

# The Ethics of Using Social Networking Sites

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***The Ethics of Using Social  
Networking Sites***  
**25th Annual Winter Leadership  
Conference**

**Prof. Nancy B. Rapoport – Moderator**  
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December 7, 2013  
Terranea Resort  
Rancho Palos Verdes, California

***MODEL RULE 1.1 COMPETENCE***

A lawyer shall provide **competent** representation to a client.

- § Legal Knowledge
- § Skill
- § Thoroughness
- § Preparation

Some local rules require “working knowledge” of:

- § Local rules and administrative orders
- § Title 28 (bankruptcy jurisdiction) and Title 18 (crimes)
- § Bankruptcy Code
- § Applicable federal rules of procedure and evidence
- § Applicable Rules of Professional Conduct

**COMMENT 6 TO RULE 1.1**

“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and practice, ***including the benefits and risks associated with relevant technology***, engage in continuing study and education and comply with all continuing education requirements to which the lawyer is subject.”

**COUNSELING DEBTORS RULE 2.1**

1. You must schedule everything, assets, income and liabilities.
2. No expectation of privacy, **including possibly all social media activity.**
3. Be cautious about what you post on-line.
4. Can you advise Debtor to remove a social media post ? Yes. MAYBE. DEPENDS.

See NYCLA Ethics Op. 745, July 2, 2013

## ***COUNSELING DEBTORS***

“Taking Down” a social media post

1. Is there a duty to preserve the material under substantive law (including bankruptcy law) ? When does duty arise ?
2. Is removal spoliation of evidence ?
3. Preserve whatever is removed.

*But see, **Gatto v. United Air Lines, Inc.**, No.: 10-cv-1090-ES-SCM, 2013 U.S. Dist. LEXIS 41909 (D.N.J. Mar. 25, 2013) and **Lester v. Allied Concrete Co. et al**, Cir. Court (Charlottesville, VA), Case No. CL09-223*

*See NYCLA Ethics Op. 745, July 2, 2013*

## ***LESTER DELETION***

Sanctions – Atty \$542K + 5-yr suspension



***OTHER HIGHLIGHTS FROM NYCLA OPINION***

- § **Rule 3.4** prohibits lawyers from suppressing or concealing social media content that should be revealed;
  - § **Rule 3.1(a)** prohibits lawyers from asserting frivolous claims or issues, extends to false factual statements that are contradicted by the client's social media postings;
  - § **Rules 3.3(a)(1) and 3.4(a)(4)** require lawyers to take remedial action if clients testify falsely about whether changes were made to their social media sites;
  - § Lawyers may counsel clients to publish **truthful** information on social media that is **favorable** to the clients' legal position;
  - § **Rule 3.4(a)(4)** prohibits a lawyer from participating in the publication of false information on social media.
- See NYCLA Ethics Op. 745, July 2, 2013

***COUNSEL'S §707(b) DUTIES***

- (C) The signature of an attorney on a petition, pleading, or written motion shall constitute a **certification** that the attorney has— (i) performed a **reasonable investigation** into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion— (I) is **well grounded in fact**; and (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).
- (D) The **signature** of an attorney on the petition shall constitute a **certification** that the attorney has no knowledge **after an inquiry** that the information in the schedules filed with such petition is incorrect.

### ***DEBTOR IN-TAKE***

1. Does Debtor use social media ?
  2. Are the posts public or private ?
  3. If private, what is the password ?
  4. Has Debtor recently deleted content ?
  5. Does Debtor use cell phone to conduct business, text message, store photos ?
  6. Do posts contradict schedules and statement of affairs ?
- Suggest written disclosure to client

### ***LITIGATION HOLD***

#### **When does the Debtor's duty to preserve records arise ?**

- § At the time of the first meeting with counsel ? Conservative approach.
- § “[T]here is no dispute that social media information may be a source of relevant information that is discoverable.” **Reid v. Ingerman Smith LLP**, CV 2012-0307 ILG MDG, 2012 BL 3397442012 WL 6720752 (E.D.N.Y. Dec. 27, 2012).

### ***TRIPPING ON ONE'S EGO***

1. What unscheduled assets are shown in the photos that you post ?
2. As a Ch. 13 Debtor, will you show that new job and changed circumstances ?
3. Are there photos of your luxurious pre-petition vacation that you charged on your credit cards ?
4. Waiver of attorney-client privilege in AP ?

### ***TRUSTEE INVESTIGATIONS***

1. § 704. **Duties of trustee**  
(a) The trustee shall— (4) investigate the financial affairs of the debtor;
2. Social media now being analyzed in criminal and civil litigation, including disability claims and divorce cases. **Why not bankruptcy ?**
3. Trustees and creditors can confirm suspicions by reviewing Debtor's social media posts, including private posts, if justified.
4. For electronic investigation and privilege waiver, see **In re Kathleen Anne Smith Cutuli**, Case No. 11-35256-BKC, Bankr, S.D. Fla., Opinion 9/13/13

***OPEN QUESTIONS ON SOCIAL MEDIA***

1. Should the Debtor be required to list social media accounts on schedules ?
2. Can the Trustee require the Debtor to disclose all accounts and passwords ?
3. Can Trustee examine Debtor about social media activity ?
4. Should the Trustee keep investigation results confidential if no inconsistencies?
5. Should the Trustee search further ?

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## Ethics of Blogging

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## Advantages of blogging

- Powerful marketing tool /creation of your “brand”
  - You can reach clients and potential clients
- Civic engagement: you can blog about the law in general or about particular cases

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## Your firm should have a policy on what is/isn't allowed.

- Who is allowed to blog? On what types of subjects? Must the posts be vetted before becoming public?
- Also a clear disclaimer that avoids the creation of an attorney-client relationship.
  - “Reasonable belief that the lawyer is representing the client.”

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## Ethics issues that intersect blogging

- Confidentiality (both in your posts and in any comments) (see MRPC 1.6).
- Advertising / solicitation rules in a world that goes beyond just your own jurisdiction (see MRPC 7.1–7.3).
- Holding yourself out as a specialist (see MRPC 7.4).
- UPL (see MRPC 5.5).
- Criticism of other judges/attorneys (see MRPC 8.2, 8.4(c), 8.4(d))

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## Confidentiality

- Preserve your client's confidences.
- Be careful about what your posts describe.
- Moderate those comments!

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## Confidentiality

- *Hunter v. Va. State Bar*, 285 Va. 485 (2013)
  - An attorney blogged about his cases without first obtaining his clients' permission.
  - The Virginia Supreme Court found that because
    - The cases were all concluded, and
    - The attorney did not include any information that was not part of the public record, therefore
    - The attorney was protected by the first amendment.

