Memorandum

To: Supreme Court Advisory Committee

From: Tracy Christopher

Date: July 11, 2018

Re: Judicial Use of Social Media

I am sorry that I will be unable to attend the meeting on July 13 to discuss this rule and comment. The Supreme Court already has my comments from the last meeting about the current draft comment. Unfortunately, the subcommittee was unable to meet again to discuss any further drafts and does not have a new draft for the committee to consider. I have no objections to adding new subsection J to Cannon 4. My objections are to the comments.

To the extent that the Supreme Court wishes to add comments to the new rule, I suggest comments along the lines of the following:

Points about social media:

It goes to a much broader audience and lasts forever.

It can be more easily misunderstood, unlike comments made in person. Tone (such as humor) is not always evident in a post.

Remember 3B(10) for your own posts.

Liking or sharing a social media post can portray approval of that post.

Watch out for potential ex parte situations under 3B(8) because it is much easier for someone to attempt to engage in ex parte communications via social media. Any known attempt at an ex parte communication should be disclosed to all parties and should be discouraged.

Be careful with even a neutral discussion of a pending case—such as—"I am in a jury trial in the case of the State v John Doe, who is accused of murder" because non-parties

can make unwanted comments such as “hang ‘em high, judge” to your post. A better practice would be to wait until a case has concluded to make such a neutral comment.

Do not join special groups via social media where lawyers comment on pending cases, because they may inadvertently engage in an ex parte communication with you.