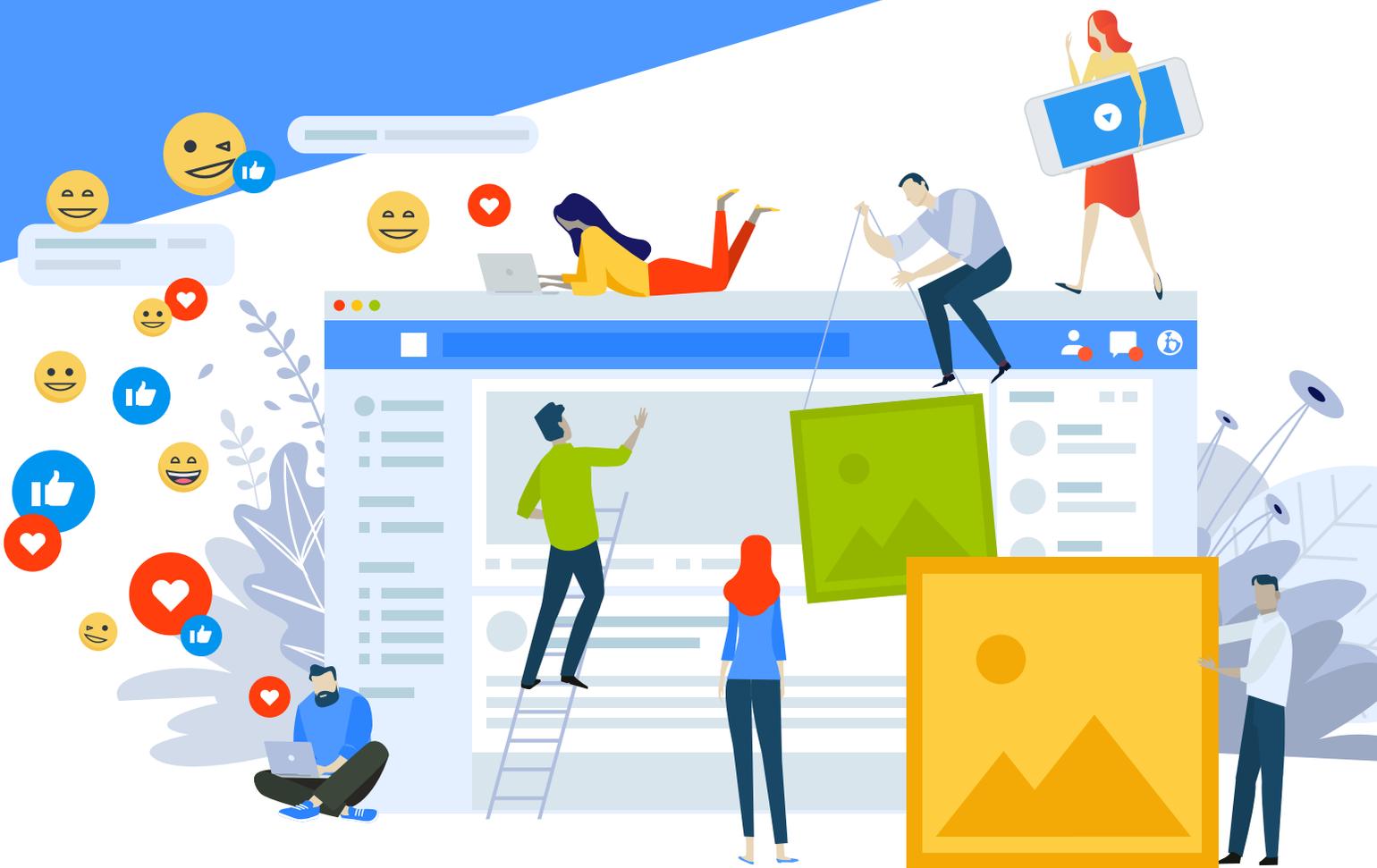


The Young Lawyers Division of The Florida Bar's

Social Media Pocket Guide



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INTRODUCTION

This handbook was created by a joint collaboration between the Young Lawyers Division of The Florida Bar and the Ethics and Advertising Department of The Florida Bar in an effort to assist Florida lawyers in complying with the rules governing lawyer advertising.

