How to Remain Ethical on Social Media

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Judge Marian Gaston, Superior Court Judge, San Diego County

2024 Annual Conference NAWJ

Fundamentals of Justice

- Trustworthy
- Neutral
- Fair - integrity
- Equal treatment
- Consistent
- Due process
- Transparent
- Accessible
- Competent

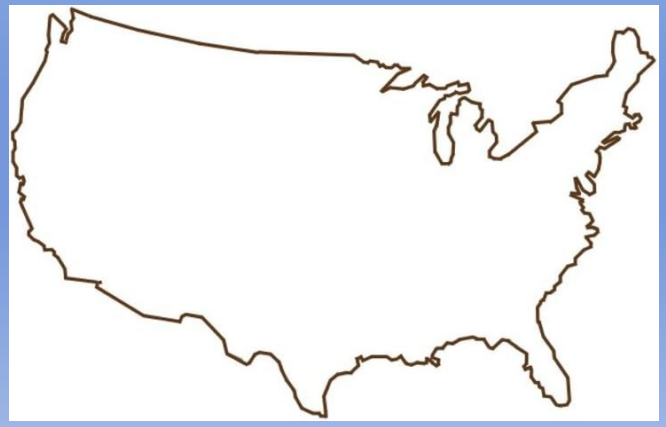
Code of Judicial Conduct

Canon 1: A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

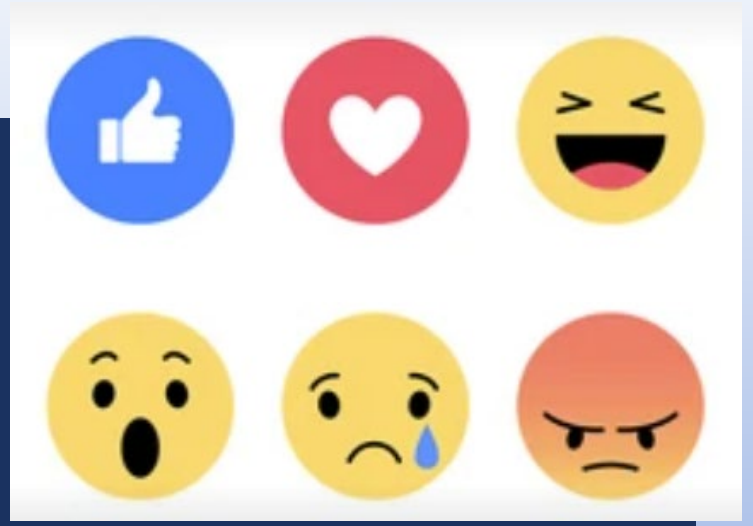
Canon 2: A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Canon 3: A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Canon 4: A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.



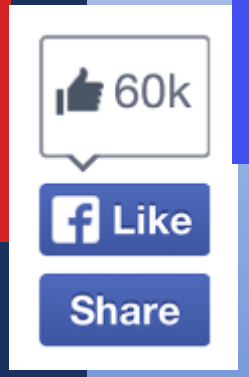
"The same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook."



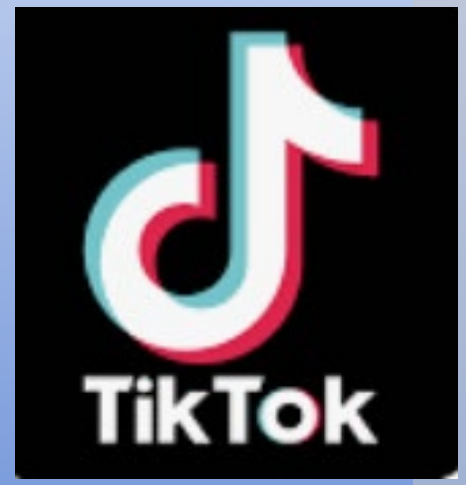

YouTube

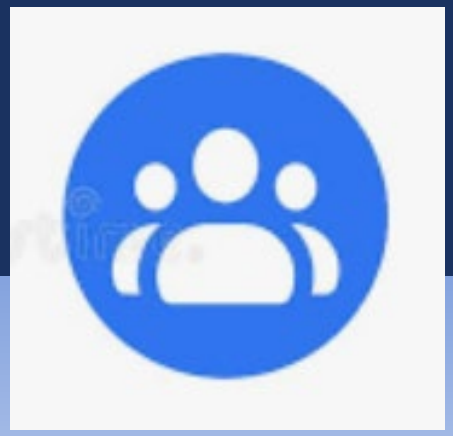

WhatsApp


yelp

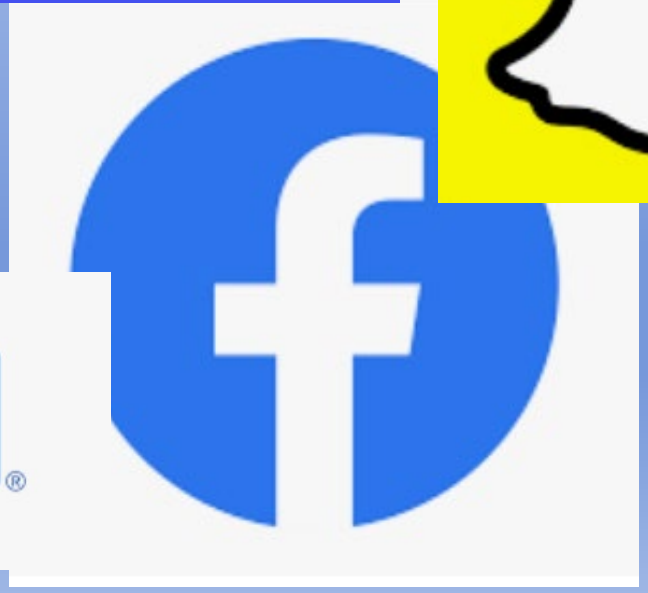

60k
Like
Share


Discord


TikTok




LinkedIn




reddit

The "Online Disinhibition Effect"

