



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Oral Advice Summary 2020-037

[Issued October 23, 2020]

**JUDICIAL OBLIGATIONS RELATING TO SOCIAL MEDIA COMMENTS BY
APPELLATE COURT STAFF**

I. Questions

The committee has been asked for advice on what, if any, ethical obligations appellate justices have once they become aware that a member of their staff has made inappropriate comments online that would violate the canons.¹

¹ All further references to canons, the code, advisory committee commentary and to “Terminology” are to the California Code of Judicial Ethics unless otherwise indicated.

II. Advice Provided

The canons mandate that appellate justices exercise reasonable direction and control over the conduct of their staff to prevent them from making public comments that would violate the canons. When a justice becomes aware that a staff member has used social media to post a comment that violates the canons, the justice should immediately take steps to remedy the ethical violation, including at a minimum requiring the staff member to take all reasonable steps to have the post taken down and removed from the public domain.

III. Discussion

Social media has become a common way to communicate with colleagues, friends and the world at large, a trend that has accelerated during the current pandemic as other avenues for communicating have become more limited. In many ways, social media has taken the place of both the proverbial office water cooler and the town square. As with any other members of the general public who participate in social media to express themselves, appellate court staff can be expected to post their thoughts, comments and opinions online. Perhaps not surprisingly, such postings can, and frequently do, reference their employment at the court.

Appellate court staff are not prohibited from posting comments on social media about their employment or about the courts in general.² But, the canons constrain the content of any such comments and obligate justices to require staff compliance with the canons. (Canons 3B(9) and 3C(3)).³ Accordingly, appellate court staff must refrain from posting comments on social media that violate the canons.

² As a term of their employment, court staff are required to keep confidential the decision making process of a court with respect to any pending matter.

³ Canon 3B(9) states in pertinent part that “A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of staff and court personnel subject to the judge’s direction and control.” Canon 3C(3) states in full that “A judge shall require staff and court personnel under the judge’s direction and control to observe appropriate standards of conduct and to refrain from

Certain canons, including canons 3B(9) and 3C(3), require justices to exercise reasonable direction and control over the conduct of the staff that they employ. The canons define the term “required” to mean that justices are “to exercise reasonable direction and control over the conduct of those persons subject to [their] direction and control.” Appellate justices face discipline if they fail to exercise such “reasonable control and direction” over their staff to prevent them from making inappropriate comments on social media. (*Public Admonishment of Commissioner Mark Kliszewski* (2017) [commissioner’s failure to take sufficient corrective action to stop court staff from making inappropriate comments violated canons 3B(4) and 3C(3)]; see also Geyh et al., *Judicial Conduct and Ethics* (5th ed. 2013) § 6.03 [compiling cases outside of California in which judicial officers have been disciplined under similar canon provisions as a result of the unethical conduct of their staff].)

Once a justice becomes aware that a staff member has posted a comment on social media that violates the canons, the justice must take reasonable steps to remedy the ethical violation. At a minimum, the justice should instruct the staff member to take all reasonable steps to delete or to have removed from public view any improper comment that violates the canons, and then follow up with the staff member to ensure that they have done so. If the justice becomes aware that an improper comment has already been viewed by the public, republished or otherwise disseminated, then depending on the circumstances, the justice may need to instruct the staff member to correct or repudiate the comment on social media, particularly if the comment is demeaning or offensive, or otherwise undermines the dignity of the court. Appropriate training will assist appellate court staff in understanding the vital role that they play in maintaining public confidence in the integrity of the judicial system, as well as the importance of maintaining confidentiality and impartiality and of upholding the dignity of the court in their postings to social media.

(a) manifesting bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment in the performance of their official duties.”



This oral advice summary is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. rule 1(a), (b).) It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions expressed in this summary are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a)).)