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JUDICIAL ETHICS IN AN INTERNET AGE

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A. OBJECTIVES OF PRESENTATION

Judges attending this seminar will be able to apply an analytical framework for determining whether their use of the internet/social media implicates constitutional, evidentiary, or ethical considerations, and how to address concerns.

Judges will also be able to identify issues that arise out of the jury’s use of the internet/social media/social networking during the presentation of evidence and during deliberations; and undertaken prophylactic measures to avoid problems.

Finally, judges will be able to identify ethical considerations relating to the use of the internet in judicial campaigns, so as to be able to tailor their behavior to avoid problems.

B. DEFINITIONS

1. **Social Media** refers to forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos).

2. **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

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social networks that offer personal connections and professional networks that market a business or accomplish other business-related goals.”

a. Example: 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. (Other social networking websites: “LinkedIn”, “MySpace”).

3. 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.

4. 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.
5. 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.

C. ANALYSIS: DEVELOPING A FRAMEWORK FOR PROPRIETY OF INDEPENDENT JUDICIAL RESEARCH ON INTERNET


   Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary.

   Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

   Canon 3: A Judge Should Perform the Duties of Office Impartially and Diligently

   Canon 4: A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

   Canon 5: A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties

   Canon 6: A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities of Monetary Contributions

   Canon 7: A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office

   Canon 8: Collective Activity by Judges

2. Key concerns Of MCJC are set out in Canons 1-3, and manifest themselves as overarching themes throughout as: (1) judicial integrity, (2)
judicial independence, (3) avoiding impropriety and appearance of impropriety, (4) judicial impartiality and (5) judicial diligence.

3. Preliminary question: Is it proper for a judge to use the internet to obtain facts relevant to a pending case?

**Compare:** ABA Mode Code of Judicial Conduct to Michigan Code of Judicial Conduct

a. **ABA Model Code of Judicial Conduct Canon 2:** A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently

   i. **ABA Model Rule 2.9(C):** A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

   ii. **ABA Comment to Rule 2.9:** [6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

b. **Michigan Code of Judicial Conduct, Canon 3:** A Judge Should Perform the Duties of Office Impartially and Diligently.

c. **Comment:** Michigan’s prohibition against ex parte communications does not go as far as ABA Model Rule and Comment accompanying its similar Canon 2.

   i. However, given the overarching themes of independent, impartial, and competent judges, and the prohibition against appearance of propriety in the performance of their duties, judicial information gathering may run afoul of even the broad Canons followed in this jurisdiction.

d. **Suggested analysis regarding Independent Judicial Research of facts on the internet:** independent judicial research may be consistent with Michigan Canons regarding independence, impartiality, diligence and absence of appearance of impropriety
when accomplished consistent with Constitutional notions of due process and Evidence rules, especially regarding judicial notice.

4. **Step One:** Identify the type of information you seek, as well as its source.

   a. Information from federal or state websites
   b. Location/distance/directions (MapQuest, Google Maps, Yahoo Maps, Bing Maps);
   c. Info regarding party from his/her/its website
   d. Personal or professional information about a party, witness, juror (Google, Yahoo, Facebook, MySpace, personal or company websites, online Court Records, Property sites).

4. **Step Two:** Factor in some of the problems inherent in using information obtained from internet source:

   a. Outdated information
   b. Inaccurate information
   c. Broken links
   d. Fairness of research – one sided or incomplete
   e. Possibility of fraudulent information (open sources)
   f. Whether interested parties know/should know of your research.

5. **Step Three:** Identify the considerations that might relate to the use of information obtained from internet:

   a. Constitutional,
   b. Evidentiary,
   c. Ethical (in Michigan, concerns stem from overarching themes of: (1) judicial **integrity**, (2) judicial **independence**, (3) avoiding improbriety and appearance of impropriety, (4) judicial impartiality and (5) judicial **diligence**, tied in with evidentiary judicial notice and constitutional due process concerns).

D. **APPLICATION OF CONSTITUTIONAL, EVIDENTIARY, AND ETHICAL ANALYSES**

1. Constitutional considerations
a. Due process

*Kiniti-Wairimu v. Holder*, 312 Fed. Appx. 907, 2009 WL 430439 (9th Cir. 2009) (9th Circuit Court finds Kenyan citizen was denied due process in his pursuit of an application for withholding of removal and protection under the Convention Against Torture when the Immigration Judge conducted independent research of Kiniti’s family circumstances on the internet and then relied on reports of which he was not aware, to make an adverse credibility determination).

2. Evidentiary considerations: Michigan Rules of Evidence

**Rule 201 Judicial Notice of Adjudicative Facts**

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts, and does not preclude judicial notice of legislative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

*Capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned.*

*American Board of Emergency Medicine Web site*. *Oken v. Williams*, 23 So.3d 140, fn 2 (Fla. Ct. App. 2009), *quashed on other grounds*, ___ So.3d ___, 2011 WL 1674252 (Fla. 2011) (majority opinion defends against dissent’s criticism of its reliance on internet resources to define “specialist” in medical malpractice action, noting that “[t]he use of generally-known knowledge … which is capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned[…] does not present the same concerns”).