"*You don't know me*" (dissociative anonymity)

"*You can't see me*"(invisibility)

"*See you later*" (asynchronicity)

"*It's all in my head*" (solipsistic introjection)

"*It's just a game*" (dissociative imagination)

"*We're equals*" (minimizing authority)

"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 sites or otherwise posting material on the Internet, given the accessibility, widespread transmission, and permanence of electronic communications and material posted on the Internet."

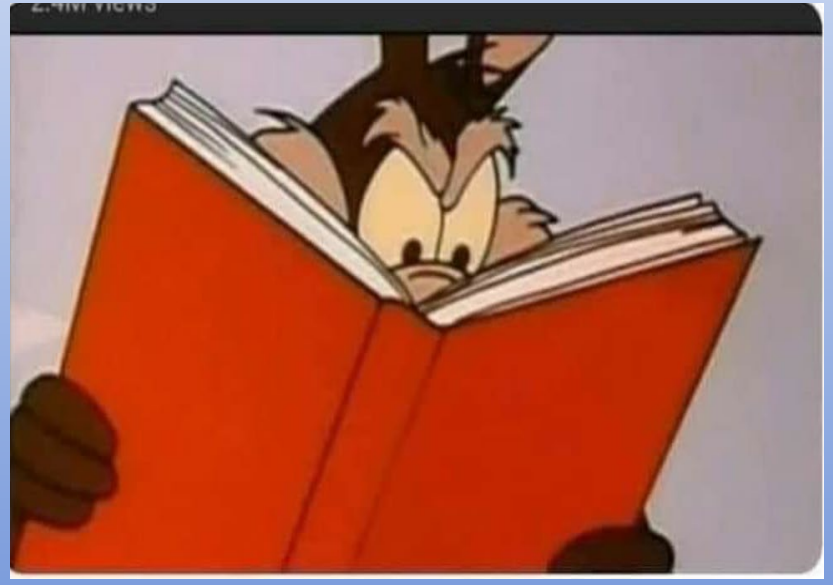
Session Outline

1) Controversial Topics
2) Charitable Fundraising
3) Liking/Friending/Reposting/Reviewing

Controversial issues

facebook

Baca Bennett
(2021)

