

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE MICHAEL J. O’GARA

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Michael J. O’Gara, a judge of the Los Angeles County Superior Court since 2009. His current term began in 2021. Pursuant to rule 116 of the Rules of the Commission on Judicial Performance, Judge O’Gara and his attorney, Paul S. Meyer, appeared before the commission on September 1, 2021, to contest the imposition of a tentative public admonishment issued on June 11, 2021. Judge O’Gara waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by Judge O’Gara and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the statement of facts and reasons set forth below.

STATEMENT OF FACTS AND REASONS

I. Facebook activity

On December 10, 2020, three days after George Gascón was sworn in as the new District Attorney of Los Angeles County, Judge O’Gara used his personal Facebook account to join a recently-created Facebook group called “Recall George Gascón,” and added his family members to the group.

In December 2020, Judge O’Gara posted on the group page, “[George Gascón] took an oath to uphold and defend the constitution of the state of California ... He is blatantly violating Section 28(f)(4) in dismissal of any prior enhancements.”

Judge O’Gara also posted, then later removed, comments that engaged with group members in response to other members’ posts. Judge O’Gara’s

comments included: (1) responding to the group administrator's post, "I don't know about the rest of you, but every election I am guilty of not paying attention to the Judges running. Now, I definitely will, especially after Gascón's own staff is talking about 'flipping the bench' etc. Some of the judges are fighting Gascóns [sic] directives and we need them to stay. They are heroes"; and (2) engaging in discussion with group members in response to another post by the group administrator, ostensibly quoting a prosecutor on a victim's right to be heard. The judge's comments, though later removed, were visible to at least 16,000 group members at the time they were made.

Judge O'Gara also "liked" the following comments by other group members: (1) regarding a complaint about a deputy district attorney implementing the district attorney's directives, "[Deputy District Attorney] Bob [Sherwood] was only doing what all the other Head Deputies are doing. He is being scapegoated here. But that's why he gets paid Grade 5 pay I guess"; and (2) regarding efforts to oust the elected district attorney, "Please let me know what I can do to help with this person's run. I work in court. The morale is extremely low."

The commission determined that Judge O'Gara's Facebook activity gave the appearance of bias against the Los Angeles County District Attorney. The judge was an active participant in a group with more than 16,000 members, formed to oppose an elected official, giving the appearance that he endorsed the group's stated goals and activity. Judge O'Gara posted remarks expressing a partisan viewpoint, and "liked" other users' comments expressing similarly partisan viewpoints.

The commission found that the judge's defense that he did not intend his social media activity to act as an endorsement of any specific partisan positions was not vindicating. "Likes" are, on their face, indicia that a person likes content. Further, Facebook is a forum with over one billion active monthly users, each of whom may, if they wish, screenshot or share content generated by another user.

Once Judge O’Gara commented on a Facebook post, he effectively distributed material to an unlimited number of persons, over whose actions he had no control.

Additionally, because Judge O’Gara heard cases prosecuted by the district attorney’s office at the same time he participated in the group, Judge O’Gara’s Facebook activity constituted making public comments about pending or impending proceedings in a court.

In his response to the commission, Judge O’Gara acknowledged that his actions on Facebook were “inappropriate,” expressed contrition, and, in December 2020, removed himself from the Facebook group.

Judge O’Gara’s participation in the “Recall George Gascón” Facebook group constituted a failure to refrain from engaging in political activity that may create the appearance of political bias or impropriety (canon 5); to refrain from making a public comment about a pending or impending proceeding in any court (canon 3B(9)); to conduct all of his extrajudicial activities so that they do not cast reasonable doubt on his ability to act impartially or demean the judicial office (canon 4A); and to participate in establishing and maintaining high standards of conduct (canon 1). Judge O’Gara’s conduct was also inconsistent with his obligations to act, at all times, in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and constituted making statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office (canon 2A).

II. Twitter activity

Judge O’Gara also maintained a public Twitter account, with the username @mjogara and display name “Michael J. O’Gara.” Judge O’Gara’s followers on Twitter included the official account for the City of Glendale, at least one Los Angeles County deputy district attorney, and multiple private attorneys. Between

2014 and 2021, Judge O’Gara posted remarks (“tweets”), re-tweeted content, or liked tweets by other users that contained partisan viewpoints on controversial issues, suggested bias against particular classes of people, and were undignified and indecorous.

Several of Judge O’Gara’s tweets appeared to reflect strong political points of view.



John Cleese  @JohnCleese · Dec 10, 2019

Can this be right ?

If a Democrat is President, lying about a blow-job is grounds for impeachment

If a Republican is President, betraying his country's defence policy again Russia...isn't

What am I missing here ?

