

TEXAS CODE OF JUDICIAL CONDUCT

(As amended by the Supreme Court of Texas through August 22, 2002)

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
- (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
- (5) A judge shall perform judicial duties without bias or prejudice.
- (6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.
- (7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.
- (8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:
 - (a) communications concerning uncontested administrative or uncontested procedural matters;
 - (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

- (c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;
 - (d) consulting with other judges or with court personnel;
 - (e) considering an *ex parte* communication expressly authorized by law.
- (9) A judge should dispose of all judicial matters promptly, efficiently and fairly.
- (10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.
- (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

- (1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
- (4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.
- (5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

- (1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,
- (2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.
- (2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

COMMENT TO 2000 CHANGE

This change is to clarify that a judge may serve on the Texas Board of Criminal Justice.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

Canon 5: Refraining from Inappropriate Political Activity

- (1) A judge or judicial candidate shall not:
- (i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;
 - (ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or
 - (iii) make a statement that would violate Canon 3B(10).
- (2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).
- (3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.
- (4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the “Act”), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge’s impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

- (1) An active, full-time justice or judge of one of the following courts:
- (a) the Supreme Court,
 - (b) the Court of Criminal Appeals,
 - (c) courts of appeals,
 - (d) district courts,
 - (e) criminal district courts, and
 - (f) statutory county courts.
- (2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

- (1) when engaged in duties which relate to the judge's role in the administration of the county;
- (2) with Canons 4D(2), 4D(3), or 4H;
- (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.
- (4) with Canon 5(3).

C. Justices of the Peace and Municipal Court Judges.

- (1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:
 - (a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;
 - (b) with Canons 4D(2), 4D(3), 4E, or 4H;
 - (c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or
 - (d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.
 - (e) with Canons 5(3).
- (2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:
 - (a) uncontested administrative matters,
 - (b) uncontested procedural matters,
 - (c) magistrate duties and functions,
 - (d) determining where jurisdiction of an impending claim or dispute may lie,
 - (e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,
 - (f) mitigating circumstances following a plea of *nolo contendere* or guilty for a fine-only offense, or
 - (g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

- (1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and
- (2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

- (1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and
- (2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. Any Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

- (1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but
- (2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.

G. Candidates for Judicial Office.

- (1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.
- (2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.
- (3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.
- (4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

Canon 7: Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

B. Terminology.

- (1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.
- (2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.
- (3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.
- (4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.
- (5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

- (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
 - (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and
 - (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
- (7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.
- (9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.
- (10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.
- (11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.
- (12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.
- (13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])
- (14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

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September 13, 2009

A Legal Battle: Online Attitude vs. Rules of the Bar

By JOHN SCHWARTZ

Sean Conway was steamed at a Fort Lauderdale judge, so he did what millions of angry people do these days: he blogged about her, saying she was an "Evil, Unfair Witch."

But Mr. Conway is a lawyer. And unlike millions of other online hotheads, he found himself hauled up before the Florida bar, which in April issued a reprimand and a fine for his intemperate blog post.

Mr. Conway is hardly the only lawyer to have taken to online social media like [Facebook](#), [Twitter](#) and blogs, but as officers of the court they face special risks. Their freedom to gripe is limited by codes of conduct.

"When you become an officer of the court, you lose the full ability to criticize the court," said [Michael Downey](#), who teaches legal ethics at the [Washington University](#) law school.

And with thousands of blogs and so many lawyers online, legal ethics experts say that collisions between the freewheeling ways of the Internet and the tight boundaries of legal discourse are inevitable — whether they result in damaged careers or simply raise eyebrows.

[Stephen Gillers](#), an expert on legal ethics at [New York University Law School](#), sees many more missteps in the future, as young people who grew up with Facebook and other social media enter a profession governed by centuries of legal tradition.

"Twenty-somethings have a much-reduced sense of personal privacy," Professor Gillers said. Younger lawyers are, predictably, more comfortable with the media than their older colleagues, according to a recent survey for LexisNexis, the legal database company: 86 percent of lawyers ages 25 to 35 are members of social networks like Facebook, LinkedIn and [MySpace](#), as opposed to 66 percent of those over 46. For those just out of law school, "this stuff is like air to them," said [Michael Mintz](#), who manages an online community for lawyers, [Martindale-Hubbell Connected](#).