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not properly disclose animal’s prior invasive joint surgery; court held that the register fell within the category of indisputable facts derived from sources the accuracy of which could not reasonably be questioned.)

Center of Disease Control and Prevention. Gent v. CUNA Mut. Ins. Society, 611 F.3d 79, 84 n.5 (1st Cir. 2010) (ERISA) (circuit court took judicial notice of general facts on website of Center for Disease Control and Prevention concerning Lyme Disease because facts were “not subject to reasonable dispute.”)


MapQuest, Google maps, and other online mapping tools. People v. Clark, 406 Ill.App. 3d 622, 940 N.E.2d 755 (Ill. App. Dist. 2, 2010) (information acquired from mainstream internet sites such as MapQuest and Google Maps is reliable enough to support a request for judicial notice; also Warwick v. University of the Pacific, 2010 WL 2680817 (N.D. Cal. 7/6/2010); Citizens for Peace in Space v. City of Colorado Springs, 477 F.3d 1212, 1219 (10th Cir. 2007)).

Michigan Dep’t of Corrections Offender Tracking Information System. People v. Djonaj, 2010 WL 3063673 (App. 2010) (majority dismisses challenges to upward departure from sentencing guidelines as moot, after apparently consulting online Offender Tracking Information System (OTIS); dissent rebukes that reliance because (1) parties did not request that Court take judicial notice of website and (2) given its disclaimer regarding accuracy, the website “is not a source whose accuracy cannot reasonably be questioned”; see also People v. Joseph Henry Duncil, 2008 WL 681161 (Mich. App. 2008) (OTIS website not deemed to qualify as a source whose accuracy cannot reasonably be questioned; court declines to take judicial notice of the website information).

1636270 (Ky. App. 2009) (circuit court took judicial notice of a definition from website maintained by NIH and NLM after parties provided differing definitions of condition; mere fact that information was obtained from internet does not make it suspect; “[c]ourts across this country take judicial notice of medical terminology on a daily basis in order to save litigants the added expense of having a physician or other medical expert testify to a readily determined disease or malady.”)


Online State Court sites. L&Q Realty Corp v. Assessor, 71 A.D.3d 1025, 896 N.Y.S.2d 886 (NYAD Dept 2 2010); Woodhull Medical & Mental Hosp. of New York City Health & Hosp, 2011 1107202 (2011) (taking judicial notice of the New York Unified Court System E-Courts public Web site); see also Marks v. Criminal Injuries Compensation Bd., 196 Md. App. 37, 7 A.3d 665 (Md. App. 2010) (“it is widely accepted that judicial notice of court records extends to records that are accessed through the Internet”)


Statistics collected and maintained by federal government: notice can be taken, but foundation from which accuracy and reliability must be established. Polley v. Allen, 132 S.W.2d 223, 226 (Ky. App. 2004) (While trial court could take judicial notice of public records from reliable sources on the internet, mere assertion that statistics came from governmental body, without identification of uniform resource locator (URL) of website from which stats originated, made it impossible to determine if the source was “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”)


**Internet resources not found to be appropriate for judicial notice:**

**Consumer Electronic Association’s website.** *Powers v. Halpin*, 2007 WL 1196527 (Ky. App. 2007) (CEA website deemed to be a source whose accuracy could reasonably be questioned; trial court erred in taken judicial notice of it; citing to lack of foundation as to identity of CEA and date of the information).

**MapQuest.** *Com. v. Brown*, 839 A.2d 433, 435-436 (Pa. Super. 2003) (holding that trial court abused is discretion in taking judicial notice of a MapQuest distance determination to invoke mandatory sentencing provision; “[c]learly, an internet site such as MapQuest™, which purports to establish distances between two locations, is not so reliable that its ‘accuracy cannot reasonably be questioned. [] An internet site determining distances does not have the same inherent accuracy as do professionally accepted medical dictionaries, or encyclopedias, or other matters of common knowledge within the community.”)

**Microsoft web site.** *People v. Schilke*, 2005 WL 1027039 (Mich. App. 2005) (defendant claimed that a known defect on Microsoft server was responsible for missing information, in prosecution for unauthorized access to a computer; Court declined to take judicial notice of information on Microsoft web site documenting the issue; trial court ruled it could not accept such information as being accurate without expert testimony; appellate court agrees that alleged problem was not capable of accurate and ready determination and that the web site did not constitute a “source[] whose accuracy cannot be reasonably questioned.”
New York State Department of Insurance. NYC Medical and Neurodiagnostics, P.C. v. Republic Western Ins. Co., 8 Misc. 3d 33, 38, 798 N.Y.S.2d 309, 313 (App. Term 2004) (no showing that the official website of the New York State Department of Insurance was the source of undisputed accuracy.)


Wikipedia results. Although cited in almost 700 judicial opinions since 2005 and relied on by some courts without much analysis or comment, this online encyclopedia is an “open source” project to which pseudonymous or anonymous volunteers; indeed, anyone with internet connections, can write, edit, revise, or vandalize almost any article.4 (Performance Pricing, Inc. v. Google Inc., 2009 WL 2497102 (D. Tex. 2009) (“The content on this website is provided by volunteers from around the world—anyone with internet access can provide or modify content. [citation omitted] Thus, not only is

the information unreliable, [citation omitted] but it can potentially change on a day-to-day basis.”))

