

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2022-05
(Finalized and effective September 19, 2022)

BACKGROUND:

LinkedIn is an online social media website that focuses on professional networking and career development. Millions of professionals use LinkedIn to post résumés, search for jobs, and interact with other professionals. Some use LinkedIn as a tool to search for speaking opportunities, join boards, or be notified of breaking news articles relevant to their profession. Many courts and bar associations have LinkedIn pages where users may search for information about the organization or view the organization’s membership. The Colorado Judicial Department, Colorado Supreme Court, and Colorado Court of Appeals all have LinkedIn pages.

Every LinkedIn user has an account profile, which lists the user’s name, current employer, a short biography, and space to post a résumé if the user wants to include one. Like other interactive social media platforms, LinkedIn lets users “connect” with one another, which allows the user to see what their connections post, comment on, or react to.¹ In turn, the connection can view the same information of the user with whom they connect. Any user can react to posts by using symbols to “like,” “celebrate,” “support,” “love,” show something is “insightful,” or be “curious” about something. Users may also comment on posts, share a post by reposting it, or send a private message to a connection.

A few factors distinguish LinkedIn from other online social networking platforms. First, users may list their skills and “endorse” the skills of a connection, business, or organization. An endorsement is a way to recognize any professional abilities or services.² Second, when a user

¹ A LinkedIn “connection” is a professional contact that is in a LinkedIn user’s network. There are varying degrees of connections. First-degree connections are people the user invites to connect or who invite the user to connect; first-degree connections are persons that are known to the user on a professional level. Second-degree connections are people who are connected to a user’s first-degree connections, and third-degree connections are people who are connected to a user’s second-degree connections. *See Connections-Overview*, LinkedIn Help, available at [Connections - Overview | LinkedIn Help](#).

The term “connection,” as used in this advisory opinion means first-degree connections—those who were invited to become a connection by the judge, or who invited the judge to connect, and the judge accepted the invitation.

² *Endorsements*, LinkedIn Help, available at <https://www.linkedin.com/help/linkedin/answer/a565106/skill-endorsements-overview?lang=en#:~:text=Endorsing%20your%20connections'%20skills%20is,the%20people%20in%20your%20network>.

comments or reacts to a post on most social networks like Twitter or Facebook, the original creator of the post is notified of the user's action. But when a user comments or reacts to a post on LinkedIn,

not only is the original creator notified that you commented, but LinkedIn takes your comment and inserts it into the feed of your network. It shares with your contacts your comment. Even if you are commenting on someone completely disconnected from your other contacts, LinkedIn will still share your comment and their post in the feed of your network. This means you have the opportunity of placing yourself, your ideas, and your insights in front of a much wider audience that extends far beyond the limits of your own network.³

Thus, by default, anything a user posts, shares by reposting, comments on, or reacts to on LinkedIn is broadcast to the user's connections and appears on the user's profile.⁴ Users may, however, control their privacy settings to specify the audience they want to reach for each published post.⁵ For instance, posts may be limited to connections, members of a LinkedIn group, or attendees of an event. Conversely, users may change their settings to reach a wider audience to allow anyone on LinkedIn or Twitter or any web user, whether they have a LinkedIn profile or not, to view posts. Once a user has selected a visibility option, it is saved as that user's default privacy option.⁶ A visibility option may not be changed after a post has been shared.

The CJEB has been asked whether a sitting judge may have a professional profile on LinkedIn, and if so, to what extent a judge may be active on the site and with whom a judge may connect. This opinion addresses the ethical implications of judges using LinkedIn to post, comment on, endorse, connect with, or react to posts made by themselves and others.

ISSUES PRESENTED AND BRIEF ANSWERS:

1. May a judge have a LinkedIn profile?

- Answer: Yes. A judge may have a professional LinkedIn profile that identifies the judge as a judicial officer. Alternatively, a judge may choose not to identify as a judicial officer. Irrespective of whether a judge identifies as a judicial officer,

³ Richard Bliss, *The Art of the Comment on LinkedIn*, LinkedIn.com, Dec. 18, 2019, available at <https://www.linkedin.com/pulse/art-comment-linkedin-richard-bliss/>.

⁴ Mario Martinez, *All LinkedIn Activities Are Public to Your Connections*, July 10, 2017, available at <https://vengreso.com/blog/linkedin-activities-public>.