In Mr. Conway's case, the post that got him in trouble questioned the motives and competence of Judge Cheryl Aleman, and appeared on a rowdy [blog](#) created by a criminal defense lawyers' group in Broward County. The judge regularly gave defense lawyers just one week to prepare for trials, when most judges give a month or more. To Mr. Conway, the move was intended to pressure the lawyers to ask for a delay in the trials, thus waiving their right under Florida law to have a felony trial heard within 175 days, pushing those cases to the back of the line.

"All I had left were my words," Mr. Conway said, adding that he decided to use the strongest ones he had.

Mr. Conway initially consented to a reprimand from the bar last year, but the State Supreme Court, which

reviews such cases, demanded briefs on First Amendment issues. The American Civil Liberties Union of Florida argued that Mr. Conway's statements were protected speech that raised issues of legitimate public concern. Ultimately the court affirmed the disciplinary agreement and Mr. Conway paid \$1,200.

That penalty is light compared with the price paid by Kristine A. Peshek, a lawyer in Illinois who lost her job as an assistant public defender after 19 years of service over blog postings and who now faces disciplinary hearings as well.

According to the complaint by officials of the state's legal disciplinary body, Ms. Peshek wrote posts to her blog in 2007 and 2008 that referred to one jurist as "Judge Clueless" and thinly veiled the identities of clients and confidential details of a case, including statements like, "This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because 'he's no snitch.'"

Another client testified that she was drug free and received a light sentence with just five days' jail time, and then complained to Ms. Peshek that she was using methadone and could not go five days without it. Ms. Peshek wrote that her reaction was, "Huh? You want to go back and tell the judge that you lied to him, you lied to the presentence investigator, you lied to me?"

The complaint, first noted by the Legal Profession Blog, said that not only did Ms. Peshek seem to reveal confidential information about a case, but that her actions might also constitute "assisting a criminal or fraudulent act."

Ms. Peshek declined to comment, citing the pending inquiry "for which I am currently seeking representation."

Frank R. Wilson, a lawyer in San Diego, caused a criminal conviction to be set aside and sent back to a lower court because of his blog postings as a juror. According to a decision published recently in the California Law Journal and picked up by the Legal Profession Blog, Mr. Wilson, while serving on a jury in 2006, posted details of the case on his blog. Any juror who blogs about the details of a trial risks trouble and even civil contempt charges. But lawyers like Mr. Wilson also face professional penalties that can threaten their livelihood.

Mr. Wilson received a 45-day suspension, paid \$14,000 in legal fees and lost his job. He said that warnings not to discuss the case did not ban blogging; the bar disagreed. Mr. Wilson also had not disclosed during jury selection that he was a lawyer. In an interview, Mr. Wilson said he had not been working as a lawyer at the time and had only been asked his occupation.

Judges, too, can get into trouble online. Chief Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit, in California, was investigated for off-color humor that was accessible on his family's Web server, though not intended to be public. He was cleared of wrongdoing, but a three-judge panel admonished him for not safeguarding the site, which they said was "judicially imprudent."

Of course, some lawyers' online problems are the same as everyone else's, like getting caught in a fib. Judge Susan Criss of the Texas District Court in Galveston recalled in an interview a young lawyer who requested a trial delay because of a death in the family. The judge granted the delay, but checked the lawyer's Facebook page.

“There was a funeral, but there wasn’t a lot of grief expressed online,” Judge Criss said. “All week long, as the week is going by, I can see that this lawyer is posting about partying. One night drinking wine, another night drinking mojitos, another day motorbiking.” At the end of the delay, the lawyer sought a second one; this time the judge declined, and disclosed her online research to a senior partner of the lawyer’s firm.

Judge Criss, who first told the story at a panel during an American Bar Association conference, said that the lawyer has since removed her from her friends list.

For his part, Mr. Conway noted that the judge he criticized was reprimanded last year by the Florida Supreme Court, which affirmed a state panel’s criticism of what it called an “arrogant, discourteous and impatient” manner with lawyers in another case. (Judge Aleman did not return calls seeking comment.) Mr. Conway said his practice was “probably enhanced by the experience” of going public.

But the State Supreme Court ultimately accepted Mr. Conway’s earlier reprimand agreement with the bar, which had argued in its brief to the court that the online “personal attack” was “not uttered in an effort to expose a valid problem” with the judicial system, and so the statements “fail as protected free speech under the First Amendment.”