**Summary of application of Rule 201(b):** as a general rule, courts are more willing to take judicial notice of facts from websites hosted by public authorities (federal and state governments, entities, agencies, subdivisions).\(^5\)

Next up are non-governmental websites that have the characteristics described in R. Evid. 803(17) – market quotations, tabulations, lists, and other data compilations relied on by the public, and the learned treatise exception described in Rule 803(18).\(^6\)

**Less reliable:** information obtained from internet sources that are “open sourced”, meaning that anyone can change them, such as Wikipedia.

**Probably the least likely source of internet information for judicial notice is that on a websites created or maintained by a party to the case.** Koenig v. USA Hockey, Inc., 2010 WL 4783042 (S.D. Ohio, 2010) (“This Court concludes that federal courts should be very reluctant to take judicial notice of information or documents that appear exclusively on websites which have been created and are maintained by one of the parties to a case unless that party is a governmental body and the website is maintained not to further the business interests of the party but to provide a source of public information. The potential for fabrication or for inaccurate information is simply too great to be reconciled with the language in Rule 201 to the effect that judicial notice may be taken only if the information comes from “sources whose accuracy cannot reasonably be questioned.” As the Advisory Committee notes to Rule 201 state, “[a] ‘high degree of indisputability’ is an essential prerequisite for a court to take judicial notice of a particular fact.” See Holland v. United States, 2008 WL 2769367, *3 (W.D.Tenn. July 11, 2008)).

\(^5\) Id.

\(^6\) Id.
(c) When discretionary. A court may take judicial notice, whether requested or not, and may require a party to supply necessary information.

(d) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

NYC Medical and Neurodiagnostic, P.C. v. Republic Western Ins., 798 N.Y.S.2d 309, 313 (NY Supp.App. 2004) (“In conducting its own independent factual research, the court improperly went outside the record in order to arrive at its conclusions, and deprived the parties an opportunity to respond to its factual findings. In effect, it usurped the role of counsel and went beyond its judicial mandate of impartiality. Even assuming the court was taking judicial notice of the facts, there was no showing that the Web sites consulted were of undisputed reliability, and the parties had no opportunity to be heard as to the propriety of taking judicial notice in the particular instance....”)

Justice v. King, 60 A.D.3d 1452, 876 N.Y.S.2d 301 (NYAD 2009) (citing NYC Medical and Neurodiagnostic, above: “Although not raised by the parties on appeal, we express our concern that, in deciding the issue before it, the court sua sponte relied on a source and its contents that were not submitted by either party. Specifically, the court accessed SGM’s website and relied heavily on information found therein.”)

(e) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(f) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Rule 605: Competency of Judge as Witness
The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

NYC Medical and Neurodiagnostic, P.C. v. Republic Western Ins., 798 N.Y.S.2d 309, 313 (NY Supp.App. 2004) (“In conducting its own independent factual research, the court improperly went outside the record in order to arrive at its conclusions, and deprived the parties an opportunity to respond to its factual findings. In effect, it usurped the role of counsel and went beyond its judicial mandate of impartiality.”)

**Rule 802: Hearsay Rule**

Hearsay is not admissible except as provided by these rules.

*Internet newspaper articles.* State v. Kinder, 2010 WL 4157297 (Ohio App. 2010) (newspaper articles, analogous to internet news articles, “are generally inadmissible as evidence of the facts stated within the article because they are hearsay not within any exception.”)

*MapQuest -- qualified.* Jianniney v. State, 962 A.2d 229 (Del. Sup., 2008) (“Numerous courts, in this and other jurisdictions, have taken judicial notice of facts derived from internet mapping tools when deciding questions concerning child custody, proper venue in a civil action, proof of venue in a criminal action, discovery disputes and compensation for travel expenses.” However, MapQuest printouts admitted for the truth of the website’s driving time estimates, without more, did not qualify for exception to the hearsay rule.)

**Rule 901: Authentication and Identification**

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Siegel-Robert, Inc. v. Johnson, 2009 WL 3486625 (Tenn Ct. App., 2009) (authentication of pages from taxpayer/claimant’s website determined sufficient by virtue of taxpayer’s corporate logo at the
top of each page, and the internet address linking to taxpayer’s website at the bottom of each page).


Be aware of tools that can help you look up registration data for (such as http://www.whois.net/) internet sites.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) – (5) * * *

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) * * *

3. Discussion Scenarios – Internet Research by Judges

Consider, with respect to each:

- Constitutional concerns?
- Rules of Evidence?
- Ethical considerations?

1. Evidence is in, parties have rested, case is under consideration.
• The parties disagree on what the term “quickie” meant, in the context of a sexual harassment case. One party defined it as a brief sexual tryst. The other defined it as an expensive wheelchair. What are the implications (constitutional, evidentiary, ethical) of your independent internet research on the so-called “quickie” brand of wheelchair? 

• The drug prosecutor claimed that the defendant’s use of the term “18th Street” was a demand for $1,800. You decide to conduct an internet search to determine whether the city has an 18th Street. What are the implications of you obtaining that information?