⁵ *Visibility of Shared Posts*, LinkedIn Help, available at <https://www.linkedin.com/help/linkedin/answer/a523141/visibility-of-shared-posts?lang=en#:~:text=You%20can't%20change%20the,LinkedIn%2C%20including%20your%20extended%20network>.

⁶ *Id.*

however, the judge must assume his or her identity as a judge will be known and must conduct himself or herself in a manner consistent with the Colorado Code of Judicial Conduct (Code).

2. May a judge post, repost, comment on, or react to general information on LinkedIn, including public legal decisions?
 - Answer: Perhaps. A judge may post and repost general information on LinkedIn, including public legal decisions, subject to the qualifications discussed below. A judge should be wary, however, of commenting on or reacting to posts in general, including public legal decisions or articles concerning public legal decisions.
3. May a judge have connections on LinkedIn, and if so, what are the limitations?
 - Answer: Yes. In general, a judge may have connections, including lawyers, on LinkedIn subject to the qualifications mentioned below.
4. May a judge endorse a connection?
 - Answer: No. A sitting judge may not endorse the skills of a connection or endorse a business because doing so would be an abuse of the prestige of judicial office. If, however, a judge has personal knowledge of a connection's skill set (*e.g.*, the connection was a former law clerk), the judge may provide that person a reference.
5. May a judge connect to a local, state, national, or specialty bar association on LinkedIn?
 - Answer: Yes. As long as the bar association is not discriminatory or partisan, the judge may connect with a local, state, national, or specialty bar association.

APPLICABLE PROVISIONS OF THE CODE:

Several rules and canons apply to a judge's LinkedIn account. Rule 1.2 provides that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Comment [1] provides that "[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates an appearance of impropriety. This principle applies to both the professional and personal conduct of a judge."

Rule 1.3 provides that "[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of others or allow others to do so," but comment [2] provides that "a judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge."

Rule 2.4(A) provides that "[a] judge shall not be swayed by public clamor or fear of criticism," and subsection (B) provides that "[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or

judgment.” Similarly, subsection (C) provides that “[a] judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.”

Rule 2.9 prohibits judges from “initiat[ing], permit[ing], or consider[ing] ex parte communications, or consider[ing] other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter....”

Rule 2.10(A) provides that “[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing,” but subsection (D) permits the judge to make public statements in the course of official duties, explain court proceedings, or comment on any proceeding in which the judge is a litigant in a personal capacity, subject to Canon 1, which requires judges to uphold and promote the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety.

Canon 3 requires a judge to conduct personal and extrajudicial activities in a way that minimizes the risk of conflict with the obligations of judicial office. Rule 3.1 governs extrajudicial activities in general and clarifies that “[a] judge may engage in extrajudicial activities, except as prohibited by law or this Code,” but when engaging in such extrajudicial activities, a judge shall not

- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive;
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.5 provides that “[a] judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties.”

Rule 3.6 prohibits judges from holding membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

Canon 4 prohibits judges and candidates for judicial office from engaging “in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.” Specifically, Rule 4.1(A) prohibits judges from

publicly endor[s] or oppos[s] a candidate for any public office . . . publicly identify[s] himself or herself as a candidate of a political organization . . . seek[s], accept[s], or us[s] endorsements from a political organization; mak[s] any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or in connection with cases, controversies, or issues that are likely to come before the court, mak[s] pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

As explained in the comments, “public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence,” and “[a]lthough members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no ‘family exception’ to the prohibition . . . against a judge publicly endorsing public candidates for public office.” C.J.C. Rule 4.1, cmts. [1]; [3].

ANALYSIS:

Electronic communication has become so pervasive among the judiciary that some states have amended their judicial ethics codes to cover social media use and Internet activity.⁷ Colorado’s Code has not been amended in such a way, but the Code applies with the same force to a judge’s activities in the virtual world as it does in the real world. Online social networking is not per se prohibited by the Code because, by itself, such action does not impair a judge’s ability to act impartially or call into question a judge’s integrity any more than an in-person conversation would.⁸ Unlike communicating in person, however, online networking might become problematic because a judge cannot control the context or the audience that hears or sees the judge’s message; rather, any images, links, endorsements, or words a judge posts, even if privately made to a connection, are permanent and may become widely accessible. LinkedIn’s prevalent use poses unique challenges that may have significant ethical implications for judges. Nevertheless, as recognized by the ABA, “with proper care, judges’ use of [electronic social media] does not necessarily compromise their duties under the Model Code any more than use of traditional and less public forms of social connection such as U.S. Mail, telephone, email or texting.” ABA Formal Op. 462 (2013).