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## Confidentiality

- An Illinois public defender was suspended for 60 days for revealing details of client confidences in a way that made it possible to identify those clients.
- She also revealed in her blog that she had failed to disclose her client's drug usage.
  - <http://iln.isba.org/2010/05/18/illinois-supreme-court-disbars-12-suspends-26>.

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## Advertising/solicitation

- The Internet is everywhere. Comply w/the most stringent rules about advertising, and you're more likely to be safe.
- Shouldn't have a problem w/solicitation if you're just posting.

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## Advertising/Solicitation

- NY State Bar Ethics Opinion 967 (6/5/13):\*
  - *The Inquirer* was a columnist who was also a licensed attorney in New York. *The Inquirer* proposed writing a blog that would not address legal issues, but rather work/life balance issues.
- The NYSB concluded:
  - “A blog written by an attorney that does not discuss legal topics and whose primary purpose is not the retention of the lawyer is not an advertisement, and would thus not be subject to the retention and preservation rules for lawyer advertising, even though the title of the blog makes clear that the author is an attorney.”

\* [http://www.nysba.org/AM/Template.cfm?Section=Ethics\\_Opinions&ContentID=244702&template=/CM/ContentDisplay.cfm](http://www.nysba.org/AM/Template.cfm?Section=Ethics_Opinions&ContentID=244702&template=/CM/ContentDisplay.cfm).

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## Holding yourself out as a specialist.

- Check your state’s rules about identifying areas of practice.
- Don’t muddy the waters—if you can’t call yourself a specialist in your own jurisdiction, don’t imply that you’re a specialist.

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## UPL

- Some states are very restrictive about what constitutes the “unauthorized practice of law.”
- Don’t give legal advice over the web. Make your disclaimers clear.
  - Pay attention to your own state’s rules about advertising, but the safe thing to do is to comply with the most restrictive rules around.
  - E.g., you might want to put “attorney advertising” in your disclaimer.
- For a well-reasoned contrary view, see <http://kevin.lexblog.com/2012/01/26/aba-committee-state-ethics-rules-on-advertising-may-not-apply-to-blogs-and-social-networking/>.

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## Criticism of other judges or attorneys

- Don’t make a false statement of fact concerning a judge.
- Be aware of civility codes (and for the ABI’s, see [http://go.abi.org/Civility\\_Report](http://go.abi.org/Civility_Report)).
- NY State Bar Ethics Opinion 912 (3/15/12)
  - A blog criticizing the actions of other attorneys is acceptable as long as the criticism is factually accurate.

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## Keeping Pace With Social Media

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Ethics & California State Bar  
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## Can Law Keep Up With Technology?

- Technological innovation driven by marketplace
- Law is much slower to develop
- Question: *Is this is a problem?*

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## Historical Development of Law

- Jurisprudence
- Cases and controversies
- Advisory opinions

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## Sources of Ethics Regulation Today

- Model Rules (ABA – National)
- State Rules (typically based on Model Rules with some exceptions (California))
- Litigated court cases
- State ethics regulator cases (such as California State Bar Court cases)

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## Sources of Ethics Regulation Today (cont'd)

- Advisory opinions (state regulators, state ethics bodies, national ethics bodies)

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## Sources Are Not Quick Responders

- Model Rules take many rounds of revision and discussion to change
- State Rules too
- Litigation takes years
- Advisory opinions carefully thought out

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## How It Should Be

- Careful development of significant area of law should be thoughtful
- Regulators should not rush to issue guidance on latest technology

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## Key Areas Covered By Recent Guidance

- Attorney Advertising
- Witness Investigation
- Website Use
- Judicial Conduct

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## Attorney Advertising

- Much of the recent guidance has been applying existing rules of attorney advertising to use of social media

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## COPRAC Formal Op. 2012-186

- COPRAC is State Bar of California's Standing Committee on Professional Responsibility and Conduct
- COPRAC issues advisory opinions on hypothetical fact patterns
- COPRAC applied existing advertising rules to social media

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### COPRAC Formal Op. 2012-186 cont'd

- Applied Rule 1-400 of CA RPC and existing statutes to Facebook-style social media posts
- Key: is it a “communication” soliciting employment?
- Yes if availability for employment mentioned; no if no solicitation

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### COPRAC Formal Op. 2012-186 Examples

- ADVERTISING: “Another great victory in court today! My client is delighted. Who wants to be next?”
- NOT ADVERTISING: “Case finally over. Unanimous verdict! Celebrating tonight.”

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## Witness Investigation

- Regulators applying existing rules of supervision of non-lawyer assistants and general attorney conduct
- Cannot have a non-lawyer assistant do something attorney cannot do
- No deception or underhanded conduct to obtain access to witness social media

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## Philadelphia Bar Op. 2009-02

- Philadelphia Bar Association Professional Guidance Committee
- Attorney and non-lawyer assistant prohibited from “friending” witness without disclosing nature of their interest
- To do so is “deceptive” and prohibited

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## Website Use

- Regulators applying existing rules
- Websites are more like magazine articles than social media posts
- Not restricted in access
- Put on public display
- Fair game

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## Oregon State Bar Op. 2005-164

- Oregon State Bar Formal Opinion 2005-164, Communicating with Represented Persons: Contact Through Web Sites and the Internet
- No restriction on reviewing and using material obtained from publicly-available websites

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## Judicial Conduct

- Existing rules largely cover social media use by judges
- Judges may not do anything online that they may not do in person

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## ABA Formal Op. 462

- ABA Formal Opinion 462, Judge's Use of Electronic Social Networking Media
- Judges can use social media after taking the bench
- Model Code of Judicial Conduct applies
- Basic tenets of judicial conduct govern online activity

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## ABA Formal Op. 462 cont'd

- “respect and honor” the judicial office
- “maintain dignity” of the bench
- Online activity mirrors in person
  - No ex parte communication
- Online connection does not indicate degree or intensity of relationship

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## New Rules

- ABA Commission on Ethics 20/20
- New rules take effect in 2012 and 2013
- Model Rule 7.2
  - General advertising rule includes electronic media, requires attorney contact details on all advertising
- Model Rule 7.5 re letterhead and names

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## New Rules cont'd

- States Modifying Own Rules
- Oregon addressed social media in revising Rule 8.4 (general misconduct)
  - Explicitly prohibited to engage in “covert activity” such as accessing individual’s social media posts without disclosure of nature of interest

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## Regulators Trying Too Hard

- Law cannot keep up with technology; motivations are different
- New York State Bar Association Committee on Professional Ethics Op. 972
  - Prohibits listing in “specialties” section on LinkedIn if not state certified
  - Issued a year after section removed

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## What Next?