This handbook is not intended to be comprehensive, but rather a compiled selection of materials published by The Florida Bar. Further, the ethics and advertising rules are evolving in nature, and practitioners should always check to see if there are any recent ethics opinions, rule changes, or other developments.

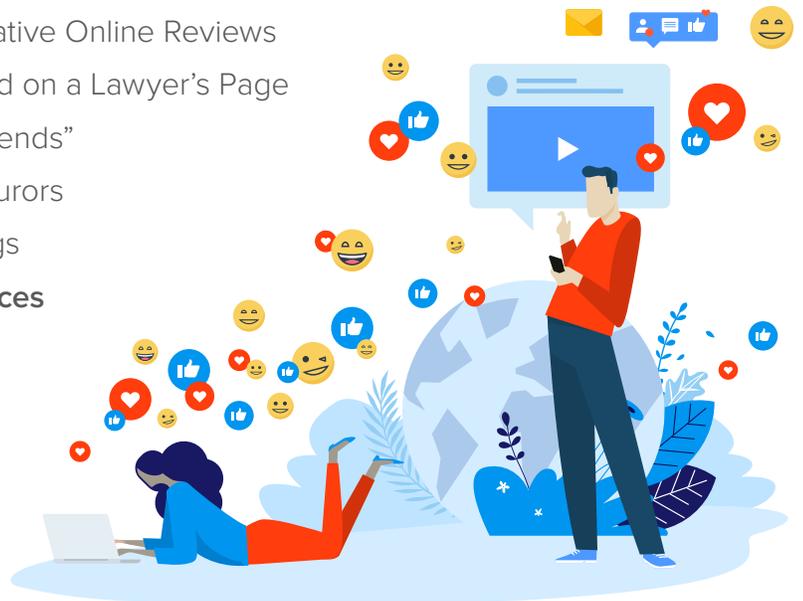
More information can be found in The Florida Bar's Handbook on Lawyer Advertising and Solicitation, the Rules Regulating The Florida Bar, and the resources listed at the end of this handbook.

Filings and other communications regarding lawyer advertising should be directed to:

Ethics & Advertising Department
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
Telephone number (850) 561-5780

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DO THE ADVERTISING RULES APPLY TO SOCIAL MEDIA?

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. On the other hand, pages of individual lawyers on social networking sites that are used solely for social purposes (*i.e.* to maintain social contact with family and close friends) and not for the purpose of marketing legal services, are not subject to the lawyer advertising rules. However, lawyers are still bound by the Rules Regulating the Florida Bar.

Thus, as discussed more in this pamphlet, the advertising rules may or may not apply to statements made by an attorney through social media. However, it is important to keep in mind that even if the *advertising* rules do not apply, the Rules Regulating the Florida Bar continue to govern a lawyer's conduct on social media and otherwise, even when a communication is not within the purview of the advertising rules. See *e.g.* Rules 4-4.1 (Truthfulness in Statements to Others); 4-3.3(d) (Extent of Lawyer's Duties); 4-8.4(c) (Misconduct). Lawyers must therefore be careful not to fall afoul of the Rules Regulating The Florida Bar, even when their conduct or any content does not amount to an advertisement under the Rules.

WHAT ARE THE BASIC ADVERTISING RULES?

Florida's lawyer advertising rules apply to all forms of communication seeking legal employment in any print or electronic forum, including email and social media advertisements.

Direct solicitation of potential clients is prohibited. This means that a lawyer cannot contact a prospective client in-person (or through an agent) including by telephone or through other means of direct real-time electronic contact (such as by video conference, direct message, comment, tag, or post) if a significant motive is the lawyer's pecuniary gain, unless the prospective client is a family member, current client, former client, or other person with whom the lawyer has a prior professional relationship. This prohibition does not extend to unsolicited direct mail, email, or other direct written communication made in compliance with Rule 4-7.18(b).

For example, the following have been found to be prohibited direct in-person solicitation:

- cold calls;
- an advertisement printed on a pharmacy bag that is handed directly to pharmacy customers;
- an advertisement printed on a claim check for valet service at a hospital;
- an advertisement printed on a folder given by a realtor to the realtor's clients;
- business cards and flyers passed out to passers-by;
- an advertisement printed on a wristband to indicate that a customer or attendee is of legal drinking age; and
- participating in a chat room.

