

Ethics on the Web: Florida's Newly Revised Rules Impact Many Beyond the Sunshine State

What Is This About?

Previously the Florida State Bar's only hard-line requirements under Florida Rule of Professional Conduct 4-7.6 ("Computer-Accessed Communications") were that a law firm Web site lists all jurisdictions in which its attorneys are licensed to practice and provide the locations of all its offices. Beyond that, law firm Web sites were "considered to be information provided upon request," meaning that they were not regarded in the same category as advertising; the thinking was that Internet visitors actively and consciously sought out law firm sites rather than just happening upon them.

What Is the Change?

The textual changes to the language of the Rules are fairly straightforward. The Court's November 19, 2009 opinion (Case No. SC08-1181) lumps law firm Web sites under all of Rule 4-7.2 ("Communications Concerning a Lawyer's Services"), and most notably, it subjects them to all of the prohibitions under 4-7.2(c). As such, in addition to certain other prohibitions, a law firm's Web site cannot do the following:

- Contain factually unsubstantiated information
- Contain any reference to past successes or results obtained
- Promise results
- Compare the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated
- Contain a testimonial

Furthermore, because a law firm's Web site will now be considered in the same category as advertising, it cannot do the following:

- Make statements describing or characterizing the quality of the lawyer's services in advertisements and unsolicited written communications (i.e., "the best," "one of the best," "most experienced," etc.)
- Include any visual or verbal descriptions, depictions, illustrations, or portrayals of persons, things, or events that are deceptive, misleading, manipulative, or likely to confuse the viewer
- Advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law
- Make any statement that directly or impliedly indicates that the Web site has received any kind of approval from The Florida Bar
- State or imply that any lawyer in the firm (and therefore listed on the site) is "certified," "board certified," a "specialist," or an "expert" except as allowed by the Rule

An Important Note

The Florida State Bar has provided a six-month extension to the Florida Supreme Court's requirements to have law firms bring their Web sites into compliance with newly revised regulations. Therefore, the regulated compliance date is **July 1, 2010**.

Law firms are not required to file a copy of their Web site with The Florida Bar for evaluation of compliance, even though their advertisements still must be filed according to Rule 4-7.7. Additionally, although a statement regarding jurisdictional disclosure must appear somewhere on the site, it need not be on the home page.

A Concession from the Bar

Perhaps understanding the effort and expense required to revise and, in some cases, re-program Web sites, the Florida Bar's Standing Committee on Advertising made a conciliatory gesture that is now awaiting approval from the Florida Supreme Court. Instead of having to scrub their sites completely, law firms may designate certain pages as "information upon request zones," separate from other pages on the site. This accommodation seems to be more in line with the thinking before the Court's November 2009 decision, and allows visitors to view the blocked content only after manually clicking throughout a series of acknowledgements.

Under this proposed rule, a law firm's disclaimer page must specify the following:

- A description of the type of information the visitor will see online

- If the firm represents any past results or offers any testimonials, it must indicate this information:
 - That a prospective client’s facts and circumstances may differ from other matters in which those results were achieved or for which the testimonials were given
 - Whether all results and testimonials are provided
 - That the results do not necessarily reflect the results the firm or lawyer generally obtains, and that the testimonials do not necessarily reflect every client’s experience with the firm or the attorney
 - That each case is different, and each client’s case must be evaluated and handled on its own merits

Presumably, even if Google or some other search engine displays the sequestered content in a search result, the visitor would be greeted with the disclaimer after clicking on the link, seemingly in accordance with the language and spirit of the rule.

E-Mails and Social Networking also Scrutinized

Law firm Web sites aren’t the only electronic communication tools subject to the Court’s and the Bar’s restrictions. E-mail and social networking sites are also targets for closer regulation.

Although not radically different from the prior version, the Standing Committee’s proposed changes to Rule 4-7.6(c) would impact the format and content of unsolicited e-mail messages sent by the lawyer or firm, or on their behalf, to prospective clients. As before, the e-mail may contain the name of the lawyer or firm, the lawyer’s military service, practice areas, references to prepaid or group legal service plans in which the lawyer or firm participates, and fee schedule information. Different, however, is the requirement that the subject line of the e-mail *begin* with “LEGAL ADVERTISEMENT” in capital letters.

Trends in social media and social networking sites have garnered similar attention, with the Standing Committee voting to recommend that Facebook, LinkedIn, Twitter, and other sites be treated exactly the same as law firm Web sites. YouTube and video-based social networks are also under scrutiny, with the added requirement that content on those sites be submitted to the Bar for review. Among the Committee’s anticipated guidelines will be a provision “that lawyers would not be responsible for other party’s postings that appear on the lawyer’s page unless the lawyer prompts the posting or uses the other party to circumvent the lawyer advertising rules.”

Similar to e-mail, the Committee seeks to treat any unsolicited invitation from a lawyer to have a third party view or link to the lawyer's social networking page as an "in-person solicitation in violation of Rule 4-7.4(a), unless the third party is the lawyer's current client, former client, relative, or another lawyer."

As with law firm Web sites, the same six-month moratorium on enforcement will apply to social networking sites.

What Does This Mean For You?

The bottom line is that if your law firm is headquartered or has a satellite office in Florida, or has attorneys who are members of the Florida bar regardless of whether the firm has any Florida offices, you have the opportunity to refresh or redesign, as appropriate, your firm's Web site for full compliance with the aforementioned Rules on or before the imposed deadline of July 1, 2010.

Compliance, however, does not come without a cost, as your firm will need to fully review and evaluate its site per the new regulations and develop an action plan with timelines and guidelines. At the same time, many firms may choose to take advantage of the rule changes and refurbish or even overhaul their sites, using this opportunity to integrate and optimize new content, incorporate the latest functionality, and refresh the look and feel in conjunction with Public Reputation management objectives.

If you would like to discuss the impending Rule changes, the steps necessary to bring your firm's Web site into compliance, or the benefits that a Web site audit can offer, please contact either:

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