- Watch for next issues
  - UPL: establishing systematic and continuing presence in a state in which attorney is not licensed; not yet addressed
  - Texting as advertising
- ABA Model Rules changes
- State changes

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## What Next? cont'd

- Watch own state advisory boards
- Keep an eye on other states for guidance

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## Resources

- ABA
- State regulators
- Ethics blogs and general legal blogs (Lawyerist.com, AttorneyatWork.com, ABA blogs, individual ethics attorney blogs, Legal Ethics Forum)

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# Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees

Committee on Codes of Conduct  
Judicial Conference of the United States



# Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees

Judicial Conference Committee  
on Codes of Conduct

April 2010

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Part 1:

## INTRODUCTION TO ETHICS IMPLICATIONS OF THE USE OF SOCIAL MEDIA BY JUDICIAL EMPLOYEES

The latest chapter in the evolution of online activities has involved an explosion in social media—also known as social computing and sometimes referred to as social networking. These diverse online media permit expression and interaction by multiple individual users, and participation in social computing is now a daily fact of life for more than 400 million people. Until recently, most Internet users were mere “consumers” of content; now many are creating their own content and interacting with other users.

For the courts, social media may provide valuable tools. For example, social media have been effectively used for recruiting, learning and employee development, posting benefits information and other announcements, and for information collection, sharing and dissemination. Other Judicial Conference committees are exploring the positive use of social media, e.g., the Judicial Branch Committee’s Ad Hoc Subcommittee on New Media.

Use of social media also raises ethical, security, and privacy concerns for courts and court employees. The ability to communicate immediately with exponential numbers of people—but with limited ability to effectively control or retrieve that communication—has increased traditional concerns regarding employee communications. Unlike other forms of communication, participation in social media offers everyone the opportunity to publish their thoughts; however, not everyone may be judicious about what they publish. User entries on blogs, wikis or any other form of user-generated media can never truly be

erased or deleted. The ability to preserve and replicate an Internet message or image for many years exacerbates the potential risks. Due to perceived anonymity, an employee may engage in conduct online that the employee might refrain from in person, without understanding that online communications may be traced to a particular user. Or the employee may not be fully aware of the ethical implications of social media given the relative newness of these online activities.

The Codes of Conduct Committee has designed this resource packet, in consultation with other Judicial Conference committees, to help courts and judges consider whether and how to develop policies and guidelines for the use of social media by judicial employees. We encourage courts and judges to incorporate social media issues into their orientation and training for judicial employees.

This introduction briefly highlights the major ethics implications of the use of social media by judicial employees, and is accompanied by the following documents:

- Part 2. Social Media Primer
- Part 3. Considerations for Development of Judicial Employee Social Media Policies
- Part 4. Sample Provisions for Judicial Employee Social Media Policies; and
- Part 5. Examples of Existing Policies.

The Code of Conduct for Judicial Employees applies to all online activities, including social media. The advent of social media does not broaden ethical restrictions; rather, the existing Code extends to the use of social media. The Committee has addressed ethics inquiries that suggest that some judicial employees have crossed

or strayed close to the boundaries imposed by these Code requirements, such as referencing pending matters. Although these posts are not widespread, they highlight the importance of emphasizing ethical constraints. The main ethical considerations follow:

- Confidentiality
- Avoiding impropriety in all conduct
- Not lending the prestige of the office
- Not detracting from the dignity of the court or reflecting adversely on the court
- Not demonstrating special access to the court or favoritism
- Not commenting on pending matters
- Remaining within restrictions on fundraising
- Not engaging in prohibited political activity
- Avoiding association with certain social issues that may be litigated or with organizations that frequently litigate

Developing standards will require careful assessment so that guidelines achieve the goals of maintaining ethics and security standards without restricting private employee conduct that does not impinge on the mission of the courts. For example, courts and judges should consider whether different levels of restrictions are appropriate for different types of judicial employees. Concerns regarding the appearance of favoritism, for instance, may be especially high for an employee who works directly with a judge. As another example, only certain employees are prohibited from engaging in both partisan and nonpartisan political activity. Developing guidelines may also require consideration of factors specific to the court or the court's locale.

The Codes of Conduct Committee (Judge McKeown, Chair, 619-557-5300), and the Committee's counsel in the Administrative Office (Robert Deyling, 202-502-1100), are available to discuss social media issues and to review draft guidelines or policies.



## Part 2:

## SOCIAL MEDIA PRIMER

Social media and social computing refer to the wide array of Internet-based tools and platforms that increase and enhance the sharing of information. The common goal of this media is to maximize user accessibility and self-publication through a variety of different formats. This “primer” briefly describes some major forms of social media.

### Social and Professional Networking

Social networking refers to building online communities of people who share interests or activities, or who are interested in exploring the interests and activities of others. These web-based applications allow users to create and edit personal or professional “profiles” that contain information and content that can be viewed by others in electronic networks that the users can create or join. There is a distinction between social networks that offer personal connections and professional networks that market a business or accomplish other business-related goals.

#### Examples:

##### *Facebook*

Facebook is a social networking website that was originally designed for college students, but is now open to anyone 13 years of age or older. Facebook provides an easy way for people, particularly friends, to keep in touch, and for individuals to have a presence on the web without needing to build a website. Since Facebook makes it easy to upload pictures and videos, nearly anyone can create and publish a customized profile with photos, videos and information about themselves. Friends can browse the profiles of other

friends or any profiles with unrestricted access and write messages on a page known as a “wall” that constitutes a publicly visible threaded discussion. Facebook allows each user to set privacy settings.

### *LinkedIn*

LinkedIn is a business-oriented social networking site used mainly for professional networking. LinkedIn enables people to build, maintain and track professional contacts. It also offers a means of self-promotion, providing users with space to publish their work experience, education, specialties or interests. The site has a “gated-access approach” (where contact with any professional requires either a preexisting relationship or the intervention of a contact of theirs) intended to build trust among the service’s users. One feature allows users to ask questions for the community to answer. Another searchable feature allows users to establish new business relationships by joining alumni, industry, or professional and other relevant groups. LinkedIn groups can be created in any subject and by any member of LinkedIn. Some groups are specialized groups dealing with a narrow domain or industry, whereas others are very broad and generic in nature. LinkedIn is reported to have more than 50 million registered users from over 200 countries around the world, including executives from every Fortune 500 company.