What must be included in my advertisement?

All Advertising - All forms of lawyer advertising, including advertisements that are exempt from the filing requirement (discussed further below), must include the following information:

Name—the name of at least one lawyer, law firm, or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertising content. The name must be reasonably prominent in the advertisement.

Location of Practice—You must also disclose the city, town, or county of one or more bona fide office locations of the lawyer or lawyers who will perform the services advertised. The geographic location disclosure must be reasonably prominent.

Referrals to Another Lawyer—Advertisements in which the advertising lawyer intends to refer the advertised matter to another lawyer or law firm must contain a reasonably prominent disclaimer indicating the matter will be referred.

Languages—All required information in an advertisement must appear in the same language used in the advertisement. If more than 1 language is used, the required

Unsolicited Email and Mail—Additional requirements apply for all unsolicited direct mail and email. These include:

“Advertisement” must be printed on the outside of direct mail advertisements and on each separate enclosure included in the advertisement or the inside of a self mailing brochure [“Advertisement” as the first word of the subject line if an email or the first word of a targeted social media communication] - Rule 4-7.18(b)(2)(B).

If the case will be handled by a lawyer who did not sign the advertisement or whose name does not appear in the advertisement, direct mail, email, or targeted social media advertisements must so indicate - Rule 4-7.18(b)(2)(G). must appear in all languages used in the advertisement.

Targeted Advertisements—Any *targeted* direct mail, email, text, or social media communication must also comply with the following additional requirements:

1. Must contain a statement as to how the lawyer obtained the information about the prospective client’s legal matter - Rule 4-7.18(b)(2)(H);
2. Must include as the first sentence “If you have already retained a lawyer for this matter, please disregard this letter.” Rule 4-7.18(b)(2)(E); and
3. There can be nothing on the outside of a targeted direct mail advertisement that reveals the nature of the client’s legal problem. Rule 4-7.18(b)(2)(I).

What is a “targeted” direct mail, email, text, or social media advertisement?

A targeted direct mail, email, text, or social media advertisement is one that is prompted by a specific occurrence. For example, sending a direct mail, email, text, or social media communication to someone the advertising lawyer knows has been arrested or whose house the advertising lawyer knows is in foreclosure, would be a targeted advertisement.

On the other hand, direct mail or email advertisements sent out generally, such as bulk mailers to a specific zip code, are nontargeted unless the advertising lawyer knows the recipients have a specific legal problem.

Posts that lawyers pay to appear in the feed of consumers whom the lawyer knows to have a specific legal problem and with whom the lawyer has no prior family or professional relationship are considered targeted social media advertisements. Frequently, they are designed to appear in the feed only of prospective clients who have self-identified with characteristics that identify those prospective clients as having a specific need for legal services. Thus, any social media post by a lawyer that is targeted to prospective consumers of legal services (who are not current or former clients of the lawyer), must comply with the requirements for targeted direct electronic media under Rule 4-7.18(b) and must be filed for review, if:

1. the social media post is targeted with enough specificity that it does not appear as mass marketing to consumers who may or may not have a specific need for legal services; and
2. the post appears in the feed only of prospective clients who have self-identified with characteristics that identify those prospective clients as having a specific need for legal services.¹

The requirements for targeted advertisements apply to unsolicited text messages under Rule 4-7.18(b). Additionally, the lawyer must provide an “opt-out” for recipients; the lawyer must ensure that recipients are not required to pay for receipt of the text messages; and the lawyer must comply with all applicable state and federal laws, rules, and regulations regarding unsolicited text messages. The lawyer is responsible for determining compliance with applicable laws, rules and regulations, including the federal Telephone Consumer Protection Act, 47 U.S.C. §227.²

When does the filing requirement apply?

All **advertisements** must be filed for review at least 20 days before their planned use. Rules 4-7.11(a), 7.19(a), and 4-7.20(a). All required filings must be submitted to the Ethics and Advertising Department of The Florida Bar. The bar does not accept initial filings by email. If you are sending video or audio recordings for review, you must mail the video or audio recording to the Ethics and Advertising Department on a disk or USB drive before a final opinion can be issued.

Are there exemptions to the filing requirement?

