



Attorney Advertising and Social Media

BY AL HARRISON AND PAT RAFFERTY

The opportunities for attorneys to disseminate their information through electronic communications exploded with the use of social media. Gone are the days of just having a website as the only web-based form of attorney advertising. Social media can be used effectively and in compliance with the Texas Disciplinary Rules of Professional Conduct. In fact, one can set up website landing pages to be not only compliant, but also free of any filing requirements. The State Bar Advertising Review Committee (ARC) has been supportive of Texas lawyers' use of electronic technology to disseminate information about rendering legal services.

Part VII of the Texas Disciplinary Rules of Professional Conduct (TDRPC) applies to information disseminated digitally via the Internet, regardless of the electronic vehicle used to send the information. The ARC also provided Interpretive Comment 17 to help clarify the filing requirements for electronic media, yet as with most evolving technology, questions abound. We will attempt to address some concerns regarding social media with the following questions and answers.

Do my landing pages for Twitter, Facebook, and LinkedIn need to be filed with the ARC?

There is a plethora of information that attorneys can disseminate about their legal services that fall outside the filing

requirements established by the Rules. Under Rule 7.07(e), a social media landing page that contains the exempt information outlined in this Rule, would not need to be filed.

Can I include on my Facebook page the list of honors I received from Best Lawyers, Super Lawyers, Chambers, etc.?

Yes. As with any advertisement, if you include honors that you received, you must enumerate in the advertisement the year(s) and publisher of the honor. Classic examples would be "Best Lawyers in America," "Rising Star," and "Top Lawyers for the People."

Can I tweet about my blog, and does my blog need to be filed?

Yes, you can tweet about your blog. Blogs are a great avenue for attorneys to demonstrate that they possess a level of media savvy, and, when used effectively, can help an attorney carve out a niche in a particular practice area. Blogs that contain educational and editorial information and information about the attorney author that is within the scope of Rule 7.07(e) exemptions do not need to be filed. Blogging about a recent court decision, a proposed legislative bill, and possible effects on an area of practice is an effective vehicle for an attorney to showcase particular knowledge of the subject, thereby creating a niche in the marketplace.

Engaging in social networking and achieving advantageous search engine positioning preferably results in an attorney or law firm receiving a steady flow of legal inquiries and requests for providing legal representation. While some law firms do not accept online or email inquiries, other law firms accept inquiries exclusively via specially developed inquiry forms. Is it ethically permissible to respond to such inquiries?

A primary objective of attorneys engaging in social networking and law firms having a formidable website is to promote client development by engendering interest in retaining legal services. Assuming that an attorney's online presence has been approved or falls within exceptions to the advertising rules, an attorney should first confirm that any inquiry originates with an individual located in Texas to avoid practicing law in a jurisdiction in which the attorney is not licensed (excepting patent law and other federal jurisdictional issues). To avoid inadvertently establishing an attorney-client relationship, the attorney should only address the issues raised in a general, non-specific context. A conspicuous disclaimer (for instance, all caps and bold face are recommended) should be included at the beginning of such general responses to assure that the recipient does not have a false impression of being represented by counsel. An attorney-client relationship should only be established when a lawyer is retained according to the terms and provisions of an appropriate engagement agreement and concomitant (initial) payment for anticipated legal services to be rendered.

We are a small firm of four lawyers and we're using Facebook to announce the opening of another office with a new area of practice. Does this need to be submitted to Ad Review?

Generally, the rules exempt an announcement "card" stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a "tombstone" professional card. If the announcement is kept within the guidelines of the rules, it does not need to be submitted for approval.

Many potential clients regularly communicate via Facebook rather than via conventional email. For a Facebook-generated inquiry from a "friend" for obtaining legal services, is it ethically permissible to respond to the friend via Facebook rather than email?

It is preferable to respond via email rather than directly via Facebook. Facebook's privacy policy has typically not been a constant upon which an attorney can reasonably rely on to avoid undue disclosure to the public at large — given Facebook's enormous user-base. Accordingly, appropriate responses should be effected via secure email with commensurate disclaimer and password protection or encryption as deemed proper as a function of the nature of the information being transmitted.

As with any new form of technology, there are questions about how to comply with the rules. Remember that the rules do not emphasize the means to which an attorney disseminates information about his or her legal service, regardless if it is an

electronic or non-electronic avenue. The rules operate to protect the public. If you have questions about electronic media or the Rules, contact the State Bar Advertising Review Department at (800) 566-4616 or gmajor@texasbar.com. To download the Rules, the interpretive comments, and an application for submission to the ARC, visit texasbar.com/adreview. ☪



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Reference Guide to Rule 7.07(e) Exemptions:

- i:** Identification of lawyer or firm;
- ii:** If applicable, denoting specialization in an area of law (Rule 7.04 complaint);
- iii:** Bullet point areas of practice;
- iv:** Dates of admission to Federal jurisdictions or State Bar; and
- v:** Foreign language ability.

A thorough review of the list of exemptions can be found in TDRPC Rule 7.07(e). Download the Rules, interpretive comments, and an application for submission at texasbar.com/adreview.

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