

NON-BINDING GUIDELINES ON THE USE OF SOCIAL MEDIA BY JUDGES



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INTRODUCTION

The Global Programme for the Implementation of the Doha Declaration was launched by the United Nations Office on Drugs and Crime to assist Member States in implementing the Doha Declaration, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015. The Declaration reaffirms Member States' commitment to "make every effort to prevent and counter corruption, and to implement measures aimed at enhancing transparency in public administration and promoting the integrity and accountability of our criminal justice systems, in accordance with the United Nations Convention against Corruption".

In order to achieve these objectives, one key initiative of the Judicial Integrity pillar of the Global Programme was the establishment of a Global Judicial Integrity Network last April 2018 in Vienna, Austria. The Global Judicial Integrity Network is a platform to provide assistance to judiciaries in strengthening judicial integrity and preventing corruption in the justice system.

During the launch event of the Global Judicial Integrity Network in April 2018 and through an online survey disseminated in 2017, judges and other justice sector stakeholders from around the world expressed their concerns regarding the use of social media by members of the judiciary. This concern has also been reflected in the Declaration on Judicial Integrity, adopted at the end of the launch event and setting out the Network's priorities. In particular, the Declaration highlighted the importance of the development of guidance materials and other knowledge products to help judges address challenges to judicial integrity and independence, including those created by the emergence of new information technology tools and social media.

With this in mind, the Global Judicial Integrity Network has embarked on the development of a set of international, non-binding guidelines that could (a) serve as a source of inspiration for judiciaries that are contemplating addressing the topic; and (b) inform judges on the various risks and opportunities in using social media. As part of this initiative, an Expert Group Meeting took place at the United Nations Headquarters in Vienna, Austria in November 2018, and a worldwide survey was launched in the same year to determine what specific challenges judges are facing when using social media.

The following text and recommendations stem from the discussions during the Expert Group Meeting, the outcomes of the survey as well as wider consultations with Network participants.

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PREAMBLE

Social media has become an important part of the social life of many people and communities, changing the way in which information about them is collected, communicated and disseminated.

Given the nature of judicial office and the vital importance of public confidence in the integrity and impartiality of the courts, the use of social media by judges, both individually and collectively, raises specific questions and ethical risks that should be addressed.

Although judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, they should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The way an individual judge uses social media may have an impact on the public perception of all judges and confidence in judicial systems generally.

The topic of the use of social media by judges is complex. On the one hand, particular instances of judges using social media have led to situations where those judges have been perceived to be biased or subject to inappropriate outside influences. On the other hand, social media can create opportunities to spread the reach of judges' expertise, increase the public's understanding of the law, and foster an environment of open justice and closeness to the communities that judges serve. Additionally, there have been instances where social media has served as a platform for online abuse or harassment of judges.

The universally recognized Bangalore Principles of Judicial Conduct identify six core values that should guide each judge's work and life, namely independence, impartiality, integrity, propriety, equality, and competence and diligence. When using social media, judges should always be guided by the Bangalore Principles as well as the detailed accompanying Commentary. However, it should be noted that when these documents were first drafted, social media platforms did not exist, and so neither document makes specific reference to their use or provides advice regarding the unique challenges and opportunities that social media platforms may create.

There is nowadays a vast array of social media platforms available, with each platform offering different services, providing different opportunities for interaction, and targeting different audiences. Thus, different expectations may arise regarding the content, type and frequency of engagement for different platforms. In addition, most social media platforms constantly evolve. Consequently, different approaches may be appropriate depending on the nature and type of the social media platform.

Social media facilitates increasing opportunities for a wide variety of online connections and relationships with judges. This may have an impact, among others, on rules and principles governing ex parte communications, bias or prejudice, and outside influences.

Concepts like “friending”, “following” in the social media context usually differ from traditional usage. In some cases, they may not mean much more than the relationship established between a content provider (such as a newspaper columnist) and a reader or subscriber. In other cases, however, the degree of online interaction may become more personally engaged or even intimate and thus will require circumspection on the part of the judge, and possibly disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships. Much will depend on the nature of the social media platform itself and the methods it has developed for facilitating contact between its users.

What follows is intended to provide guidance to both judges and judiciaries (as well as other judicial office holders and court personnel, as applicable, given that their conduct can also have an impact on judicial integrity and public confidence in the judiciary), and to delineate a broader framework on how to guide and train judges on the use of different social media platforms consistent with international and regional standards of judicial conduct and ethics and existing codes of conduct.

Finally, differences in cultures and legal traditions should also be taken into consideration when addressing the various questions related to the use of social media by judges and tailoring guidance and training to be provided to them.