⁷ For example, California’s Code of Judicial Ethics provides that “[a] judge must exercise caution when engaging in any type of electronic communication, including communication by text or email, or when participating in online social networking site or otherwise posting material on the Internet.” Canon 2A, cmt.

⁸ See ABA Formal Op. 462, *Judge’s Use of Electronic Social Networking Media*, Feb. 21, 2013 (judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code and avoid conduct that would undermine the judge’s independence, integrity, or impartiality, or create an appearance of impropriety).

1. A Judge May Have a LinkedIn Account

Every ethics committee that has considered the issue has concluded that a judge may have a LinkedIn (or similar) profile page. The judge has the option of disclosing his or her professional status on their page or hiding it. *See, e.g.*, UT Ad. Op. 2012-01 (Aug. 31, 2012) (judge’s LinkedIn profile could identify judge as a judicial officer and could include a photograph of judge in judicial robes if the photo was taken in the appropriate setting; alternatively, judge could use a screen name or pseudonym); *see also* MA Letter Op. 2016-01 (Feb. 16, 2016) (judge may not want to identify as a judge on social media for non-ethical concerns like safety, but if a judge wants to, he or she may identify as a judge because a “judge’s appropriate use of Facebook should not threaten the dignity of judicial office, constitute an abuse of prestige of judicial office, or otherwise violate the Code”). If a judge decides not to disclose his or her professional status or to adopt a screen name, the judge must assume his or her judicial identity will be known and must comply with the Code at all times. *See* UT Ad. Op. 2012-01 (any judge who chooses not to disclose his or her professional status on a social networking site must “operate under the assumption that those who view the judge’s comment[s] will know the commenter is a judge”); N.M. Ad. Op. Concerning Soc. Media (Feb. 15, 2016) (judge could use a pseudonym, but judge’s actions online are still subject to the code of conduct).

We similarly conclude that a judge may have a LinkedIn profile which identifies the judge as a judicial officer. The judge may post a profile picture of themselves in judicial robes as long as the photo is taken in the appropriate setting, *i.e.*, a courtroom or in chambers. Having a LinkedIn profile page that identifies the judge as a judicial officer, mentions the court the judge serves, and contains a picture of the judge in robes does not violate Rule 1.2 or 1.3 because there is no concern that the judge is using the prestige of judicial office for an improper purpose. Rather, identifying as such is analogous to the judge introducing themselves in a professional setting, and the same information is often included on a court’s website or, if it exists, a court’s LinkedIn webpage.

We also conclude that a judge may choose not to disclose his or her professional status on LinkedIn, but the judge should act as if every LinkedIn connection knows the judge is a judicial officer because the judge’s online activities (even if conducted anonymously) remain subject to the Code.

2. Judges Posting, Reposting, Commenting, and Reacting on LinkedIn

Judges must exercise caution when posting, reposting, commenting, or reacting on LinkedIn.⁹ As the ABA recognized, “upon assuming the bench, judges accept a duty to ‘respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system,’ [and] [a]lthough judges are full-fledged members of their communities, [] they

⁹ Posting and reposting refers to the act of posting or sharing a link or similar access point by reposting it on the judge’s profile page. A comment is a written statement attributable to a user, and reactions “are a set of expressions that offer members a way to more easily participate in conversations and communicate with their network.” *Use LinkedIn Reactions*, LinkedIn Help, available at <https://www.linkedin.com/help/linkedin/answer/a528190/use-linkedin-reactions?lang=en#:~:text=LinkedIn%20Reactions%20are%20a%20set,and%20hold%20the%20Like%20icon>.

‘should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens.’” ABA Formal Op. 462; *see also* C.J.C. Rule 1.2, cmt. [2] (“A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.”).

When considering whether to post, repost, comment on, or react to content, there are (1) issues a judge must never post or comment on because doing so would violate the Code; (2) issues judges may post or comment on because the subject matter concerns the law, the legal system, or the administration of justice; and (3) issues judges may post or comment on after weighing the risks and exercising care.

