

RHODE ISLAND BAR ASSOCIATION

Federal Bench/Bar Committee Meeting

**Wednesday, June 3, 2015 at 4:00 p.m.
Jury Assembly Room**

Meeting Minutes

I. Welcome

Pat Rocha welcomed members to the June 2015 meeting.

II. Litigation Academy

Professor Niki Kuckes reported on the success of the second Deposition Skills Training Program presented jointly by the Court, the Roger Williams University School of Law and the Federal Bar Association. The program was well received by all, including the participants and faculty, which also included Judge Brian P. Stern, Judge Netti C. Vogel and Judge Daniel A. Procaccini from the Superior Court. A planning committee meeting is scheduled to address the programs to be held next Fall and Spring, 2016. It is anticipated that the next sessions will focus on direct/cross examination of witnesses, as well as openings and closings.

III. Pro Bono Subcommittee

Magistrate Judge Patricia Sullivan reported that meetings will be scheduled for the *Pro Bono* Subcommittee and the Subcommittee will report at the next Federal Bench/Bar Committee meeting.

IV. H.O.P.E. Court

Magistrate Judge Patricia Sullivan reported that the H.O.P.E. Court continues to meet every two weeks and hopes to ramp up to 10 participants; there are currently 5 participants with an additional 2 under active review.

V. Social Media Subcommittee

Matt Parker and Professor Niki Kuckes reported on the subcommittee's report to Chief Judge William E. Smith concerning the Court's use of social media. A copy of the subcommittee's report is attached. The report concludes that using GovDelivery.com to help the Court manage its communications and social media publications might be the Court's best option to increase the social media presence in a manner that is affordable and consistent with its interests in maintaining control over its message. In the longer term, the subcommittee recommends further consideration of additional social media outlets including, but not limited to, a video sharing website such as YouTube, which would allow the Court to send even more one

direction communications to an ever broader audience. The Social Medical Subcommittee remains available to the Court on a “standing basis” to provide additional consultation and feedback to the Court as it continues to grow its on-line presence. Chief Judge Smith thanked all the members of the subcommittee for their hard work and insightful comments.

VI. Local Rules

Matt Oliverio reported that the last meeting of the Local Rules Committee will be on June 8 at which time the Committee will take a final vote on its recommendations for proposed amendments to be submitted by the Court. Its report should be forwarded to the Court by June 30 at which time the Court will review the proposed recommendations and thereafter publish the accepted recommendations for comment by members of the Bar. At the June 8 meeting, the Committee will take up the issue of uniform definitions for discovery requests. Matt reported that this issue has resulted in a lively debate and he looks forward to a final recommendation from the Committee.

VII. ESI Subcommittee

Pat Rocha reported in Steve Richard’s absence that there was no update at this time; however, the subcommittee will have a report at the Fall meeting.

VIII. 225th Anniversary Celebration

Chief Judge Smith reported that there will be an Anniversary Celebration on June 23, 2015 at the Courthouse including a panel discussion involving Professor Gordon Wood from Brown University, Judge Bruce M. Selya and Chief Judge Patti B. Saris. Judge John J. McConnell, Jr. is moderating the panel and there will be opportunity for questions and answers. After the panel discussion, there will be a reception in the Courthouse.

IX. 2016 District Conference

Chief Judge Smith reported that a planning meeting of the District Conference Committee was recently held and a theme identified for the Conference – the role of Federal Courts in the future. The date for the Conference has not yet been set, as the Committee is waiting to hear regarding the availability of a keynote speaker.

X. Open Discussion

Mike Simoncelli reviewed his report regarding comparison of trial activity for civil and criminal cases in the Federal and State Court. There was active discussion between members of the Committee including comments from U.S. Attorney Peter Neronha regarding trial trends and expected future activity. All parties agreed that although the number of trials in the Federal Court may be decreasing, the role of the Court in serving the interests of litigants and their

counsel is an important role, whether cases are resolved through mediation or as a result of a trial.

Respectfully submitted,

Patricia K. Rocha
Chair

Attachment

MEMORANDUM

To: The Honorable William E. Smith
Chief Judge of the United States District Court (D.R.I.)