E. ANALYSIS: ETHICAL CONSIDERATIONS OF JUDICIAL USE OF SOCIAL MEDIA

1. Introduction

a. A recent national survey (results released 8/26/2010) found that 40% of judges reported using social media sites like Facebook and LinkedIn. 

b. Nearly half of the judges (47.8%) disagreed or strongly disagreed with the statement “Judges can use social media profile sites, such as Facebook, in their professional lives without compromising professional conduct codes of ethics.” (emphasis added). Only about 34.3% responded the same way to the statement “Judges can use social media profiles sites, such as Facebook, in their personal lives without compromising professional conduct codes of ethics.” (emphasis added).

c. While a few states have issued advisory legal ethics opinions about judges’ participation in social networking activities, almost no ethical violations have been found in connection with such activities.

2. State Advisory Opinions re Judicial Use of Social Networking


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7 People v. Mar, 28 Cal. 4th 1201, 1204, 52 P.3d 95, 97 (Cal. 2002).
i. Question 1: Whether a judge may post comments and other material on the judge’s page on a social networking site, if the publication of such material does not otherwise violate the Code of Judicial Conduct.

Answer: Yes

Discussion: This question, as well as Question 3, relates to the posting of materials by the judge or the campaign committee and relate only to the method of publication. The Code of Judicial Conduct does not address or restrict a judge’s or campaign committee’s method of communication but rather addresses its substance.

ii. Question 2: Whether a judge may add lawyers who may appear before the judge as “friends” on a social networking site, and permit such lawyers to add the judge as their “friend.”

Answer: No.

Discussion: “[I]isting lawyers who may appear before the judge as “friends” on a judge’s social networking page reasonably conveys to others the impression that these lawyer “friends” are in a special position to influence the judge. This is not to say, of course, that simply because a lawyer is listed as a “friend” on a social networking site or because a lawyer is a friend of the judge … means [that the] lawyer is, in fact, in a special position to influence the judge. The issue, however, is not whether the lawyer actually is in a position to influence the judge, but instead whether the proposed conduct, the identification of the lawyer as a “friend” on the social networking site, conveys the impression that the lawyer is in a position to influence the judge. The [Florida Judicial Ethics Advisory Committee] concludes that such identification before the judge does convey this impression and therefore is not permitted.”

Note: This is a minority opinion among the advisory
opinions filed on the subject by several states. (See Kentucky, New York, and Ohio opinions that follow.)

iii. Question 3: Whether a committee of responsible persons, which is conducting an election campaign on behalf of a judge’s candidacy, may post material on the committee’s page on a social networking site, if the publication of the material does not otherwise violate the Code of Judicial Conduct.

Answer: Yes.

Discussion: (see Question 1).

iv. Question 4: Whether a committee of responsible persons, which is conducting an election campaign on behalf of a judge’s candidacy, may establish a social networking page which has an option for persons, including lawyers who may appear before the judge, to list themselves as “fans” or supporters of the judge’s candidacy, so long as the judge or committee does not control who is permitted to list himself or herself as a supporter.

Answer: Yes.

Discussion: “To the extent a social networking site permits a lawyer who may practice before a judge to designate himself or herself as a fan or supporter of the judge, this practice is not prohibited … so long as the judge or committee controlling the site cannot accept or reject the lawyer’s listing of himself or herself on the site. Because the judge or the campaign cannot accept or reject the listing of the fan on the campaign’s social networking site, the listing of a lawyer’s name does not convey the impression that the lawyer is in a special position to influence the judge.”

i. Question: May a Kentucky judge or justice, consistent with the code of judicial conduct, participate in an internet-based social networking site, such as Facebook, LinkedIn, MySpace, or Twitter, and be “friends” with various persons who appear before the judge in court, such as attorneys, social workers, and/or law enforcement officials?

Answer: Yes.

Discussion: “While the nomenclature of a social networking site may designate certain participants as ‘friends’, the view of the Committee is that such a listing, by itself, does not reasonably convey to others an impression that such persons are in a special position to influence the judge. . . . While social networking sites may create a more public means of indicating a connection, the Committee’s view is that the designation of a ‘friend’ on a social networking site does not, in and of itself, indicate the degree or intensity of a judge’s relationship with the person who is the ‘friend’. The Committee conceives such terms as ‘friend,’ ‘fan’ and ‘follower’ to be terms of art used by the site, not the ordinary sense of those words.”

g. South Carolina: S.C. Advisory Committee Opinion 17-2009 (2009)\(^9\).

i. Question: A magistrate judge has inquired as to the propriety of being a member of Facebook, a social networking site. The Magistrate is friends with several law enforcement officers and employees of the Magistrate’s office. The Magistrate is concerned about the possibility of an appearance of impropriety since the list of Facebook subscribers is vast.

Conclusion: A judge may be a member of Facebook and be friends with law enforcement officers and employees of the Magistrate as long as they do not discuss anything related to the judge’s position as magistrate.

Opinion: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary… However, the commentary to Canon 4 states that complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Allowing a Magistrate to be a member of a social networking site allows the community to see how the judge communicates and gives the community a better understanding of the judge. Thus, a judge may be a member of a social networking site such as Facebook.