## **Blogs**

A blog, a contraction of the term “weblog,” is a type of website maintained with regular entries of commentary, descriptions of events, or other material such as graphics or video. “Blog” can also be used as a verb, meaning “to maintain or add content to a blog.” Many blogs provide commentary or news on a particular subject; others function as more personal online diaries. A typical blog combines text, images, and links to other blogs, web pages and other media related to its topic. The ability for readers to leave comments in an interactive format is

an important part of many blogs. Entries are commonly displayed through “threaded discussions” in reverse chronological order.

### **Micro-blogging (e.g., Twitter)**

Twitter is a micro-blogging application that is more or less a combination of instant messaging and blogging. Twitter has quickly established itself as a popular tool for communicating news, market trends, questions and answers and links with numerous benefits for both business and personal use. Twitter enables its users to send and read messages known as tweets. Tweets are text-based posts of up to 140 characters displayed on the author’s profile page and delivered to the author’s subscribers, who are known as followers. Senders can restrict delivery to those in their circle of friends or, by default, allow open access.

### **Wiki**

A wiki (Hawaiian for “fast”) refers to a website that allows the site users themselves, as opposed to a centralized site manager, to control the content by adding or correcting the text of the site. Most wikis serve a specific purpose, and off-topic material is promptly removed by the user community. Such is the case of the collaborative encyclopedia Wikipedia, [http://en.wikipedia.org/wiki/Main\\_Page](http://en.wikipedia.org/wiki/Main_Page).

### **Social Bookmarking**

Social bookmarking sites allow users to save and share website bookmarks online instead of saving to a web browser’s favorites list. After joining the site, a user is able to save a bookmark, tag it with a comment, and categorize it. These saved bookmarks can be searched and viewed

by any user; registered users can in turn save, tag and categorize the bookmarks themselves. Any user can also search according to a registered user's screen name and see all the registered user's bookmarks. To facilitate browsing, the sites usually include categories of "most viewed," "recently added," etc. Delicious and Digg are examples of popular bookmarking sites.

## **Video Sharing**

Video sharing sites allow registered users to upload video clips that can be searched, viewed and shared by other users. Registered users are identified by screen names, and other users can search by that screen name to see all of a user's videos. Users do not need to be registered to view and search videos. YouTube is an example of a video sharing site. Facebook and other social networking sites enable direct sharing of videos posted on video sharing sites.

## **Threaded Discussion, Discussion Group and/or Chat Room**

A "threaded discussion" is a running exchange of messages between two or more people in an online discussion group about a particular topic. Using a web or usenet service on the Internet, users can post messages that appear in chronological order or in question-answer order. The exchanges are then typically saved and searchable for later viewing.

## Part 3:

## CONSIDERATIONS FOR DEVELOPMENT OF JUDICIAL EMPLOYEE SOCIAL MEDIA POLICIES

Following is a checklist of issues to consider in the process of developing a court or chambers policy governing the use of social media by judicial employees. The list is not intended to be comprehensive or prescriptive, but to provide a starting point for developing a policy. Although these considerations are helpful prompts in thinking about scope and restrictions, the list is not meant to suggest that a policy necessarily should address each of these individual items.

### **Definition of Social Media, or Social Computing:**

The range of potential types of social media, or social computing, is virtually without limit. The definition needs to accommodate new forms of online media and to have appropriate coverage of existing media. A court may want to consider whether to exclude activities that are functionally equivalent to other forms of private communication, such as email.

### **Scope of Restrictions on the Use of Social Media:**

- Work-related only or including personal activity
- Timing: Whether the policy, or aspects of it, needs to cover a period before or following the judicial employee's employment by the court
- Anonymous activities
- Professional network listings—such as LinkedIn, educational institutions, bar associations

- Because the range of social media is so broad, any restrictions should take into account whether all online activity should be treated similarly or whether certain activities merit separate treatment. Types of online activity to consider include the following:
  - Blogging
  - Maintaining a website
  - Posting of comments or other text on any website
  - Posting of any graphic or multimedia material on any website
  - Posting of links to other websites or to materials on any website
  - Micro-blogging, e.g, through Twitter
  - Taking online surveys
  - Posting or transmitting any information on a third-party hosted website (e.g., Facebook, YouTube, a chat room, a blog, or a wiki). Examples include: posting status updates, posting comments to other users' profile pages, posting videos, taking surveys or playing games for which the results are posted, posting links, sending invitations to events, and sending individual messages to a friend or group of friends
  - Developing or collaborating on wikis
  - Posting instant messenger status updates
  - Podcasting or webcasting of any form
  - Engaging in any other online activities that involve postings that can either be viewed by others, or involve input that triggers a post that can be viewed by others

**Ethics Concerns:**

Does the policy address the primary ethics concerns implicated under the Code of Conduct for Judicial Employees? The five Canons of the Employee Code state:

1. A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee's office.
2. A judicial employee should avoid impropriety and the appearance of impropriety in all activities.
3. A judicial employee should adhere to appropriate standards in performing the duties of office.
4. In engaging in outside activities, a judicial employee should avoid the risk of conflict with official duties, should avoid the appearance of impropriety, and should comply with the disclosure requirements.
5. A judicial employee should refrain from inappropriate political activity.

Following is a list of the key ethics concerns related to employee use of social media. Also included are some concrete illustrative examples. These examples are neither comprehensive nor meant to recommend specific restrictions; they are listed simply to prompt consideration of the connection between particular social media activities and specific ethics concerns.

