

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 14-01
(Revised August 5, 2014)

**USE OF SOCIAL
AND ELECTRONIC MEDIA BY JUDGES AND JUDICIAL
EMPLOYEES**

Overview

Many Arizona judges and judicial employees are using social and electronic media, including:

- Facebook and other social networking sites for personal use
- Websites, blogs, and social networking sites devoted to reelection campaigns or retention elections
- Websites, blogs, listservs, and other electronic sites devoted to legal issues
- Websites, blogs, and social networking sites designed for community outreach or educational purposes
- Twitter
- LinkedIn

Such uses raise ethical issues that judges and judicial employees must carefully consider to ensure compliance with the Arizona Code of Judicial Conduct and the Arizona Code of Conduct for Judicial Employees.

It is not possible to anticipate and address every ethical issue that may arise from the use of such media, especially given the inevitable development of new electronic platforms. The purpose of this advisory opinion is to address common existing uses. Judges and judicial employees are encouraged to seek guidance from the Judicial Ethics Advisory Committee (JEAC) regarding questions left unresolved by this opinion, using the process set forth in Rule 82, Rules of the Arizona Supreme Court.

Issues under the Arizona Code of Judicial Conduct

1. May a judge use LinkedIn?

LinkedIn¹ is a professional networking platform whose mission is to “connect the world's professionals to make them more productive and successful.” The use of

¹ <https://www.linkedin.com/>.

LinkedIn to make professional recommendations raises potential ethical issues for judges under Rule 1.2 and Rule 1.3.²

Utah Informal Judicial Ethics Opinion 12-01 (August 31, 2012), discusses LinkedIn and concludes that a judge may not use the site to recommend a lawyer who regularly appears before him or her. We agree that such a use could reasonably call the judge's impartiality into question, in violation of Rule 1.2. It is also problematic for a judge to recommend the employment by clients of *any* professional by using the judge's position or title. Using the prestige of judicial office to advance the personal or economic interests of another violates Rule 1.3.

Other uses of LinkedIn and similar sites are permissible. Recommending a former law clerk to a specific prospective employer through LinkedIn, for example, would not violate Rule 1.3 as long as the recommendation clearly states it is for that purpose and is based on the judge's personal knowledge of the person being recommended. *See* Comment 2 to Rule 1.3 of the Arizona Code of Judicial Conduct.

2. May judges maintain blogs?

A judge's use of a blog may implicate Rule 2.10(A).³ Judges must ensure that any statements they make will not negatively affect judicial proceedings, and they must avoid making statements that could be perceived as prejudiced or biased under Rule 2.3(A)⁴ or Rule 3.6.⁵ Additionally, Rule 3.1 prohibits judges from

² Rule 1.2 Promoting Confidence in the Judiciary

"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."

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

"A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

³ 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."

⁴ Rule 2.3 Bias, Prejudice, and Harassment

Rule 2.3(A)

"A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

⁵ Rule 3.6 Affiliation with Discriminatory Organizations
Comment 1

participating in activities that will necessitate frequent disqualification, which may affect the substance of a judge’s blog postings.⁶

3. What ethical concerns relate to the personal use of Facebook?

The Arizona Code of Judicial Conduct does not prohibit the personal use of Facebook or other social networking sites, even when the site reveals the judge’s professional status. Nevertheless, using Facebook to communicate with friends, family, and professional peers has potential ethical implications under Rules 2.4(B) and 2.4(C).⁷

A judge should avoid participating in or being associated with discussions about matters falling within the jurisdiction of his or her court. This extends to postings by others regarding high profile cases or legal issues that could come before the court. Such communications could give the impression that other people or

“A judge’s public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. . . .”

⁶ Rule 3.1 Extrajudicial Activities in General

“A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in judicial 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 or demean the judicial office;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administrative of justice, or unless such additional use is permitted by law.”

⁷ Rule 2.4 External Influences on Judicial Conduct

Rule 2.4(B)

“A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”

Rule 2.4(C)

“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.”

organizations are in a position to influence the judge. They could also raise concerns about the judge's impartiality.

The question arises whether disqualification is required in cases involving litigants or lawyers who are Facebook "friends" of the judge's (or the functional equivalent, including Twitter or Instagram followers).⁸ Could it reasonably appear to a litigant or opposing counsel that the "friend" is in a position to influence the judge in a pending matter?

Rule 1.2 requires a judge to avoid not only impropriety, but also the appearance of impropriety. Comment 5 to Rule 1.2 provides, in part, that "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge."

