


# **TAC 2018:**

## *Social Media and Other Ethical Issues Facing Judges and Staff*

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April 12, 2018



# Presenter

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**Eric Vinson**

*Executive Director, State Commission  
on Judicial Conduct*

# The SCJC

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Constitutionally Created (1965)

13 Commissioners

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

Staggered six year terms



# SCJC Staff

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- **14 Employees**
  - *3 Administrators*
  - *3 Investigators*
  - *2 Legal Assistants*
  - *6 Attorneys*

# SCJC Complaint Process

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## Passive

- *Online*
- *Mailed*

## Comm'n may initiate Sources

- *Public*
- *Litigants*
- *Attorneys*
- *Other judges*



# SCJC Contact Info

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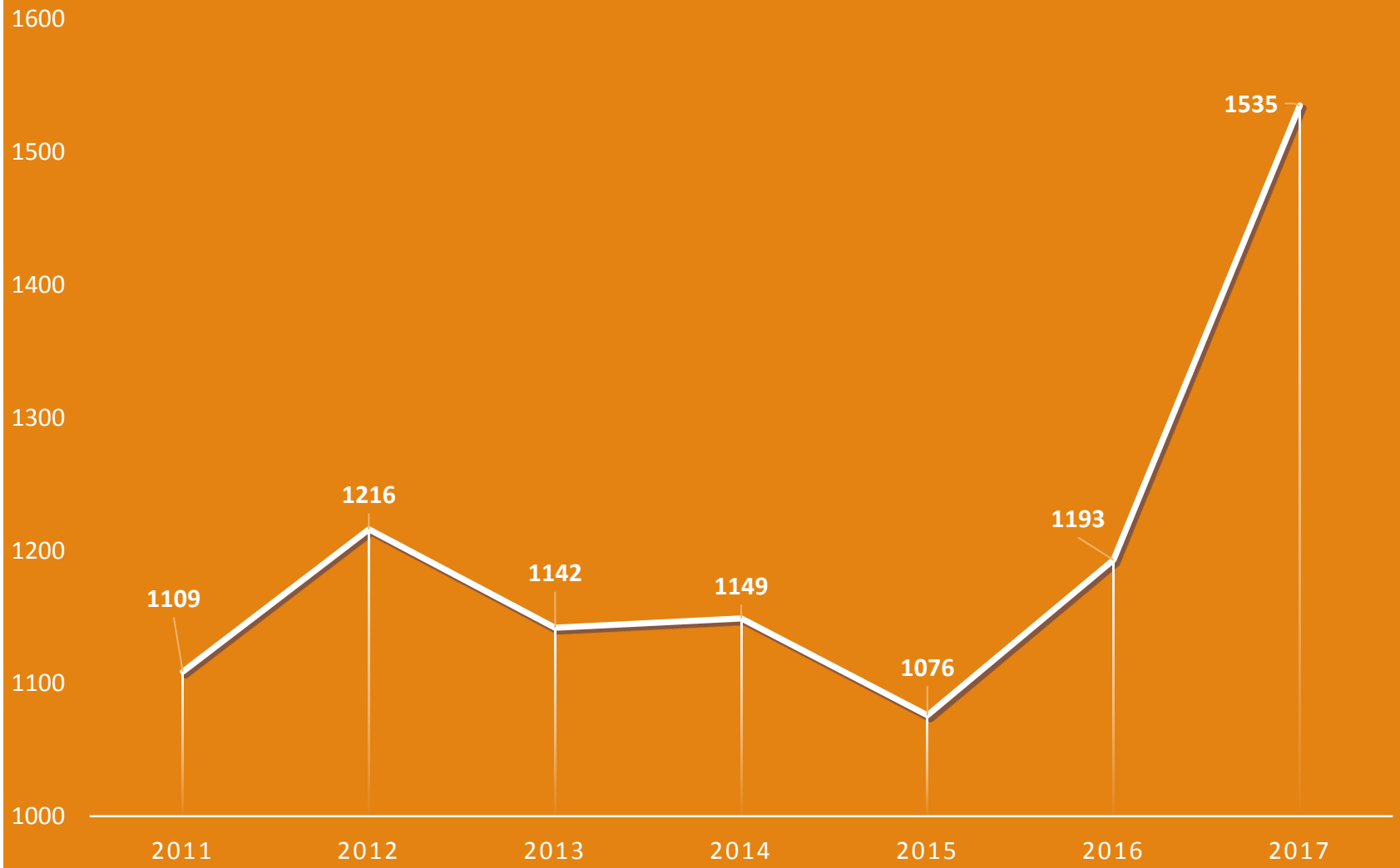
[eric.vinson@scjc.texas.gov](mailto:eric.vinson@scjc.texas.gov)

(512) 463-5533

# Complaints to the SCJC

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# COMPLAINTS, FY 11-17





# Why So Many?

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No Clear Answers

Possibilities:

*Additional Online Participation and awareness (Judges and the Public)*

*SCJC Online Complaint Portal?*


*Election year?*



# **Background Rules regarding Court Staff**

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*...Why should I care?*

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# Texas Code of Judicial Conduct and Staff

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## 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.