First, judges must never post, repost, comment on, or react to anything on LinkedIn that would violate the Code, including but not limited to posts involving pending cases, non-public information concerning a case, or political activity. *See* C.J.C. Rule 2.10(A) (judges are prohibited from making public statements that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or to make any nonpublic statement that might substantially interfere with a fair trial or hearing); C.J.C. Rule 3.5 (judges shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties); C.J.C. Canon 4 (judges are prohibited from engaging “in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary”). Similarly, judges may not post, repost, comment on, or react to anything that is discriminatory, biased, or expresses prejudice. *See* C.J.C. Rule 3.1, cmt. [3] (“Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity or impartiality.”). This includes, but is not limited to, any post, comment, or reaction that demeans a person based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For example, judges should not forward what the judge might regard as an innocuous off-color joke because, for a judge, there is no such thing as an innocuous off-color joke.

Second, subject to the restrictions mentioned below, judges may generally post, repost, comment on, and react to topics concerning the law, the legal system, or the administration of justice because they “are uniquely qualified” to engage in and address these issues. *See* C.J.C. Rules 3.1 and 3.7; *see also* CJEO Expedited Op. 2021-42 (Apr. 28, 2021) (judges may use social media to make statements about the law, legal system, or the administration of justice, including legislation affecting the judiciary; however, judges must exercise caution and restraint, should assume the widest possible audience due to lack of control over dissemination, may not engage in political commentary, and must evaluate and monitor what they intend to post).

As recognized by California’s Ethics Committee, “the code does not precisely define the law, the legal system, or the administration of justice,” and “an overly broad interpretation could sweep nearly any sociopolitical topic within its ambit.” CJEO Op. 2021-42 at p.7. To provide judges with guidance, the Committee advised that conduct is more likely to fall within the safe harbor of the scope of the law, the legal system, or administration of justice when it pertains to “purely administrative issues, such as court budgets, facilities, and docketing impacts rather than the more substantive end of the policy spectrum.” *Id.* at 7-8. We think such guidance is sound;

posts, comments on, and reactions to issues concerning court administration and procedure are apolitical and fall on the safer side of the posting spectrum. For instance, judges may post or comment on announcements for free legal clinics, new court rules, judicial vacancies, and upcoming meetings for local specialty bars and inns of court because there is nothing controversial or inappropriate about these subjects. Judges may also post and repost public legal decisions from their own court or any state or federal court. Additionally, judges may post or repost neutral news reports on judicial decisions but should think twice about posting, commenting on, or reacting to articles praising or criticizing a legal decision because doing so drifts away from the safe harbor of the law, the legal system, and the administration of justice and wades into sociopolitical waters.

With respect to posting and reposting content on LinkedIn, there is no bright-line rule, but some ethics committees have established a two-step process to help judges decide whether a post complies with the applicable ethics code. *See id.* at 8. First, a judge must evaluate the post using the guidelines for impropriety before posting something on LinkedIn.¹⁰ Second, the judge must monitor reactions to the post. Under this two-step inquiry, even if a post does not appear to be inappropriate, public comment or reaction to the post may render it inappropriate.

For instance, a judge could post a link to the U.S. Supreme Court’s recent decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), on his or her LinkedIn profile page without violating the Code. But posting is just one step of the process; a judge must also monitor comments and reactions to the post. LinkedIn allows connections to like, celebrate, support, or love a post. It also allows connections to be curious about posts. Some may wonder what the judge’s intention was when making such a post, and what first began as an innocuous post announcing a long-awaited U.S. Supreme Court decision may quickly evolve into a political or biased battleground of commentary and reactions made by others. Judges have been disciplined for not monitoring and removing the offensive posts others have made on their social media pages. *See, e.g.*, CA Comm. on Jud. Performance, Ann. Rept. (2018), Private Admonishment 2, at p. 27 (judge privately admonished for failing to monitor social media account connected with judge’s name); *see also* CA Judges Assoc., CJEO 66, p. 5 (Nov. 23, 2010) (“[A] judge is obligated to delete, hide from public view or otherwise repudiate demeaning or offensive comments made by others that appear on the judge’s social networking site.”). Consistent with other ethics jurisdictions, Rules 1.2, 1.3, and 2.4, we conclude that judges must monitor comments and reactions to anything they post or repost on LinkedIn.