5.3K 28.8K 133.9K

Michael J. O'Gara @mjogara · Dec 15, 2019

Perjury

George Takei  @GeorgeTakei · Apr 26, 2019


Will you join me in pledging not to speak negatively about any of our candidates? We don't know who the nominee will be, but they need to be as strong as they can be going into the election against Trump.

7.8K 11K 45.6K

Michael J. O'Gara @mjogara · Apr 27, 2019

So hide the truth and weakness in hopes of winning in November? That sounds like a winning strategy.

One tweet appeared critical of Black Lives Matter supporters who were exercising their First Amendment right to protest.

UCLA  @UCLA · Jun 2, 2020

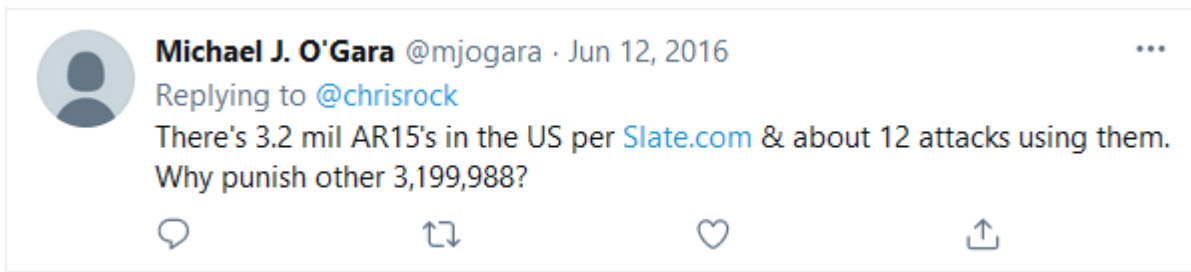
We're troubled by accounts of Jackie Robinson stadium being used as a "field jail." This was done without UCLA's knowledge or permission. As lessee of the stadium, we informed local agencies that UCLA will NOT grant permission should there be a request like this in the future.

291 3.2K 8.9K

Michael J. O'Gara @mjogara · Jun 3, 2020

I'm sure your position would change if they had just devastated the student store or the medical center. But sure, local businesses, burn 'em down.

One tweet suggested a partisan viewpoint on the controversial issue of gun control.



A screenshot of a tweet from Michael J. O'Gara (@mjogara) dated June 12, 2016. The tweet is a reply to @chrisrock and discusses the number of AR15s in the US and attacks using them. The tweet includes icons for replies, retweets, likes, and a share button.

Michael J. O'Gara @mjogara · Jun 12, 2016
Replying to @chrisrock
There's 3.2 mil AR15's in the US per [Slate.com](#) & about 12 attacks using them. Why punish other 3,199,988?

Another tweet was undignified and indecorous.