An advertisement that is required to be submitted in advance for approval by the bar may be exempt from the filing requirement if it meets certain criteria. These are referred to as “tombstone” ads.

Direct mail, direct email, text, and targeted social media advertisements do not fall within this exception and must always be filed for review. Note: even if exempt from the filing requirement, the advertisement must still comply with all other advertising rules.

¹ See [The Florida Bar Standing Committee on Advertising Guidelines for Networking Sites \(Rev. Aug. 19, 2020\)](#).

² See [Florida Bar Advertising Opinion A-00-1 \(Revised\) \(2016\)](#).

An advertisement in any public medium (e.g., T.V., radio, print, Internet banner, Internet pop-up) that contains no information other than the following is not required to be filed for review:

1. the name of the lawyer or law firm, a listing of firm lawyers, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, email addresses, office and telephone service hours, and a designation such as “attorney” or “law firm”;
2. date of admission to The Florida Bar and any other bars; current membership or positions held in The Florida Bar, its sections or committees or those of other state bars; former membership or positions held in The Florida Bar, its sections or committees, together with dates of membership or those of other state bars; former legal positions or legal employment together with the dates the positions were held; years of experience practicing law, number of lawyers in the advertising firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;
3. technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions; military service, including branch and dates of service;
4. military service, including branch and dates of service;
5. foreign language ability;
6. fields of law in which the lawyer practices, including official certification logos subject to Rule 4-7.14(a)(4) on certification or specialty;
7. participation in prepaid or group legal service plans;
8. credit cards accepted;
9. fee for initial consultation and fee schedule, subject to Rule 4-7.14(a)(5) regarding disclosing client responsibility for costs and honoring advertised fees;
10. common salutary language such as “best wishes,” “good luck,” “happy holidays,” “pleased to announce,” or “proudly serving your community”;
11. punctuation marks and common typographical marks; and/or
12. an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statute of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of or employed by the firm against a plain background consisting of a single solid color or a plain unadorned set of law books.

DO THE ADVERTISING RULES APPLY TO “SOCIAL MEDIA”?

In general, advertising rules do not apply to “social networking pages that are used **solely** for social purposes (i.e. to maintain social contact with family and close friends) and not for the purpose of marketing legal services.” However, if social media is used to promote you or your law firm’s practice, then such pages are subject to the lawyer advertising rules set forth in Rules 4-7.11 through 4-7.21. See R. Regulating Fla. Bar 4-7.11(a)-(b). While a lawyer must file all advertisements for review pursuant to Rule 4-7.19, a number of exemptions exist under Rule 4-7.20 as discussed below. See R. Regulating Fla. Bar 4-7.19; R. Regulating Fla. Bar 4-7.20.

Websites, Blogs, and Networking Sites

Florida's lawyer advertising rules apply to websites and blogs "seeking legal employment." This means that a lawyer's website and any blogs, and the information contained on each, are subject to Rules 4-7.11 through 4-7.18, and 4-7.21. However, lawyer websites and blogs do not need to be submitted for review. See Rule 4-7.20(g). Similarly, a lawyer's page on a networking site is sufficiently similar to a website of a lawyer that pages on a networking site are not required to be submitted for review, but must abide by Rules 4-7.11 through 4-7.18 and 4-7.21.

Twitter

Lawyers who post information to Twitter whose postings are generally accessible are subject to the lawyer advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as above. However, if the lawyer restricts access to the posts to the lawyer's followers, who are persons who have specifically signed up to receive posts from that lawyer, then the information posted there is subject to the lawyer advertising rules, but is exempt from the filing requirement under Rule 4-7.20(e). Any communications that a lawyer makes on an unsolicited basis to prospective clients to obtain "followers" is subject to the lawyer advertising rules, as with any other social media as noted above.

Because of Twitter's 280-character limitation, lawyers may use commonly recognized abbreviations for the required geographic disclosure of a bona fide office location by city, town, or county as required by Rule 4-7.12(a).

Facebook, LinkedIn, and Online Posts

Networking sites used solely for social purposes are not subject to the advertising rules. However, when sites such as Facebook are used to promote a lawyer or their firm's practice, the advertising rules found in Rules 4-7.11 through 4-7.18 and 4-7.21 apply. Similarly, video sharing sites such as YouTube are also subject to advertising rules when the content featuring the lawyer is used for purposes related to the practice of law. Other networking sites, such as LinkedIn, which are used specifically for commercial purposes are also subject to the advertising rules.