From: Niki Kuckes, Esq. and Matthew Parker, Esq.,
Co-Chairs of the Subcommittee on Social Media of the Federal Bench-Bar Committee¹

Cc: Federal Bench-Bar Committee

Date: April 3, 2015

Re: Recommendations Concerning the Court's Use of Social Media

Introduction

In recent years, outlets for spreading news and information have both rapidly expanded and dramatically changed. Digital media have come to dominate over traditional print media, and instantaneous digital communication through cellphones, tablets and computers has come to be the means by which many citizens obtain news and information. This has created a challenge for courts, both at the federal and state level, who must determine which, if any, of these outlets to use themselves, and which to allow in their courtrooms. Courts must balance the interests of the public and litigants in access to the judiciary against courts' interests in maintaining their neutrality, dignity, and security, while also considering the courts' limited staff and resources.

Based upon the work of the Social Media Subcommittee (the "Subcommittee") of the Federal Bench-Bar Committee over the course of several meetings in 2014, this report focuses on the use of social media by the U.S. District Court for the District of Rhode Island (the "Court") and provides some recommendations to the Court concerning its use of social media going forward.

Background

While newspapers, legal and bar journals, legal publishers, and information available at the physical premises of the Court have traditionally been a main source of information for the public about the Court's decisions, proceedings, and operations, the recent rise in digital media provides numerous additional ways that lawyers and members of the public can receive such information. Already, most courts, including our own, have established official online websites. These are valuable resources that allow the public and participants in the legal process to obtain information about the Court.

¹ In addition to its Co-Chairs, the Subcommittee's membership has included Nicole Benjamin, Esq., Jill Connolly, SPHR, David DiMarzio, Esq., Linn Freedman, Esq., Douglas Giron, Esq., Christian Jenner, Esq., Raymond Marcaccio, Esq., Byron McMasters, Esq., Frank Perry, David Pellegrino, Esq., Catherine Shaghalian, Esq., and Anthony Traini, Esq.

There are now numerous additional outlets available, some of which disseminate information more “actively” (as distinguished from “passive” information sources that require a viewer to seek out the information, such as a court’s website). One subcategory of these information outlets is known as “social media.”

While there are many different definitions of the term, one dictionary (Miriam-Webster) defines “social media” as:

forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos).

A key concept is that social media outlets facilitate the dissemination of “user-generated” content (rather than content created by the site sponsor, as for a traditional media outlet). Some examples of social media outlets include Twitter, YouTube, Facebook, LinkedIn, Pinterest, Instagram, and Google Plus, but there are many others – and new outlets are coming into popular use with startling speed. Many users, including not only individuals but also companies, government officials, and government agencies, have come to appreciate the benefits of social media, such as Twitter, as new and potentially highly effective methods of putting out information.

Attached to this Memorandum as Exhibit 1 is a chart identifying several of the most widely-used current social media outlets and explaining some of their unique qualities, advantages, and disadvantages.

Considerations for the Court’s Use of Social Media

The Court has already adopted a variety of digital means of delivering court-related information. These include a comprehensive website,² a Twitter page,³ and an RSS feed,⁴ all of which provide information concerning court operations, news and announcements, court notices and rules, cases of interest, and published decisions. The following bullet points are intended to identify some general considerations that the Court may wish to weigh as it determines what other social media outlets to use going forward. Several of these considerations were identified through an online survey of the membership of the Social Media Subcommittee, conducted last summer, while others came from discussions within the Subcommittee during four meetings that it held in 2014.

² The Court’s website is constantly being improved, and on November 28, 2014, the Court launched a mobile version of its website to make it more accessible from mobile devices and smartphones.

³ The Court’s Twitter page went “live” in April 2014.