Disqualification decisions must be guided by Rule 2.11.⁹ The test is whether the judge's impartiality in a proceeding might reasonably be questioned. A judge must take into consideration all relevant facts and circumstances in determining whether grounds for disqualification exist in a particular case.¹⁰

The JEAC concludes that the Arizona Code of Judicial Conduct does not impose a per se disqualification requirement in cases where a litigant or lawyer is a "friend" or has a similar status with a judge through social or electronic networks. Judges must be mindful, though, of Rule 3.1(B), which requires them to avoid activities that will lead to frequent disqualification. If social or electronic media associations will necessitate frequent disqualification, the judge must consider whether continuing that relationship is appropriate.¹¹ *See also* Rule 2.7 ("A judge

⁸ This issue is addressed in ethics advisory opinions from other jurisdictions, many of which are cited in Formal Opinion 462 (Judge's Use of Electronic Social Networking Media) issued on February 21, 2013, by the American Bar Association Standing Committee on Ethics and Professional Responsibility. See also the list of relevant opinions at the end of this opinion.

⁹ Rule 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned"

¹⁰ Facebook permits categorization of "friends," including designations of individuals as "close friends." A person in the "close friend" category is more likely to trigger disqualification than a person appearing as one of many on a list of friends.

¹¹ It is insufficient to simply "de-friend" a lawyer or litigant while presiding over a case in which the individual is involved. The ethics switch is not so easily turned on and off. The fact that the judge was just recently associated with the lawyer or litigant poses the same ethical issues as an ongoing relationship.

shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.”).

Another option, depending on the facts and circumstances of a given case, is for the judge to disclose on the record any such relationship, even if he or she believes there is no basis for disqualification. *See* Comment 5 to Rule 2.11. The parties can then decide if they wish to seek the judge’s recusal. But if the facts and circumstances are such that the judge’s impartiality might reasonably be questioned, the judge may not preside over the matter. “Personal bias or prejudice” in favor of or against a litigant or a litigant’s lawyer cannot be remitted using the procedure set forth in Rule 2.11(C), and the “might reasonably be questioned” standard does not require a showing of actual bias or prejudice.

4. What other rules affect judges’ use of social and electronic media?

Social and electronic media usage may also raise issues under Rules 2.9(A) and 2.9(C).¹² If, for example, a judge maintains a website, blog, or social media presence, litigants or lawyers may attempt to engage in *ex parte* communications. A judge using such platforms should take steps to guard against such communications. And pursuant to Rule 2.9(B), “If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.”

Rule 2.9(C) prohibits judges from independently investigating the facts of cases, except as otherwise provided by law. Judges must consider only the evidence presented by the parties and any facts properly subject to judicial notice. Comment 6 to Rule 2.9 provides that, “The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic.” Judges must scrupulously avoid researching facts, litigants, or lawyers involved in matters pending before them through electronic or social media. *Cf.* Opinion No. 68 (Ethics of Internet Research of Facts by Trial Judges), Judicial Ethics Committee, California Judges Association (April 2013).

¹² Rule 2.9 Ex Parte Communication

Rule 2.9(A)

“A judge shall not initiate, permit, or consider *ex parte* communications made to the judge, outside the presence of the parties or their lawyers concerning a pending or impending matter, except [as otherwise authorized by the rule].”

Rule 2.9(C)

“Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.”

As previously discussed in connection with Rule 2.3(A), a judge who uses social media must 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. *See* Rule 2.10(A); *see also* Rule 4.1(A)(9) (“A judge or a judicial candidate shall not do any of the following: make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court”). Although nonpublic statements are only prohibited under Rule 2.10(A) if they might substantially interfere with a fair trial or hearing, it is prudent to assume that even postings intended only for friends and family may be more broadly disseminated through social and electronic media.¹³

A judge has a duty to ensure that court staff, court officials, and others subject to the judge’s control refrain from making statements that the judge is prohibited from making.¹⁴ *See also* Rule 2.12(A) (“A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this code.”). The next section of this opinion addresses the ethical rules specifically applicable to judicial employees.

The admonitions set forth in connection with Rule 2.11 (Disqualification) are equally applicable in connection with Rule 3.1 (Extrajudicial Activities in General) and Rule 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities).¹⁵ A judge could “like” or “follow” a civic

¹³ “Due to the ubiquitous nature of information transmitted through the use of social media, judges and employees should assume that virtually all communication through social media can be saved, electronically re-transmitted to others without the judge’s or employee’s knowledge or permission, or made available later for public consumption.” Opinion 112 (Use of Electronic Social Media by Judges and Judicial Employees), Committee on Codes of Conduct, Judicial Conference of the United States (March 2014), Section VI. Dignity of the Court.