***Confidentiality (Canon 3)***

E.g., posting a "status update" on a social networking site that broadly hints at the likely outcome in a pending case; making a comment on a blog that reveals confidential case processing procedures; sending a Tweet that reveals non-public information about the status of jury deliberations

***Avoiding impropriety in all conduct (Canons 2 and 4)***

E.g., exchanging frequent "wall posts" with a social networking "friend" who is also counsel in a case pending before the court

***Not lending prestige of office (Canon 2)***

E.g., affiliating oneself on a social networking site as a "fan" of an organization that frequently litigates in court

*Not detracting from the dignity of the court or reflecting adversely on the court (Canon 4)*

E.g., posting inappropriate photos or videos on social networking sites

*Not demonstrating special access or favoritism (Canons 1 and 2)*

E.g., commenting favorably or unfavorably on a legal blog about the competence of a particular law firm

*Not commenting on pending matters (Canon 3)*

E.g., posting a comment on a legal blog that pertains to issues in a pending case, even if the case is not directly mentioned

*Fundraising only within limitations (Canon 4)*

E.g., circulating a pledge appeal for a charity walk to all of your social network site "friends," which includes individuals who practice before your court

*Not engaging in partisan political activity (or any political activity, for certain judicial employees) (Canon 5)*

E.g., circulating an online invitation for a partisan political event, even if the employee does not plan to attend him/herself; posting pictures on a social networking profile that affiliate the employee with a political party or a partisan political candidate

*For certain judicial employees, avoiding activities that involve controversial issues that may appear before the court or that involve organizations that frequently litigate (Canon 4)*

E.g., circulating an online petition regarding a highly contentious state ballot measure

## **Application of Policy to Different Categories of Judicial Employees:**

The categories of judicial employees in the court, and whether their online activities (or some of those activities) should be treated differently, for example:

- Personal staff and law clerks to judges
- Staff attorneys
- Court executive employees, such as the Clerk of Court or the Chief Pretrial Services Officer
- Court employees who are not executive employees and do not work directly for judges, for example employees in the clerk's office
- Probation officers and other staff in the probation office

## **Identification with the Court:**

Whether the employee may identify him or herself as employed by a specific court, and, if not, whether the employee may still include a job title (e.g., "federal law clerk" or "federal probation officer") or any identification with the federal court system; whether identification should be more generic, such as "attorney" or "court clerk"

## **Disclosure of Certain Activities:**

Whether the policy should require disclosure of certain ongoing social media activities for which the employee is the primary participant, for example, maintaining a website or a blog, and, if so, whether any restriction should apply to any type of website or blogs, or only those related to certain topics

### **Disclosure for Monitoring and Investigation:**

Whether the policy will require access to the employee's social media activities that are not public; when that access would be required (for example, for purposes of investigation following an alert by another employee); how/whether the policy will notify employees of this potential required disclosure

### **Security Concerns:**

How the policy relates and conforms to the court's practices regarding personal security; for example, does it consider:

- Posting of photos that compromise court security or security of individual judicial officers or employees
- Posting information through social networking that reveals confidential information about a judge or the court, such as a judge's location at a certain time

### **Use of Court Facilities and Equipment:**

How the policy relates to the Judicial Conference model policy on Personal Use of Government Office Equipment (available at [http://jnet.ao.dcn/Information\\_Technology/Personal\\_Use\\_Policy.html](http://jnet.ao.dcn/Information_Technology/Personal_Use_Policy.html)) and the court's policy regarding proper use of court computer equipment and services

Whether the policy will distinguish between activities that the employee performs using court computers or services and activities the employee performs not using court computers or services

Whether use of court computer equipment and services to participate in the activity reveals an identification or association with the court, for example, through a court email address

**Potential Exceptions or Flexibility:**

Whether the policy will allow for social networking through certain approved websites, for example, professional education websites; professional association websites; or career building websites (e.g., LinkedIn)

Whether the court itself is considering using (or already uses) an online format, such as a Facebook group, to communicate with employees

Whether the court would allow employees to create a closed online group only available to current court employees

Whether certain activities may be permissible when performed not using court computers or services, but not permissible when using court computers or services

Whether certain activities may be permissible if the scope of the potential audience is limited to the judicial employee's family or close friends and privacy settings are employed

**Orientation/Training:**

Consider including the issue of social media in employee orientation and periodic training

Educate trainers about the policy so that in any training that touches on computer usage the explanation of the court's restrictions on social media is consistent

## Part 4:

## SAMPLE PROVISIONS FOR JUDICIAL EMPLOYEE SOCIAL MEDIA POLICIES

With the advent of social networking, many courts have focused on the online social media activities of judicial employees, and have requested guidance on options to balance court considerations with employees' personal activities. These sample provisions are not intended as recommended policies or procedures, but simply offer options that courts might use in crafting their own policies or guidelines. They are adaptable for use in individual chambers or for courts generally.

The following listing, which is not meant to be exclusive or exhaustive, serves as a "menu" of sample provisions, arranged according to specific concerns raised by social media. The listing does not include sample provisions related to other issues that may warrant inclusion in a social media policy, for example regarding court security or any potential for disciplinary action resulting from social media activity. The prior part, Considerations for Development of Judicial Employee Social Computing Guidelines, provides a framework for considering adoption of a policy or guidelines. In addition, the examples in the next part of existing social media policies provide useful principles to consider.

### Scope

- **Long version:** For purposes of these guidelines, social media includes any activity on the Internet that involves posting by the individual employee user, either directly or as the result of individual input that results in a post, for example, blogging; hosting or updating any other form of website;

posting comments to any website; posting photos, other graphics, or multimedia materials; posting documents or links; saving website bookmarks to a public site; filling out surveys; posting status updates, comments, or links; posting materials or links, or sharing or participating in any other way on a social networking site like Facebook; micro-blogging, for example through Twitter; contributing to a wiki; and so on.

- **Short version:** Social media refers to the wide array of Internet-based tools and platforms that increase and enhance the sharing of information.
- These guidelines do not target messages sent through email or a social networking site directed to individuals or to small groups of personal friends or family members that are not available for viewing by anyone beyond the small number of addressee(s). In all online activities, however, the employee must abide by the restrictions on conduct imposed by the Code of Conduct for Judicial Employees, for example, the obligation of confidentiality.
- The restrictions on identification with the court and work-related postings do not apply to participation in court-related or professional education sites approved in advance or sponsored by the employee's court.

### **Compliance with Code of Conduct for Judicial Employees and Confidentiality Obligations (Canon 3)**

- In all online activities, the employee must abide by the Code of Conduct for Judicial Employees, including the obligation not to reveal any confidential, sensitive or non-public information

obtained through the course of employment by the court. Use of social media is permitted within the restrictions imposed by the social media policy and by the Code.

### **Common sense and the integrity of the judiciary– Canons 1 and 2**

- Judicial employees are expected to avoid impropriety and conduct themselves in a manner that does not detract from the dignity and independence of the judiciary. These principles extend to social media activities. Common sense counsels discretion in the nature and subject matter of Internet postings.

