



## CJE Opinion No. 2016-08

### Linked In: Using Social Networking Site

September 6, 2016

You have asked the CJE whether you may accept Linked in requests from attorneys who appear before you. You have also asked whether you must disconnect from Linked In connections you may have with attorneys who appear before you.

Your question requires us to consider whether our analysis and advice in Letter Opinion No. 2016-01, Facebook: Using Social Networking Site, is applicable to Linked In. We believe that the same overarching principles and concerns stated in Op. 2016-01 apply to all forms of social media that are currently available. Different types of social media networking may, however, pose distinct issues due to their features and the nature and extent of the audience with access to content posted by the judge.

Linked In is primarily a business-oriented social networking site, although some Linked In users post personal updates on and send personal messages through their Linked In accounts. A Linked In user, like a Facebook user, creates a personal profile. The Linked In user may then invite others "to connect" and respond to invitations "to connect" sent by others. Affirmative replies lead to the establishment of a "connection." Users may also "like" a connection's updates and achievements, endorse a connection's skills, and post recommendations. These actions will generally be visible on the profile page of the connection (although a Linked In user may choose not to post endorsements and recommendations). Linked In's default settings permit each user to view each connection's entire list of connections and vice versa. This is considered one of the most useful aspects of Linked In; a Linked In user may ask a connection (a first-order connection) to introduce the user to one of the connection's connections (a second-order connection). While Linked In resembles Facebook by requiring a person's affirmative response to connect with another, many if not most Linked In users seek to grow their number of connections so as to increase their business network. Moreover, Linked In user profiles are generally available to any other Linked In user (even if not a connection) who logs onto the Linked In website and enters the name of any person with a Linked In profile.

In our judgment, and consistent with Op. 2016-01, a judge who uses Linked In may not be connected with any attorney who is reasonably likely to appear before that judge. This conclusion requires a judge to reject requests to connect with and to disconnect from lawyers who are reasonably likely to appear before the judge<sup>(1)</sup>. Because of the prevalence of professional recommendations and endorsements of professional skills that appear on many Linked In profiles, disconnection and disclosure are necessary to protect the independence, integrity, and impartiality of the judiciary. Despite a judge's best efforts to comply with the foregoing guidance, there may be instances where, unexpectedly, a lawyer whom the judge knows<sup>(2)</sup> to be a Linked In connection appears before the judge. The existence and nature of the Linked In connection (e.g., whether, while the judge was a practicing attorney, the judge had posted a recommendation or endorsement on the profile page of this lawyer) is one factor for the judge to consider when determining whether disqualification is required under Rule 2.11(A)(1). Where disqualification is unwarranted, the judge should both disconnect from the lawyer on Linked In and disclose on the record the existence and nature of the Linked In connection. See Rule 2.11, Comment [5]. If a judge knows that a lawyer appearing before the judge is a former Linked In connection, the judge should consider the nature of that past connection to determine whether disclosure is warranted. See Rule 2.11, Comment [5B].

As the use of social media continues to grow, we again emphasize judges' obligations under the Code of Judicial Conduct, including the obligations to uphold and promote the independence, integrity, and impartiality of the judiciary; promote public confidence in the judiciary; avoid both impropriety and the appearance of impropriety in their professional and public lives; maintain the dignity of judicial office at all times; avoid abuse of the prestige of the judicial office; refrain from political activity; and conduct all personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office. Judges must expect to be the subject of public scrutiny that might be burdensome if applied to other citizens. Each judge who uses social media must take steps to minimize the likelihood that the manner in which that judge uses social media would lead a reasonable person to question the judge's impartiality.

Judges must, of course, be aware that all social media communications may become public. See, e.g., In the Matter of Archer (Alabama Court of the Judiciary, August 8, 2016) (judge conducted what he regarded as "private" Facebook communications with a Facebook friend who made a copy of these communications and shared them with a reporter). There may also be sound reasons, apart from ethical considerations, for a judge to exercise restraint when using social media, such as the judge's concerns over the personal safety of the judge or the judge's family members. As we stated in Op. 2016-01, judges inclined to use social media should carefully weigh the risks and benefits.

*(1) This requirement also applies to parties or witnesses reasonably likely to appear before the judge.*

*(2) The Code defines "knows" to require actual knowledge of the fact in question, although knowledge may be inferred from circumstances.*

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