



Report (Consultation 10/2018), of 25 February 2019.

***Implications of the principles of judicial ethics in the use of social networks by members of the judiciary***

**I. Consultation**

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**II. OBJECTIVE OF THE CONSULTATION**

1. The consultation relating to the participation of judges on social networks raises a series of issues that can be divided into three distinct sets.

The first covers questions 1, 2 and 3 and deals with how judges should access social networks and whether it is appropriate for them to identify themselves as members of the Judiciary.

The second covers questions 4, 5 and 6 and deals with the expression of opinions, the content of posts and reactions by judges on social networks.

The third covers questions 7, 8 and 9, and deals with how judges interact with other users of social networks.

2. The questions posed have a direct bearing on various principles of the Judicial Ethics Text:

Principle no. 9: *Judges must behave, and undertake their rights in all activity in which they are recognisable as such, in a way that they do not compromise or prejudice the perception held by society on the independence of the judiciary in a democratic, lawful state.*

Principle no. 16: *Impartiality also imposes the duty to avoid conduct that, within or away from the proceedings, could put them in question or prejudice public trust in justice.*

Principle no. 17: *Judges must endeavour to ensure the upholding of the appearance of impartiality in coherence with the essential nature that material impartiality has for the exercise of jurisdiction.*



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Principle no. 22: *Integrity demands that judges observe a conduct that reinforces the trust of citizens in the Judicial Administration not just in the exercise of jurisdiction, but in all facets in which they are recognisable as judges, or invoke their condition as such.*

Principle no. 24: *In their personal relationships with professionals linked to the Judicial Administration Judges must avoid the risk of projecting an appearance of favouritism.*

Principle no. 29: *Judges must be aware that the dignity of the jurisdictional function demands appropriate behaviour.*

Principle no. 31: *Judges, as citizens, have the right to freedom of expression, which they will exercise with prudence and moderation with the objective of preserving their independence and appearance of impartiality, and maintain social trust in the judicial system and jurisdictional bodies.*

**3. Other ethical principles enter into play in an indirect and supplementary fashion:**

Principle no. 3: *Members of the judiciary must be actively committed towards the good functioning of the judicial system, and promoting an attitude of respect and trust in the Judiciary throughout society, and exercise the jurisdictional function in a manner that is prudent, moderated and respectful to the other powers of the State.*

Principle no. 4: *It is the duty of judges to demand from the political powers working conditions appropriate for the independent and effective undertaking of their functions, and the resulting provision of human and material resources.*

Principle no. 19: *In their social lives and in their relationship with the communications media judges may contribute reflections and opinions, but at the same time they must be prudent in order to ensure their appearance of impartiality is not affected by their public statements, and they must show, in any event, discretionary respect for the information that could prejudice the parties or the development of the proceedings.*

Principle no. 20: *In their relationships with the communications media, judges may carry out a valuable educational function in terms of explaining the law and the way in which fundamental rights operate at the core of the process.*

### **III. ANALYSIS OF THE QUESTION**



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4. Before examining each of the issues raised, we must remember that the Judicial Ethics Text adopted by the Plenary of the General Council of the Judiciary on 20 December 2016 was intended as a text on ethical principles and to some extent as a code of practice.

The preamble to the Text explains that the effectiveness of these ethical principles will arise from the level at which each judge assumes them as their own, and translates them into models of conduct. The Judicial Ethics Committee makes an interpretation of the ethics principles contained in the Text, expresses its opinion and alerts of the situations that could influence the ethics principles in order to clarify the doubts that may be raised among those that the Text of Ethical Principles is aimed at. In any event, it is the personal responsibility of every judge to make an ethical assessment in any given case and to act accordingly.

5. When addressing the way in which judges access social networks, we should start with the fact that social networks are a vehicle for mass social interaction and information in today's society. Their use has become so widespread in all areas that it is becoming difficult to find people who are not on any social networks.

As citizens, judges should be able to access these social networks – as indeed they do. As judges, they must be mindful of the risks that arise in terms of compliance with the principles of judicial ethics, which will always be affected by their participation on social networks, even if they do not identify themselves as judges.

The duty of all judges to be aware of the requirement to behave in a manner befitting the dignity of the jurisdictional function (principle No. 29) and the exercise of freedom of expression with the necessary care and moderation to preserve their independence and appearance of impartiality and to maintain society's trust in the judicial administration (principle No. 31) are ethical obligations that affect all aspects of personal and professional life, and also participation on social networks.

6. The manner in which judges present themselves and act on social networks may have a greater impact on principles of judicial ethics when they do so as judges, whether through the identifying information they provide, the alias they use or the content of the comments or opinions that they post.