### **Identification with the Court** (through self-description, use of a court email address, or any other manner); these options highlight that the employee's identification reflects on the court and may lend the court's prestige– **Canons 2 and 4**

- ***Least restrictive–ID with federal courts:*** The judicial employee may identify her/himself as an employee of the federal courts generally, but may not specify which court or judge, e.g., "federal court law clerk," "federal court clerk's office," or "federal court librarian."
- ***Generic job title ID:*** The judicial employee may identify her/himself by a court-related job title, e.g., "law clerk," "records clerk," or "case processing manager," but may not identify the federal court or a specific court or judge as the employer.
- ***Most restrictive–No ID with courts:*** The judicial employee may not identify her/himself in any way as employed by or associated with any court.

### Work-related Posts–Canons 2 and 3

- ***Work-related OK:*** The judicial employee may participate in social media related to the law and employment by the court within the restrictions imposed by the Code of Conduct for Judicial Employees, including the obligation to maintain confidentiality.
- ***Work-related restricted:*** The judicial employee may not participate in any social media directly or indirectly related to the law or the individual's employment by the court, except as approved by the employee's supervisor or the court.

### Posts Implicating Potential Future Cases–Canons 1 and 4

- ***For judicial employees who are judge's personal staff and court executives:*** The judicial employee should not participate in any social media that relates to a matter likely to result in litigation or to any organization that frequently litigates in court.

### Political Posts–Canon 5

- ***For judicial employees who are not members of the judge's personal staff or court executives (these employees are permitted to participate in nonpartisan political activities):*** The judicial employee may not participate in any social media that relates to partisan politics, including political issues, events and politicians.
- ***For judicial employees who are judge's personal staff and court executives (these employees may not participate in any political activities):*** The judicial

employee may not participate in any social media that relates to any political issue, political activity or politician, whether partisan or non-partisan.

## Part 5:

## EXAMPLES OF EXISTING POLICIES

**United States District Court for the District of Rhode Island Social Media Policy/Guidelines<sup>1</sup>**

The birth and advance of “Web 2.0” technologies and applications in recent years has the potential to revolutionize how individuals, corporations, government agencies, and non-profit organizations interact and communicate with one another. Web 2.0 refers to the second generation of web design and software development, which places heavy emphasis on communication, collaboration, and sharing among Internet users. Unlike the first generation of Internet (Web 1.0), this change is not grounded in major technical transformations; instead, this change is centered, chiefly, on the ways individuals use the Internet. Before Web 2.0, most Internet users were mainly consumers of information; now, these new technologies and applications allow users to be both producers and consumers of information and shift easily between those roles.

For many individuals, Web 2.0 applications (often called “social media”) are central to their daily computer usage. Users connect and communicate through social networking Internet sites; collaborate on, refine, and disseminate knowledge through wikis; share their perspective through blogs and microblogs; upload still and video images through videosharing and photosharing sites; broadcast via podcasts and vodcasts; and stay connected via RSS feeds beamed to email inboxes or displayed on smartphones.

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<sup>1</sup> Law Clerks and Interns of this Court are also bound by the First Circuit Judicial Council “Interim Policy-- Use of Social Networking Sites by Law Clerks.” They should consult the First Circuit’s policy in addition to this policy.

As Web 2.0 has made communication instantaneous and allowed for greater collaboration and information sharing, there has been some downside. Many users adopting Web 2.0 seem less concerned, or at least mindful, of privacy and confidentiality as they navigate social media sites such as Facebook. Recent news stories illustrate the privacy and confidentiality concerns generated by the expansion of social media Internet usage: employment opportunities lost because of Facebook profiles; scandal precipitated by YouTube or Flickr postings, and judicial proceedings compromised by jurors' Twitter postings.

The challenges and risks of such social media, though, are particularly acute for government employees who work in positions where discretion and confidentiality are imperative. Court employees work in such an environment. Court personnel are expected to keep sensitive information confidential, exercise discretion to avoid embarrassment to the Court, and take precautions to avoid unnecessary security risks for court personnel, especially the judges they serve.

The Court has set down a series of broad guidelines for employees to follow as they navigate these new, and ever-changing, technologies and applications

1. **Think before you post.** Internet postings—whether they be text, photos, videos, or audio—remain accessible long after they are forgotten by the user. Beyond that, remember that nothing is “private” on the Internet despite people’s best efforts to keep things private. Do not post anything on the Internet that you would not want to read on the front page of the Providence Journal.
2. **Speak for yourself, not your institution.** On social networking sites, many individuals list their occupations and/or places of employment. Considering the sensitive nature of the work that we do, Court employees should carefully evaluate

whether the listing of their place of employment on a social networking website poses a security risk. Also, remember that you are a representative of the Court and should conduct yourself in a way that avoids bringing embarrassment upon yourself and/or the Court. In the age of Facebook, YouTube, and Twitter, many often do not think through the implications of what they post. Users often believe that their postings are private because of a social networking website's privacy features or that their comments are untraceable because they were made under a screen name, but this information may not be private and could cause damage to your reputation and the Court's if it becomes public. As such, Court employees should abide by a simple rule: if you are not speaking to someone directly or over a secure landline, you must assume that anything you say or write is available for public consumption.

3. **Keep secrets secret.** Make sure to abide by all of the court's confidentiality and disclosure provisions. Court employees handle confidential and sensitive information and the restrictions that employees normally observe in the performance of their day-to-day duties should also apply to their use of social media. Just as court employees are prohibited from disclosing sensitive, non-public information to the media and general public in person or over the phone, the same applies to social media. Furthermore, Court employees should refrain from discussing any of the Court's internal processes and procedures, whether they are of a non-confidential or confidential nature.
4. **Remember the Guide.** Any public postings are governed by the Judiciary's Guide to Policies and Procedures. As Judiciary employees, we are expected to avoid impropriety and conduct

ourselves in a manner that does not detract from the dignity and independence of the judicial system. As such, Judiciary employees are restricted from engaging in partisan political activity and fundraising activities that could compromise judicial independence. Please keep these policies and procedures in mind as you participate on social media sites.

5. **Observe security protocol.** Court employees must also take care to avoid doing things that would compromise the security of the courthouse and personnel. To maintain security, do not post pictures of the courthouse, inside or outside; do not post pictures of court events and do not post pictures of the Court's judicial officers. Also, be careful when disclosing your place of employment: social media sites are notoriously unsecure environments and knowledge of your place of employment could place employees in situations where pressure could be applied on them to corrupt the integrity of the judicial process.

**CLERK'S OFFICE EMPLOYEE  
SOCIAL MEDIA AND SOCIAL NETWORKING POLICY**

April 1, 2010

**1. AUTHORITY**

This social media and social networking policy applies to all Clerk's Office employees of the United States District Court, Central District of California, including those employees under its supervision or administration, such as capital habeas staff attorneys, pro se staff attorneys, and court reporters (collectively referred to as the employees). This policy should be read in conjunction with the Code of Conduct for Judicial Employees, the Court's Employee Manual, the Clerk's Office Employee Internet Access Agreement, and the Court's Job Behavior and Conduct Expectations policy (Chapter 3, § 3.07 of the Employee Manual).