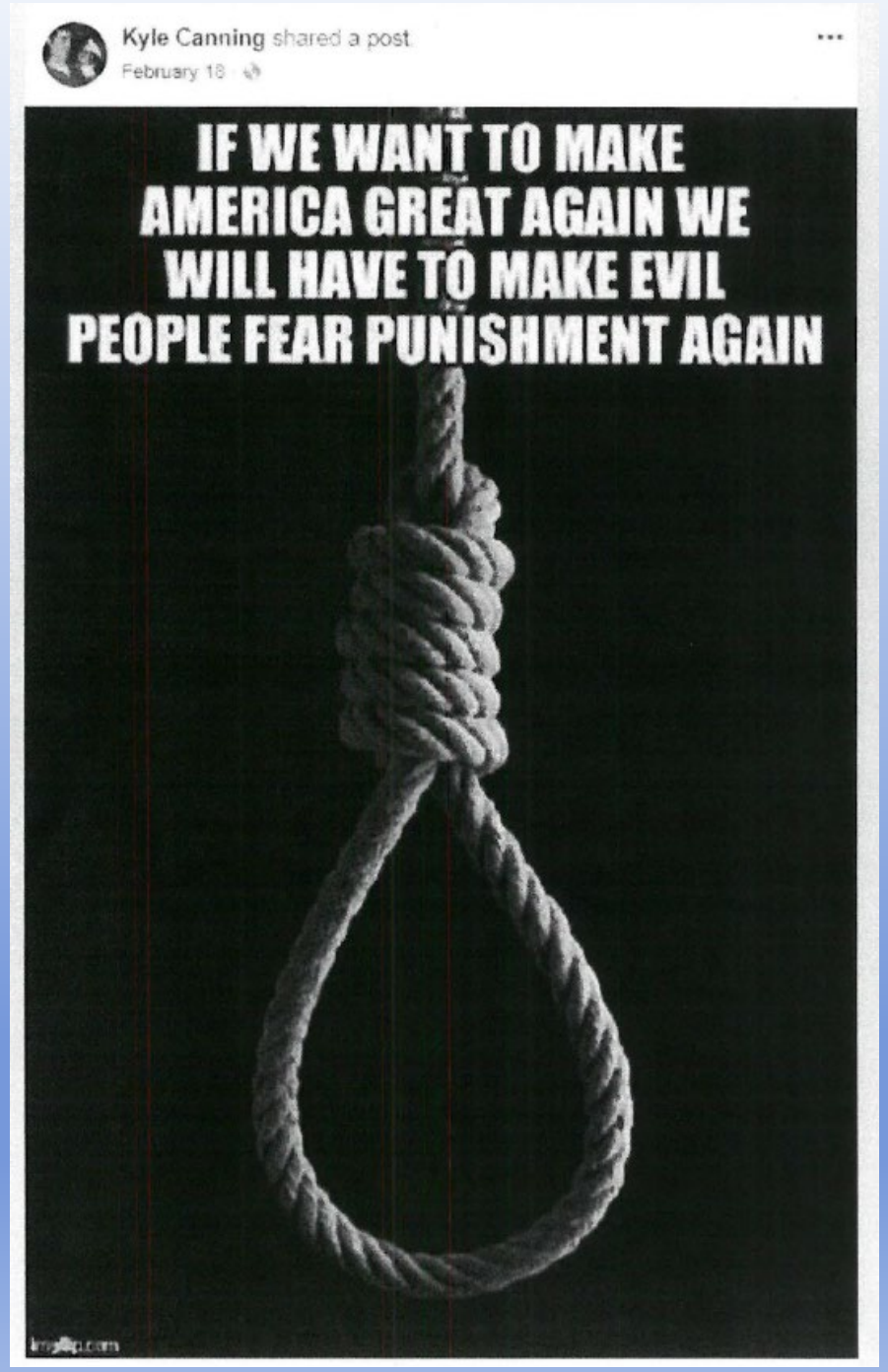


How to carry kids across the border...

Rothman, Cal. Judicial Conduct Handbook, 4th ed. §10:33

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.

Canning (2019)



facebook

O'Gara (2021)

James Woods @RealJamesWoods · Jan 21, 2017

These are the #women we should be fighting for. This @womensmarch is an abomination...

In the Matter Concerning Michael J. O'Gara

- Judge O'Gara maintained a public Twitter account.
  - His username was @mjogara.
  - His display name was Michael J. O'Gara.
  - His followers included the City of Glendale, at least one DDA and several private attorneys.
  - Between 2014-2021 Judge O'Gara posted remarks, retweeted content or liked tweets by others.

O'Gara Case

Examples:

George Takei @GeorgeTakei · Apr 26, 2019

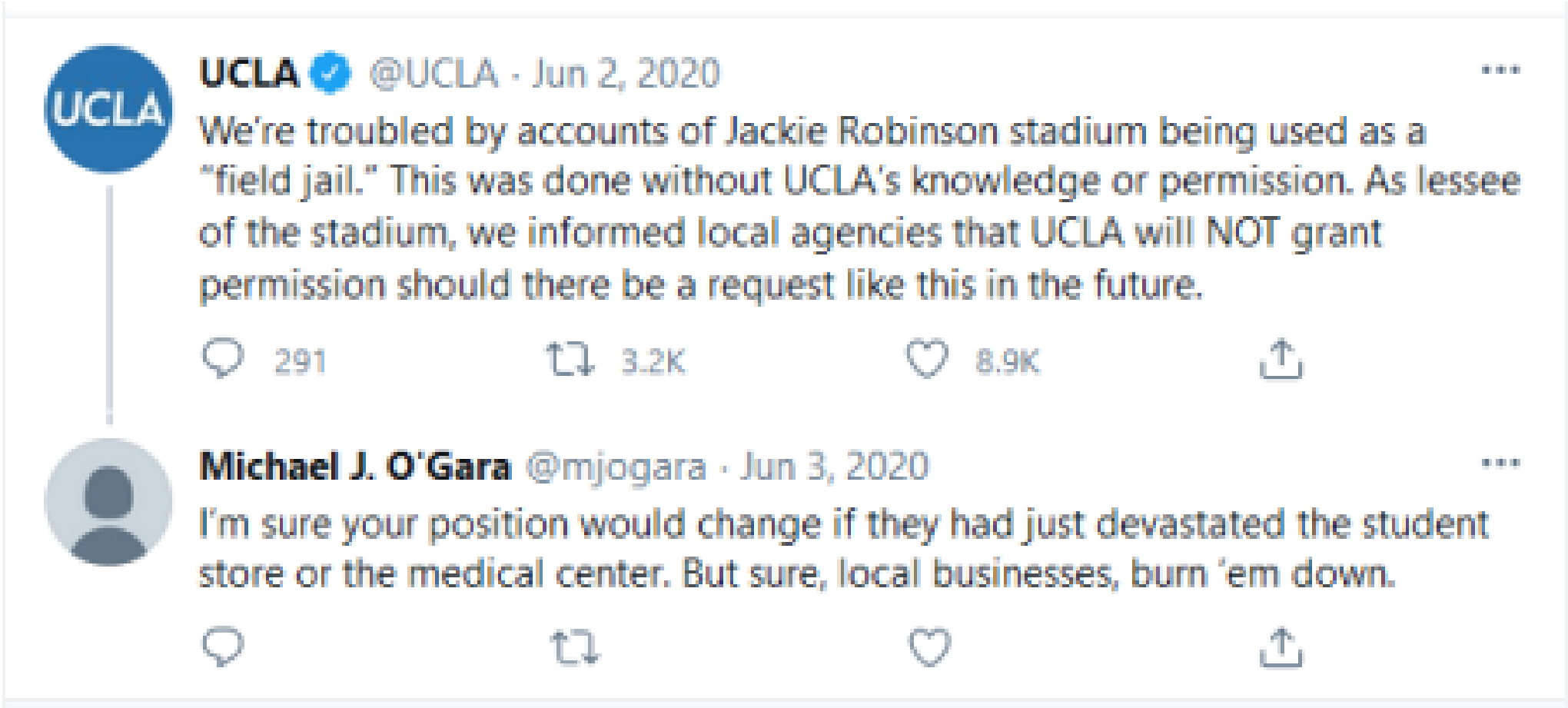
Will you join me in pledging not to speak negatively about any of our candidates? We don't know who the nominee will be, but they need to be as strong as they can be going into the election against Trump.

