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### Works Cited

Kurita, M.Sue. "Judges Should Social Distance-on Social Media." *Litigation*, vol. 49, no. 3, Spring 2023, pp. 32–33. *EBSCOhost*, libproxy.txstate.edu/login?url=https://https://search.ebscohost.com/login.aspx?direct=true&db=lgs&AN=164789603&site=ehost-live&scope=site.

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### Section:

SUA SPONTE

### Judges Should Social Distance-on Social Media

In March 2020, when the World Health Organization declared the COVID-19 pandemic and mandatory stay-at-home orders were issued, most people were anticipating a short interruption of activities-a welcomed extension to the 2020 spring break. Three years later, COVID continues to affect our lives.

Everyone had to adjust to new ways of communicating, socializing, connecting, and working. People were forced into a virtual dimension in their personal and professional lives. People turned to the virtual world to keep in touch with their friends and family. Social media became the lifeline for a quarantined population starved for human connection.

The working world realized that COVID was a long-term situation pretty quickly, and it sought and implemented adjustments as a result. Judges were not immune. COVID forced judges into a virtual world using platforms such as Zoom and Microsoft Teams to conduct hearings and address the ever-growing backlogs. Court procedures, rules, formalities, decorum, and dress were relaxed. Many lawyers appeared at Zoom hearings in "Donald Duck couture," dressed professionally only from the waist up. Office hours went from 8 to 5 to 24/7, with office communications occurring at all hours of the day and night.

The relaxed COVID protocols influenced everything-including social media use. Judges, like the general population, increased their social media use and, unfortunately, decreased compliance with their respective codes of judicial conduct.

The impact of COVID is evident when reviewing the discipline summaries in the Judicial Conduct Reporter, published quarterly by the National Center for State Courts' Center for Judicial Ethics. There has been a marked increase in the number of reports of discipline orders issued to judges for social media misuse when comparing the three years pre-COVID (2017, 2018, and 2019) with the number reported during COVID (2020, 2021, through October 2022).

Pre-COVID, the Reporter contained a total of 28 discipline orders that were issued to judicial officers for social media misuse, by my tally. I count 47 social-media-related discipline orders discussed in the pages of the Reporter during the COVID years-an increase of almost 68 percent over a period three months shorter. Private disciplinary dispositions for social media misconduct- those resolved by some method other than a formal order, such as the judge's voluntary resignation-have followed the same trend over the same periods. Private disciplinary dispositions increased 71 percent from 14 pre-COVID private dispositions published in the Reporter to 24 private dispositions appearing in the quarterly issues published thus far during COVID.

Codes of judicial conduct are designed to maintain public confidence in the judiciary's independence, impartiality, integrity, and competence. Seven states-California, Connecticut, Idaho, Illinois, New Mexico, Virginia, and West Virginia-have specifically added social media conduct to their respective judicial conduct codes. More than half of the states have issued judicial ethics advisory opinions regarding social media, and the universal advice is to use with "extreme caution." Yet, the number of disciplinary orders for social media misconduct continues to rise.

Any activity that affects judicial neutrality hurts the principles of justice and dilutes public trust in the judiciary. The offending activity may be a simple "like," a thumbs-up, an emoji, or nothing more than the sharing of a post, a picture, or a meme. And still, the virality of social media can make a questionable decision available to hundreds of people immediately. Because a social media post can be captured on a screenshot, it is indelible and forever, even on platforms where content is purported to disappear once viewed.

The significant increase in reports of disciplinary orders issued to judges for their social media conduct may correspond to the time of the relaxed COVID environment, but the Code of Judicial Conduct is never relaxed. Judges should be cautious when using social media and must be familiar with their state's specific judicial conduct standards. A judge should monitor all activity on his or her account and frequently review the social media privacy settings. A key takeaway from the scenarios described in the Judicial Conduct Reporter is that judges should

never use their social media accounts when angry, intoxicated, medicated, or "amorous," as one New York judge described himself in a post that resulted in disciplinary proceedings.

Judges are a vulnerable population in the social media world, where the Code of Judicial Conduct, case law, and advisory ethics opinions can be applied to the unwary or the unwise. Therefore, judges should socially distance from social media-and remember that the Code of Judicial Conduct applies even in a virtual world.

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By M. SUE KURITA

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