

# Social Media Guide



**for Lawyers**  
**v. 3.0**

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## INTRODUCTION

In the first edition of the *Social Media Guide for Lawyers*, the 2010-2011 Leadership Institute proclaimed that “the world is changing.” Nothing could have been closer to the truth. Over the last five years, hundreds of thousands of lawyers have flocked to LinkedIn, Twitter and Facebook to develop personal and professional profiles to connect with family, friends and colleagues. Now, lawyers and law firms are increasingly turning to social media for marketing and business development. In doing so, the question is no longer *whether* lawyers and law firms should use social media to promote their practice but *how* it can be done effectively while avoiding serious ethical pitfalls with lawyer advertising. The world has indeed changed.

The first edition of the *Guide* featured a “Best Practices Guide” on how law firms and individual lawyers could use social media to add value and generate business. The *Guide* also provided step-by-step instructions for effectively using the “Big Three”—LinkedIn, Facebook, and Twitter. Basically, that first edition served as “Social Media 101,” providing a foundation for those just diving into the social media pool.

With the second edition, Heather Melick of the 2010-2011 Leadership Institute and I elevated Meritas to the next level of social media use by showing lawyers and law firms how to harness social media to their advantage by integrating “traditional” media with these new technologies to further expand visibility and exposure. The second edition is largely incorporated into this *Guide* with significant updates, new features, and effective tips on how to take advantage of the current features offered on social media.

In this third edition, I address the primary reason why lawyers and law firms have yet to fully embrace social media for marketing: the uncertainty surrounding how the advertising ethics rules apply to social media. While advertising rules generally govern the message, not the medium, many lawyers and law firms are still uncertain about how the lawyer advertising rules apply to social media and how they can use these marketing tools safely. The *Guide* will empower lawyers and law firms to use social media safely by summarizing the applicable advertising rules, explaining how the advertising rules apply to a lawyer’s personal and professional social media use, and providing examples of actual social media profiles to assist Meritas lawyers. Armed with this information, lawyers can connect with confidence, develop their professional online presence, and effectively use social media to generate business.

I hope you enjoy the *Social Media Guide for Lawyers v. 3.0*.

Ethan Wall, Social Media Law and Order  
Member of the 2010-2011 Leadership Institute

# Social Media Marketing and Ethics Guide



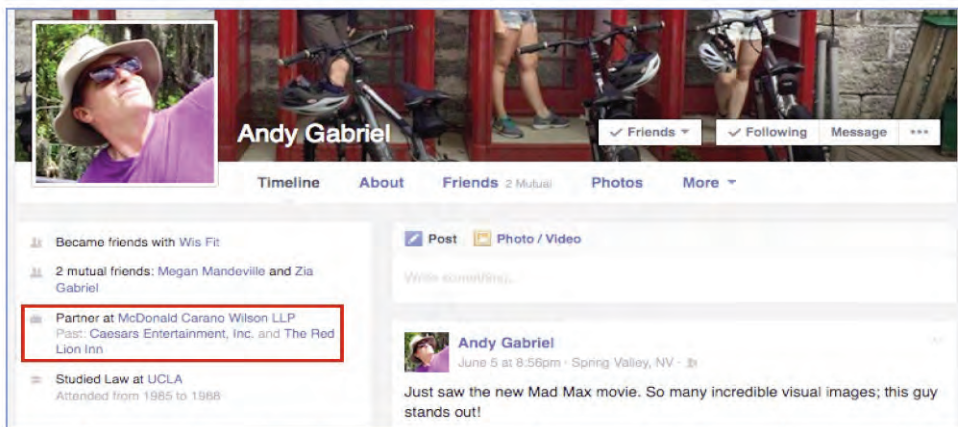
One major roadblock preventing a lawyer from engaging in social media marketing is the uncertainty surrounding how the advertising ethics rules apply to social media. This section will set forth the applicable lawyer advertising rules, explain how the advertising rules apply to a lawyer’s personal and professional social media use, and provide examples of actual social media posts in compliance with the rules. While this section addresses the general advertising rules, a lawyer must be diligent in reviewing the specific advertising rules, ethics opinions, and guidelines directed toward social media in their jurisdiction.

## Social Media Profiles Must Comply with Advertising Rules

Generally speaking, a lawyer’s personal profile on a social media website that is used solely for social purposes is not subject to the lawyer advertising rules.

A profile is used “solely for social purposes” when it is only used to maintain social contact with family and close friends.

A lawyer’s personal profile might not be considered “solely for social purposes” if the lawyer posts information about their practice.



In the event a lawyer uses an individual profile to promote themselves or the law firm’s practice, the content posted on the social media profile is subject to all of the lawyer advertising rules.