State judicial ethics committees have recognized that commenting on or reacting to posts on LinkedIn may create concerns for judges. Problems arise when a judge “contribut[es] to [a] site or otherwise comment[s] on others’ contributions” and that these “issues arise even where the contribution may be as perfunctory as selecting a thumbs up icon on a post or on another’s page. Indeed, depending on the circumstances, that perfunctory act may create more of an issue than a detailed post might.” CJEO Formal Ethics Op. No. 78 (Jan. 2020) at 3. These issues may be more pronounced on LinkedIn because any time a user comments on or reacts to a post, every

¹⁰ In C.J.E.A.B. Advisory Opinion 2017-01, we discussed the guidelines for impropriety and the appearance of impropriety at length.

connection the user has is automatically notified of the user's comment or reaction unless the user has restricted his or her visibility settings. While the notification function is helpful for many professionals seeking increased exposure, the same cannot be said for a judge. Moreover, because many LinkedIn users forget to change their privacy settings or do not realize they "are talking to [their] entire network and not just the individual who posted the message," they are "unaware that their comment is being carried to hundreds and even thousands of people who have no idea what [the commenter] is talking about because there is no context to the comment." Richard Bliss, *The Art of the Comment on LinkedIn*; see also MA Ad. Op. 2016-01 (a judge's "comments on other's posts may be transmitted without the judge's permission or knowledge to unintended recipients and may be taken out of context, relayed incorrectly or saved indefinitely"). Finally, even though a user may send a comment to a specific connection or targeted audience, the user has no control over any recipient's ability to share or repost the user's comment.

While completely eliminating the risk of misuse or unintended dissemination may be impossible, many jurisdictions have determined that judges should attempt to reduce the danger by using protective privacy settings. See *State v. Thomas*, 376 P.3d 184, 199 (NM 2016) ("Judges should make use of privacy settings to protect their online presence but should also consider any statement posted online to be a public statement and take care to limit such actions accordingly."); see also CJEO Ad. Op. 66 (judges should "not participate in an online social networking site without being familiar with that site's privacy settings and how to modify them"). Regardless of privacy settings, however, judges must understand that any comment or reaction made on LinkedIn will leave a footprint.

In sum, judges may post, repost, comment on, and react to posts while using LinkedIn subject to the qualifications mentioned above, but they should proceed with extreme caution.

3. Limitations on a Judge's LinkedIn Connections

Most ethics decisions do not place limitations on the social media connections a judge may have, with the exception of connections with lawyers. Judges may generally connect with lawyers unless that lawyer appears or will appear before the judge; in those situations, the ethics committees are split. Some states have adopted a bright-line rule prohibiting judges from being social media friends or connecting with lawyers who may appear before them. See, e.g., MA Comm. on Jud. Ethics Ad. Op. 2016-1 (Feb. 16, 2016) (judges may not make or accept a friend request from any lawyer reasonably likely to appear before the judge); CT Informal Ad. Op. 2013-06 (Mar. 22, 2013) (judge should not become a social networking "friend" of attorneys who may appear before the judge); OK Jud. Ethics Op. 2011-3 (July 6, 2011) (judges may not "friend" attorneys appearing before them in court because public trust in impartiality and fairness of judicial system requires erring on the side of caution where the situation like online networking is "fraught with peril"). Some states take the prohibition further and disallow judges from friending or connecting with law enforcement and social workers who frequently appear before the judge. See, e.g., OK Jud. Ethics Op. 2011-3.

Other states have declined to adopt a bright-line rule and have instead determined that the issue depends on the nature and scope of the relationship between the judge and the attorney. These states distinguish between a social media "friend" or connection versus a friend in the real world and have concluded that the two are not the same; while a person may have hundreds or

thousands of online friends or connections, it is unlikely they have that many in the real world. Thus, whether a person is truly a friend depends on the frequency and substance of the contact. *See, e.g.*, NM Ad. Comm. on Code of Jud. Conduct Op. Concerning Social Media (Feb. 15, 2016) (“Given the ubiquitous use of social networking, the mere fact that a judge and an attorney who may appear before the judge are linked in some manner on a social networking site does not itself give the impression that the attorney has the ability to influence the judge.”); UT Ethics Ad. Comm. Informal Op. 12-01 (Aug. 31, 2012) (because most individuals use social media and understand that an online “friend” is not necessarily a real friend, judges may be friends and accept friend requests from lawyers appearing before them in court); OH Ad. Op. 2010-7 (Dec. 8, 2010) (judge may be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge).