RISKS AND OPPORTUNITIES IN JUDGES’ AWARENESS AND USE OF SOCIAL MEDIA

1. It is important that judges, both as citizens and in their judicial role, should be involved in the communities they serve. In an era where such involvement increasingly includes online activities, judges should not be prohibited from appropriate participation in social media. The public benefit of such judicial involvement and participation must, however, be balanced with the need to maintain public confidence in the judiciary, the right to a fair trial and the impartiality, integrity and independence of the judicial system as a whole.
2. The Bangalore Principles of Judicial Conduct and other existing international, regional, and national rules, standards, and conventions of judicial conduct and judicial ethics apply to judges’ digital lives as much as to their real lives. Social media opens up interesting challenges and opportunities and engages the Bangalore Principles in different ways, and judges should be aware of those. There may also be additional requirements that would inform judges’ discretion in using this technology. Any such additional requirements should not, however, be specific to particular technologies in use at any given time but should be of general applicability.

3. Irrespective of whether they use social media or not, judges should have a general knowledge of social media, including how it may generate evidence in cases that judges may decide. Judges should also have an understanding of existing online communication tools and technology, including artificial-intelligence-powered technology.
4. Judges should receive specific training on the benefits, risks and pitfalls of their personal use of social media, as well as on its use by their family members, close friends and court personnel.
5. Use of social media by individual judges should maintain the moral authority, integrity, decorum, and dignity of their judicial office.
6. Judges should be aware of, and take into consideration, practical aspects of online forms of expression and association. These aspects include a potentially greater reach in terms of publicity or amplification to larger networks, and greater permanence of statements, as well as the potentially significant implications of relatively small and casual actions (such as “liking”) or otherwise relaying information presented by others.
7. Judiciaries are encouraged to seek the assistance of the legal profession and civil society in demystifying courts and access to justice concepts. Judges should be aware that the competent bodies of the courts or judiciaries at large may consider and act upon the opportunities presented by social media and online communities in this regard.
8. Where the Bangalore Principles of Judicial Conduct and the Commentary refer to judges’ ability to educate the public and the legal profession or engage in public commentary, that may include the use of social media in addition to other forms of communication.
9. Judges should ensure that the level of their social media use does not adversely impact their capacity to perform judicial duties with competence and diligence.
10. Institutional (as opposed to individual) use of social media by the courts can, in appropriate circumstances, be a valuable tool for promoting issues such as (a) access to justice; (b) administration of justice, in particular judicial efficiency and expedition of case processing; (c) accountability; (d) transparency; and (e) public confidence in, understanding of, and respect for, the courts and the judiciary.
11. Courts working to create online portals for litigation should consider the risks of allowing court users to use their social media profiles to access such portals, in particular with regards to the data aggregation practices of social media platforms.

JUDGES’ IDENTIFICATION ON SOCIAL MEDIA

12. Judges may use their real names and disclose their judicial status on social media, provided that doing so is not against applicable ethical standards and existing rules.
13. During the development of the present guidelines, contrasting views have been shared with regard to the use of pseudonyms by judges on social media and no consensus has been reached on this issue. As such, the present guidelines neither recommend nor forbid the use of pseudonyms. However, it can be said that, in their behaviour on social media, judges must comply with all ethical standards related to their profession. Pseudonyms should never be used to enable unethical behaviour on social media. Additionally, the use of a pseudonym offers no guarantee that the real name or judicial status will not become known.

14. Judges should have regard to the range of social media platforms and should recognize that, with some platforms, it may be beneficial to separate private and professional identities. Understanding how the various social media platforms operate and what type of information may be necessary or appropriate to share on various social media platforms would be an appropriate area for the training of judges.

CONTENT AND BEHAVIOUR ON SOCIAL MEDIA

15. Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media.
16. Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, the right to fair trial or public confidence in the judiciary. The same principle applies to judges regardless of whether or not they disclose their real names or judicial status on social media platforms.
17. Judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision.
18. Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on all social media platforms. It may be helpful to consider in respect of each item of social media content (such as posts, comments on posts, status updates, photographs, etc.) what its impact on judicial dignity might be if disclosed to the general public. The same caution applies when reacting to social media content uploaded by others.
19. Judges should treat others with dignity and respect, not use social media to trivialize the concerns of others, or make remarks that discriminate on any prohibited ground.
20. It is recognized that social media makes it much easier to research parties online and discover things that are not part of evidence that is before the court or tribunal. Subject to the rules of evidence of different jurisdictions, judges should refrain from researching the aspects of a case online, including parties and witnesses, as this could potentially influence judges' decisions on a case (or lead to a perception that it has had such an influence).
21. Judges should consider whether any digital content antedating their ascension to the bench might damage public confidence in their impartiality or in the impartiality of the judiciary in general. Judges should follow the applicable rules of their jurisdictions regarding the disclosure and removal of such content. If no rules are in place, judges should consider removing the content. It may be necessary to take advice on whether it would be correct to remove it and how to do so.
22. If a judge has been insulted or abused online, he or she should seek advice from senior judicial colleagues or other mechanisms in place in the judiciary but should refrain from responding directly. Judiciaries are encouraged to provide guidance for judges on how to deal with harassment or abuse online.
23. A judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own "echo