This article has been revised to reflect the following correction:

Correction: September 20, 2009

An article last Sunday about lawyers who have been disciplined for comments they made online misstated the source of a statement saying that one lawyer’s remarks “fail as protected free speech under the First Amendment.” That statement came from a brief submitted by the Florida bar to the state Supreme Court, which reviewed the lawyer’s punishment; it was not from the state Supreme Court’s ruling in the case.

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Legal Ethics

Too Much Information: Blogging Lawyers Face Ethical and Legal Problems

Posted Sep 14, 2009 8:52 AM CST

By [Debra Cassens Weiss](#)

Updated: Chalk it up to the age of Facebook. Blogging lawyers and judges have landed in trouble with legal ethics regulators and judges, while one blogging lawyer ended up as a defendant in a defamation lawsuit.

The lawsuit began on Sept. 14 in Tyler, Texas, [Texas Lawyer](#) reports. It ended Monday with a settlement, before jurors began deliberations, according to [IP Law and Business](#). The plaintiff, intellectual property litigator Eric Albritton, claimed lawyer Richard Frenkel defamed him in anonymous postings on his Patent Troll Tracker blog, written when Frenkel was an in-house lawyer for Cisco Systems.

The suit said Frenkel defamed Albritton by accusing him of conspiring with a federal judicial clerk to alter documents to obtain subject matter jurisdiction in a patent suit. The defamation suit settled after the federal judge overseeing the case [ruled Albritton could not win punitive damages unless he proved actual malice](#).

The [New York Times](#) chronicles the ethical travails of other legal bloggers, including Kristine Ann Peshek, fired from her job as an assistant public defender in Illinois and accused in a disciplinary complaint of revealing client confidences in blog posts with thinly disguised references. The [Legal Profession Blog](#) was first to report the case.

Peshek didn't comment to the New York Times, but she told the [ABA Journal](#) on Thursday that she disagrees with the assessment that her clients could be identified through her blog. "I would not have posted any information in such a manner that I thought a specific client could be identified, without that client's permission, or without the information being a matter of public record," Peshek said. The blog posts identified clients by either their first names, a derivative of their first names, or by their jail identification numbers, according to the disciplinary [complaint](#) (PDF).

In other blog posts, Peshek complained that one judge was clueless and another was an ---hole. Criticizing a judge also landed blogging lawyer Sean Conway in trouble, the Times notes. In a conditional plea, Conway agreed to a reprimand for calling a judge an "evil, unfair witch" in a blog post. He claimed in a brief submitted to the Florida Supreme Court that his [remarks were protected by the First Amendment](#), but the court affirmed the disciplinary agreement this April, the Times says.

The Times also cited these examples:

- A lawyer requested a continuance due to a death in the family, but the Galveston, Texas, judge checked her Facebook page and discovered news of a week of drinking and partying. The judge, Susan Criss, [told lawyers about the episode](#) at the ABA Annual Meeting.
- Lawyer Frank Wilson of San Diego lost his job and got [suspended from practice](#) for 45 days for blog postings he wrote as a juror.

Updated on Sept. 23 to include news of the settlement in the Patent Troll Tracker case.

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Question of the Week

What Boundaries Have You Set for Your Own Facebook or Twitter Use?

Posted May 20, 2009 8:34 AM CST

By [Molly McDonough](#)



Social networking is fairly new for lawyers, and there aren't many best practices for using the medium for client development and professional networking.

Jones Day partner Steven Bennett, who chairs the firm's e-discovery group, [took a crack at it](#) with a Twitter-related cover story in this month's [New York State Bar Association Journal \(PDF\)](#).

Bennett advises that lawyers establish protocols before tweeting, specifically that they avoid "anything but general professional news in their Twitter communications, restricting the group of recipients of Twitter communications (or some subset of such communications) and/or providing periodic notice to recipients of the conditions under which the Twitter communications are made."

This made us wonder if we're going to see 140-character versions of the ubiquitous confidentiality notice that we often see tacked to the end of lawyer-generated e-mail messages. And it made us wonder what you've done, if anything to keep your Twitter and Facebook communications from getting you into disciplinary hot water.

So tell us ...

Have you developed any protocol for Twitter, Facebook or social media conversations? Bonus points if you have cautionary tales to share about how lawyers communicate online.

Answer in the [comments below](#).

Read last week's entertaining responses to this request, "[Share Your Witness Attire Horror Stories](#)."