Digest: “Provided that the judge otherwise complies with the Rules Governing Judicial Conduct, he/she may join and make use of an Internet-based social network. A judge choosing to do so should exercise an appropriate degree of discretion in how he/she uses the social network and should stay abreast of the features of any such service he/she uses as new developments may impact his/her duties under the rules.”

Discussion: There is nothing inherently inappropriate about a judge joining and using a social network. The judge must adhere to the rules of conduct, and in participating on a social network must (1) recognize the public nature of anything he/she posts and tailor such postings accordingly; (2) be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge’s court; and (3) not answer questions about or seek to discuss a person’s case, or answer legal advice. “The Committee urges all judges using social networks to, as a baseline, employ an appropriate level of prudence, discretion and decorum in how they make use of this technology.”


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i. Question: May a judge be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge?

Answer: “A judge may be a ‘friend’ on a social networking site with a lawyer who appears as counsel in a case before the judge. As with any other action a judge takes, a judge’s participation on a social networking site must be done carefully in order to comply with the ethical rules in the Ohio Code of Judicial Conduct.”

(Ethical considerations mentioned in this opinion are set out throughout this discussion.)

3. Ethical Violation found re Judicial Use of Social Networking

Public Reprimand of B. Carlton Terry, Jr., N.C. Judicial Standards Comm’n Inquiry No. 08-234, a judge was reprimanded for his use of Facebook, as follows:

From September 9, 2008 through September 12, 2008, Judge Terry presided over a child custody and support hearing.

On September 9, 2008, the judge and the attorney for the defendant talked about Facebook in chambers. This discussion was in the presence of the Plaintiff’s lawyer, but she stated that she did not know what Facebook was and that she did not have time for it.

Judge Terry and the defendant’s attorneys designated each other as “friends” on their Facebook accounts.

On September 9, 2008, Judge Terry Googled the plaintiff about her photography business, stating that he wanted to see examples of her work. He viewed samples of photographs she had taken and also found numerous poems that he enjoyed.

In another in-chambers hearing on September 10, 2008, the lawyers and Judge Terry reviewed prior testimony suggesting that one of the parties had been having an affair. The judge stated he believed the allegations against the defendant but that it did not make any difference. The defendant’s attorney (the judge’s new Facebook friend, stated “I will have to see if I can prove a negative”).

During the evening of September 10, 2008, Judge Terry checked the defendant’s attorney’s Facebook account. The attorney had posted “how do I prove a negative”.

Judge Terry posted on his Facebook account that he had “two good parents to choose from” and “Terry feels that he will be back in court”, referring to the case not being settled.

The defendant’s attorney then posted on his Facebook page “I have a wise Judge”.

The next day, September 11, 2008, Judge Terry told the plaintiff’s attorney about the September 10, 2008 exchanges on Facebook between the defendant’s attorney and himself.

On September 11, 2008, Judge Terry wrote on his Facebook page that he was in his last day of trial. The defendant’s attorney wrote “I hope I’m in my last day of trial”, to which Judge Terry responded with the post “you are in your last day of trial”.

On September 12, 2008, prior to announcing his findings in the case, the judge recited a poem, to which he had made minor changes, that he found on the plaintiff’s web site.

Judge Terry disclosed to the parties that he had viewed the plaintiff’s web site and quoted a poem he found thereon only after the hearing had concluded and he had orally entered his order.

The North Carolina Judicial Standards Commission found that (1) Judge Terry had ex parte communications with counsel for a party in a matter being tried before him and (2) he was influenced by information he independently gather by viewing a party’s web site while the hearing was ongoing, without offering or entering the contents of the web site:
“Judge Terry’s actions ... evidence a disregard of the principles of conduct embodied in the North Carolina Code of Judicial Conduct, including failure to personally observe appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved (Canon 1), failure to respect and comply with the law (Canon 2A), failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2A), engaging in ex parte communication with counsel and conducting independent ex parte online research about a party presently before the Court (Canon 3A(4)). Judge Terry’s actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute.”

4. Application: Michigan Code of Judicial Conduct in Relation to Other State Advisory Opinions

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. The provisions of this code should be construed and applied to further those objectives.

Independence, integrity, impartiality: Ohio Ethics Opinion. “A judge must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and must avoid impropriety and the appearance of impropriety. It should go without saying that upholding the law is a key component of maintaining the dignity of the office, displaying anything to the contrary on a social networking site is imprudent and improper.”

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

______________

12 Id.
A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Kentucky Ethics Opinion. “[T]he Committee is compelled to note that, as with any public media, social networking sites are fraught with peril for judges, and [] this opinion should not be construed as an explicit or implicit statement that judges may participate in such sites in the same manner as members of the general public…. Thus, pictures and commentary posted on sites which might be of questionable taste, but otherwise acceptable for members of the general public, may be inappropriate for judges.”

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

Note: Respecting and observing the law includes compliance with rules prohibiting ex parte communications and governing judicial notice.

C. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not use the prestige of office to advance personal business interests or those of others. A judge should not appear as a witness in a court proceeding unless subpoenaed.