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.



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

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

2.9K 9K 34K

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?

CJC Case – In the Matter Concerning Michael J. O'Gara

- The Commission found that the Twitter activity violated:
  - Canon 4A Failure to conduct extrajudicial activity in a manner that that did not cast doubt on the ability to act impartially or demean the judicial office.
  - Canon 1 Failing to maintain high standards of conduct.
  - Canon 2A Failing to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and making statements that the judge with respect to cases, controversies and issues.

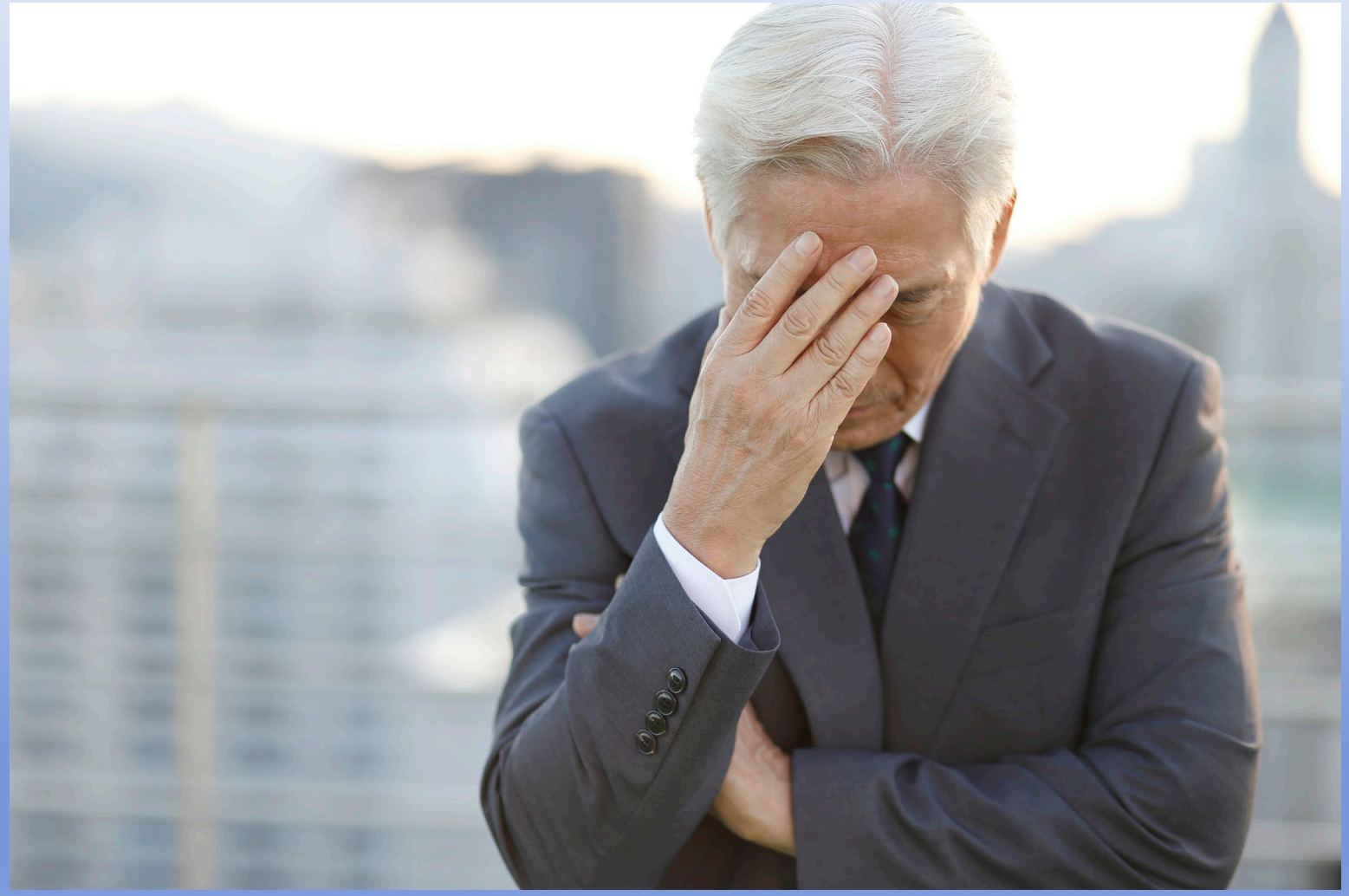
Schmidt (2020)

facebook

You **WILL** be Googled

Charitable fund-raising

Why is this a Code violation?