chambers”. However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge’s impartiality or the impartiality of the judiciary in general.

24. Judges should ensure that they do not use their social media accounts to directly or indirectly advance their own or third-party’s financial or commercial interest.

FRIENDSHIPS AND RELATIONSHIPS ONLINE

25. Judges should be aware that concepts like “friending”, “following”, etc., in the social media context, can differ from traditional usage and may be less intimate or engaged. However, where the degree of interaction, online or otherwise, becomes more personally engaged or intimate, judges, should continue to observe the Bangalore Principles of Judicial Conduct, necessitating, in appropriate situations, circumspection, disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships.
26. Judges should periodically monitor past and present social media accounts and should take steps to review content and relationships as and when necessary.
27. Judges should develop and consistently apply an appropriate etiquette for removing and/or blocking followers/friends/etc., especially where failure to do so would reasonably create an appearance of bias or prejudice.
28. It is prudent and wise for judges to exercise due care and diligence when creating online friendships and connections and/or accepting online friend requests.
29. Whenever there is uncertainty as to either online relationships or content, judges are encouraged to seek guidance of approved social media experts and/or judicial ethics advisers provided by the judiciaries.
30. Judges should avoid accepting or sending friend requests from or to parties or their legal representatives, and engaging in any other social media interactions with them. The same applies to witnesses or any other known interested persons.
31. Judges should be trained on how to inform their immediate families, close friends, court personnel, etc. about the ethical obligations of a judge and how use of social media can undermine compliance with those obligations.

PRIVACY AND SECURITY

32. Judges are advised to acquaint themselves with the security and privacy policies, rules, and settings of the social media platforms they use, periodically review them, and exercise caution, with a view to ensuring personal, professional, and institutional integrity and protection.
33. Regardless of the settings, it is advisable for judges not to make any comment or engage in any conduct on social media that might be embarrassing or improper were it to become public knowledge.

34. Judges should be aware of the risks and propriety of sharing personal information on social media. Judges should be particularly aware of the privacy and security risks of revealing their location or any similar information directly or indirectly through posts on social media. Additionally, judges should be aware that even if they are not active social media users, privacy and security risks may arise from the use of social media by their family members, close friends, court personnel, etc.
35. Judges should be aware that how they are perceived on social media may be based not only on their active use of social media, but also based on what information they receive and from whom they received it, even if the contact was not requested by them.
36. Irrespective of whether they use social media or not, judges should be wary of how they behave in public because photos or recordings may be taken that can be spread quickly on social media platforms.
37. Courts and judiciaries should prioritize and facilitate the training of judges on the use of social media to enable them to effectively manage the accounts they use.

TRAINING

38. Judges should be periodically provided with training to address pertinent questions and issues, such as:
 - i. What social media platforms are available for use;
 - ii. How these platforms operate;
 - iii. What benefits there are to participating in these platforms;
 - iv. What the potential risks/consequences of such participation are;
 - v. How judges should participate with appropriate reticence to protect their security and to fulfil their obligations to maintain judicial independence, the dignity of office and public confidence;
 - vi. How family members should be adequately informed to play their part in ensuring that judges are not subject to security risks and are successfully fulfilling their obligations as judges;
 - vii. How the use of social media by court personnel may also have an impact on public confidence in the judiciary, judicial integrity, impartiality and independence; and
 - viii. Why to avoid researching parties and discovering things that are not part of evidence that is before the court or tribunal.
39. Training should be provided to newly appointed judges. In addition, training should be provided to judges with some level of permanency and on a continuous basis and, if possible, should also be available electronically.
40. There should be ongoing confidential resources for inquiry and advice as needed. The judiciary should consider publishing an anonymous compilation of such advice and direction. The judiciary may also consider preparing other practical guidance for judges on the topic of the use of social media.



The Doha Declaration:
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OF LAWFULNESS**



GLOBAL
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INTEGRITY**
NETWORK