New York ethics opinion: “The judge should also be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge’s court through a social network. In some ways, this is no different from adding the person’s contact information into the judge’s Rolodex or address book or speaking to them in a public setting. But, the public nature of such a link (i.e., other users can normally see the judge’s friends or connections) and the increased access that the person would
have to any personal information the judge chooses to post on his/her own profile page establish at least, the appearance of a stronger bond. A judge must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a “close social relationship” requiring disclosure and/or recusal…”

D. * * *

E. A judge should not allow activity as a member of an organization to cast doubt on the judge’s ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions. A judge should be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic. Nothing in this paragraph should be interpreted to diminish a judge’s right to the free exercise of religion.

Ohio Ethics Opinion. “A judge must not foster social networking interactions with individuals or organizations is such communications will erode confidence in the independence of judicial decision making. [A] judge must not convey the impression that any person or organization is in a position to influence the judge; and must not permit others to convey that impression. For example, frequent and specific social networking communications with advocacy groups interested in matters before the court may convey such impression of external influence.”

Non-social media Michigan opinion: JI-109 (August 6, 1996): SYLLABUS: A judge may not participate in a public protest against a group or organization which advocates against a particular race, ethnic group or religion.

Canon 3: A Judge Should Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities.

13 Id.
Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) – (3) * * *

(4) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) – (d) * * *

*Kentucky Ethics Opinion:* “Judges are generally prohibited from engaging in any ex parte communications with attorneys and their clients... A North Carolina judge was publicly reprimanded for conducting independent research on a party appearing before him and for engaging in ex parte communications, through Facebook, with the other party’s attorney. Public Reprimand of B. Carlton Terry, Jr., N.C. Judicial Standards Comm’n Inquiry No. 08-234.”

(5) * * *

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require a similar abstention on the part of court personnel subject to the judge’s direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court or the judge’s holdings or actions.

*Ohio Ethics Opinion.* “A judge should not make comments on a social networking site about any matters pending before the judge—not to a party, not to a counsel for a party, not to anyone. As required by Jud. Cond. Rule 2.9(A), a judge must avoid
initiating, receiving, permitting, or considering \textit{ex parte} communications. Even though Jud. Cond. Rule 2.9(A)(1) allows “[w]hen circumstances require it, an \textit{ex parte} communication for scheduling, administrative, or emergency purposes, that does not address substantive matters or issues on the merits . . . provided the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the \textit{ex parte} communication,” it would be prudent to avoid any such job related communications on a social networking site as it increases the chance of improper \textit{ex parte} exchanges. If a judge receives an \textit{ex parte} communication, the judge should reveal it on the record to the parties and their attorneys.”\textsuperscript{14} 

\textit{Kentucky Ethics Opinion}. “While a proceeding is pending or impending in any court, judges are prohibited from making “any public comment that might reasonably be expected to affect its outcome or impair its fairness…. Judges, therefore, must be careful that any comments they may make on a social networking site do not violate these prohibitions. While social networking sites may have an aura of private, one-on-one conversation, they are much more public than off-line conversations, and statements once made in that medium may never go away.”

(7) A judge should prohibit broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions except as authorized by the Supreme Court.

(8) – (10) \hspace{1cm} * \hspace{1cm} * \hspace{1cm} *

\textit{Canon 5: A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties}

\textbf{A. Avocational Activities.} A judge may write, lecture, teach, speak, and consult on nonlegal subjects, appear before public nonlegal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

\textsuperscript{14} Id.
Ohio Ethics Opinion. A judge must maintain dignity in every comment, photograph, and other information shared on the social network.\textsuperscript{15}

5. Discussion Scenarios – Judge participation in social media:

Consider, with respect to each:

- Constitutional concerns?
- Rules of Evidence?
- Ethical considerations?

1. Judge establishes Facebook page, authorizes attorneys appearing before him/her as “Friends”. Majority of existing opinions accept if no violation of Code of Judicial Conduct occurs in that activities.
   
a. Permutation: Judge establishes Facebook page, authorizes law enforcement officers and employees of the judge’s office as “Friends”

b. Permutation: Judge establishes Facebook page, authorizes attorneys appearing before him/her as “friend”, refers to pending case in posting to his/her page.

c. Permutation: Judge establishes Facebook page, authorizes attorneys appearing before him/her as “friend”, checks attorney’s Facebook page in response to claim that continuance is needed because of a death in the attorney’s family.

2. Judge looks at witness’s online criminal record during pendency of trial.

   a. Permutation: Judge looks at party’s Facebook page during trial.

3. Judge reads blogs regarding the facts of a case pending before him during pretrial motion stage, personally recognizes and congratulates a particular blog author after a court proceeding for the fairness blogger has shown in his writings on case.

