Supreme Court
STATE OF LOUISIANA
400 ROYAL STREET
SUITE 1190
New Orleans
70130-8101

CHIEF JUSTICE
BERNETTE JOSHUA JOHNSON
JUDICIAL ADMINISTRATOR
SANDRA A. VUJNOVICH

TELEPHONE (504) 310-2550
FAX: (504) 310-2587

OPINION NO. 271

April 14, 2016

Personal and Confidential

Re: Your request for an ethics advisory opinion, Louisiana Supreme Court Committee on Judicial Ethics

Dear

Please be advised that the Louisiana Supreme Court Committee on Judicial Ethics has carefully considered your request for an ethics advisory opinion and by majority vote, the Committee responds as follows:

> For the purposes of the following, please note that the phrase "judicial candidate" refers to an incumbent judge or an attorney, who has never been a judge, who is a candidate for judicial office. The phrase "social media" refers to "forms of electronic communication ([such] as web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content ([such] as videos)."[1]

ISSUE 1

> Is it ethically permissible for a judicial candidate to use social media in his or her campaign for judicial office?

Yes. Additionally, a judicial candidate may permit his/her campaign committee to use social media during the campaign for judicial office. However, all judicial candidates must be mindful of all aspects of Canon 7 of the Code of Judicial Conduct when using social media or permitting their campaign committees to use social media, particularly: Canon 7A(2) (the prohibition against publicly endorsing or opposing other candidates for public office); Canon 7A(6) (the prohibition against personally soliciting or accepting campaign contributions); Canon 7A(9) (knowingly making false statements about the candidate or opponent); Canon 7A(11)

[1] Merriam-Webster Dictionary, available at http://www.merriam-webster.com/dictionary/social%20media (last visited 4/23/14).

(making pledges or promises inconsistent with impartial performance of judicial duties); and Canon 7B(1) (maintaining the dignity appropriate to judicial office).

Incumbent judges running for judicial office should also be mindful of the remainder of the Code of Judicial Conduct when using social media, particularly: Canon 1 (upholding the integrity and independence of the judiciary); Canon 2 (avoiding impropriety and the appearance of impropriety in all activities); Canon 3A(4) (performance of judicial duties without bias or prejudice); Canon 3A(6) (a judge shall not permit ex parte communication); Canon 3A(8) (a judge shall not while a matter is pending make any public comment that might reasonably be expected to affect the outcome of that proceeding); and Canon 3C (recusal).

ISSUE 2

If the answer to Issue 1 is yes, is a judicial candidate required to name the social media account in such a way that it indicates its use is solely for campaign purposes?

No; a judicial candidate may use his/her personal social media account during his/her campaign for judicial office; however, the judicial candidate must be mindful of the aspects of the Code of Judicial Conduct that could be affected by social media use, as explained in response to Issue 1, *supra*.

ISSUE 3

If the answer to Issue 1 is yes, does the judicial candidate have to use the name of his or her campaign committee as the name of the social media account?

It depends. Again, a judicial candidate may use his/her personal social media account during his/her campaign for judicial office. What is more, a judicial candidate's campaign committee may create and maintain its own social media accounts for use during a judicial campaign and conduct activities as described in Canon 7D, such as solicit campaign contributions. Because the campaign committee may engage in activities which the judicial candidate is prohibited from engaging, such as fund solicitation, the judicial candidate and campaign committee should be careful to keep their social media activities separate. Additionally, the campaign committee shall clearly name the social media account to indicate it is operated solely by the campaign committee, again, due to the fact that the campaign committee may use the social media account to engage in activities from which the judicial candidate is prohibited.

ISSUE 4

If the answer to Issue 1 is yes, is it ethically permissible for a judicial candidate to create a website for campaign purposes?

Yes. Additionally, a judicial candidate may permit his/her campaign committee to create and use a website during the campaign for judicial office. However, all judicial candidates must

be mindful of all aspects of Canon 7 of the Code of Judicial Conduct when maintaining a website or permitting their campaign committees to maintain a website, particularly: Canon 7A(2) (the prohibition against publicly endorsing or opposing other candidates for public office); Canon 7A(6) (the prohibition against personally soliciting or accepting campaign contributions); Canon 7A(9) (knowingly making false statements about the candidate or opponent); Canon 7A(11) (making pledges or promises inconsistent with impartial performance of judicial duties); and Canon 7B(1) (maintaining the dignity appropriate to judicial office).