¹⁴ Rule 2.10 Judicial Statements on Pending and Impending Cases

Rule 2.10(C)

“A judge shall require court staff, court officials, and others subject to the judge’s direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).”

¹⁵ Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

“(A) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:”

organization's Facebook page, but must consider whether disqualification is required under Rule 2.11 should that organization appear as a litigant, and the judge must avoid making public statements prohibited by Rule 2.10. A judge must also ensure that he or she does not run afoul of Rule 4.1, discussed below, through social media associations with political organizations and activities.

A judge may not use nonpublic information acquired in a judicial capacity for personal purposes, *see* Rule 3.5,¹⁶ which includes usage on social and electronic media. The terminology section of the Arizona Code of Judicial Conduct defines "nonpublic information" to mean "information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports."

5. Are there restrictions on judges "friending" elected officials or "liking" an election-related Facebook page?

Once again, the answers to such questions are fact-intensive. If, for example, a judge is a "friend" of an elected state representative's official Facebook page, a disqualification issue would likely arise only in connection with a case where the representative is a litigant, lawyer, witness, or other participant. Such a "friendship" is not an endorsement prohibited by Rule 4.1(A)(3).¹⁷

On the other hand, if the state representative is standing for reelection, the judge may not be a "friend" of the campaign committee's Facebook page or "like" that page, as such associations would indicate that the judge supports and is

¹⁶ Rule 3.5 Use of Nonpublic Information

"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."

¹⁷ Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

Rule 4.1(A)

"A judge or a judicial candidate shall not do any of the following:

* * *

(3) publicly endorse or oppose another candidate for any public office;

* * *

(5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;

* * *"

endorsing that individual's reelection.¹⁸ Similarly, a judge may not be a "friend" of or "like" another judge's reelection campaign Facebook page because Rule 4.1(A)(3) prohibits judges from endorsing another candidate for any public office.

It would also violate Rule 1.2 for a judge to be a "friend" of the local sheriff's (or other local law enforcement officials') Facebook page or to "like" such a page. Rule 1.2 requires a judge to "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." Because the sheriff's office regularly participates in matters before most courts, such associations are ethically problematic.

It also bears mention that a judge or judicial candidate's campaign committee cannot engage in conduct that the judge is prohibited from engaging in. The judge or judicial candidate is responsible for ensuring that his or her campaign committee complies with all pertinent provisions of the Arizona Code of Judicial Conduct and other applicable law. *See* Rule 4.4(A).

Issues under the Arizona Code of Conduct for Judicial Employees

We next consider judicial employees' use of social and electronic media under the Arizona Code of Conduct for Judicial Employees. Many of the same issues and answers discussed above apply equally in this context.

1. May a judicial employee recommend a lawyer through LinkedIn?

Rule 1.2¹⁹ prohibits a judicial employee from engaging in conduct involving the appearance of impropriety, and Rule 1.3²⁰ prohibits judicial employees from using their positions to secure special privileges for others. Based on these provisions, the JEAC concludes that judicial employees may not publicly recommend professionals on sites such as LinkedIn if they refer in any manner to their role with the court. Doing so would use the prestige of the employee's court

¹⁸ If a person clicks "like" on a Facebook page, his or her Facebook profile will reveal that he or she "likes" that other page.

¹⁹ Rule 1.2 Promoting Confidence in the Judiciary

"A judicial employee 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."

²⁰ Rule 1.3 Abuse of Position

"Judicial employees shall not use or attempt to use their positions for personal gain or to secure special privileges or exemptions for themselves or any other person."

and position to advance the personal or economic interests of the recommended professional.

On the other hand, a judicial employee's recommendation of an individual sent to a specific prospective employer through LinkedIn does not violate Rule 1.3 as long as the recommendation is clearly stated as being for that purpose and is based on the employee's personal knowledge of the lawyer. Comment 2 to Rule 1.3 provides that "A judicial employee may provide a reference or recommendation for an individual based upon personal knowledge. The judicial employee may use court letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the court employment."

2. May judicial employees maintain blogs?

Rule 3.1²¹ and Rule 2.11(A)²² are relevant whenever a judicial employee engages in outside activities. A judicial employee's advocacy of particular legal positions on a blog or other electronic media could place the employee in a position

²¹ Rule 3.1 Outside Activities in General

Rule 3.1(A)

"A judicial employee shall conduct outside activities so as to avoid a negative effect on the court or the ability to perform court duties."