## When Do Social Media Posts Constitute Lawyer Advertisements?

If a lawyer's social media posts could be considered an advertisement, they must include certain required advertising disclosures. Social media posts are generally considered advertisements when they concern the availability of legal employment. Consider the following examples:

**Example 1: “Case finally over. Unanimous verdict! Celebrating tonight.”**

This statement, standing alone, is not likely to be considered an advertisement because it does not concern the availability of legal employment. Generally speaking, lawyer posts that simply announce victories without accompanying information about the lawyer's availability for professional employment are unlikely to be considered an advertisement. Here, the lawyer does not need to include the required disclosures.

**Example 2: “Another great victory in court today! My client is delighted.**

**Who wants to be next?”**

The statement, “Another great victory in court today!” standing alone is not likely an advertisement because it is not concerning the availability of legal employment. However, the addition of the text, “Who wants to be next?” promotes the lawyer's availability for legal employment. This would make the post an advertisement.

**Example 3: “Won a million dollar verdict. Tell your friends to check out my website.”**

This post also qualifies as an advertisement because the words “tell your friends to check out my website” conveys a message concerning the availability for legal employment. In this context, the lawyer is asking the reader to tell others to look at the lawyer's website for possible legal employment.

**Example 4: “Won another personal injury case. Call me for a free consultation.”**

This post would also be considered an advertisement because an offer of a free consultation is a step toward securing potential employment, and the offer indicates that the lawyer is available to be hired.

**Example 5: “Just published an article on wage and hour breaks. Let me know if you would like a copy.”**

This post is not an advertisement because it does not concern the availability for legal employment. The lawyer is merely relaying information regarding an article that the lawyer has published, and is offering to provide copies. Accordingly, this post does not need to include either of the required disclosures.

## Required Content When a Post Constitutes an Advertisement

If a social media post constitutes an advertisement for legal employment, the lawyer must also include:

- ✓ the name of at least one lawyer or the law firm responsible for the content of the advertisement; and
- ✓ the city, town, or county of one or more bona fide office locations of the lawyer who will perform the services advertised.

The appropriate placement of the disclosures depends on the social media platform.

### Facebook

A lawyer's Facebook profile will always include their name at the top of the profile and on every status update that the lawyer posts. The lawyer must therefore prominently place the location of the office where the services will be performed in order to display the required disclosures.

The lawyer may place the office location in the "About" section of their Timeline as it will be displayed anytime a potential client visits the lawyer's profile. A lawyer should take great care to ensure the location of their office is accurately displayed.

By placing the required disclosures atop the lawyer's Timeline, the lawyer will not need to include the office location on every lawyer advertisement post.



Note: The lawyer's personal profile clearly lists his name, his law firm, and the city of one bona fide office location of the lawyer who will perform the services.

## Twitter

Unlike Facebook, a lawyer must place the required disclosures on any tweet that could be considered an advertisement.

Placing the required disclosures on each tweet may present two challenges:

- ✓ Twitter limits tweets to 140 characters or less, which provides the lawyer with minimal space to include their name, office, and advertisement.
- ✓ If the lawyer does not use their real name as part of their Twitter handle, they must include their name, the law firm's name, or the name of at least one lawyer responsible for the ad within the tweet.



Note: The lawyer discloses his name as his twitter handle and the location of the office where services will be performed in the body of the tweet.

## Direct Contact with Prospective Clients & Improper Solicitations

A lawyer may not solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the prospective client is the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer.

In the context of social media, this means that a lawyer cannot directly contact a Facebook friend, Twitter follower, or LinkedIn connection for the purpose of soliciting professional employment unless that person falls into one of the above exceptions.

Generally speaking, a lawyer is permitted to post information about their practice through status updates without violating direct solicitation rules because those updates are not directed at a specific prospective client.

However, invitations sent directly from a lawyer's profile via instant messaging, direct messages (similar to emails), or by inviting a third party to view, "like," or link to the lawyer's page on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business would be an improper solicitation.





Note: A lawyer may invite other lawyers, current and past clients, and family members.

## Prohibitions Against Deceptive and Misleading Statements

A lawyer cannot make deceptive or inherently misleading communications about themselves or services offered. The following statements are designed to serve as examples of the distinction between permitted and prohibited posts.

### Misleading and Deceptive Statements

A social media post will be considered misleading when it contains:

- ✓ Factually or legally inaccurate materials statements;
- ✓ Material omissions; or
- ✓ Implications of material nonexistent facts.

### Predictions of Success

The following predictions of success may be considered deceptive and misleading:

- ✓ I will save your home.
- ✓ I can save your home.
- ✓ I will get you money for your injuries.
- ✓ I will get you acquitted of your criminal charges.