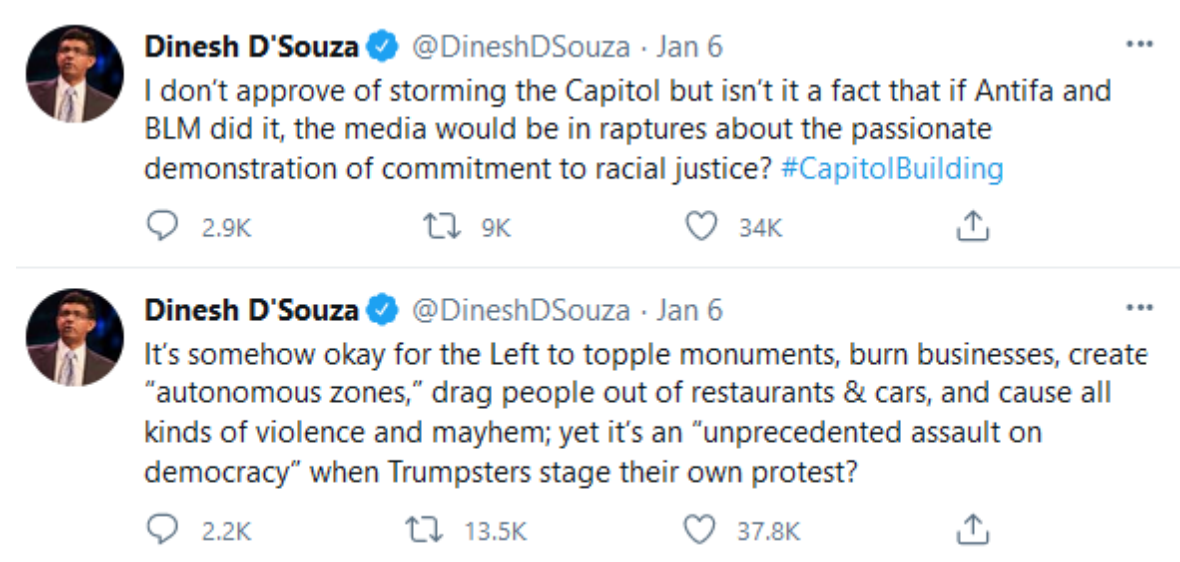


A screenshot showing a retweet by Michael J. O'Gara of a tweet by Carlin Bardsley (@CarlinBardsley) from February 19, 2015. The original tweet discusses the finale of the TV series 'Two and a Half Men'. Below it is another tweet by Michael J. O'Gara from the same date, expressing his opinion on the finale. Both tweets include engagement icons.

Michael J. O'Gara Retweeted
Carlin Bardsley @CarlinBardsley · Feb 19, 2015
Just watched the Two and a Half Men series finale. Wow, Chuck Lorre is a petty man. And happens to look like @PLefko. Dunno which is worse.

Michael J. O'Gara @mjogara · Feb 19, 2015
Loved the finale of Two and a Half Men - Till the last 10 seconds.Chuck Lorre you suck.#491 was spiteful and immature #TwoAndAHalfMenFinale

Judge O'Gara also liked tweets by other users that appeared to reflect strong political points of view and opinions on controversial issues.



A screenshot of two tweets by Dinesh D'Souza (@DineshDSouza) from January 6. The first tweet discusses the media's reaction to Antifa and BLM protests. The second tweet discusses the actions of the Left and Trumpsters. Both tweets have high engagement and include icons for replies, retweets, likes, and a share button.

Dinesh D'Souza @DineshDSouza · Jan 6
I don't approve of storming the Capitol but isn't it a fact that if Antifa and BLM did it, the media would be in raptures about the passionate demonstration of commitment to racial justice? #CapitolBuilding

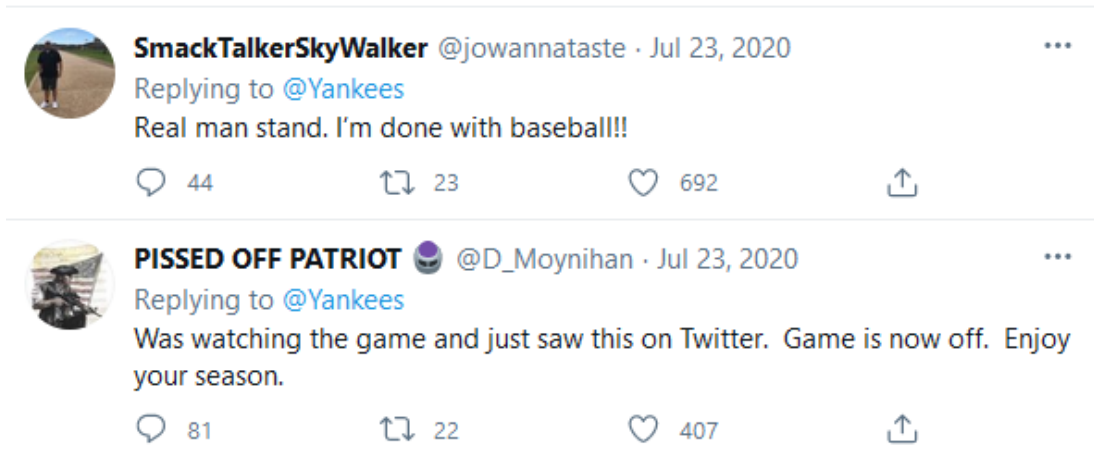
Dinesh D'Souza @DineshDSouza · Jan 6
It's somehow okay for the Left to topple monuments, burn businesses, create "autonomous zones," drag people out of restaurants & cars, and cause all kinds of violence and mayhem; yet it's an "unprecedented assault on democracy" when Trumpsters stage their own protest?



Judge O’Gara liked a tweet by another user that suggested racial bias against people of Chinese descent.



Judge O’Gara liked tweets that were seemingly critical of those exercising their First Amendment right to protest, such as supporters of the Black Lives Matter movement.



Several tweets the judge liked appeared to convey bias against victims of sexual assault and disdain and disrespect for women.