"A judge may not use social media or social networking platforms to promote the activities of educational, religious, charitable, fraternal, or civic organizations when the judge would be prohibited from doing so using another means of communication. For example, just as a judge may not write or telephone nonfamily members or judges over whom the judge has supervisory authority to encourage them to attend organizations' fundraising events, a judge may not promote those events via social media or social networking platforms."

Svaren (2018)

facebook

Like Message Save

Judge David Svaren

@judgedavidsvaren

Home

About

Endorsements

Photos

Likes

Videos

Posts

Create a Page

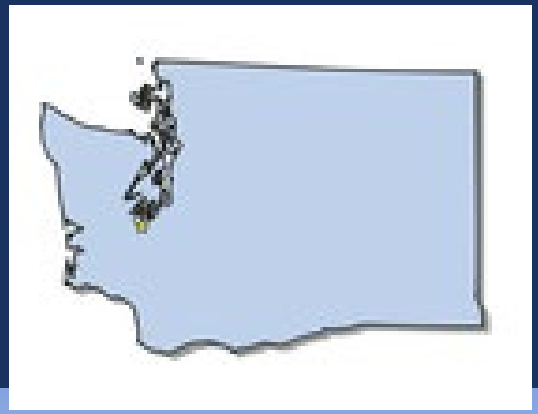
Judge David Svaren added 2 new photos.

1 October at 10:50 ·

The Burlington Fire Department Pancake Feed is happening now and 100% of the proceeds go to benefit the families of the victims of the recent tragedy at Cascade Mall. Please consider attending, it runs until noon today.

#SkagitStrong

Yu (2018)




facebook
Like
Follow
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Justice Mary Yu
@JMaryYu
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Create a Page
Justice Mary Yu
22 April at 13:06
Join Lifelong for Dining Out For Life on April 26!
On Thursday, April 26, raise your fork for Dining Out For Life! Join Lifelong at one of 90 restaurants in the Greater Seattle Area who are set to donate 30-50% of their proceeds to vital programs that support people facing serious illness and poverty in our community.
https://www.diningoutforlife.com/seattle
Dining Out SM
FOR LIFE
Join Lifelong for Dining Out For Life on April 26! | Dining Out for Life, Seattle, Lifelong AIDS Alliance, Restaurants, HIV/AIDS, fundraiser, Lifelong, DOFL,...
DININGOUTFORLIFE.COM
Like
Comment
Share

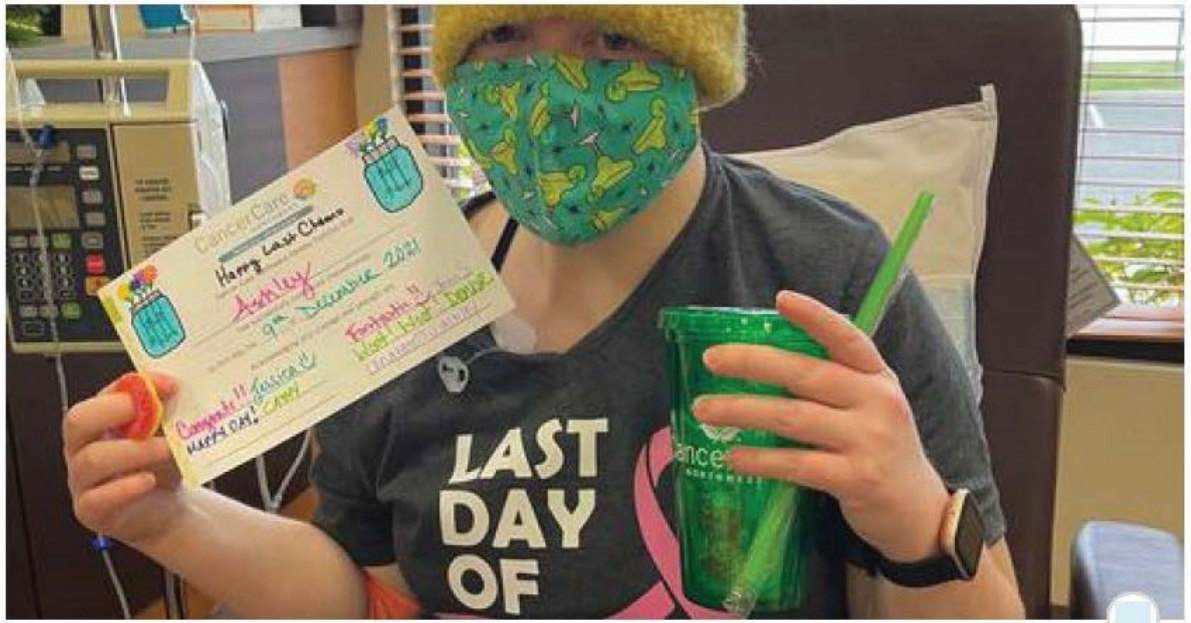
McCroskey (2023)

facebook

Write a comment...

Robin Stone McCroskey
January 14 · GoFundMe ·

She's one of a kind!!!



GOFUNDME.COM

Help Ashley cover her medical expenses!, organized by Kadee Coatney

Hi, my name is Kadee Coatney, and I am trying to help my lifelong best friend r... Kadee Coatn...