While subject to advertising rules, the Standing Committee on Advertising Guidelines for Social Networking Sites and the Guidelines for Video Sharing Sites do not require networking sites to be filed for review.³ For the purpose of this exception, networking sites are limited to Facebook, YouTube, LinkedIn, and other similar websites or pages.⁴

Firm Newsletters

The advertising rules apply to firm newsletters, whether digital or printed, because they qualify as direct mail communications.⁵ As such, newsletters must comply with the advertising rules. See Rule 4-7.18.

Newsletters must also be filed for review with the Florida Bar, in accordance with Rule 4-7.19, if they are going to be emailed or mailed to prospective clients.⁶ Subsequent newsletters may need to be filed for review, unless the new content is considered entirely presumptively permissible by Rule 4-7.16. Specifically, "[s]ubsequent newsletters must be filed for review only if they include additional information about the law firm and the new firm information is not presumptively permissible under the rules." See Advertising Opinion A-99-01. Purely substantive changes to articles—that contain no information about the firm—do not need to be refiled.

Newsletters mailed to current and former clients and other lawyers do not need to be filed for review. The same is true for newsletters being mailed to people who requested them.

³ See <https://www.legalfuel.com/the-florida-bar-standing-committee-on-advertising-guidelines-for-networking-sites/>; also Rule 4-7.20.

⁴ See <https://www-media.floridabar.org/uploads/2020/08/Handbook-2020-8-19-20-ADA-Compliant.pdf>

⁵ See *Id.*

⁶ See [Florida Bar Advertising Opinion A-99-01 \(2000\)](#).

Emails

The advertising rules apply to all advertisements sent by email to prospective clients.⁷ This includes invitations sent from social media sites via email, unless the recipient is a current or former client, a lawyer, relative, or someone who has requested the information or with whom the lawyer has a prior professional relationship. Rule 4-7.18.

In addition, any unsolicited direct emails must also be **filed** prior to their planned use in accordance with Rule 4-7.19.⁸

Banner Ads & Pop Up Ads

Banner advertisements and pop up advertisements are subject to the advertising rules found in Rules 4-7.11 through 4-7.18 and 4-7.21. They must also be filed under Rule 4-7.20. The filing requirement for banner and pop up advertisements also applies when these types of advertisements are posted on social media websites. See Rule 4-7.19; Rule 4.7-20(a).

Testimonials/Recommendations

Testimonials on social media must also comply with the advertising rules. The Rules Regulating The Florida Bar define a testimonial as a “personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation.” Rule 4-7.13, comm. Testimonials are prohibited if they fall within Rule 4-7.13(b)(8). Pursuant to Rule 4-7.17(b), a lawyer may not give **anything of value** to a person for providing a testimonial regarding a lawyer’s services or recommending a lawyer’s services.

Attorney Recognitions

The comments to Rule 4-7.14 state that it is permissible under the advertising rules for lawyers to list “bona fide awards, honor, and recognitions using the name or title of the actual award and the date it was given” because they do not amount to subjective statements. See Rule 4-7.14, comm. Advertisements cannot contain information about awards, honors, ratings or memberships of lawyers “unless the entity conferring such membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based upon objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover.” Rule 4-7.14(a)(3). In addition, the comments to Rule 4-7.14 explain what a lawyer can advertise regarding board certification, specialization, or certain expertise.

Certain forms of attorney recognition must also comply with the advertising rules, including when posted on social media and sending information to prospective clients. See e.g. Rules 4-7.12--7.14.

Chat Rooms

A lawyer may solicit prospective clients through internet chat rooms only if the lawyer complies with the rules on direct written communications and files any unsolicited communications with The Florida Bar for review.⁹

⁷ The general prohibition on contacting prospective clients does not extend to unsolicited email communications that comply with Rule 4-7.18.

⁸ See <https://www-media.floridabar.org/uploads/2020/08/Handbook-2020-8-19-20-ADA-Compliant.pdf>; see also Rule 4-7.19(a); Rule 4-7.20(a).