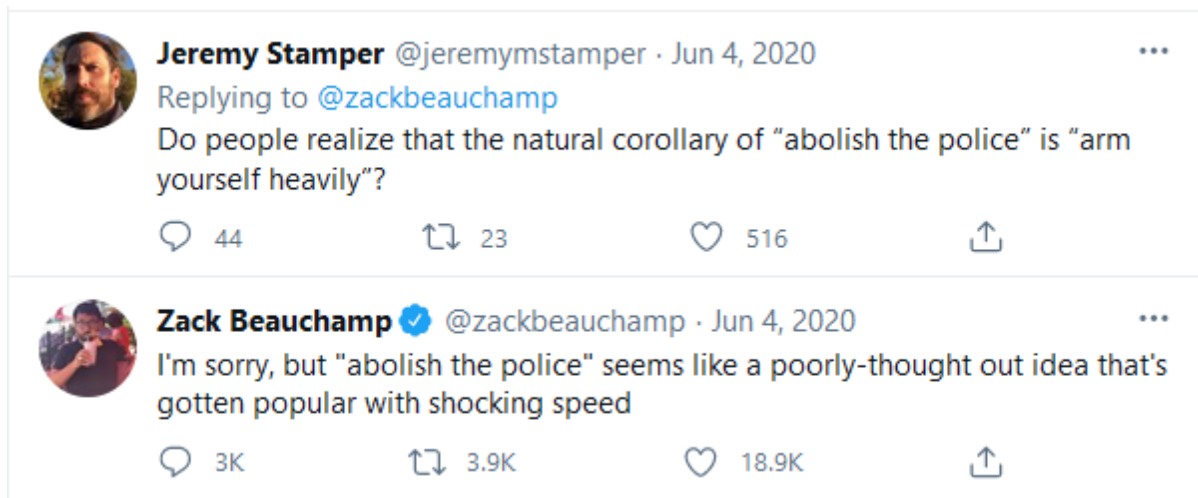




Other tweets liked by Judge O’Gara gave the appearance of opposition to immigrants and appeared to reflect strong political points of view and opinions on a controversial issue.



Other tweets that the judge liked suggested a partisan viewpoint on the controversial issue of police reform.



Judge O’Gara also liked a tweet that appeared to convey an anti-Muslim sentiment and gave the appearance of criticizing the First Amendment right to protest exercised by participants in Women’s March.



Another tweet that Judge O’Gara liked seemed to express an opinion on the controversial issue of the death penalty.



Judge O’Gara’s social media activity gave the appearance of bias. He posted undignified, indecorous remarks in response to public figures, and appeared to espouse partisan and controversial viewpoints.

The commission found that the judge’s defense that he did not intend his social media activity to act as an endorsement of any specific partisan positions or controversial viewpoints was not vindicating. “Likes” are, on their face, indicia that a person likes content. In addition to the judge’s original tweets, the Twitter content Judge O’Gara “liked” reflected the appearance of bias, regardless of his intent. Further, Twitter is a forum with over three hundred million active monthly users, each of whom may, if they wish, screenshot or share content generated by another user. Once Judge O’Gara tweeted or re-tweeted content, he effectively distributed material to an unlimited number of persons, over whose actions he had no control. That Judge O’Gara’s followers on Twitter included the official account for the City of Glendale, at least one Los Angeles deputy district

attorney, and multiple private attorneys, compounded the harm done by his social media activity.

Public involvement on either side in ongoing debates about controversial social and political issues is improper. Such issues (e.g., abortion and same-sex marriage) are frequently the subject of public debate and litigation. A judge who is politically active may be perceived to have prejudged issues that may come before the courts. Public involvement politicizes the judicial institution, demeans the judiciary, and impairs judicial independence and impartiality.

(Rothman, Cal. Judicial Conduct Handbook (4th ed. 2017) § 10:33, pp. 699-700.)

In his response to the commission, Judge O’Gara accepted that his actions on Twitter were inappropriate, expressed contrition, and advised the commission that he took corrective action by deleting the Twitter app from his phone and deactivating his account.

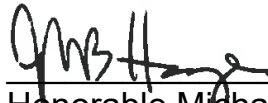
The commission determined that Judge O’Gara’s Twitter activity constituted a failure to conduct all of his extrajudicial activities so that they do not cast reasonable doubt on his ability to act impartially or demean the judicial office (canon 4A); to participate in establishing and maintaining high standards of conduct (canon 1); and to act, at all times, in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and constituted making statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office (canon 2A).

Judge O’Gara’s conduct was, at a minimum, improper action.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Mr. Eduardo De La Riva; Ms. Kay Cooperman Jue; Victor E. Salazar, Esq.; and Ms. Beatriz E. Tapia voted to impose the public admonishment. Hon. William S. Dato; Hon. Lisa B. Lench; Rickey Ivie, Esq.; and Mr. Richard Simpson voted for a

private admonishment. Commission member Ms. Sarah Kruer Jager did not participate.

Date: September 14, 2021

A handwritten signature in black ink, appearing to read "M. B. Harper", written over a horizontal line.

Honorable Michael B. Harper
Chairperson