

1 **FLORIDA BAR ETHICS OPINION**
2 **OPINION 21-1**
3 **June 10, 2021**

4 **Advisory ethics opinions are not binding.**

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

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

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

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

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

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

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

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

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

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

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

32 The comment to the rule explains:

33 A fundamental principle in the client-lawyer relationship is that, in the
34 absence of the client's informed consent, the lawyer must not reveal
35 information relating to the representation...The confidentiality rule applies not
36 merely to matters communicated in confidence by the client but also to all

37 information relating to the representation, whatever its source. A lawyer may
38 not disclose confidential information except as authorized or required by the
39 Rules Regulating The Florida Bar or by law.

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

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

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