Given the prevalence of social media and the population’s general understanding that having an online connection is not synonymous with friendship in the real world, we decline to adopt a bright-line rule prohibiting judges from making LinkedIn connections with lawyers who may appear before them. Instead, we conclude that context matters. States like California and New Mexico have identified helpful factors judges should consider when deciding whether to connect with an attorney online: (1) the nature of the social networking page; (2) the number of friends or connections the judge has on the page; (3) the judge’s practice when deciding whom to friend or connect with; and (4) how regularly the attorney appears before the judge. *See* Nat’l Center for State Courts Center for Jud. Ethics, *Jud. Conduct Reporter*, Vol. 39, No. 1, p. 15 (Spring 2017). For instance, “the more personal the page, the fewer number of friends and the more exclusive the judge is deciding whom to add, and the more frequently the attorney appears before the judge, the more ‘friending’ the attorney would create the impression that the attorney is in a special position to influence the judge.” *Id.* On the other hand, “‘friending’ an attorney would more likely be appropriate if the page is less personal, the judge has more ‘friends’ on the page, and the judge is more inclusive when choosing whom to ‘friend,’ particularly if the attorney is unlikely to actually appear before the judge.” *Id.*

A. Judge’s Duty to Disconnect from Lawyers Appearing Before Them

While a judge may remain friends or have a connection with an attorney who *may* appear before a judge, some state ethics committees require judges to unfriend or disconnect from any lawyers who *actually* appear before the judge. *See* CJA CJEO Op. 66 (Nov. 23, 2010) (when a judge learns that an attorney who is a member of the judge’s online social networking community has a case pending before the judge, the online interaction with that attorney must cease, *i.e.*, the attorney should be “unfriended,” and the relationship disclosed).

Other states, like Florida, have criticized this approach because it requires, “each judge who ha[s] accepted a lawyer as a friend or connection to constantly scan the cases assigned to the judge, and the lawyers appearing in each case, and ‘defriend’ or delist each lawyer upon a friend or connection making an appearance in a case assigned to a judge.” FL Jud. Eth. Ad. Op. 2012-12 (May 9, 2012). Under Florida’s approach, the judge considers whether or not a lawyer may appear before the judge, and, based on the characteristics of the lawyer’s practice and the jurisdiction of the judge’s court, determines whether to delist an attorney connection. *See id.* We agree that Florida’s approach is more practical, as it does not require a judge to “constantly approv[e], delet[e], and reapprove[e] lawyers as . . . ‘connections’ as their cases are assigned to, and thereafter concluded or removed from a judge.” *Id.*

This more flexible approach also accommodates new judges who had pre-existing LinkedIn accounts with attorney connections before being appointed to the bench. New judges should consider whether the attorney connection may appear before them, the judge's docket type, and the characteristics of the connected lawyer's practice when deciding to delist a pre-existing attorney connection or to accept an invitation from a new attorney connection.

B. Judge's Duty to Recuse from Attorney Connections Appearing Before Them

No judicial ethics committee has determined that disqualification is necessary when an attorney with whom the judge has an online connection appears before the judge; rather, the connection should just be one factor in considering whether a judge's impartiality may be compromised. *See* AZ Jud. Ethics Ad. Op. 2014-01 (Aug. 5, 2014) (there is no per se disqualification requirement when a litigant or lawyer has an online social connection with a judge, but there may be facts and circumstances related to the social media relationship that require disqualification). In C.J.E.A.B. Advisory Opinion 2021-02, we discussed when a judge should recuse based on an existing personal relationship; the same recusal analysis applies to LinkedIn connections.

C. Judge's Duty to Disclose an Attorney Connection Appearing Before Them

Some states require the judge to disclose the online connection with the attorney to the parties only in certain circumstances. *See, e.g.,* MA Comm. on Jud. Ethics Op. 2018-03 (May 18, 2018) ("When a judge knows that the lawyer appearing before the judge is a former Facebook friend [or LinkedIn connection], the judge should consider the nature of the particular relationship to determine whether disclosure is warranted.").

In C.J.E.A.B. Advisory Opinion 2021-02, we also discussed when a judge should disclose a friendship. That opinion applies to connections between judges and attorneys in the virtual world. Having a LinkedIn connection is just one factor for a judge to consider in determining whether to disclose the relationship. As we discussed in Advisory Opinion 2021-02, the focus is on the actual relationship between the lawyer and the judge.