"If a judge posts on social networking sites such as Facebook or crowdsourced sites such as Yelp or TripAdvisor, the judge may not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others. For example, a judge may not comment on, recommend, or criticize businesses, products, or services on such sites if it is reasonably likely that the judge can be identified as a judge."

California Advisory Opinion 78 (2020)

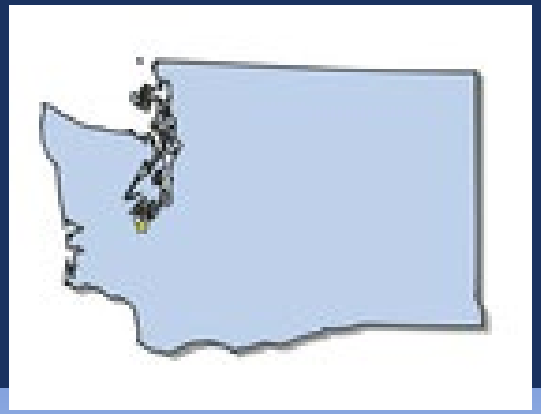
1) How likely is it that a reader can identify that a judge wrote the review?
2) Where will the post appear?
3) Is there a reasonable possibility the reviewed business can tell the post was written by a judge?
4) How detailed is the review?
5) Who is the review being written for?

California Advisory Opinion 78 (2020)

Whether "liking" a business abuses the prestige of office depends on who can see the judge's "likes"

- Only the judge
- Anyone
- Only "friends"
- Only close friends & relatives

McCroskey (2023)



facebook

Robin Stone McCroskey

.

Love Nissa. Love this place!!!

"Judges should be vigilant in minimizing reasonable apprehensions of bias arising from these communications and associations. . . . Judges who choose to use social media should exercise great caution in their communications and associations within these networks, including expressions of support or disapproval."

"A violation of the Code may occur when a judge uses the Internet, including social networking sites, to post comments or other materials such as links to websites, articles, or comments authored by others, photographs, cartoons, jokes, or any other words or images that convey information or opinion. Violations may occur even if a judge's distribution of a communication is restricted to family and friends and is not accessible to the public."

"A judge may not use social media or social networking platforms to promote the activities of educational, religious, charitable, fraternal, or civic organizations when the judge would be prohibited from doing so using another means of communication. For example, just as a judge may not write or telephone nonfamily members or judges over whom the judge has supervisory authority to encourage them to attend organizations' fundraising events, a judge may not promote those events via social media or social networking platforms."

"Judges must carefully monitor their social media accounts to ensure that no communication can be reasonably interpreted as suggesting a bias or prejudice; an ex parte communication; the misuse of judicial power or prestige; a violation of restrictions on charitable, financial, or political activities; a comment on a pending or impending case; a basis for disqualification; or an absence of judicial independence, impartiality, integrity, or competence."