Rule 3.1(B)

"Except as provided by law or court rule, judicial employees shall not engage in any business, secondary employment or volunteer activity that:

* * *

- (2) Is conducted during the judicial employee's scheduled working hours;
- (3) Places the judicial employee in a position of conflict with the judicial employee's official role in the judicial department;

* * *

- (5) Identifies the judicial employee with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or
- (6) Requires use of court equipment, materials, supplies, telephone services, office space, computer time, or facilities."

²² Rule 2.11 Personal Interests

Rule 2.11(A)

"A judicial employee shall manage personal and business matters so as to avoid situations that may lead to conflict, or the appearance of conflict, in the performance of the judicial employee's employment."

of conflict with his or her role in the judicial department. Judicial employees must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. *See* Rule 1.2. So, for example, depending on a judicial employee’s duties, postings advocating abolition of the death penalty or particular positions on other controversial social issues could undermine the public’s confidence that the court the employee works for will fairly and impartially rule in litigation regarding such matters brought before that court. Judicial employees must ensure that any statements they make will not negatively affect judicial proceedings under Rule 2.10(A) ²³ and they must avoid making statements that could be perceived as prejudiced or biased under Rule 2.3. ²⁴

The best practice is for judicial employees to notify their supervisors if they have discussed a legal issue on social or electronic media that comes before his or her court. The supervisor can then determine whether the employee must withdraw from participation pursuant to Rule 2.11 or whether other remedial action is required.

3. What ethical concerns relate to judicial employees’ use of Facebook?

The Arizona Code of Conduct for Judicial Employees does not prohibit judicial employees from using social networking sites such as Facebook or from identifying themselves as judicial employees on those sites. However, employees must be aware of potential ethical pitfalls in pursuing such activities.

A judicial employee’s use of Facebook to communicate with professional peers, family, and/or friends may implicate Rules 1.2, 2.2,²⁵ and 2.4(B)²⁶ if, for

²³ Rule 2.10(A) provides that “A judicial employee 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.”

²⁴ Rule 2.3 Bias, Prejudice, and Harassment

“A judicial employee shall perform court duties without bias or prejudice and shall not manifest bias or prejudice by words or conduct, or engage in harassment in the performance of court duties. . . .”

²⁵ Rule 2.2 Impartiality and Fairness

“A judicial employee shall perform court duties fairly and impartially.”

²⁶ Rule 2.4 External Influences on Court Duties

Rule 2.4(B)

“A judicial employee shall not permit family, social, political, financial, or other interests or relationships to influence the performance of court duties.”

example, he or she discusses legal issues pending in the court where the employee serves. As with judges, judicial employees must also consider the effect of postings by others regarding high profile cases or legal issues likely to come before the employee's court. If a judicial employee is associated with such postings, it could give rise to a complaint that his or her conduct or judgment has been influenced by others. Depending on the nature of the posted material, it could also suggest that other people or organizations are in a position to influence the judicial employee's performance of his or her duties.

Questions also arise regarding judicial employees who are "friends" (or the functional equivalent) of litigants and lawyers through social and electronic media. Could it reasonably appear to an adverse litigant or lawyer that the "friend" is in a position to influence the judicial employee in performing his or her duties, or even to influence the judge? Rule 2.2 requires judicial employees to perform court duties fairly and impartially. Rule 1.2 requires judicial employees to avoid impropriety and the appearance of impropriety. Comment 5 to Rule 1.2 states, in part, that, "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judicial employee violated this code or engaged in other conduct that reflects adversely on the judicial employee's honesty, impartiality, temperament, or fitness."

The best practice is for judicial employees to notify their supervisors if they are Facebook "friends" (or the functional equivalent) with any litigant or lawyer in a pending matter over which the employee has any responsibility. Rule 2.11(E) states that "A judicial employee shall withdraw from any proceeding in which the employee's impartiality might reasonably be questioned due to a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." Judicial employees are expected to use reasonable means to know the persons with whom they are associated via electronic and social media and to monitor cases they are working on to ensure that no conflicts arise.

A conflict due to reasonably perceived "bias or prejudice" cannot be remitted under Rule 2.11(F). However, if withdrawal in a particular circumstance would cause unnecessary hardship, a judge or court manager could authorize the judicial employee to participate, subject to the requirements of Comment 2 to Rule 2.11.