This policy is approved and administered by the Clerk of Court. The absence of, or lack of, explicit reference to a specific site does not limit the extent of the application of this policy. Where no policy or guideline exist, employees should use good judgment and take the most prudent action possible. Employees should consult with their manager or supervisor if uncertain.

**2. USE OF SOCIAL MEDIA**

Social media, professional networking sites, rapid-fire communications, blog sites, and personal web sites are all widespread, relatively new, communication technologies. The rules for use of this social media with respect to Court employment, however, are identical to the rules for use of other communication methods (such as writing or publishing, telephoning, or even conversation).

Many users of social media identify their employer or occupation. An employee clearly identifies association with the Court by using the employee's court email address to engage in social media or professional social

networking activity. As stated in Section 6, the use of the employee's court email address to engage in social media or professional social networking activity is prohibited.

Employees must use good judgement and careful discretion about the material or information posted online.

### **3. PRINCIPLES**

The Court's reputation for impartiality and objectivity is crucial. The public must be able to trust the integrity of the Court. The public needs to be confident that the outside activities of our employees do not undermine the Court's impartiality or reputation and that the manner in which the Court's business is conducted is not influenced by any commercial, political, or personal interests.

Do not identify yourself as a Court employee. By identifying oneself as an employee of the United States District Court, a social networker becomes, to some extent, a representative of the Court, and everything he/she posts has the potential to reflect upon the Court and its image. It is acknowledged that without identifying oneself as a Court employee, an employee may intentionally or unintentionally reveal information that will allow the inference of Court employment. If this occurs, the employee assumes the responsibility for representing the Court in a professional manner.

### **4. RESPONSIBILITY**

Any material, including photographs, presented online on a Court employee website, social media, or email or blog, that pertains to the Court by any poster is the responsibility of the Court employee, even if Court employment can only be indirectly inferred or deduced. Personal blogs should not identify Court employment even indirectly; if possible, use your first name only. Do not reference or cite other Court employees without their express consent, and even then, do not identify them as Court employees.

## 5. RELEVANT TECHNOLOGIES

This policy includes (but is not limited to) the following specific technologies:

- Classmates
- Digg
- Facebook
- Flickr
- LinkedIn
- LiveJournal
- MySpace
- Personal Blogs
- Personal Websites
- Twitter
- Yahoo! Groups
- YouTube

## 6. RULES

- Use of the court email address for social networking (for example, blogs, Facebook, Twitter) is not permitted. Use of an employee's court email address is subject to the same appropriate use policies pertaining to the use of the telephone, namely, limited personal use not interfering with the performance of work responsibilities. Email addresses should not be used for "chain" correspondence, solicitation of donations, transmittal of large audio, video or other large files, or any business enterprise.
- The Court policy is not to identify yourself as a court employee at all in social media. While you can control what you post, you cannot predict nor control what others, even family members or friends, might post on your page or in a blog. Their actions, while

harmless in intent, could end up embarrassing you, the Court, or worse yet, put you in some danger.

- Maintain professionalism, honesty, and respect. Consider your online dialogue as subject to the same bounds of civility required at work. Employees must comply with laws covering libel and defamation of character. Even non-Court specific behavior could have ramifications on your employment status (e.g. photographs in compromising or illegal situations).
- Do not discuss your job responsibilities for the Court on the Internet. Be careful to avoid leaking confidential information. Avoid negative commentary regarding the Court. Any commentary you post that could reveal an association with the Court must contain an explicit disclaimer that states: "These are my personal views and not those of my employer." Again, remember that even harmless remarks could be misconstrued by litigants unfamiliar with court processes (such as pro se litigants).
- Observe security protocol. Employees must take care to avoid doing things that would compromise the security of the courthouse and personnel. To maintain security do not post pictures of the courthouse, inside or outside; do not post pictures of court events; and do not post pictures of the Court's judicial officers.
- Regularly screen the social media or websites that you participate in to ensure nothing is posted which is contrary to the best interests of the Court. Should such items appear, it is your responsibility to contact your supervisor and then immediately delete the communication or information, even closing down your Facebook page, etc., as necessary.

- Further, if any employee becomes aware of social networking activity of other staff that would be deemed distasteful or fail the good judgment test, please contact your supervisor.

## ***7. PRODUCTIVITY IMPACT***

The use of Court assets (computers, Internet access, email, etc.) is intended for purposes relevant to the responsibilities assigned to each employee. Social networking sites are not deemed a requirement for any position, and certain job titles are not permitted to access these services at work. For employees that are allowed to access these services, social media activities should not interfere with work commitments, and must comply with the signed Internet Access Agreement. Unless otherwise authorized by the Judge, employees who work in the courtroom are prohibited from using computers, handheld wireless devices, blue-tooth enabled earpieces and headsets, and other hands-free wireless devices, for non-work related reasons when court is in session or the courtroom is otherwise occupied.

## ***8. COPYRIGHT***

Employees must comply with all copyright laws, and reference or cite sources appropriately. Plagiarism applies online as well.

## ***9. TERMS OF SERVICE***

Most social networking sites require that users, when they sign up, agree to abide by a Terms of Service document. Court employees are responsible for reading, knowing, and complying with the terms of service of the sites they use. It is not the policy of the Court to require employees to use pseudonyms when signing up for social networking sites; however, for some employees in sensitive positions, this might be wise. Employees should check with the Information Technology Department regarding any

questions about Terms of Service agreements when accessing the Internet at work.

## **10. OFF LIMITS MATERIAL**

This policy sets forth the following items which are deemed off-limits for social networking whether used at Court or after work on personal computers, irrespective of whether Court employment is identified:

### **Seal and Logos**

The United States District Court seal and logos may not be used in any manner.

### **Politically Sensitive Areas**

Employees may not be seen to support any political party or cause. Employees should never indicate a political allegiance on social networking sites, either through profile information or through joining political groups. Employees should not express views for or against any policy which is a matter of current party political debate. Employees should not advocate any particular position on an issue of current public controversy or debate. If an employee is in doubt, they should refer immediately to their supervisor or manager.