Good Use of Social Media

Examples of Appropriate Posts

Judicial civics education

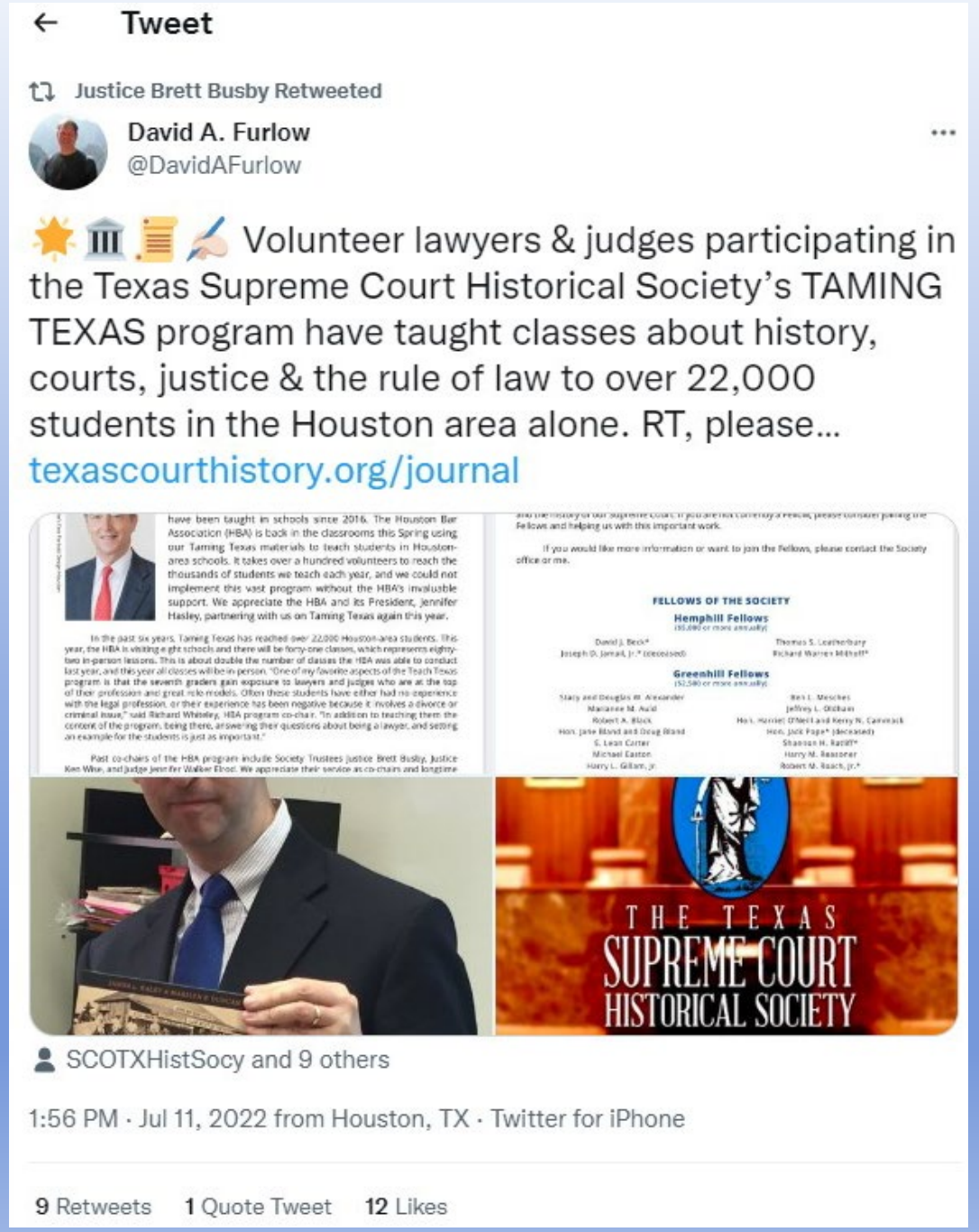
← Tweet

Justice Brett Busby
@BrettBusby

It was a pleasure to welcome these dedicated Texas teachers to @SupremeCourt_TX yesterday! Thanks to the State Bar's Law-Related Education Department @Texas_LRE for organizing this training and helping to bring judicial civics education to Texas classrooms. #SCOTX

Examples of Appropriate Posts

Sharing information on role of judges and the judicial system



Examples of Appropriate Posts

Insights into Supreme Court procedures

← Tweet

Justice Brett Busby Retweeted

Supreme Court of TX
@SupremeCourt_TX

The Supreme Court of Texas holds court conference, at which the justices discuss all causes before the Court. Texas is one of very few state supreme courts that allow law clerks to attend deliberations. Clerks and staff attys sit against the walls. #appellatetwitter #TXCourts

12:00 PM · Apr 26, 2022 · Twitter for iPhone

Examples of Appropriate Posts

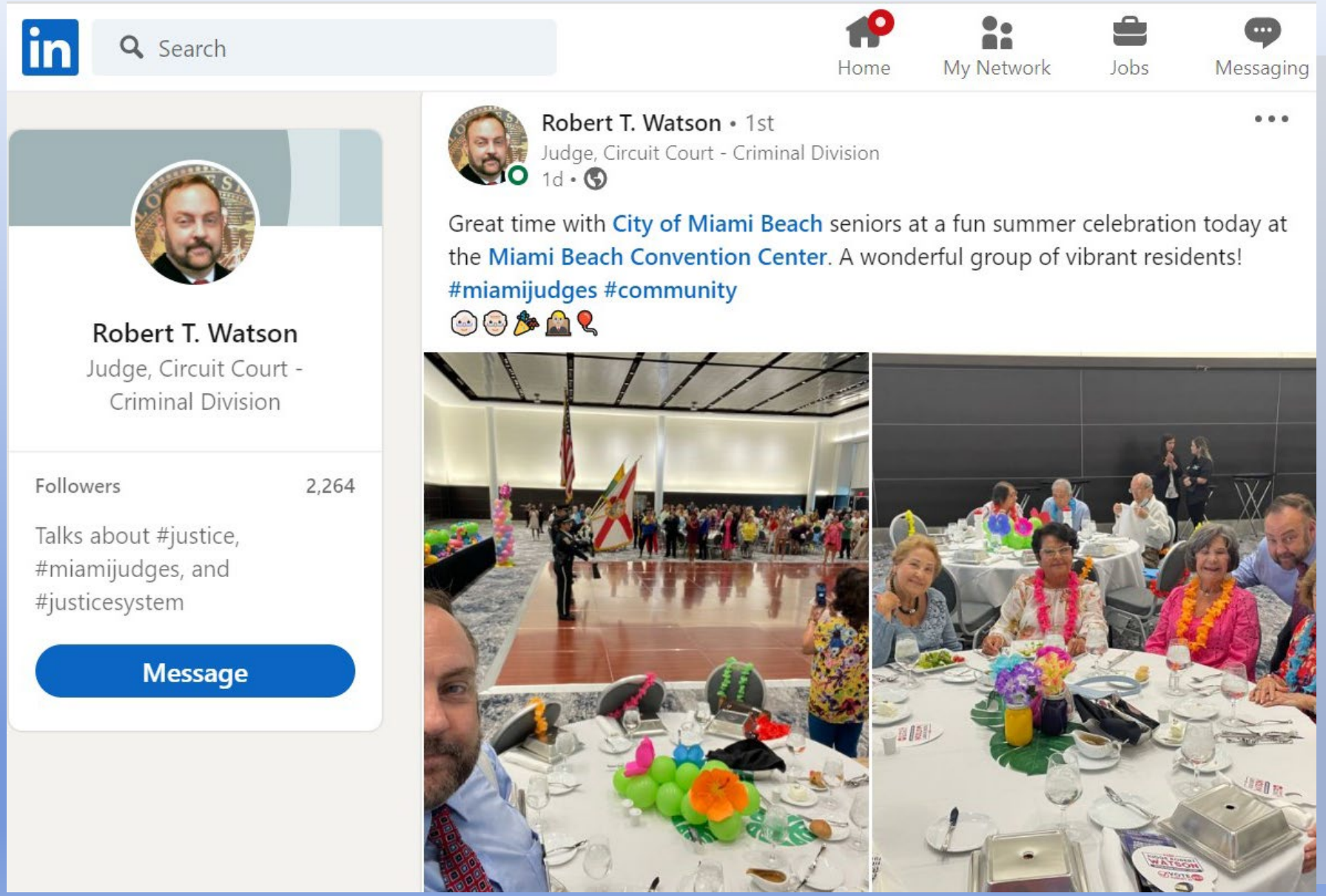
Involvement in educational organizations