⁹ See [Florida Bar Advertising Opinion A-00-1 \(Revised\) \(2016\)](#).

As such, a lawyer must comply with the requirements for direct written communications in Rule 4-7.18(b) and file any direct solicitations with The Florida Bar when such communications are unsolicited. See Rule 4-7.20. In addition, *all* responses to prospective clients in chat rooms remain subject to the advertising rules found in the Rules, even when not required to be filed for review. See *generally* Rule 4-7. Further, a lawyer is required to comply with *all* of the Rules of Professional Conduct found in Chapter 4 of the Rules Regulating The Florida Bar in the event, even if inadvertently, a lawyer-client relationship is established when responding to a legal inquiry.

Video Sharing Sites (YouTube, Vimeo, TikTok, etc.)

Videos of individual lawyers on video sharing sites that are used solely for purposes that are unrelated to the practice of law are not subject to the lawyer advertising rules.

Videos appearing on video sharing sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These videos and all information the lawyer or law firm posts with them must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21. However, such videos are considered at the request of the prospective client, and therefore are not required to be filed with The Florida Bar for review. Rule 4-7.20(e).

However, invitations to view or link to the lawyer's video sent on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business must comply with requirements for direct written solicitation under Rule 4-7.18(b).

OTHER SOCIAL MEDIA ISSUES

Handling Negative Online Reviews

A lawyer may not disclose information relating to a client's representation in response to a negative online review, but may respond with a general statement that the lawyer is not permitted to respond as the lawyer would wish, but that the online review is neither fair nor accurate. The Florida Bar has suggested the following forms of response would not violate Rule 4-1.6:¹⁰

A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.

-or-

As an attorney, I am constrained by the Rules Regulating The Florida Bar from responding in detail, but I will simply state that it is my belief that the [comments/post] present neither a fair nor accurate picture of what occurred and I believe that the [comments/post] [is/are] false.

¹⁰ See [Florida Bar Ethics Opinion 20-01 \(2020\)](#).

Content Posted on a Lawyer's Page

Although lawyers are responsible for all content that the lawyers post on their own pages, a lawyer is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules. If a third-party posts information on the lawyer's page about the lawyer's services that does not comply with the lawyer advertising rules, the lawyer must remove the information from the lawyer's page.

If the lawyer becomes aware that a third party has posted information about the lawyer's services on a page not controlled by the lawyer that does not comply with the lawyer advertising rules, the lawyer should ask the third party to remove the non-complying information. In such a situation, however, the lawyer is not responsible if the third party does not comply with the lawyer's request.¹¹

Judges as "Friends"

The Florida Supreme Court has expressed that lawyers and Judges should exercise caution when connecting on social media. The Court has ruled that a judge is not automatically disqualified from a case based solely on a Facebook friendship with one of the attorneys. However, the Court held that additional facts could lead to disqualification.¹²

Researching Jurors

A lawyer can view the public portion of a juror's social media accounts. However, a lawyer should not, either themselves, or through others, communicate with jurors or make requests to "friend" the jurors. In *Tenev v. Thurston*, the Court held: "[t]here is no prohibition in Florida law against an attorney researching jurors before, during, and throughout a trial so long as the research does not lead to contact with a juror. An attorney is not obligated to inform the court of such research unless it affects the fairness of the trial and the administration of justice."¹³

Privacy Settings

A personal injury lawyer may advise a client pre-litigation to change privacy settings on the client's social media pages so that they are not publicly accessible. Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, the lawyer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved.¹⁴

USEFUL RESOURCES

[Advertising Regulation and Information Page of The Florida Bar](#)
[Handbook on Lawyer Advertising and Solicitation](#)
[Quick Reference Checklist – Targeted Social Media](#)
[Advertising Guidelines for Networking Sites](#)
[Florida Ethics Opinions Search](#)



¹¹ See eg. *Texas Center for Legal Ethics, Op. 685*.

¹² *Law Offices of Herssein & Herssein, P.A. v. United Servs. Auto. Ass'n*, 271 So. 3d 889 (Fla. 2018).

¹³ *Tenev v. Thurston*, 198 So. 3d 798, 802 (Fla. 2d DCA 2016).

¹⁴ See *Florida Ethics Opinion 14-1* (2015).