TAC 2018:
Social Media and Other Ethical Issues Facing Judges and Staff

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Presenter

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The SCJC

Constitutionally Created (1965)

13 Commissioners

- Six Judges (Supreme Ct.)
- Five Public Members (Governor)
- Two Attorney Members (State Bar)

Staggered six year terms
SCJC Staff

14 Employees

- 3 Administrators
- 3 Investigators
- 2 Legal Assistants
- 6 Attorneys
SCJC Complaint Process

Passive
- Online
- Mailed

Comm’n may initiate Sources
- Public
- Litigants
- Attorneys
- Other judges
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Complaints to the SCJC
Why So Many?

No Clear Answers

Possibilities:

Additional Online Participation and awareness (Judges and the Public)

SCJC Online Complaint Portal?

Election year?
Background Rules regarding Court Staff

...Why should I care?
Texas Code of Judicial Conduct and Staff

**Canon 3B(4): Demeanor**

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.
Canon 3B(6): Discrimination

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.
Texas Code of Judicial Conduct and Staff

Canon 3B(10): Public Comment

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....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....
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.
Your Employment

“Law Clerk Accused of Pretending to be Judge is Fired”

Chicago Tribune -- August 2016
Law clerk Rhonda Crawford put on a robe and heard cases in Judge Valarie Turner’s courtroom.

Her boss, Cook County Chief Judge Timothy Evans terminated her, citing Illinois Supreme Court rules, which require a judge to “take or initiate appropriate disciplinary measures.”

Texas Canons 3D(1) & 3D(2) speak to a judge’s obligations when learning of misconduct by a judge or an attorney, respectively.
What Would You Do?

AKA:

“Ripped from the Headlines” (and other sources)
Round 1: Social Media
Social Media/Online Conduct

...what could go wrong?

What, Me Worry?
Answer: Lots

Ex Parte

Independent Investigation

Bias/Prejudice
More of What Can Go Wrong

Canon 3B(11): Disclosure of Judicial Confidences

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.
The “Online Disinhibition Effect”

“You don’t know me” (dissociative anonymity)

“You can’t see me” (invisibility)

“See you later” (asynchronicity)

“It’s all in my head” (solipsistic introjection)

“It’s just a game” (dissociative imagination)

“We’re equals” (minimizing authority)
Social Media Gone Wrong

May a judge be sanctioned for clicking the “like” button on Facebook?
Social Media Gone Wrong
In the Matter of Whitmarsh

New York judge weighed in regarding potential elimination of colleague’s judicial position on her Facebook page
“When the town board attempted to remove a Judge position – I stood up for my Co-Judge. When there is a charge, I feel is an abuse of the Penal Law – I WILL stand up for DAVID VANARNAM.”
In the Matter of Whitmarsh
In the Matter of Whitmarsh

Judge also clicked the “like” button on other people’s comments that criminal charges against VanArnam were

“an abuse of our legal system”

and

“uncalled for”
In the Matter of Whitmarsh

You’re a commissioner asked to determine the outcome of the case:

How do you vote?
In the Matter of Whitmarsh

Outcome: Public Admonishment
“Comments posted on Facebook are clearly public, regardless of whether they are intended to be viewable by… [a] limited audience of the user’s Facebook ‘friends.’ Even such a ‘limited’ audience, we note, can be substantial, and…such postings…cannot be viewed as private in any meaningful sense….”
“Regardless of respondent’s intent, her comments — and her ‘likes’ of comments criticizing the [DA]... conveyed ... the appearance that she was impugning the integrity of the prosecution and endorsing others’ criticism of the [DA’s] office and the [DA] personally.”
In the Matter of Whitmarsh

“Her statements, which were viewable online for 15 days and were reported by the media, were inconsistent with her duty to ‘act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary’”
“Moreover, by referring to her judicial position in the same post (stating that she had once ‘stood up for my Co-Judge’), respondent lent her judicial prestige to her comments...”
Round 2: Use of Public Property
Misuse of Gov’t Property

Offices

Computers/Equipment Personnel

Time

Funds
Misuse of Gov’t Property

- *De minimis* use allowable

- Where is the line?
Hypothetical: how many minutes per day may a judge use the state or county computer to surf Amazon.com, Facebook.com, Twitter.com, for personal use and stay in the “safe zone”? 

Misuse of Gov’t Property
Misuse of Gov’t Property

Answer: Let’s not find out
Avoiding Misuse of Public Property

- When in doubt, play it safe
- Use personal devices (cell phones, iPads, etc.) for all personal and campaign business
Closing Thought...

“Ethics is knowing the difference between what you have a right to do and what is right to do.”

Justice Potter Stewart