Featured answer:

Posted by John A. Day: "A decade ago I was trying a case in rural, rural Virginia - an area plagued by unemployment and poverty. My client's daughters were both going to testify. Both lived in NYC, were absolutely beautiful, and very good dressers. Too good for the venue. I took them to Wal-Mart and bought them more appropriate clothes. They literally wept, but showed up to court every day looking Wal-Mart pretty."

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Judiciary

Facebooking Judge Catches Lawyer in Lie, Sees Ethical Breaches #ABAChicago

Posted Jul 31, 2009 2:16 PM CST

By [Molly McDonough](#)

Galveston, Texas-area lawyers on Facebook may want to double-check their friends list, especially if they're about to appear before Judge Susan Criss.

That's because Criss, a state court judge who is learning to adapt to social media as a way to connect with long-lost friends and is leveraging Facebook as a judicial campaign tool, has also learned a few things she didn't expect.

Biggest surprise: Even lawyers don't fully grasp how public social media is, even when privacy controls are in place.

"Anyone can cut and paste," said Criss, who was part of a Friday ABA Annual Meeting program "Courts and Media in the 21st Century: Twitterers, Bloggers, the New Media, the Old Media, and What's a Judge to Do?" sponsored by the ABA's Judicial Division.

Criss recalled one time that a lawyer asked for a continuance because of the death of her father. The lawyer had earlier posted a string of status updates on Facebook, detailing her week of drinking, going out and partying. But in court, in front of Criss, she told a completely different story.

Then there was the lawyer who complained about having to handle a motion in Criss's court. Criss playfully zinged her, too—on Facebook, of course.

Criss has seen lawyers on the verge of crossing, if not entirely crossing, ethical lines when they complain about clients and opposing counsel. And she admonished one family member who jeopardized her own tort case by bragging online about how much money she would get from a lawsuit.

The judge's near-breathless accounts of questionable online activity by members of the bench and bar had many in the audience wondering whether Facebook, Twitter and their ilk are worth the headache.

To Criss, there's no going back. With self-imposed ground rules—no politics, no blogging about cases—she's steaming right ahead.

Indeed, she's among a growing number of lawyers and judges who have begun using Facebook for personal, professional and public interest reasons.

[JD Supra](#) this week started an attempt to track lawyers using Facebook, much in the same way it is [tracking lawyers on Twitter](#).

Judges questioned Criss for more details about her ground rules. And they asked whether the ABA should be exploring model rules relating to Twitter and Facebook.

Criss said she's the first to admit these social networks are new to her, but her ground rules are simple. She follows her ethical canons and is careful about what she says and who she friends. Yes to all lawyers—to avoid an appearance that she favors one side over another. Friending the general public is trickier. So far, she's been more selective.

As for whether the ABA needs to address social media in its Model Rules, she and other panelists said no. "The rules are pretty good," Criss said. That's not to say that the ABA shouldn't explore new media and its impact on lawyers, judges and the law.

"The medium is always going to change," she said. "We need to always adapt."

More on the Annual Meeting '09 here:

Legal Ethics

Calif. Lawyer Suspended Over Trial Blogging While Serving as Juror

Posted Aug 4, 2009 1:58 PM CST

By [Martha Neil](#)

A 40-year-old California attorney has had his law license suspended for 45 days over a trial blog he wrote while serving as a juror.

Because of a blog post by Frank Russell Wilson, an appeals court reversed and remanded the felony burglary case, reports the [California Bar Journal](#).

Although reportedly warned by the judge not to discuss the case, orally or in writing, Wilson apparently made a lawyerly distinction concerning blogs: "Nowhere do I recall the jury instructions mandating I can't post comments in my blog about the trial," he writes, before forging on with unflattering descriptions of both the judge and the defendant. He also failed to identify himself as a lawyer to the trial participants, the bar journal notes.

The article doesn't include any comment from Wilson, who apparently was not in practice and was working for a wireless technology company at the time of the trial. He cooperated with the ethics investigation and had no prior disciplinary record, the article states.

Hat tip: [Legal Blog Watch](#) and [Legal Profession Blog](#).

Related earlier coverage:

[ABAJournal.com](#): "Calif. Lawyer Disbarred Over Jury Vote"

[ABAJournal.com](#): "New Mich. Jury Rule: No Texts, Tweets or Google Searches"

[ABAJournal.com](#): "Judge to Mob Trial Lawyer: Chill Blogging"

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Legal Ethics

Lawyer Agrees to Reprimand for Blog Tirade About Judge

Posted Jun 11, 2008 4:42 AM CST

By [Debra Cassens Weiss](#)

A Florida lawyer has agreed to a public reprimand and ended a First Amendment fight over his critical blog post calling a judge a witch.

