Advisory ethics opinions are not binding.

The Professional Ethics Committee has been asked by the Board of Governors of The Florida Bar to give an opinion on Florida Bar members responding to negative online reviews posted by individuals that are not clients or former client.

Negative online reviews are becoming more common. Florida Ethics Opinion 20-1 discusses a lawyer’s response to a client or former client’s negative online review.

Besides clients or former client, often a third party who is close to the client or former client will post a negative review about the lawyer. Occasionally, someone who lacks a connection even to the lawyer will post a negative review.

Rule 4-1.6 is the rule regarding confidentiality of information. Rule 4-1.6(c) explains when a lawyer may reveal confidential information and states:

(c) When Lawyer May Reveal Information. A lawyer may reveal confidential information to the extent the lawyer reasonably believes necessary:

(1) to serve the client’s interest unless it is information the client specifically requires not to be disclosed;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;

(3) to establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved;

(4) to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with the Rules Regulating The Florida Bar; or

(6) to detect and resolve conflicts of interest between lawyers in different firms arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

The comment to the rule explains:

A fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation…The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all
information relating to the representation, whatever its source. A lawyer may not disclose confidential information except as authorized or required by the Rules Regulating The Florida Bar or by law.

If a lawyer wants to respond to a negative online post by someone who is not a client or former client, the lawyer must still determine whether the response reveals confidential information about a client. If true, a lawyer may respond by stating that the person posting is not a client or former client. A lawyer may also state: “As a lawyer, I am constrained by the Rules Regulating The Florida Bar in responding, but I will simply state that it is my belief that the comments are not accurate.” A lawyer owes no ethical duties to a person who is not a client or former client posting a negative online review. However, ABA Formal Opinion 496 warns that “a lawyer must use caution in responding to posts from nonclients.” It further states:

If the negative commentary is by a former opposing party or opposing counsel, or a former client’s friend or family member, and relates to an actual representation, the lawyer may not disclose any information relating to the client or former client’s representation without the client or former client’s informed consent. Even a general disclaimer that the events are not accurately portrayed may reveal that the lawyer was involved in the events mentioned, which could disclose confidential client information. The lawyer is free to seek informed consent of the client or former client to respond, particularly where responding might be in the client or former client’s best interests. In doing so, it would be prudent to discuss the proposed content of the response with the client or former client.

In conclusion, when responding to a negative online review by someone who is not a client or former client, the lawyer must still consider Rule 4-1.6 and determine whether the response would reveal confidential information regarding a client or former client’s matter. A lawyer may respond in a way that does not reveal confidential information about a client or former client. If true, a lawyer may respond that the poster is not a client or a former client.