⁴ Short for “Rich Site Summary,” RSS is “a service that automatically syndicates content from a publisher’s website in real time, and in a format that enables users to aggregate feeds from many different websites into an RSS reader, where the feeds can all be reviewed in one place.” Barclays Capital, Inc. v. Theflyonthewall.com, 700 F. Supp. 2d 310, 325 n.21 (S.D.N.Y. 2010), rev’d in part on other grounds, 650 F.3d 876 (2d Cir. 2011). Although the Court had temporarily suspended its RSS feed after first implementing its Twitter feed, the Court later restored its RSS feed based on feedback received during the Social Media Subcommittee’s 2014 meetings.

General considerations that might usefully guide the Court in considering the use of additional social media outlets include these:

- The Court is a public institution whose proceedings are open to the public, absent a compelling reason for confidentiality (e.g., sealed documents, grand jury proceedings).
- The mission of the Court includes an informational role that encompasses (1) publicly disseminating copies of judicial decisions and rules; (2) providing information about the Court to participants in the judicial process and the public more generally; and (3) helping to educate students and members of the public about the federal courts and the American justice system.
- The Court has a number of target audiences (such as lawyers, jurors, litigants, journalists, students, and members of the public), who might get information from different sources and who might expect the Court to use multiple avenues to disseminate important news.
- The Court should consider the benefits of enabling litigants, lawyers, journalists, and members of the public to sign up to receive regular informational updates.
- At the same time that it has a key informational mission, the Court needs to remain neutral and to avoid engaging in communications and social networking that could call its neutrality into question.
- The Court should avoid participating in public debates or inviting public dialogue on Court-sponsored information outlets.
- The Court should carefully consider and control the methods by which it invites and receives information and comments from the public and others.
- The Court should maintain control over and ensure the security of its own communications and any information posted, stored on, or received through the electronic platforms it uses.
- The Court is a dignified institution and should avoid using social media outlets that would risk undermining its position of trust and respect.
- The Court should consider implementing formal guidelines concerning the use of social media by Court personnel related to the Court's business.⁵

⁵ In 2010, the Committee on Codes of Conduct of the Judicial Conference of the United States published a Resource Packet for Developing Guidelines on Use of Social Media By Judicial Employees. [See http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/SocialMediaLayout.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/conduct/SocialMediaLayout.pdf). The Packet, which cites to the relevant Canons of the Code of Conduct for Judicial Employees and provides sample policies, might be a good place to start.

- The Court has limited resources and needs to ensure that the maintenance of its website, social media profiles, and other publications do not become too expensive or burdensome.

Preliminary Recommendations

Based on our discussions and research, the excellent presentations by personnel from the Clerk’s office, and the general considerations outlined above, the Subcommittee reached several preliminary recommendations for the Court related to use of social media.

The Subcommittee agreed that increasing the Court’s social media presence may be valuable in making the Court more accessible. At the same time, a paramount concern must be maintaining the Court’s control over its image and over the information posted on the Court’s electronic platforms. Some social media outlets can accommodate this concern, while others may contemplate two-way communications with other site users or otherwise be inappropriate for the Court’s needs. The ideal digital informational outlets will allow the Court to efficiently broadcast information to the public without creating any impression or expectation that the Court will respond to or endorse the commentary posted by other users. Fundamentally, the Court’s use of social media should be a “one-way street.”

Currently, the Court’s website, its RSS feed, and its Twitter feed are essentially one-directional. All of these outlets allow the Court to publish important updates, but the Court has made clear that it will not engage in back-and-forth dialogue with members of the public through them. For example, the Court’s Twitter profile states at the top that “[t]he Court does not reply via Twitter.” The Social Media Subcommittee encourages the Court to continue this practice, and to consider implementing an internal policy to ensure that all inquiries and commentary from members of the public to the Court will be channeled through a central information avenue, such as an e-mail address screened by the Clerk’s Office or other similar device. This will minimize any risk that the Court’s impartiality could be called into question, and maintain the Court’s reputation as being “above the fray,” while enabling members of the public to communicate with the Court about their concerns or questions, as is appropriate to the Court’s mission.

In addition, there are some social media outlets now in use by the public that may be unsuitable for use by the Court, given their degree of informality, the risks that they pose to information security and privacy, and similar considerations. Currently, in the view of the Subcommittee, these outlets include but are not limited to:

- Facebook;
- LinkedIn;
- Google Plus;
- Pinterest;
- Instagram; and
- Snapchat.