Incumbent judges running for judicial office should also be mindful of the remainder of the Code of Judicial Conduct when maintaining a website during a judicial campaign, particularly: Canon 1 (upholding the integrity and independence of the judiciary); Canon 2 (avoiding impropriety and the appearance of impropriety in all activities); Canon 3A(4) (performance of judicial duties without bias or prejudice); Canon 3A(6) (a judge shall not permit ex parte communication); Canon 3A(8) (a judge shall not while a matter is pending make any public comment that might reasonably be expected to affect the outcome of that proceeding); and Canon 3C (recusal).

ISSUE 5

If the answer to Issue 4 is yes, is a judicial candidate required to name the website in such a way that it indicates its use is solely for campaign purposes?

It depends. Again, a judicial candidate may create and maintain a personal website. What is more, a judicial candidate's campaign committee may create and maintain its own website for use during a judicial campaign and conduct activities as described in Canon 7D, such as solicit campaign contributions. Because the campaign committee may engage in activities which the judicial candidate is prohibited from engaging, such as fund solicitation, the judicial candidate and campaign committee should be careful to keep their website activities separate. Additionally, the campaign committee shall clearly name the website to indicate it is operated solely by the campaign committee, again, due to the fact that the campaign committee may use the website to engage in activities from which the judicial candidate is prohibited.

ISSUE 6

Upon taking office, is it ethically permissible for a judge to maintain a website for his or her judicial office?

Yes; however, judges should also be mindful of several aspects of the Code of Judicial Conduct when maintaining a website while holding judicial office, particularly: Canon 1 (upholding the integrity and independence of the judiciary); Canon 2 (avoiding impropriety and the appearance of impropriety in all activities); Canon 3A(4) (performance of judicial duties without bias or prejudice); Canon 3A(6) (a judge shall not permit ex parte communication); Canon 3A(8) (a judge shall not while a matter is pending make any public comment that might reasonably be expected to affect the outcome of that proceeding); and Canon 3C (recusal).

ISSUE 7

If the answer to Issues 4 and 6 are yes, is it ethically permissible to create a website for campaign purposes and, if successful, continue the use of the website for judicial office purposes, thereby avoiding the cost of building another website?

Yes, provided that the website was created by the judge for his/her personal use during the campaign. A judge may not convert his/her campaign committee's website for personal use upon taking office, as said website was previously used for campaign fund solicitations and could be used again for that purpose in subsequent elections.

ISSUE 8

If the answer to Issue 7 is yes, upon taking office, is it ethically permissible for the website to operate in the name of the judicial candidate's campaign or does the website have to be renamed to indicate its use by a sitting judge?

See response to Issue 7, *supra*. A judge should not maintain his/her campaign committee's website for personal use upon taking office.

ISSUE 9

Is it ethically permissible for a judicial candidate's campaign committee to accept credit card contributions either directly or through a contribution link on the candidate's website or social media account(s)?

Yes, provided that campaign fund solicitations are made solely by the campaign committee on the committee's website or social media account, the name of which clearly reflects it is maintained solely by the campaign committee. Moreover, the campaign committee should ensure the contributor is legally permitted to contribute by credit card under the campaign finance laws. Pursuant to Canon 7A(6), a judicial candidate may not personally solicit or accept campaign contribution by any means including social media accounts or websites.

Please be advised that this opinion is based solely on an interpretation of the Louisiana Code of Judicial Conduct; it is up to the judicial candidate to ensure compliance with all applicable statutory provisions, including campaign finance laws. Furthermore, because social media applications are constantly evolving, the guidance provided above is not an exhaustive list

of all issues that may arise with social media use in a judicial campaign. Judicial candidates should employ caution and much discretion when evaluating whether certain activity on social media sites during a judicial campaign is ethically permissible.

Sincerely,

Sandra A. Vujnovich, J.D.
Secretary and Member
Supreme Court Committee on Judicial Ethics

SAV/bkb

cc: Chair and Members, Supreme Court Committee on Judicial Ethics
Associate Justices of the Supreme Court of Louisiana