

LinkedIn and the Lawyer Advertising Rules: What are “Advertisements” and “Solicitations” in the Context of Your Online Profile?

by Steve Thomas

After long ignoring my LinkedIn page, I finally updated my information, rewrote my background, answered all of the questions in the profile builder, and sent out connection requests to friends and colleagues. All caught up. But then one of my partners catches me in the hall and says, “Do you think the lawyer advertising rules apply to LinkedIn pages?”

As it turns out, the answer is yes.

In Texas, Part VII of the Texas Disciplinary Rules of Professional Conduct (the “Rules”) governs lawyer advertising. The Rules are supplemented by Rule Comments, