that having a lawyer as a Facebook friend would require a judge to recuse from a case in which that lawyer appears. *Id.* at 490 (comparing social media interactions—such as adding friends on Facebook or following on Twitter—to ex parte communications and concluding that rules of judicial conduct should cover improper communications made in cyberspace just as they cover those made in real life). That is almost never correct. As with any friendship, it is the nature of the relationship that determines whether a judge should disclose the connection or recuse from the case. But judges in certain states should be aware of the ethics and judicial opinions on this subject. Different judicial ethics committees have given different advice about whether judges may connect on social-media platforms with attorneys who are likely to appear before them in court. Cynthia Gray, *Social Media & Judicial Ethics: Part I*, 39 JUD. CONDUCT REP. 2, 12–14 (2017), available at https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/JCR/JCR_Spring_2017.ashx (noting that “the committees in Connecticut, Florida, Massachusetts, and Oklahoma have advised that judges should not add lawyers who may appear before them as ‘friends’ on Facebook or permit those lawyers to add them as ‘friends,’” but also noting that “the judicial ethics advisory committees in California, Kentucky, Maryland, New Mexico, New York, Ohio, and Utah concluded that whether a judge may connect on social media with a lawyer who appears before her depends on an analysis of the nature and scope of the specific relationship”); *see also id.* at 17–20 (concluding that disqualification based on a social-media connection between the judge and a lawyer in a case is not automatically required, but that the connection is a factor that the judge should take into account when considering whether there might be a question about her impartiality, and also recognizing that other actions like disclosure of the relationship and un-friending the attorney might be required).

State appellate courts have also cautioned against judges using social media improperly. *See, e.g.*, State v. Thomas, 376 P.3d 184, 198 (N.M. 2016) (noting that “[w]hile we make no bright-line ban prohibiting judicial use of social media, we caution that ‘friending,’ online postings, and other activity can easily be misconstrued and create an appearance of impropriety”); *see also* Law Offices of Herssein & Herssein, P.A. v. United Servs. Auto. Ass'n, 271 So. 3d 889, 899 (Fla. 2018) (disagreeing with state ethical committee’s 2009 opinion that judges cannot add attorneys who practice before them as “friends” on Facebook and concluding that such a relationship standing alone does not warrant disqualification). *But see id.* at 899–900 (Labarga, J., concurring) (agreeing with the majority opinion, but encouraging judges to forego using Facebook at all because maintaining Facebook friendships with attorneys appearing before the judge is “quite simply, inviting problems”); *id.* at 900 (Pariente, J., dissenting) (asserting that “a judge’s involvement with social media is fraught with risk that could undermine confidence in the judge’s ability to be a neutral arbiter,” and advocating for a strict rule that judges must always disqualify themselves from cases in which an attorney with whom the judge is Facebook friends appears before her or him).

parties and groups on opposite sides of issues. We want to be accessible to as many Georgians and Michiganders as possible, and to let them know that we proudly serve them all.⁶¹

Third, we are careful about what we “like” on social-media platforms. In most cases, when you like a tweet or post, your like is broadcasted to the public.⁶² Your impartiality can be called into question by liking political tweets or posts, even if you are not making partisan or controversial comments. We also recommend periodically checking to see that you have not accidentally liked a political or controversial statement on social media, which is easy to do.⁶³

B. Best Practices and Authenticity

Now that we have covered what judges should not do on social-media platforms, let’s discuss what judges can and should do with their online presences. In our view, it is crucial for judges’ social-media accounts to be accurate reflections of who they are in real life. Authenticity resonates. That said, there is nothing wrong with putting your best foot forward. You can care deeply about civility and treating others with kindness and compassion, even when you occasionally lose your temper. Sometimes we emphasize being kind and charitable because we need the reminder too.

One way to be authentic is to discuss your interests outside of the law. The people you serve are interested in knowing what kind of person you are when you take off the robe; so share your hobbies and passions with them. We recognize that some of our colleagues may find it unusual or even unseemly for a judge to disclose aspects of his or her personal life to the public, but we think doing so humanizes judges and makes us more accessible to the people we serve. In our view, accessible judges and courts promote greater confidence in the judiciary.

61. We take this approach with national accounts too. For example, we follow and are followed by the Federalist Society and the American Constitution Society.

62. Browning, *supra* note 3, at 136 (“Judges are also cautioned to regard all social media postings as public communications and not be lulled into complacency by reliance on privacy settings.” (citation omitted)).

63. See, e.g., *How to Like a Tweet*, TWITTER, <https://help.twitter.com/en/using-twitter/liking-tweets-and-moments>.

Our accounts model this approach to social media. For example, Judge Dillard's Twitter presence benefitted greatly from follower feedback. Early on, a law student sent him a direct message that went something like this: "I think it's great that you're a judge with a fairly active presence on Twitter, and you seem like a really nice person, but your account is a bit dull. You haven't asked for my advice, but I am going to give it to you anyway: Tell us more about who you are as a person off the bench." The message was received, and Judge Dillard began more personal engagement with his followers. Similarly, Justice McCormack has found that some of her most personal posts are the ones that people respond to most enthusiastically; they like knowing when her children have reached some milestone or that her dad is a Marine.

So, in addition to tweets about livestreaming of proceedings, unique aspects of our respective courts, oral-argument tips, and pleas for civility and professionalism, you will also see frequent tweets on our feeds about various non-legal subjects. We regularly feature Samford University (Dillard) and the University of Michigan (McCormack) and their respective athletic programs. Our families also occasionally make appearances—including humorous quips from our spouses and children. We post photographs of our beautiful houses of worship, pets, and landmarks from around Georgia and Michigan. We also debate grammar and typography issues with followers (and with each other). And we share our views on music, books, films, and television programs.

We also each have recurring Twitter habits that have developed over time. Judge Dillard takes "judicial notice" of birthdays, often highlights his "chambers music" for the day, and posts the following tweet every Friday at 5:00 p.m. (EST): "I hope that all of you have a wonderful and relaxing weekend. And please, be good to each other." Justice McCormack highlights upcoming oral arguments with a link to the live feed and a reminder that the court belongs to the public, promotes treatment-court success stories, and will also occasionally comment on matters related to pop culture.⁶⁴

64. For an entertaining example of a tweet relating to pop culture that caught the interest of Chief Justice McCormack's Twitter followers, see her inquiry about the fashion status of the fanny pack. Chief Justice McCormack, TWITTER, <https://twitter.com/Bridget>

Again, we understand that some of our colleagues may be hesitant to share this kind of personal information with the public. But the reality is that we live in a radically different world than we did even ten years ago. In any other electoral context, you will see public officials and candidates sharing aspects of their lives in the hope that voters will feel personally connected to them. They do this for a reason: It is political malpractice not to do so. But beyond the political benefits of giving your constituents a glimpse into who you are off the bench, it also humanizes a branch that is called upon to make life-changing decisions that impact people's lives every day. We believe the judiciary benefits greatly from having thoughtful and caring judges directly engage with the public on the social-media platforms that citizens use on a daily basis.

That said, there is a downside to being on social media, and judges need to know this at the outset. It's not always going to be a positive and uplifting experience online. You will (and we do) occasionally receive a nasty tweet or critical message. When that happens, our advice is simple: do not reply or engage that person in any way. Don't get into fights with your critics. It's exactly what they want, and there is little chance that you or your court will come out of the exchange looking good. Even so, we strongly recommend that you do not block anyone (especially from your home state).⁶⁵ Once again, that's exactly what they want you to do. Rather, we suggest that you mute them instead. If you really want to disappoint a "troll"—a bad-faith actor—ignore him or her. But you do need to draw a distinction between a troll and someone who is asking a genuine question or offering constructive criticism that you can address (e.g., why your court's website isn't easy to navigate). If you're unsure which category that person falls into, you will usually find out during the initial exchange. And if someone starts to

MaryMc/status/1162763766657929216 (Aug. 17, 2019, 11:30 AM EDT) (generating thirteen retweets and 585 likes).

65. In fact, some federal courts of appeals have held that doing so violates the First Amendment—at least in some contexts. Vera Eidelman, *Court Rules Public Officials Can't Block Critics on Facebook*, ACLU (Jan. 9, 2019, 12:00 PM), <https://www.aclu.org/blog/free-speech/internet-speech/court-rules-public-officials-cant-block-critics-facebook>; Jonathan Peters, *Public Officials: Beware Blocking Critics on Social Media*, ABA (July 22, 2019), <https://www.americanbar.org/groups/litigation/committees/civil-rights/practice/2019/blocking-social/>.

become rude, you have every right to disengage from the conversation.⁶⁶ Judges should be accessible to the public, but they are not required to be unfairly abused for doing so.

V. CONCLUSION

Technology has dramatically changed the way that public officials communicate with the people they serve. Judges have, unsurprisingly, been the slowest to adapt to this reality. It's time for that to change, and it is changing rapidly. Once again, judges are different, but we are not special. Just like our friends in the executive and legislative branches, we are public servants and we are accountable to the people we serve. This is not to say that the differences between judges and other elected officials are unimportant or that the judiciary doesn't have a unique role in our tripartite system of government. Indeed, these differences are so important that we think they are worth highlighting on social-media platforms. And as long as we do that within the bounds of the judicial canons, we believe our engagement with the public is a net positive. Social media allows us to reach more people about these crucial differences, along with other important information about the judicial branch.

The courts belong to the people, and they play a unique role in the public's government. Giving the people we serve direct access to the judges who serve them is good government and, when done well, promotes confidence in the judiciary. We are both proud to play a small role in this reimagining of how judges engage with the people we are so fortunate to serve. We hope more of our colleagues will join us.



66. Thornburg, *supra* note 16, at 272–73 (“It is safer, perhaps, for one judge to defend another than for the judge under attack to exercise digital self-defense.”).