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It is possible that judges who have acquired public importance because of a case under their jurisdiction, or due to the fact they hold a government position or have an uncommon name, may be easily recognised even if they access social networks without making direct or indirect reference to their position as a judge. This is outside of their personal control.

There is no ethical problem with accessing or using social networks with an alias or pseudonym, though doing so does not justify ethically reprehensible behaviour because they are attempting to remain anonymous.

Without denying judges the possibility of accessing social networks and identifying themselves as such, they should first carry out an ethical assessment as to whether identifying themselves as members of the Judiciary, either directly or indirectly, might affect other people's perception of their independence, impartiality and integrity in terms of how they use social networks. They should also be aware that the more of their "judicial identity" they reveal (such as the place or court where they sit), the greater the risk that their actions and posts may have an impact on judicial ethics issues.

Judges who use a social network to express an opinion after having disclosed their position incur risks, which include: the fact that some people might believe that the opinion is being expressed in their capacity as a judge or member of a court; some might think that it is a commonly held opinion within the justice system; when the opinion is directly or indirectly related to a case before them, their appearance of impartiality might be affected; if an unsavoury tone is used, the lack of restraint and prudence might undermine trust in the justice system.

**7.** The ethical assessment of how social networks are used must consider the difference between accessing closed groups solely comprising Judiciary members, accessing closed groups used by non-legal professionals and accessing open social networks where anyone can access posts and reactions expressed by the judge who owns the social network account. Identifying judges will clearly require a much more exhaustive ethical assessment in the latter case than in the first two.

**8.** The second set of issues relate to the content of posts and actions and to reactions to the posts of others. The questions posed in the consultation made reference to the posting of private opinions, legal opinions and reactions to other posts ("likes", sharing,



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retweeting, etc.) and asked to what extent the major principles of judicial ethics, namely independence, impartiality and integrity, might be affected.

The reach and significance of social networks as a means of communication are ever increasing in the “information society” in which we live. Judges identifying themselves as such on social networks may work towards fulfilling the ethical duties expressed in principle No. 20 concerning the valuable educational role that judges may play in explaining the law and fundamental rights in proceedings.

That said, judges must always exercise caution when using social networks and, in particular, they must be sure to uphold their independence and appearance of impartiality. They must never disclose information on cases they have heard as a judge, as indicated in principle No. 19, and they must express their thoughts and opinions in accordance with the duty of care regarding their public statements and confidentiality of information concerning the parties or the proceedings.

**9.** The posting of personal opinions, whether they concern legal or non-legal issues, and reactions to the posts of others may compromise not only the appearance of impartiality referred to in principle No. 17, but also actual impartiality, independence and integrity under certain circumstances. This is covered firstly by principle No. 16, according to which judges have the duty to avoid behaviour that may call into question their impartiality and undermine public trust in the justice system and, secondly, by principle No. 9, which requires judges to behave, when exercising their rights, in such a way that does not compromise or undermine society’s perception of the independence of the judiciary. It should also be recalled that principle No. 22, referring to integrity, requires judges to conduct themselves in a manner that reaffirms public trust in the administration of justice whenever they are recognisable as judges.

This imposes on judges the ethical duty to be extremely careful when expressing their opinions, making personal assessments and reacting to the statements of others, especially when they are recognisable as members of the Judiciary. They should take extra care when accessing media that can be shared on social networks.

**10.** The level of care that judges must exercise varies depending on the scope of publication of the post and its target audience.



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The expression of personal opinions about legal or other matters is unlikely to have the same impact on the appearance of impartiality or independence, or on trust in the Judicial Administration, if the potential audience of such opinions or comments are all legal professionals.

The broader the scope of publication, the more thorough the ethical assessment should be before the opinion, comment or reaction to third persons is posted so that, if it is deemed appropriate to post them, the necessary care is taken to ensure that the values underpinning the principles of judicial ethics are not compromised.

**11.** The third set of issues concerns the way in which judges interact with other users of social networks. Judges must exercise caution and restraint when using social networks when they present themselves as judges or when they are recognisable as members of the Judiciary, as established by principle No. 31 on the ethical perspective of the exercise of freedom of expression by judges. They must uphold the values of independence, impartiality and integrity at all times.

Accordingly, when using social networks, judges must bear in mind principle No. 3, which requires judges to promote respect for and trust in the Judiciary among society.

Similarly, although the principles of judicial ethics relating to courtesy are restricted to judges' conduct regarding parties to proceedings, it is clear that this requirement must underpin the ethical perspective of the judges' actions when they can be recognised as judges, as this will undoubtedly help promote an positive attitude of respect for and trust in the Judiciary among society.

