

# LinkedIn Recommendations: Yay or Nay?

By [Adrian Dayton](#)



I'd like to believe we live on a planet where reason dictates the choices we make as well as the policies of law firms. As numerous personal experiences and Above the Law articles have demonstrated to me, this isn't always the case. And nowhere is this irrationality more perplexing than firm policies towards [LinkedIn](#) recommendations.

LinkedIn has a feature that allows lawyers and clients to write recommendations of each other. For a recommendation to be published online, it has to "accepted" by the person being recommended. The problem is, major law firms are prohibiting the use of LinkedIn recommendations by their attorneys (both inbound and outbound). Referrals and peer-to-peer recommendations are the lifeblood of most practices.

So why are so many firms prohibiting their use online?

"We take a very conservative approach," explained Melanie Daniels, director of marketing at the Indiana-based law firm of [Baker & Daniels](#). "Our professional ethics counsel isn't going to take any risks, and their interpretation of the Indiana rules is that recommendations are not allowed." Indiana has some of the strictest regulations in the nation when it comes to recommendations. According to Indiana Rules of Professional Conduct:

7.2(d): A lawyer shall not, on behalf of himself, his partner or associate, or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication which: ... (3) contains a testimonial about or endorsement of a lawyer....

When I asked [Andrew Perlman](#), Legal Ethics Professor at Suffolk University Law School, what he thought of the Indiana Rule, he had this to say: "I'm not familiar with how that rule has been interpreted in Indiana, so I can't say if it was intended to prohibit the types of endorsements that are common on LinkedIn. If it covered LinkedIn endorsements, however, I think there is a non-frivolous argument that the provision is unconstitutional as a violation of the First Amendment."

First Amendment aside, there are other, more practical arguments in favor of LinkedIn recommendations.

"Any restrictions regarding online peer endorsements are shortsighted and not dealing with reality," according to [Mark Britton](#), attorney and CEO of [Avvo.com](#). Although Britton certainly has a horse in the race as the CEO of a company that relies on peer recommendations by lawyers, he made some compelling arguments.

“Martindale’s AV Rating and Superlawyers ratings are almost entirely the result of peer endorsements,” he noted. “The fact that these ratings are offline shouldn’t make any difference.”

Britton also pointed out that “most states appear not to have an issue with it,” including [usually conservative Florida](#). South Carolina has issued a [non-binding ethics opinion](#) holding that some peer endorsements may be okay provided they comply with the advertising rules.

Law firms don’t want to go to the work or the headache of having to determine which endorsements are acceptable and which are not — so they simply “throw the baby out with the bathwater,” and prohibit the use of LinkedIn recommendations altogether. If recommendations are so important to referral sources, wouldn’t it make sense to find a way to provide some guidance for the use of recommendations, rather than simply prohibiting the practice altogether?

This debate is fueled by fear. Take this ABA article, [Navigating the Ethical Pitfalls of Online Networking](#) (subscription), which explains the following about online recommendations:

Be very careful here. Some states prohibit attorneys from using any testimonials in their advertising materials. If you are licensed in one of these jurisdictions, you cannot display any “Recommendations” or similar testimonials in your online profiles.

Does your LinkedIn profile fit the definition of “advertising material”? Or was the rule referring to law firm website profiles? Did the rules ever anticipate the type of online networks that we participate in now? If LinkedIn recommendations are written by a third party and posted on a website, that is not under the control of the law firm. As long as the recommendations doesn’t contain factually incorrect material, unverifiable claims or promises of certain outcomes, then what is the issue? Keep in mind that most of these rules came about to limit ambulance chasing by attorneys, not to prohibit peers of a learned profession from recommending one another.

“As a practical solution, lawyers can simply review the LinkedIn recommendations that they get in order to make sure the post complies with attorney advertising rules,” according to [David Barrett](#), who has been referred to as the “LinkedIn Lawyer,” with over 10,000 connections on the site. “Firms should likely run these ‘firm publications’ through a review board like they would any newsletter, website or other materials.”

It comes down to firms wanting to control their brand and provide proper supervision of their lawyers. “One individual attorney’s missteps could cost the entire firm an ethical problem with bar overseers,” according to Barrett. “With a well-written social media policy, as well as training, law firms will be able to take the next step, explore the positive aspects, [and] show off the amazing intellectual capital and talent that law firms employ. Simply prohibiting such publications is likely unsupportive of the firm’s overall marketing, public relations and business development objectives.”

In other words, prohibiting LinkedIn recommendations for fear of lawyer missteps is tantamount to prohibiting attorneys from opening their mouths in public for fear of them saying something stupid. Or as Aviva Cutler, founder of [JD Supra](#), stated:

“Although there are clearly a multitude of potential pitfalls, risk is inherent in all of our activities—from the risk of a car accident while driving to work, to the risk of a malpractice claim arising out of our practice of law. As in all endeavors, education and care are the best defense.”

Does your firm allow recommendations on LinkedIn? Please share your thoughts with us.