Examples of Appropriate Posts

Encouragement of Pro Bono Activites

Examples of Appropriate Posts

Civic and community activities



Examples of Appropriate Posts

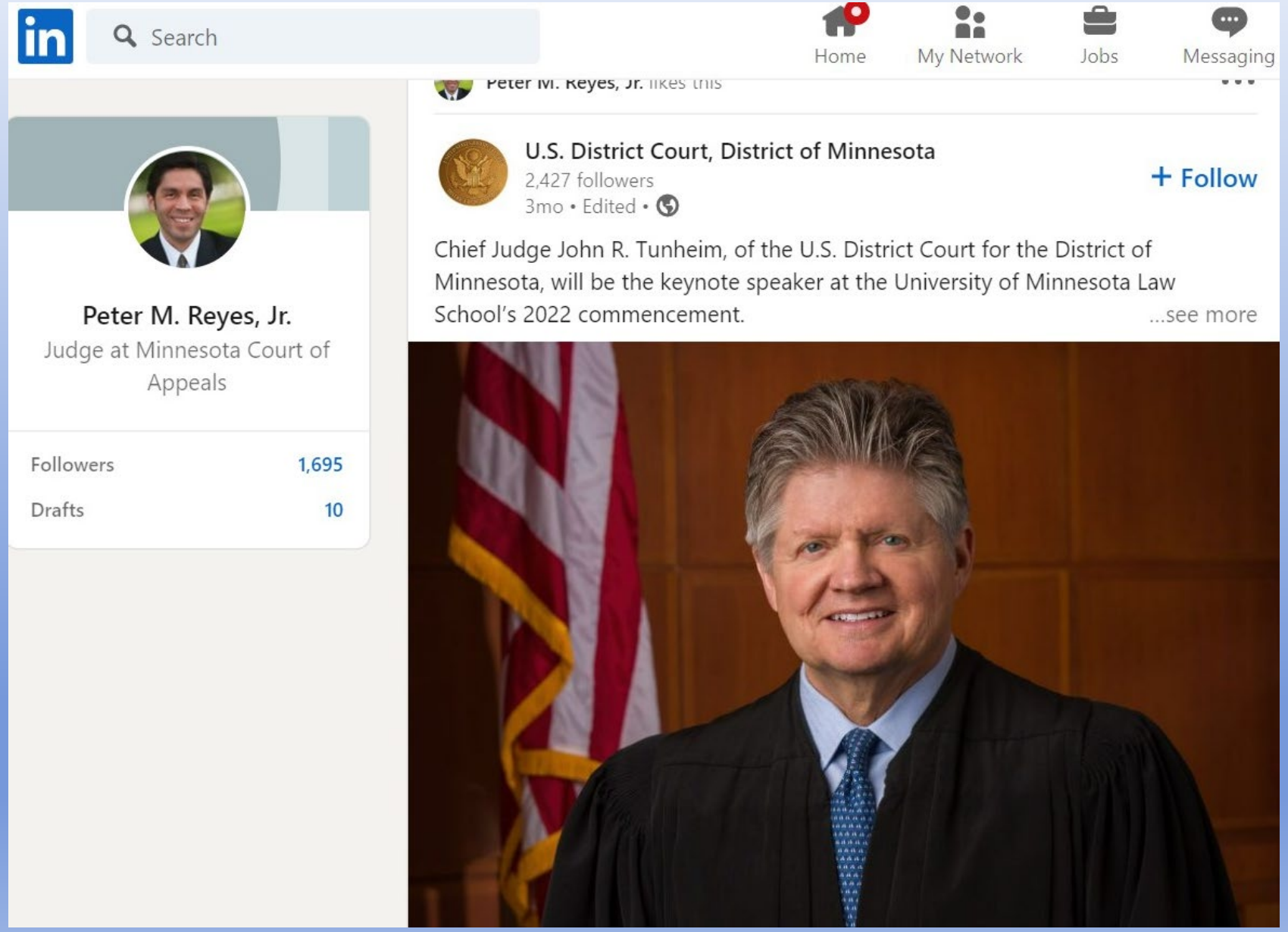
Sharing information on role of judges and the judicial system

Examples of Appropriate Posts

Promoting judge's activities and recognitions received

Examples of Appropriate Posts

Court post on LinkedIn and community activities



Bridging the Past, Present and Future of Justice
2024 Conference, October 17-19, San Diego

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