4. What other rules affect judicial employees' use of social and electronic media?

If a judicial employee becomes aware of facts outside the official court record through social or electronic media (or otherwise), Rule 2.9(A)²⁷ directs the employee

²⁷ Rule 2.9 Communications with Judges

Rule 2.9(A)

"A judicial employee shall not communicate personal knowledge about the facts of a pending case to the judge assigned to the case."

not to communicate such knowledge to the judge assigned to the case. And, as directed by Rule 2.11(E), if the judicial employee is working on any proceeding in which he or she acquires personal knowledge of facts in dispute, the employee must withdraw from any involvement, subject to possible remittal of the disqualification following the procedure set forth in Rule 2.11(F).

Pursuant to Rule 2.10(A),²⁸ a judicial employee who uses social or electronic media must 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. Although nonpublic statements are only prohibited if they might substantially interfere with a fair trial or hearing, it is prudent to assume that even postings intended only for friends and family may be more broadly disseminated through social and electronic media.²⁹

Rule 2.11(A) could be implicated if, for example, a judicial employee maintained a blog on his or her own time addressing legal topics. Depending on the extent of any advocacy involved, the employee's extra-judicial conduct could conflict with his or her official duties. *See* Rule 2.2. Rule 1.2 also requires judicial employees to avoid impropriety and the appearance of impropriety. The test for the appearance of impropriety includes "whether the conduct would create in reasonable minds a perception that the judicial employee violated [the] code or engaged in other conduct that reflects adversely on the judicial employee's honesty, impartiality, temperament, or fitness."

A judicial employee must not use nonpublic information acquired in an official capacity for any personal purpose. *See* Rule 3.2.³⁰ This includes using such information on Facebook pages, websites, blogs, Twitter, or other electronic platforms. The terminology section of the Arizona Code of Conduct for Judicial Employees defines "nonpublic information" to mean "information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated *in camera*, and information offered in dependency cases or psychiatric reports and

²⁸ Rule 2.10 Statements on Pending and Impending Cases

Rule 2.10(A)

"A judicial employee 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."

²⁹ *See* Footnote 12, *supra*.

³⁰ Rule 3.2 Use of Nonpublic Information

"A judicial employee shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the employee's duties."

any information contained in records that are closed or confidential under Arizona Supreme Court Rule 123 or other law.”

5. Are there restrictions on judicial employees “friending” elected officials or “liking” election-related sites?

A judge’s personal staff, courtroom clerks, and court managers (all defined terms in the terminology section of the Arizona Code of Conduct for Judicial Employees) are subject to the same limitations as judges set forth in Canon 4 of the Code of Judicial Conduct.³¹ See the discussion above regarding the ethical duties of judges under Canon 4 of the Arizona Code of Judicial Conduct.

For purposes of Rule 4.1,³² judicial employees *other than* a judge’s personal staff, courtroom clerks, and court managers, can discuss political issues on social and electronic media as long as they do not identify themselves as judicial employees and do not give the impression that the judiciary itself endorses any political candidate or supports any political cause. Of course, as previously discussed, other rules, such as Rule 2.11 and Rule 3.1, must also be considered in determining the propriety of activities a judicial employee engages in on his or her own time.

The question arises whether judicial employees, including members of a judge’s personal staff, courtroom clerks, and court managers, who voluntarily participate³³ in a judge’s or clerk’s reelection campaign, can appear as a “friend” on

³¹ Rule 4.2 Personal Staff, Courtroom Clerks, and Managers

“In addition to the other sections of this canon, members of a judge’s personal staff, courtroom clerks, and court managers shall be subject to the same political limitations as judges contained in Canon 4 of the Arizona Code of Judicial Conduct, except as provided in Rule 4.3 of this code [Elective Judicial Department Office], and may not hold any elective office.”

³² Rule 4.1 General [Political] Activities

“In general, a judicial employee may participate in any political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes, except when assigned to do so regarding measures to improve the law, the legal system, or the administration of justice.”

³³ Rule 4.7 Judicial Campaign Activity

“Judicial employees, including members of a judge’s personal staff, courtroom clerks, and court managers, may voluntarily participate in a judge’s or clerk’s campaign activities and may voluntarily contribute funds to a campaign, but only through a judge’s or clerk’s fund-raising committee. However, judges, elected clerks of the court, and court managers or supervisors shall not require subordinate judicial employees to participate in political activities or personally receive funds from judicial employees for any political purpose.”

the campaign committee's Facebook page and/or be listed as a financial contributor on the campaign committee's website. It is the JEAC's opinion that the employee can be so listed as long as he or she is not identified as a judicial employee.