There are also some social media outlets that pose challenges of a different nature: principally the need for frequent updating and monitoring. These might be unsuitable for use by the Court because of the extensive staffing effort that would be involved. These include:

- Creating a weblog (“blogging”) with regular entries; and
- Monitoring the Court’s Wikipedia site for accuracy.

This said, there are some additional steps that the Court might consider taking to increase its social media presence in a manner that is consistent with the goals and values outlined above. While the Subcommittee’s consensus was that the Court should avoid social media outlets that place an emphasis on networking and two-directional communications, not all social media outlets are the same.

GovDelivery.com

The Subcommittee received a highly informative presentation by Jill Connolly and Frank Perry on potential uses of the government’s internal information delivery service, GovDelivery.com. If it would be cost-effective, the Subcommittee recommends that the Court use this platform to disseminate important updates to a broad group of subscribers via several different social media outlets.

While not a social media outlet in and of itself, GovDelivery is a comprehensive digital subscription management system that would enable the Court to publish important updates to several different outlets at the same time through one interface. Users could sign up with GovDelivery to receive updates from the Court on their preferred social media outlet(s).

For example, GovDelivery would enable the Court to instantaneously publish notice of a rules change to its RSS feed, to e-mail subscribers (e.g., ECF users), to its Twitter followers, and to subscribers who have signed up with the Court to receive such updates by text message. The Court would be able to choose to which venues (e.g. e-mail or Twitter or RSS) to publish which updates. That is to say, not all updates would need to be broadcast through every avenue. This service would provide a streamlined way for the Court to push out information concerning new decisions, announcements, and orders.

Some of the information that the Court could make available through GovDelivery could include options to subscribe to updates in areas such as:

- New opinions and orders (which the Court could break down into subject areas such as criminal decisions and civil decisions).
- Proposed and adopted changes in federal rules of procedure (again, broken down into civil and criminal).
- Changes in model jury instructions (again, broken down into civil and criminal cases).
- Proposed and adopted changes in local rules and standing orders.

- Developments in cases of general public interest (including multi-district litigation).
- Selected briefs or motions in cases of general public interest.
- Weather closings.
- News and announcements issued by the Court.
- Upcoming dates for ceremonial events, speeches, or other public presentations.

This service has great potential for keeping persons interested in the work and proceedings of the Court updated about emerging news and developments in an efficient and effective manner.

Should the Court set up a GovDelivery.com account, it would reduce the administrative burden on its personnel of maintaining several different social accounts that essentially publish the same information, and it would remain consistent with the Subcommittee's recommendation that the Court only participate in social media in a one-way direction; from the Court out to the public.

YouTube / Video-Sharing

The Court might also find value in implementing a YouTube channel or a page on a similar video-sharing website that would allow the Court to publish informational videos on topics such as courtroom procedures, what members of the public can expect when called to jury service, and the Court's history. This would also allow the Court the option of "live-streaming" or publishing recordings of certain ceremonies, hearings, or presentations that would be of public interest. For example, there might be an online audience for swearing-in or naturalization ceremonies, or for University symposia, for those who are not otherwise able to attend in person. Individual judges could also choose to post videos explaining their specific courtroom procedures. Myriad uses could be developed as the court enhances its informational mission, going forward.

Should the Court implement such a website, it would be advisable to set it up with guidelines or criteria concerning what videos are posted, when they are posted, how long they will stay online, and how the Court will address requests to share them or take them down. Furthermore, to maintain control over its message, the Court would want to minimize the potential for members of the public to "comment" or post upon its videos.

Conclusion

In the short term, using GovDelivery.com to help the Court manage its communications and social media publications might be the Court's best option to increase its social media presence in a manner that is affordable and consistent with its interest in maintaining control over its message. In the longer term, the Social Media Subcommittee recommends further consideration of additional social media outlets, including but not limited to a video-sharing website such as YouTube, which would allow the Court to send even more "one-direction" communications to an ever broader audience.