### General Statements Regarding the Legal Process

The following statements regarding the legal process that are not directed at a specific result are generally permissible:

- ✓ I will protect your rights.
- ✓ I will prepare my clients to handle cross-examination.
- ✓ When the government takes your property through eminent domain, the government must provide you with compensation for your property.

## Aspirational Statements are Generally Permissible

The following aspirational statements are generally permissible as they describe goals that a lawyer or law firm will try to meet:

- ✓ My goal is to achieve the best possible result in your case.
- ✓ My law firm's mission is to work hard for homeowners.
- ✓ If you've been injured through no fault of your own, I am dedicated to recovering damages on your behalf.

## How to Modify Prohibited Statements into Permitted Posts

A lawyer can prevent social media posts from running afoul with the rules prohibiting deceptive and misleading statements by using modifying language such as “try,” “pursue,” “may,” “seek,” “might,” “could,” and “designed to.” Here are two examples:

**Prohibited Post 1:** I will get you acquitted of the pending charges.

**Permitted Modification:** I will pursue an acquittal of your pending charges.

**Explanation:** In the first social media post, the lawyer promises a specific legal result. In contrast, in the second post the lawyer does not promise a specific a legal result but merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client.

**Prohibited Post 2:** My law firm will stop your foreclosure.

**Permitted Modification:** My law firm is committed to protecting your home.

**Explanation:** In the first social media post, the lawyer promises that the law firm will achieve a specific legal result. In the second post, the lawyer makes an aspirational statement of the general goal the law firm will try to achieve.

## Social Media Posts Must be Objectively Verifiable

Statements characterizing a lawyer's skills, experience, reputation, or record are permitted so long as they are objectively verifiable. Objectively verifiable statements are those statements that can be proven true through empirical data, evidence, or observation. The author of the social media post bears the responsibility of demonstrating that the statements contained therein are objectively verifiable. Consider the following examples:

### Objectively Verifiable Post

This post is objectively verifiable as it is capable of being proven true through empirical data.



The author could offer a press release, webpage on the law firm's website, or other evidence to demonstrate that the lawyer was appointed co-chair of the law firm's Employment & Labor Law Practice Group.

Examples of objectively verifiable social media posts include:

- ✓ I have defended the three largest hospitals in this county this year.
- ✓ I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit.

Statements of a character trait or personal attribute are not statements that characterize skills, experience, or record and therefore are not objectively verifiable. These statements include ones where the lawyer states the lawyer is:

- |               |                |
|---------------|----------------|
| ✓ aggressive  | ✓ intelligent  |
| ✓ creative    | ✓ honest       |
| ✓ trustworthy | ✓ hard working |

Statements that the lawyer works for a law firm that is the largest in a specified geographic area, or is the only law firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

- ✓ Our law firm is the largest law firm in this city that practices exclusively labor law.

## Not Objectively Verifiable

While empirical data can prove that the lawyer has joined the law firm's Government Affairs Group, other statements in this post may not be objectively verifiable.



For example, the author may experience difficulty proving the lawyer brings “tremendous experience, reputation, and ethics” as there is no objective measure of “tremendous experience, reputation, and ethics.” The author is also not clear whether the experience and reputation the lawyer brings to the law firm is in government affairs.

Descriptive statements as “the best,” “second to none,” or “the finest” are generally not objectively verifiable and are therefore likely to mislead prospective clients as to the quality of the legal services offered.

Examples of social media posts that may not be objectively verifiable include:

- ✓ We have the finest bankruptcy practice in the city.
- ✓ I am the best personal injury lawyer to handle your case.
- ✓ Our law firm employs the most effective strategies and cutting-edge techniques to obtain the best possible result in your case.

## Sharing Past Results on Social Media

Social media posts about results obtained on behalf of a client, such as the amount of a jury award or the lawyer's record in obtaining favorable verdicts, are only allowed if the lawyer obtains the client's permission and the results are objectively verifiable and not misleading.

### Misleading Posts About Past Results are Prohibited

Social media posts about past results that may be misleading include:

- ✓ A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default.
- ✓ A result that fails to disclose the judgment obtained was far short of the client's actual damages.
- ✓ A result that is not typical of persons under similar circumstances.

Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

## Posts About Past Results Must be Objectively Verifiable

Objectively verifiable posts about past results can be proven true through empirical data, evidence, or observation. The following examples can be proven through evidence:

- ✓ I have obtained acquittals in all charges in four criminal defense cases.
- ✓ Our law firm obtained a one million dollar judgment for an injured client.