# Texas Code of Judicial Conduct and Staff

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## 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

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## 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...

# Texas Code of Judicial Conduct and Staff

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## Canon 3C(2): Administrative Capacity

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

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

**Chicago Tribune -- August 2016**

# Your Employment (con't)

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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?

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AKA:

*“Ripped from the Headlines”* (and  
other sources)

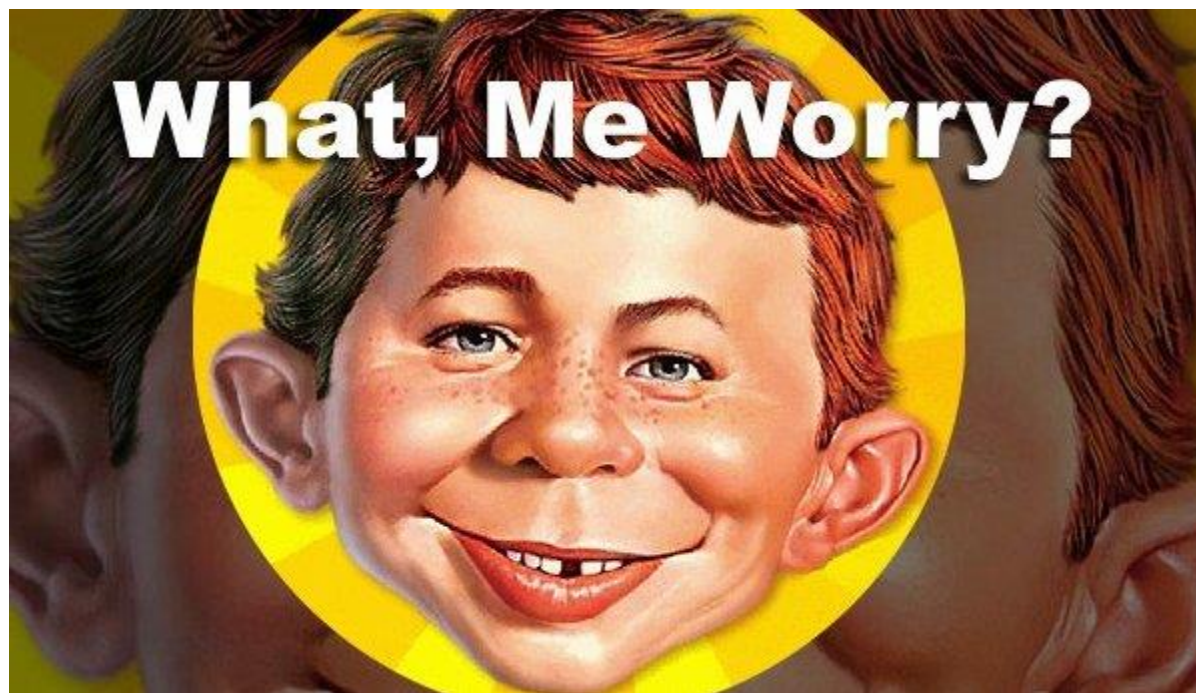
# **Round 1: Social Media**

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# Social Media/Online Conduct

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*...what could go wrong?*



# Answer: Lots

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Ex Parte

Independent Investigation

Bias/Prejudice



# More of What Can Go Wrong

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## 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”

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“*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

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May a judge be sanctioned for clicking the “like” button on Facebook?

# Social Media Gone Wrong

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# ***In the Matter of Whitmarsh***

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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.”

scam in my book

it was your  
remove a

that is corruption  
justice execution - I stand up for

my Co-Judge. When there is a charge, I feel I  
WILL stand up for DAVID VANARNAM.

“YOU are just spineless”

Did anyone know that Dave VanArnam reduced his pay for Councilman and requested that money go to the Summer Rec Program (for the area children - when his are all young adults). Sound like a Felon?

Dave VanArnum won his election by a landslide 200 something to what 12 or 20? He won because the PEOPLE spoke! Did he make a poor decision in signing the petitions? You are absolutely correct. Bigger question - Did he sign those forms with CRIMINAL INTENT? Absolutely NOT!!!

This whole fiasco is a huge mess but did any of the participants partake with the idea of criminal corruption in mind? Seriously?

Very sad situation....

Share Hooplet

# ***In the Matter of Whitmarsh***

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# *In the Matter of Whitmarsh*

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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*

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

**How do you vote?**

# ***In the Matter of Whitmarsh***

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Outcome: Public Admonishment



# *In the Matter of Whitmarsh*

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“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...”

# *In the Matter of Whitmarsh*

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“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*

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“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’”

# *In the Matter of Whitmarsh*

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“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**

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# Misuse of Gov't Property

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*Offices*

*Computers/Equipment Personnel*

*Time*

*Funds*



# Misuse of Gov't Property

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- *De minimis* use allowable
- Where is the line?



# Misuse of Gov't Property

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**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

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**Answer:** Let's not find out

# Avoiding Misuse of Public Property

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



# Closing Thought...

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

Justice Potter Stewart

