



Kristen Brauchle Hawkins
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Via E-Mail: ecarlson@stcl.edu

Professor Elaine Carlson
South Texas College of Law Houston
1303 San Jacinto Street
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Dear Professor Carlson,

I am writing to express my concerns about the comments to Canon 4 of the Texas Code of Judicial Conduct. Specifically, I disagree that the following portion of the comments as written accurately reflects the realities of social-media use:

“Liking” a post is tantamount to an endorsement [of any communication contained within the posting]. Similarly, “sharing”, retweeting, and even selecting emoji responses to a post may suggest an endorsement.

“Liking” a post, a page, a political candidate, or a public official **is not** an endorsement. The use of “likes,” posts, reposts, retweets, emoji, etc., are more nuanced than the comments reflect. What a “like” or a post may mean varies based on the social-media platform and the context in which it is used. Thus, the proposed comments incorrectly conclude that a “like” is “tantamount” to an endorsement.

For example, “liking” a political officeholder’s campaign page allows someone to “follow” the official on Facebook so that official’s posts will show up in future news feeds. Equating one’s ability to get information or news from political officeholders or candidates as an endorsement of their candidacy does not accurately reflect how social media is used or how it works. If a social-media user “likes” Mayor Sylvester Turner’s Facebook page, that is not necessarily an endorsement of his candidacy or his performance. It is simply one way to keep abreast of what is happening in the

City of Houston so that announcements made by the Mayor will appear in the user's newsfeed.

Similarly, a judge's "liking" a candidate's page allows any news about the candidate and the issues discussed by the candidate to appear in the judge's newsfeed. As you are aware, Texas judicial candidates run as either a Republican or Democrat, identifying by party affiliation. They often attend the same political events. Candidates may choose to follow multiple other candidates—possibly in the same race—to stay aware of events and issues common to multiple campaigns. Therefore, to stay informed, a judge might "like" the pages of multiple candidates running for the same office. Under the Committee's proposed Rule and Comments, that judge would have endorsed multiple candidates in the same race.

Second, judges likely have practicing lawyers as friends on social media. If an attorney "friend" posts that s/he was successful in representing a client in a matter, the judge may congratulate that friend by "liking" the post. That "like" is not tantamount to an "endorsement" of either the attorney or the prevailing side in the referenced case.

Third, posting an article—especially if done without comment—is not an endorsement of the content of that article. Rather, posting articles is a way to pass on information or interesting news items to friends and the public. For example, posting an article about the outcome of an election is not an endorsement of the politician who prevailed, but a way to share news. Similarly, posting, reposting, tweeting, or retweeting a news article about public events—even controversial ones—is not an endorsement about the content of the article, but a way to share information.

Additionally, I am concerned about the proposed comments regarding a judge's duty to monitor comments made by third parties on social media. At the December Committee Hearing on this issue, Mr. Babcock presented an example in which a judge gives a speech to a Rotary Club. To take this scenario a step further, a judge who gives a speech at a public event—or even a judge who makes a statement in open court—has no duty to monitor comments made by attendees at the speech or by persons in the courtroom. A judge should not have new or additional duties to monitor the conduct of third parties merely because the judge makes a public statement on a social media platform instead of in a banquet hall or a courtroom.

Overall, the comments to Canon 4 of the Texas Code of Judicial Conduct fail to provide concrete guidance for judges and judicial candidates. The comments do not acknowledge the current realities regarding social-media use. And they inaccurately equate short-hand social-media tools of "likes" and posts as endorsements. I would encourage further public discussion regarding this issue and encourage further revision of the proposed comments.

Sincerely,

A handwritten signature in black ink that reads "Kristen Brauchle Hawkins". The signature is written in a cursive, flowing style.

Kristen Brauchle Hawkins
Judge, 11th District Court

cc: Mr. Charles L. "Chip" Babcock
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