## Past Results that May Not Be Objectively Verifiable

The following general statements may not be objectively verifiable:

- ✓ I have successfully represented clients charged with violating the law.

In a criminal law context, the lawyer may interpret the word “successful” to mean a conviction to a lesser charge or a lower sentence, while a prospective client likely would interpret the word “successful” to mean a complete acquittal of all charges.

- ✓ I have won numerous appellate cases.

An appellate lawyer may interpret the word “won” to mean that one of several appellate issues in the case was remanded for further proceedings, where a prospective client would interpret the word “won” to mean that the lawyer obtained a final decision in favor of the client following an appeal.

## Requirements for Testimonials on Social Media

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s law firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

Testimonials must include the following requirements:

- ✓ The person making the testimonial must be qualified to evaluate the lawyer.
- ✓ The testimonial must be the actual experience of the person making the testimonial.
- ✓ The information provided by the testimonial must be representative of what clients of the lawyer or law firm generally experience.
- ✓ The lawyer may not write or draft the testimonial.
- ✓ The person making the testimonial may receive nothing of value in exchange for the testimonial.
- ✓ If the testimonial contains information about results obtained, the advertisement must contain a prominent disclaimer that prospective clients may not obtain the same or similar results.

## Specific Types of Testimonials on Social Media

Testimonials may appear on social media in a variety of ways, both formally and informally. It is important for the lawyer to understand where testimonials may be posted to ensure that they do not knowingly allow an improper testimonial to remain on their personal social media profiles.

### Facebook

Testimonials may appear on the lawyer's Timeline as a result of a client's status update or on the "review" section of the law firm's Timeline. The review section allows clients to give the law firm a rating between 1-5 stars and make testimonials about the law firm and its individual lawyers.

Note:

A testimonial left by a former client or colleague on a law firm's review section.

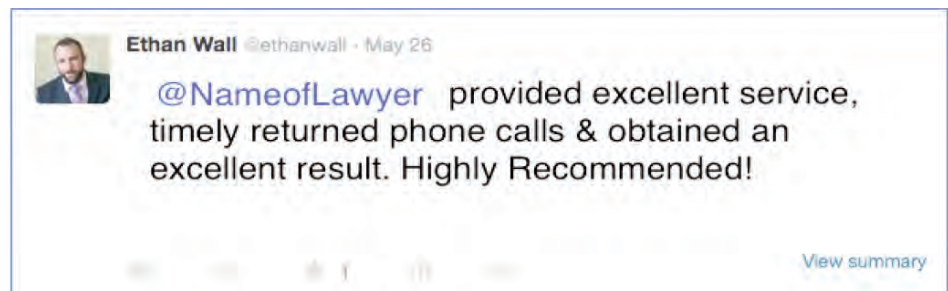


### Twitter

Testimonials may appear in a former client's tweet about the lawyer or law firm. The former client may "mention" the individual lawyer on Twitter by including their Twitter handle in the tweet. The testimonial may appear on the individual lawyer's Twitter profile if the lawyer "retweets" the testimonial.

Note:

A client can mention a lawyer by inputting their twitter handle after the "@" sign.



### LinkedIn

Testimonials may appear in the "recommendations" section of the lawyer's profile, by way of endorsing the lawyer for a particular skill, or in the form of a client's update where the lawyer is mentioned. The most typical place a lawyer will find a testimonial on their LinkedIn profile would be in the recommendations section.



Note:

The lawyer may configure their settings to require approval of recommendations.

### Recommendations

#### Internet, Intellectual Property & Social Media Attorney



**Marty Cassini**  
Legislative Counsel - Broward County OIAPS

Ethan is a brilliant attorney, presenter and friend who cares more about the people around him than himself. He is quickly becoming an expert in intellectual property and has the ability to take on any case that comes his way. I attended one of his CLE presentations and was impressed with both the subject matter and and public speaking ability. He is also a great friend... [more](#)

## Responsibility for Third Party Content Posted on Lawyer’s Profile

Although the lawyer is responsible for all content that they post on their own profiles, 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 that does not comply with the lawyer advertising rules, the lawyer must remove the information from their 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.

## When in Doubt, the Lawyer Should Seek Assistance

Since social media changes faster than the advertising rules can adapt, the lawyer must be diligent with staying up to date on changes to advertising rules, ethics opinions, and how their state bar ethics rules apply to social media. When in doubt, the lawyer should seek assistance from a social media marketing and ethics consultant who can help them navigate the applicable rules and explain how to ethically use social media for personal and professional use.