4. Endorsing Connections

LinkedIn users can include specific skills on their profile to showcase their abilities to other LinkedIn members, like peers, colleagues, managers, and recruiters.¹¹ Once a user has added a skill, their connections may endorse those skills, thereby giving strength to the user's profile and "increas[ing] the likelihood that [the user] will be discovered for opportunities relating to the skills possessed." *Id.*

Rule 1.3 prohibits judges from using the prestige of judicial office to advance the personal or economic interests of others. Because the purpose of an endorsement is to help advance the interests of a connection by raising their status, judges (whether identifying as judges or not) should not endorse any connection's skills. *See, e.g.,* AZ Ad. Op. 2014-01 (it is problematic for a judge to recommend employment by clients of *any* profession—not just the legal profession—by using the judge's position or title because it would violate Rule 1.3). In

¹¹ *Skill Endorsements*, LinkedIn Help, available at [Skill Endorsements - Overview | LinkedIn Help](#).

addition to violating Rule 1.3, endorsing a lawyer's skills on LinkedIn would violate Rule 1.2. *See id.*; *see also* UT Ad. Op. 2012-01. Additionally, many jurisdictions prevent judges from endorsing businesses for the same reasons. *See, e.g.*, NY Jud. Ethics Comm. Ad. Op. 19-87 (Sept. 12, 2019) (judge may not provide written testimonial or other endorsement on social media for use in promoting a professional travel enterprise even if judge did not identify as a judicial officer); MI State Bar, *Judicial Social Media*, FAQs (judge may not use the prestige of office to support or like a business on social media). We similarly conclude that judges should not endorse the skills of any connection or endorse businesses on LinkedIn.

A judge could, however, use LinkedIn to recommend a former law clerk to a specific prospective employer without violating Rules 1.2 or 1.3, provided the recommendation clearly states it is for that person and the recommendation is based on the judge's personal knowledge of the person being recommended. *See* C.J.C. Rule 1.3 Cmt. [2] ("A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge.").

New judges with existing LinkedIn accounts who previously endorsed attorney connections or businesses should "unendorse" attorney connections and businesses they have previously endorsed to comply with Rule 1.3.¹²

5. A Judge May Connect with Bar Associations on LinkedIn

In C.J.E.A.B. Advisory Opinion 2022-02 we discussed whether a judge could serve on the board of or be a dues-paying member of a "specialty" bar association. We concluded that the concern with a specialty bar association was not whether the organization focused on a specific type of law or the composition of its members, but whether the organization was "partisan" and a judge's association with the organization would give the appearance of impropriety, convey the impression the judge could be influenced, risk the prestige of judicial office, or erode public confidence in the judiciary. Our analysis in Advisory Opinion 2022-02 applies in the context of LinkedIn as well. As long as a bar association is not partisan or discriminatory, judges may connect with local, national, and specialty bar associations through social media. This is the view adopted by other state ethics committees. *See, e.g.*, UT Ad. Op. 2012-1 (judge may connect with law-related groups and organizations on LinkedIn); FL Jud. Eth. Ad. Comm. Op. 09-20 (Nov. 17, 2009) (ethically permissible for a judge to be a member of a voluntary bar association's social media page).

CONCLUSION:

Judges are responsible for complying with the Code in both the real world and the virtual world. A judge may have a LinkedIn profile page identifying the judge as a judicial officer and the court that the judge serves. Alternatively, the judge may choose not to identify as a judicial officer. Either way, the judge should proceed as if every connection knows that the judge is a judge.

¹² LinkedIn provides instructions for removing a skill endorsement from a connection's profile; the connection will not be notified that the endorsement has been removed. *See Remove a Skill Endorsement You've Given*, LinkedIn Help, available at [Remove a Skill Endorsement You've Given | LinkedIn Help](#).

A judge may post, comment on, or react to certain topics on LinkedIn subject to the qualifications mentioned in this opinion.

A judge may connect with an attorney on LinkedIn even if the attorney may appear before the judge. If the attorney actually appears before the judge, the attorney may have to be removed from the judge's connections after the judge considers the characteristics of the lawyer's practice and the jurisdiction of the judge's court. If the judge and the attorney connection have a close relationship as discussed in Advisory Opinion 2021-02, the judge should disclose the relationship to the parties and perhaps recuse.

A judge may not endorse any LinkedIn connection's skills without violating Rule 1.3. Likewise, judges should not endorse businesses. A judge may, however, recommend a connection based on the judge's personal knowledge; for instance, a judge could recommend his or her former clerk for a specific position to a potential employer. Judges may also connect with bar associations and law-related groups consistent with the guidance we provided in Advisory Opinion 2022-02.

FINALIZED AND EFFECTIVE this 19th day of September, 2022.