The Hatch Act, 5 U.S.C. § 7324 et seq., regulates the participation of government employees, as defined in 5 U.S.C. § 7322(1), in certain types of partisan political activities. Although the Hatch Act is not applicable to the Judicial Branch, the Judicial Conference has adopted similar restrictions. Canon 5 of the Code of Conduct for Judicial Employees prohibits all active engagement in partisan political activities, including, but not limited to, public endorsement of a candidate or contribution to a political campaign. The Code of Conduct should be consulted for a thorough understanding of the specific prohibitions on political activity contained in Canon 5. In

addition, Advisory Opinion No. 92 provides guidelines for political activities.

### **Confidential Information**

One of the most important obligations of employees is to ensure that non-public information learned in the course of employment is kept confidential. Confidential information is strictly forbidden from any discourse outside of the appropriate employees of the Court. Information published on blog(s) must comply with the Court's confidentiality policies. This also applies to comments posted on other blogs, forums, and social networking sites. Confidential information is not to be discussed or referred to on such sites, even in private messages between site members who have authorized access to the information. Court employees should also refrain from discussing any of the Court's internal processes and procedures, whether they are of a non-confidential or confidential nature.

### **Online Recommendations**

Some sites, such as LinkedIn, allow members to "recommend" current or former co-workers. If an employee does this as a representative of the Court, it may give the appearance that the Court endorses the individual being recommended. This could create a liability situation if another entity hires the recommended person on the basis of the recommendation. Accordingly, the Court forbids employees to participate in employee recommendations for reasons of liability. All communication of this type should be referred to Human Resources for verification.

## ***11. MONITORING EMPLOYEES' USE OF SOCIAL MEDIA***

The Court reserves the right to monitor its employees' use of Social Media by monitoring its employees' Internet activities as set forth in the Clerk's Office Employee

Internet Access Agreement. The Court further reserves the right to visit and monitor Social Media sites to ensure that employees are not violating our Court's Social Media Policy via Court or any other computers, including employees' own personal computers.

## ***12. DISCIPLINARY ACTION***

Employees who participate in online communication deemed not to be in the best interest of the Court may be subject to disciplinary action. Inappropriate communication can include, but is not limited to:

- Confidential Court information or data leakage.
- Inaccurate, distasteful, or defamatory commentary about the Court.
- Behavior or communication encouraging behavior that is illegal, grossly unprofessional or in bad taste.

Disciplinary action can include termination or other intervention deemed appropriate by Human Resources. Please refer to the Employee Manual for information on the appeal procedures for disciplinary actions.

## ***13. COURT REPORTER EXCEPTION***

Official court reporters have an authorized business reason to establish and maintain websites that identify the Court as their place of employment.

## Federal Judicial Center: Social Networking Guidelines

Center staff using or accessing social networking and similar Internet sites (e.g., Facebook, MySpace, LinkedIn, Twitter, blogs) should follow these guidelines.

1. Government time and government equipment are for official use only. Only limited exceptions are permitted: see Chapter 6, section C, of the FJC Personnel Manual at p. 73 (copy attached). Use of social networking sites for official purposes (e.g., research related to your work) is permitted, subject to these guidelines.

2. Even when using social networking services with nongovernment equipment on your own time, you should:

- a. Consider carefully whether identifying yourself as a Center employee (or an employee of the courts or of the U.S. Government) is necessary and appropriate. Whether or not you identify yourself as a Center employee, be aware that others may recognize you as such. So, in all cases, and especially if you have identified yourself as a Center employee:
  - (1.) Be careful to avoid a perception that your communications represent the official position of the Center;
  - (2.) Be careful to avoid communications that may adversely affect perceptions about the quality and objectivity of your or the Center's work. (See also permissible political activities at Chapter 1, section M, of the FJC Personnel Manual, at pp. 11-14.)
  - (3.) Do not use the Center's seal, letterhead, or any other distinctive Center insignia.
- b. Not discuss confidential or sensitive information obtained as a result of working at the Center.

- c. Protect the security of judges and judiciary employees; do not divulge the dates or locations of Center (or other judicial) programs or meetings; do not post pictures of, or personal information about, judges or judiciary employees without their express consent and do not post pictures of courthouses or other judiciary buildings.
- d. Always think before you post. Notwithstanding privacy agreements or promises made by sites, services, or other users, anything posted may be, or may become, widely accessible, and is likely to remain so long after it is posted. Ask yourself, would it now, or will it someday, compromise or embarrass you or others if your post is seen by people beyond the immediate intended recipients?

3. If you have questions about what may be or should not be posted please discuss them with your division or office director or the Center's deputy director.

## **Attachment**

Chapter 6, section C, of the FJC Personnel Manual at p. 73:

### ***C. Employee Responsibilities: Use of Government Equipment and Services***

Center employees may use government equipment and services for authorized purposes only. Limited personal use is permitted provided that such use

- does not interfere with official business;
- occurs when the employee is not expected to be doing agency business;
- involves minimal additional expense to the government; and

- is not illegal, disruptive, offensive, or otherwise inappropriate.

Note, however, that an employee's personal use of a government credit card or long-distance telephone service is forbidden. The Center makes Internet and email services available to all its employees in order to provide a supportive work environment. When using these services or other automation resources for official or personal purposes, Center employees should have no expectation of privacy, even when use occurs on their own time. Personal use of government-supplied equipment and services is a privilege of employees, not a right, and supervisors may limit employee access to or use of government equipment and services beyond the limits embodied in this policy. You should check with your supervisor before you make use of government equipment or services if you are at all unsure about how this policy might apply to such use.

## Sample Law Clerk Policies for an Individual Judge's Chambers

### *Sample Policy #1:*

The Internet and social networking pose unique challenges for law clerks. Clerks are reminded of their ongoing duty of confidentiality and the importance of keeping all court information confidential until it is officially released by the court. Clerks should use common sense in their online activities during the clerkship. Think before you post and assume that nothing is private. Although clerks may engage in blogging, social networks and other online activity, none of the posts or messages may relate to the law, politics, or work or workplace related information. Finally, clerks should exercise discretion in identifying themselves in any way with the U.S. Courts and should remember that any such identification reflects on the courts and could be interpreted as speaking on behalf of the court.

### *Sample Policy #2:*

No blog activity is permitted during the clerkship, including comments to the posts of others. Although use of Facebook, Twitter, and other Internet sites is permissible, your activity must be restricted. This means no postings, status updates, links, position statements, or messages related to law, politics, or work or workplace related information. Clerks may not identify themselves as an employee of the U.S. Courts or a law clerk on any website, nor should clerks join a U.S. Courts or law clerk network in social or professional networking utilities.