\textsuperscript{15} Id.
F. JURORS’ USE OF THE INTERNET

1. The Problem—Fair and Impartial Trial?

“The theory of our [legal] system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether private talk or public print.” 

a. Not a Recent Problem

   a. Juries have always had access to:
      i. Newspapers/radios,
      ii. friends, and
      iii. the ability to view the scene.

b. But now Jurors are researching information DURING jury selection, presentation of evidence and deliberations.

   iii. Rebuttable presumption of prejudice exists in criminal trials when jurors exposed to extraneous information. U.S. v. Siegelman, 561 F.3d 1215 (11th Cir. 2009).

   c. Jurors Disseminating Information about the trial during the trial

      i. Tweeting
      ii. Blogging
      iii. Facebook posts
      iv. OT -Texting Info to sequestered witness
2. How to Deal with Smart Phones in the hands of Not So Smart Jurors?

a. Ban phones? U.S. District Court for the Western District of Louisiana bans cell phones from the courthouse.
b. Require Phones be turned off? New Jersey state courts allow cell phones but require they be turned off.
c. Confiscate phones?
d. _____________________________

3. A Proactive Approach

a. Michigan Court Rule 2.511 Impaneling the Jury
b. Michigan Civil Jury Instructions 2.06 Prohibited Actions by Jurors
c. Federal Proposed Model Jury Instruction
d. Develop Best Practices
   i. Before Jury Selection Process
   ii. During Jury Selection Process
   iii. Preliminary Instructions
   iv. Final Instructions
   v. Collect devices
   vi. Sequestration

4. Cat’s Out of the Bag... Now what?

a. Declare a “Google Mistrial”?
   i. Steps to take: (U.S. v. Wheaton, 517 F.3d 350 (6th Cir. 2008)
     Juror’s computer used to listen to recording from evidence
     and look at mapping software):

     A. Alert counsel immediately;
     B. Inquire with Juror about extraneous information;
     C. Inquire with entire jury if extraneous information
        impacted deliberations:
     D. Mistrial or further Instructions?

     ii. Juror Misconduct ≠ Prejudice

b. If Mistrial called-Double Jeopardy impact?
   i. Manifest necessity

B. Not if caused by Defendant

C. Juror Misconduct?

c. Punish the misbehaving juror?

i. Fine

A. Detroit Judge removed a Juror and ordered the Juror to pay a $250 fine and write a 5 page essay after posing on Facebook that it was “gonna be fun to tell the defendant they’re Guilty.”

ii. Jail

A. Example from England

iii. ____________________________

G. JUDICIAL USE OF THE INTERNET IN CONTESTED CAMPAIGNS

1. Facebook

   a. Personal Settings
   b. Friends or No Friends?
   c. Soliciting Donations?
   d. ____________________________

2. Website

   a. Fundraising Issues

      i. Public Reprimand of B. Carlton Terry, Jr., District Court Judge, Judicial District 22.
      ii. ____________________________

3. Internet Advertising

4. Money, Money, Money-the approaching tidal wave


   d. Judicial candidates should not include electronic links on their websites to the websites of partisan political parties, organizations or other campaigns.

   a. The candidate may include a link on their campaign website to newspaper articles about themselves, providing that nothing in the article is misleading and provided the article maintains the dignity of the judicial office.
http://www.michbar.org/opinions/ethics/mcjc.cfm

The Michigan Code of Judicial Conduct [MCJC] became effective October 1, 1974; the opinions listed address conduct occurring after that date. Amendments to the Michigan Code of Judicial Conduct addressing bias in the courts became effective October 1, 1993. For rules and opinions addressing conduct occurring prior to October 1, 1974, see the former Michigan Canons of Judicial Ethics. This table lists those ethics opinions that cite the respective provision of the Michigan Code of Judicial Conduct.

http://www.michbar.org/opinions/ethics/ethicsindex2.cfm#23

**OPINIONS INTERPRETING THE MICHIGAN RULES OF PROFESSIONAL CONDUCT**

“Friends”, back when that meant something different
JI-44 (November 1, 1991)

**SYLLABUS:** A judge's "personal acquaintance" with an advocate or a party, without more information indicating the nature of the acquaintance which gives rise to a presumption of bias, is insufficient grounds for a judge's automatic recusal. Where a judge is concerned about the appearance of bias because of a personal acquaintance with a party or advocate, the judge should advise the parties and their lawyers of the judge's concerns and recuse unless asked to proceed.

No ex parte communications directly or indirectly
JI-134 (November 20, 2006)

**SYLLABUS:** A judge has a duty not to initiate or permit ex parte communications with the judge directly or through court personnel. In seeking not to permit ex parte communications through court personnel, a judge should instruct his or her personnel regarding the requirements of MCJC 3A(4) and the need to avoid improper ex parte communications.
“I just happened to come upon a discussion of issues just like those before me”
JI-84 (March 7, 1994)

SYLLABUS: A judge who attends a program or seminar at which the faculty argues issues which are nearly identical to those in a case pending before the judge is not required to advise the parties and their counsel in the pending case that the judge attended the seminar.

“Don’t ex parte me with talk of possible recusal!”
JI-83 (February 25, 1994)

SYLLABUS: A lawyer may not contact a judge about the possible recusal of the judge outside the presence of opposing counsel.