Sean Conway of Fort Lauderdale refused to comment for the [South Florida Sun-Sentinel](#) on his decision to resolve his case. But his lawyer, Fred Haddad, told the newspaper he would have continued to contest disciplinary action.

"Resolving the case was not my position, and it was not the position that I ever took," Haddad said. "However, the lawyer does not make all the decisions."

Writing on [JAABlog](#), Conway had called Judge Cheryl Aleman an "evil, unfair witch," accused her of having an "ugly, condescending attitude" and questioned her mental stability. He [later said he was angry](#) because the judge was giving defense lawyers only one week to prepare for trial.

The Florida Supreme Court still must affirm the settlement.

Aleman herself is on the hot seat. The Judicial Qualifications Commission [has recommended](#) the Miami judge receive a public reprimand for setting unreasonable time limits for defense lawyers to prepare court documents and threatening them with contempt for failing to meet the deadline.

In one instance, Aleman gave defense lawyers a 15-minute time limit to draft a motion.

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INSTRUCTIONS TO CRIMINAL JURY

The following instructions are court orders. They apply until the trial is over and I tell you they no longer apply. Failure to abide by these court orders will result in consequences including but not limited to contempt of court. Punishment for contempt of court will be fines or imprisonment in jail. **You can be fined or jailed for violating these court orders.**

1. Do not mingle with nor talk to the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except for casual greetings. They have to follow these same instructions and you will understand it when they do.
2. Do not accept from, nor give to, any of those persons any favors however slight, such as rides, food or refreshments.
3. Do not discuss anything about this case, or even mention it to anyone whomsoever, or in the presence of others including your spouse, partner or significant other. Do not allow anyone to mention it in your hearing until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case with you or in front of you report it to the bailiff at once. The bailiff is ordered to inform me of all such reports by jurors.
4. Do not post or read about the case or subject matter of the case or persons in the case on blogs, internet news sites or social media including but not limited to Wikipedia, MySpace, Twitter or facebook. You can post that you are on jury duty and how long you expect to be on jury duty. That is ALL you are allowed to write or text about. You cannot post anything about whether a verdict has or will be reached or when a verdict has or will be reached or announced in court.
5. Do not read or send text messages in the courtroom. Do not have cell phones, blackberries or any other device you may use to communicate with others on while you are in the courtroom. While you are deliberating your cell phones, blackberries and any other device you may use to communicate with others will be removed from the jury room.
6. Do not even discuss this case among yourselves until after you have heard all of the evidence, the court's charge, and the attorney's arguments and until I have sent you to the jury room to consider your verdict.
7. Do not make personal inspections, observations, investigations, or experiments nor personally view premises, things or articles not produced in court. Do not let anyone else do any of these things for you. All evidence must be presented in open court so that each side may question the witnesses and make proper objection. If you know of, or learn anything about, this case except from the evidence admitted during the course of this trial, you should tell me about it at once. You have just taken an oath that you will render a verdict on the evidence submitted to you under my rulings.

8. Do not tell other jurors your own personal experiences or those of other persons, nor relate any information you obtained outside of the courtroom about any aspect of the case. A juror may have knowledge of matters such as business, technical or professional matters or he may have expert knowledge or opinions, or he may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions.
9. Do not seek information contained in law books, dictionaries, public or private records, the internet, television, newspapers, blogs, social media, or elsewhere, which is not admitted in evidence. Do not research anything about this case, the parties, attorneys or any subject matter connected to the case.

The Texas law requires investigation and hearings about proof of any violation of the rules of jury conduct. Jurors and others may be called to testify in open court or in chambers about acts of jury misconduct. I caution you to follow carefully all instructions which I have given you, as well as others which you later receive while this case is on trial.

When a juror violates these instructions a mistrial may be declared. Sometimes the appellate courts will order that the verdict be thrown out due to jury misconduct. Having to start over and try a case again is very expensive for the parties, lawyers and taxpayers. Trying the case over also creates stress and hardship for all involved.

As a judge I am very serious about my obligation to see that cases are tried fairly, efficiently and according to the law. I do not want to have to punish citizens who give up their time to serve on juries. But please understand that I will ensure that all laws regarding jury conduct are followed and that all violations of those laws are addressed.

You may keep these instructions and review them as the case proceeds. If you are aware of any violation of these instructions you are ordered to report it to the bailiff. The bailiff is ordered to inform me of any such reports by jurors.

