
The Florida Bar Standing Committee on Advertising Guidelines for Networking Sites

(Revised August 19, 2020)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including e-mail and instant messaging. Twitter is a networking site in which brief posts of no more than 140 characters are sent to followers, or persons who have specifically requested to receive the postings of particular persons on Twitter [Note: Twitter subsequently changed its character limitations]. Twitter postings are generally public, but a person who posts via Twitter can choose to have Twitter postings sent only to that person's followers and not generally accessible to the public.

The SCA has reviewed the social networking media and issues the following guidelines for lawyers using them.

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.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.17 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guaranties of results, and testimonials that fail to comply with the requirements listed in Rule 4-7.13(b)(8). Regulations also include prohibitions against statements characterizing skills, experience, reputation or record unless they are objectively verifiable. Lawyers and law firms should review the lawyer advertising rules in their entirety to comply with their requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Posts that lawyers pay to appear in the feed of consumers with whom the lawyer has no prior family or professional relationship must not only comply with all general regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21, but must also be filed for review under Rule 4-7.19 unless they are “tombstone” advertisements, the content of which is limited to the information listed in Rule 4-7.16. These posts are a form of paid spot advertising and are sometimes referred to as “sponsored” or “boosted.” Frequently, they are provided to consumers within a specified geographic area near the advertising lawyer. Depending on the type of advertisement and selection criteria for the consumers to whom they are “boosted,” the advertisement also may have to comply with the requirements for direct electronic solicitations based on a January 31, 2020 decision of The Florida Bar Board of Governors. The board determined that a social media post was a form of targeted electronic solicitation that must comply with the requirements of Rule 4-7.18(b) for targeted electronic media when the lawyer inquired about paying to have a specific social media post appear in the social media feed of specific individuals who self-identified through their social media as containing specified characteristics of a prospective class in a prospective class action. Thus, it is The Florida Bar’s position that 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 where 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 instead it 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, then that social media post must comply with the requirements for targeted direct electronic media under Rule 4-7.18(b) and must be filed for review. Information on complying with these rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Targeted Social Media Advertisements Quick Reference Checklist on the Florida Bar website.

Invitations sent directly from a social media site via instant messaging to a third party to view or link to the lawyer’s page on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business must meet the requirements for written solicitations under Rule 4-7.18(b), unless the recipient is the lawyer’s current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer. Any invitations to view the page sent via e-mail must comply with the direct e-mail rules if they are sent to persons who are not current clients, former clients, relatives, other lawyers, persons who have requested information from the lawyer, or persons with whom the lawyer has a prior professional relationship. Instant messages and direct e-mail must comply with the general advertising regulations set forth in Rules 4-7.11 through 4-7.18 and 4-7.21 as well as additional requirements set forth in Rule 4-7.18(b). Information on complying with the direct e-mail rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

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.

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. A lawyer may post information via Twitter and may restrict access to the posts to the lawyer's followers, who are persons who have specifically signed up to receive posts from that lawyer. If access to a lawyer's Twitter postings is restricted to the followers of the particular lawyer, the information posted there is information at the request of a prospective client and 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 140 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).

Finally, the SCA is of the opinion that a page on a networking site is sufficiently similar to a website of a lawyer or law firm that pages on networking sites are not required to be filed with The Florida Bar for review.

In contrast with a lawyer's page on a networking site, a banner advertisement posted by a lawyer on a social networking site is subject not only to the requirements of Rules 4-7.11 through 4-7.18 and 4-7.21, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.16. See Rules 4-7.19 and 4-7.20(a).