Nothing in the Code of Conduct for Judicial Employees prohibits judicial employees, including judges' personal staff, courtroom clerks, and court managers, from "liking" or "friending" most elected public officials' official websites as long as they are not identified as judicial employees. However, as indicated above, in discussing the Code of Judicial Conduct, it is inappropriate for a judicial employee to be a "friend" of a local law enforcement official's Facebook page or to "like" such a page for the same reasons judges may not engage in such conduct.

As to friending or liking the websites of political candidates, judicial employees *other than* a judge's personal staff, courtroom clerks, and court managers may do so subject to the restrictions set forth in Rule 4.1. A judicial employee should not identify him or herself as a judicial employee in so doing and should avoid conduct that may give the impression the employee's political activities are on behalf of the judiciary. Members of judges' personal staff, courtroom clerks, and court managers are subject to the same political limitations as judges contained in Canon 4 of the Code of Judicial Conduct, except as provided in Rule 4.3 (Elective Judicial Department Office).

Relevant Advisory Opinions on Social Media Issues from Other Jurisdictions

Opinion 112 (Use of Electronic Social Media by Judges and Judicial Employees), Committee on Codes of Conduct, Judicial Conference of the United States (March 2014).

Opinion 2013-14 (Judge's use of Twitter in re-election campaign), Florida Supreme Court Judicial Ethics Advisory Committee (July 30, 2013)

Opinion No. 68 (Ethics of Internet Research of Facts by Trial Judges), Judicial Ethics Committee, California Judges Association (April 2013)

Informal Opinion 2013-06 (Extrajudicial Activities; Electronic Social Media; Facebook), Connecticut Committee on Judicial Ethics (March 22, 2013)

Formal Opinion 462 (Judge's Use of Electronic Social Networking Media), American Bar Association Standing Committee on Ethics and Professional Responsibility (February 13, 2013)

Advisory Opinion No. 12-01 (Whether judges may utilize social media such as Facebook, Twitter, LinkedIn, and MySpace and, if so, the extent to which they may participate), Tennessee Judicial Ethics Committee (October 23, 2012)

Informal Opinion 12-01 (Judges' use of social media), Utah Judicial Council Ethics Advisory Committee (August 31, 2012)

Opinion 2012-07 (Judge Must Consider Limitations on Use of Social Media Networking Sites), Maryland Judicial Ethics Committee (June 12, 2012)

Opinion 2012-12 (Whether a judge may add lawyers who may appear before the judge as “connections” on the professional networking site, Linked In, or permit such lawyers to add the judge as their “connections” on that site?), Florida Supreme Court Judicial Ethics Advisory Committee (May 9, 2012)

Opinion 2011-6 (Facebook: using social networking web site), Massachusetts Supreme Judicial Court Committee on Judicial Conduct (December 28, 2011)

Judicial Ethics Opinion 2011-3 (Questions concerning a judge’s use of social media), Oklahoma Judicial Ethics Advisory Panel (July 6, 2011)

Opinion 2010-7 (A judge may be a “friend” on a social networking site with a lawyer who appears as counsel in a case before the judge), Ohio Supreme Court Board of Commissioners on Grievances and Discipline (December 3, 2010)

Opinion 66 (Online Social Networking), California Judges Association Judicial Ethics Committee (November 23, 2010)

Opinion 2010-06 (Whether the Code of Judicial Conduct requires a judge who is a member of a voluntary bar association to “de-friend” lawyers who are also members on that organization’s Facebook page and who use Facebook to communicate among themselves about that organization and other non-legal issues), Florida Supreme Court Judicial Ethics Advisory Committee (March 26, 2010)

Opinion JE-119 (Judges’ Membership on Internet-Based Social Networking Sites, Ethics Committee of the Kentucky Judiciary (January 20, 2010)

Opinion 2009-20 (Issues concerning judges’ use of social media), Florida Supreme Court Judicial Ethics Advisory Committee (November 17, 2009)

Opinion 17-2009 (Propriety of a magistrate judge being a member of a social networking site such as Facebook), South Carolina Judicial Department Advisory Committee on Standards of Judicial Conduct (October 2009)

Opinion 08-176 (Judges’ use of Internet-based social networks), New York State Advisory Committee on Judicial Ethics (January 29, 2009)

Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees, Committee on Codes of Conduct, Judicial Conference of the United States (April 2010)