In the event of an emergency, evacuation or power outage that requires the courthouse be closed, that information will be posted at www.oja.intranets.com.

Trials & Litigation

New Mich. Jury Rule: No Texts, Tweets or Google Searches

Posted Jul 2, 2009 12:53 PM CST

By [Martha Neil](#)

Stepping up to the plate to deal with an electronic communications issue that has plagued courts throughout the country recently, the Michigan Supreme Court has issued a new rule requiring trial judges to warn jurors they cannot surf the Internet while they are in court or during deliberations.

The ban includes, but is not limited to, text messages, Google searches and tweets on Twitter, reports the [National Law Journal](#).

The article doesn't make clear whether the rule bans juror cell phones, period, as some courts have done following a wave of questioned verdicts because of trial-related commentary in the blogosphere.

Earlier related coverage:

[ABAJournal.com](#): "Juror Tweets in \$12.6M Case Teach Lawyer a Lesson: Ask About Web Use"

[ABAJournal.com](#): "A Shock for Judge Zloch: 9 Jurors in 1 Trial Doing Web Research"

[ABAJournal.com](#): "Lawyers Fume Over Juror Twitter Posts; Blogger Wonders What Would OJ Tweet"

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Order

Michigan Supreme Court
Lansing, Michigan

June 30, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2008-33

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Amendment of Rule 2.511
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.511 of the Michigan Court Rules is adopted, effective September 1, 2009.

[Additions are indicated by underline, and deletions by strikethrough.]

MCR 2.511 Impaneling the Jury

(A)-(G) [Unchanged.]

(H) Oath of Jurors; Instruction regarding prohibited actions.

(1) The jury must be sworn by the clerk substantially as follows:

“Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God.”

(2) The court shall instruct the jurors that until their jury service is concluded, they shall not

(a) discuss the case with others, including other jurors, except as otherwise authorized by the court;

(b) read or listen to any news reports about the case;

- (c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but may not be used to obtain or disclose information prohibited in subsection (d) below;
- (d) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about the case when they are not in court. As used in this subsection, information about the case includes, but is not limited to, the following:
- (i) information about a party, witness, attorney, or court officer;
 - (ii) news accounts of the case;
 - (iii) information collected through juror research on any topics raised or testimony offered by any witness;
 - (iv) information collected through juror research on any other topic the juror might think would be helpful in deciding the case.

Staff Comment: This amendment requires judges to instruct jurors that they are prohibited from using computers or cell phones at trial or during deliberation, and are prohibited from using a computer or other electronic device or any other method to obtain or disclose information about the case when they are not in the courtroom. The instruction shall be given when the jury is empaneled.

The amendment prohibits jurors from reading about or listening to news reports about the case and prohibits discussion among jurors until deliberation. The prohibition on juror discussion does not apply to courts participating in the jury reform pilot project, which specifically allows jurors to discuss a case before the close of evidence.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 30, 2009

Corbin R. Davis

Clerk

Technology and Ethics: Strategies for the Digital Age

Suggested Reading

- A Legal Battle: Online Attitude vs. Rules of the Bar
 - <http://www.nytimes.com/2009/09/13/us/13lawyers.html>

- Too Much Information: Blogging Lawyers Face Ethical and Legal Problems
 - http://www.abajournal.com/news/article/too_much_information_blogging_lawyers_face_ethical_and_legal_problems/

- Facebooking Judge Catches Lawyer in Lie, Sees Ethical Breaches
 - http://www.abajournal.com/news/article/facebooking_judge_catches_lawyers_in_lies_crossing_ethical_lines_abachicago/

- When Lawyers Spy Through Facebook: the Ethics of “Regional Network” Changes
 - <http://lawyerist.com/lawyer-ethics-spy-facebook/>

- In the Matter of: KRISTINE ANN PESHEK
 - <http://www.iardc.org/09CH0089CM.html>

- Legal Ethics of Facebook, Twitter & Cloud Computing
 - http://www.abajournal.com/news/article/legal_ethics_of_facebook_twitter_cloud_computing_abachicago/

- What Boundaries Have You Set for Your Own Facebook or Twitter Use
 - http://www.abajournal.com/news/article/what_self-imposed_guidelines_if_any_have_you_developed_for_tweets_fb_etc/

- Working in the Cloud
 - http://www.abajournal.com/magazine/article/working_in_the_clouds/