“You ought to be in pictures”
CI 816 (August 9, 1982)

SYLLABUS: It is not unethical for a judge to appear in a driver education videotape filmed in the judge’s courtroom and intended for use in driver education courses by law enforcement officers, provided there is no suggestion in the setting or the dialogue that would cast doubt upon the judge’s capacity to decide impartially any issue that may come before the judge.
Michigan Court Rule 2.511 Impaneling the Jury

Rule 2.511 Impaneling the Jury

(H) Oath of Jurors; Instruction regarding prohibited actions.
(1) The jury must be sworn by the clerk substantially as follows: "Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God."
(2) The court shall instruct the jurors that until their jury service is concluded, they shall not (a) discuss the case with others, including other jurors, except as otherwise authorized by the court; (b) read or listen to any news reports about the case; (c) use a computer, cellular phone, or other electronic device with communication capabilities while in attendance at trial or during deliberation. These devices may be used during breaks or recesses but may not be used to obtain or disclose information prohibited in subsection (d) below; (d) use a computer, cellular phone, or other electronic device with communication capabilities, or any other method, to obtain or disclose information about the case when they are not in court. As used in this subsection, information about the case includes, but is not limited to, the following: (i) information about a party, witness, attorney, or court officer; (ii) news accounts of the case; (iii) information collected through juror research on any topics raised or testimony offered by any witness; (iv) information collected through juror research on any other topic the juror might think would be helpful in deciding the case.

CHAPTER 2 CIVIL PROCEDURE Chapter Last Updated 1/11/2011
**M Civ JI 2.06 Prohibited Actions by Jurors**

Because the law requires that cases be decided only on the evidence presented during the trial, there are a number of important limitations on your conduct that you are required to observe while you serve as jurors:

1. Until I discharge you as jurors, the only time you are permitted to discuss this case is after you have begun deliberations on your verdict. Then you may discuss this case with the other members of the jury, but only when all of you are present in the jury room.

   This means that you are not to discuss the case at all with family, friends, or even strangers, until you have been discharged as a juror. You may not answer questions from members of your family or anyone else about what kind of case it is or what the case is about. The reason for this restriction is that in talking about the case to others and hearing what they may have to say, you may be influenced to form an opinion about the case. This would compromise the right of the defendant and the plaintiff to have a verdict rendered only by the jurors and based only on the evidence you hear and see in the courtroom.

   This also means that you are not even to discuss the case with the other members of the jury until you are instructed to begin your deliberations. The reason you may not discuss the case with the other jurors while you are in recess, while some of you are at lunch, or any other time before deliberations begin is that all of you are entitled to participate in all of the discussions about the case. Also, it would be improper for any of you to discuss and begin to express opinions about the case until it has been submitted to you for deliberation.

   After you are discharged as a juror, you may talk to anyone you wish about the case. Until that time, I ask you to control your natural desire to discuss this case here, at home, or anywhere else.

   While you are serving as a juror, don't allow anyone to say anything to you or say anything about this case in your presence. If anyone does, advise them that you are on the jury hearing the case, ask them to stop, and let me know immediately.

   During the trial of this case and until I have discharged you, there are certain persons you may not talk to at all. You may not talk to any plaintiff or defendant
or their lawyers or any witness, even if your conversation has nothing to do with this case. This is necessary to avoid even the appearance of unfairness or improper conduct on your part.

(2) Until I discharge you as jurors, you may not read, listen to, or watch any news reports about this case. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because news reports do not have to meet these standards, they could give you incorrect or misleading information that might unfairly favor one side. So, to be fair to both sides, you must follow this instruction.

(3) While you are in the courtroom and while you are deliberating, you are prohibited altogether from using a computer, cellular telephone, or any other electronic device capable of making communications. You may use these devices during recesses, but even then you may not use them to obtain or disclose the kind of information I will describe next.

(4) Until you are discharged as jurors on this case, even when you are not in court, you may not use a computer, cellular phone, any electronic device capable of making communications, or any other method, to get any information about this case. Information about this case means:

(a) any information about a party, witness, attorney, or court officer;
(b) any news accounts about this case;
(c) any information on any topics raised in the case, or testimony offered by any witness; and
(d) any other information that you might think would be helpful in deciding the case.

(5) You must not visit the scene of the occurrence that is the subject of this trial. If it should become necessary that you view or visit the scene, you will be taken as a group. You must not consider as evidence any personal knowledge you have of the scene.

(6) You must not do any investigations on your own or conduct any experiments of any kind. This includes using the Internet for any purpose regarding this case.

(7) If you discover that any juror has violated any of my instructions about prohibited conduct, you must report it to me.
Comment

On June 30, 2009, the Michigan Supreme Court amended MCR 2.511(H) to require judges to instruct jurors that they are prohibited from using computers or cell phones at trial or during deliberations, and are prohibited from using such devices or other methods to obtain or disclose information about the case. The amended court rule became effective September 1, 2009. The September 2009 amendment reflects that order. MCJI 2.07 and 2.12 were incorporated into this amended instruction.

History
Model Jury Instruction Recommended To Deter Juror Use Of Electronic Communication Technologies During Trial Published on Federal Evidence Review (http://federalevidence.com)

Before Trial:
You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom. Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, Blackberries, the internet and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube.

At the Close of the Case:
During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.
Resources:

*Judicial Ethics and the Internet: May Judges Search the Internet in Evaluating and Deciding a Case?* David H. Tennant and Laurie M. Seal, 16 No. 2 Prof. Law.2 (Professional Lawyer 2005).


*A Fair Trial: Jurors Use of Electronic Devices & the Internet*, A Best Practices Paper prepared by the America Bar Association Judicial Division National Conference of State Trial Judges


*Should Jurors Use the Internet?* The National Law Review (www.natlawreview.com)