# Conclusion and Next Steps





The *Social Media Guide for Lawyers v. 3.0* should serve as a helpful handbook for lawyers and law firms who want to use social media to more effectively promote their practice. The next steps will depend on each lawyer's personal and professional goals and interests for using social media in his or her career. Meritas recommends the following three steps as a good place to start:

### **1. Determine the Lawyer's Specific Marketing Goals**

Everyone's marketing goals are different. An experienced lawyer will have different goals from first year associates. A lawyer interested in research and writing will have different marketing goals than those who are passionate about public speaking and in-person networking groups. A law firm will have aligned, but slightly different goals from their lawyers. Figuring out the specific marketing goals for the lawyers and law firm will help determine how social media can be used effectively for marketing.

### **2. Determine the Most Effective Social Media Strategies to Accomplish Those Goals**

Just as there is no one-size-fits-all approach to legal marketing, there is also no one social media platform or strategy that will accomplish everyone's marketing goals. Each lawyer's social media marketing strategy should take into account which social media sites they currently use, consider how each site can benefit them or their law firm, and then design a strategy that most effectively accomplishes their marketing goals. For example, if a lawyer's goal is to target members of a specific industry, the lawyer could accomplish that goal more effectively by joining a LinkedIn Group tailored to that industry instead of sharing industry related information to the lawyer's personal Facebook friends. On the other hand, a lawyer who wishes to educate their personal network about how they can help in family law matters may be better served sharing information to their friends on Facebook.

### **3. Still Need Help? Don't Be Afraid to Ask**

Not everyone is a social media-marketing expert. The lawyer should seek assistance from their marketing director or a social media-marketing consultants to help them develop the right strategy for their goals. Marketing professionals experienced in both social media and the law will help a lawyer and law firm understand how social media marketing strategies can be implemented effectively within the practice of law in a manner that complies with advertising ethics rules. If the lawyer has any questions about the *Guide*, or how they can incorporate social media into their practice, they are welcome to contact the author listed on the following page. The author can serve as a helpful social media resource and is available for speaking engagements and social media training sessions.

**See you on social media!**

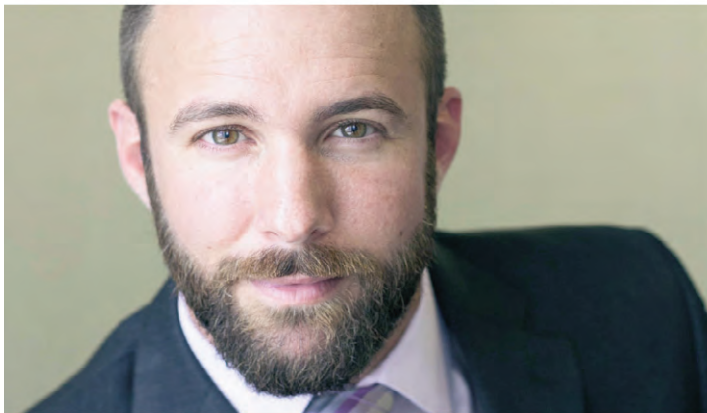
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## ABOUT THE AUTHOR

**Ethan Wall** is the founder of Social Media Law and Order where he pursues his passion for educating, consulting, and training lawyers and law firms on all areas of social media. Ethan previously practiced social media, Internet, and intellectual property law at a former Meritas affiliate in Miami, Florida. After serving on the Meritas Leadership Institute, and co-authoring the prior versions of the Social Media Guide, Ethan quickly became widely recognized as an authority on the effect of social media on the law. He has since authored three books including *Fire over Facebook: A Primer on Protected Social Media Activity in the Workplace* and *Best Practice Guide for Managing Employee Social Media Use*. Ethan also developed the Social Media Law and Order blog to chronicle the effect of Facebook, Twitter, and other social media on the law. High profile news organizations, including CNN, NPR, and Thomson Reuters have turned to Ethan for commentaries on social media legal issues.

Ethan has an exceptional reputation for delivering engaging presentations and training programs in the area of social media and the law. Over the last few years, Ethan delivered more than 100 seminars and workshops at national and international legal, business, and industry symposiums including the Meritas Annual Meeting and Regional Meetings, and has published dozens of scholarly articles on social media legal issues. He also teaches a law school course he developed titled Social Media and the Law. He has lectured at the University of Miami School of Law, Nova Southeastern University, and Florida International University School of Law.



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Ethan also pursues his dream to leave the world better than how he found it through a charitable initiative called Let's Plant a Seed. He delivers motivational speeches, workshops and programs designed to help people identify their dreams, inspire them to pursue their passions, and encourage them to give back to the world in a lasting way through community service. Ethan regularly volunteers and schedules community service events in South Florida and in locations where he speaks, consults and trains.



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