If the Court believes it would be beneficial, the Social Media Subcommittee can remain available to the Court on a "standing basis" to provide additional consultation and feedback to the Court as it continues to grow its online presence.

Trial Activity, Civil Cases, 2006-2013								
U.S. District Court					Rhode Island Superior Court			
Year	Civil Bench Trials, USDC	Civil Jury Trials, USDC	Total Civil Trials, USDC	% of Civil Cases Going To Trial, USDC	Civil Bench Trials, RI Superior Court	Civil Jury Trials, RI Superior Court	Total Civil Trials, RI Superior Court	% of Civil Cases Going to Trial, RI Superior Court
2006	7	9	16	2.81%	23	46	69	0.74%
2007	6	5	11	1.53%	25	36	61	0.62%
2008	3	9	12	0.95%	20	16	36	0.30%
2009	3	7	10	0.97%	24	11	35	0.32%
2010	2	2	4	0.37%	30	29	59	0.52%
2011	6	8	14	1.79%	16	12	28	0.27%
2012	3	3	6	0.58%	7	14	21	0.23%
2013	8	4	12	1.31%	15	12	27	0.32%

Trial Activity, Criminal Cases (Felonies Only), 2006-2013				
U.S. District Court			Rhode Island Superior Court	
Year	Criminal Jury Trials, USDC*	% of Criminal Cases Going to Trial, USDC	Criminal Jury Trials, RI Superior Court	% of Criminal Cases Going to Trial, RI Superior Court
2006	10	7.09%	94	1.58%
2007	7	5.07%	66	1.11%
2008	12	9.84%	67	1.22%
2009	4	2.23%	62	1.20%
2010	6	3.45%	67	1.21%
2011	10	5.65%	68	1.26%
2012	9	5.26%	70	1.46%
2013	5	3.14%	61	1.13%

*The U.S. District Court for the District of Rhode Island also had 4 criminal bench trials during this period. These have not been included since the state court did not report the number of criminal bench trials during the period.

Criminal Case Filings (Felonies Only), 2003-2013

U.S. District Court			Rhode Island Superior Court	
Year	Criminal Cases Filed, U.S. District Court	% Increase/Decrease Over Previous Year	Criminal Cases Filed, RI Superior Court	% Increase/Decrease Over Previous Year
2003	121		6026	
2004	117	-3.31%	5722	-5.04%
2005	136	16.24%	5509	-3.72%
2006	141	3.68%	5961	8.20%
2007	138	-2.13%	5946	-0.25%
2008	122	-11.59%	5499	-7.52%
2009	179	46.72%	5156	-6.24%
2010	174	-2.79%	5543	7.51%
2011	177	1.72%	5393	-2.71%
2012	171	-3.39%	4788	-11.22%
2013	159	-7.02%	5417	13.14%

Civil Cases Filed, 2003-2013						
U.S. District Court					Rhode Island Superior Court	
Year	All Civil Cases Filed, U.S. District Court	% Increase/Decrease Over Previous Year, U.S. District Court	"Core" Civil Cases Filed, U.S. District Court*	% Increase Over Previous Year, U.S. District Court	Civil Cases Filed, RI Superior Court	% Increase Over Previous Year, RI Superior Court
2003	630		630		9468	
2004	807	28.10%	568	-9.84%	9417	-0.54%
2005	560	-30.61%	560	-1.41%	9215	-2.15%
2006	570	1.79%	570	1.79%	9299	0.91%
2007	721	26.49%	527	-7.54%	9811	5.51%
2008	1257	74.34%	548	3.98%	11855	20.83%
2009	1034	-17.74%	656	19.71%	10778	-9.08%
2010	1088	5.22%	547	-16.62%	11286	4.71%
2011	781	-28.22%	482	-11.88%	10351	-8.28%
2012	1030	31.88%	393	-18.46%	9290	-10.25%
2013	919	-10.78%	411	4.58%	8509	-8.41%

*The number of "core" civil cases does not include MDL transfers and other special matters (e.g., Station Fire cases, MERS cases, etc.).