**12.** In their tone and the way in which they express opinions and react to third-party posts, judges must eschew insults and personal attacks and avoid generating or exacerbating tensions.

By their very nature, some social networks encourage quick comments and leave little space for clarification, which impedes the reflection required as a matter of caution, and is conducive to occasional brusque, disproportionate or disrespectful responses to others' opinions. This is why members of the judiciary must be especially careful when using such media. It is always advisable to re-read opinions and reactions before posting them.



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**13.** In relation to the risks of judges showing some kind of favouritism when accessing social networks, we believe that the requirements under principle No. 24 on avoiding the risk of giving an appearance of favouritism refers to the personal relationship between professionals associated with the Judicial Administration within the course of a proceeding.

It is understood that the terms “friend” or “follower” which are used on some social networks do not have the same meaning outside of that context. In principle, there is no reason that appearing as someone’s “friend” or “follower” should, in itself, affect the appearance of impartiality, even if that person presents him or herself on the social network as a member of the Judiciary. However, nor can the risk that doing so might affect independence or impartiality be ruled out.

The risk of giving such a perception principally arises in contact with professionals associated with the Judicial Administration who are, or might be, involved in cases at the court or tribunal where the judge sits.

**14.** Judges must be aware their contacts on social networks and their frequency may give a certain impression of their interests and opinions. In most cases, this will be irrelevant to their appearance of impartiality, but it cannot be ruled out in all cases.

There is no ethical duty *per se* to limit judges’ contacts on social networks. However, a large number of contacts does not outweigh the risk that judges’ participation on social networks might be misinterpreted by third parties and that the appearance of impartiality or independence might be affected. Judges must use basic caution when exercising their freedom of expression, as established by the prior assessment of their participation on social networks and how they do so.

## IV. CONCLUSION

In view of the foregoing, we issue the following opinion:

**(i)** Judges’ participation on social networks does not conflict with the Principles of Judicial Ethics, but how they present themselves and act may create risks in terms of compliance with the principles of judicial ethics, which may be affected at any time, even if they do not identify themselves as judges.



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**(ii)** Judges can publicly present themselves as such on social networks. However, they must conduct a prior ethical assessment on how to present themselves and evaluate to what extent identifying themselves as members of the Judiciary, albeit directly or indirectly via an alias, may determine the content, opinions or behaviour they express in public on social networks, and how they react to the posts of others.

**(iii)** They must also be aware that the more of their “judicial identity” they disclose, the greater the risk that their actions and posts may impact on matters of judicial ethics and especially on other people's perception of judicial independence, impartiality and integrity.

**(iv)** When exercising their freedom of expression, judges may share their private opinions on social networks, whether or not they are of a legal nature, and react to the posts of others by the means typically employed by users of social networks.

**(v)** Judges identifying themselves as such on social networks may work towards fulfilling ethical duties relating to their educational role or to the defence of fundamental rights and values on which the Spanish legal system is based.

**(vi)** In all cases, judges must exercise caution on social networks and, in particular, they must be sure to uphold an appearance of impartiality.

**(vii)** The expression of opinions, comments and reactions by judges on social networks can seriously damage the appearance of independence and impartiality, as well as being a reflection of a behaviour that must preserve the dignity of the jurisdictional function. This is the reason for the emergence of the correlative ethical obligation to be extremely careful when expressing their opinions, making personal assessments and reacting to the posts of others, where the reasonable possibility exists of the speaker being recognisable as belonging to the judiciary.

**(viii)** In all cases, judges must avoid making any reference to matters directly or indirectly related to the cases they are hearing.

**(ix)** The use by judges of forms of contact with third persons on social networks is likely to create an appearance of favouritism. Such risks are greater when contacting professionals associated with the Judicial Administration who are, or might be, involved in cases at the court or tribunal where the judge sits. To avoid this, judges must assess





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whether it is appropriate to refrain from adding or remove contacts that may give such an impression.

**(x)** There is no ethical obligation *per se* to limit judges' contacts on social networks. Judges must use basic caution, which must govern the exercise of their freedom of expression, to guide the extent and number of third person contacts they have.

**(xi)** The Commission cannot replace the judge in assessing their own conduct and its impact on the Principles of Judicial Ethics. However, when interpreting these principles, we believe that the judge's participation on social networks should generally be governed by caution and restraint.

**(xii)** As regards other social network users, and in particular during debates on controversial topics, the principle of courtesy must underpin the ethical perspective of all judges' actions when contributing to the debate in order to encourage a positive attitude of respect for and trust in the Judiciary among society.

**(xiii)** Caution and courtesy must be used to determine the wording and tone of their participation in the debate and, if applicable, to decide whether to continue or end the conversation.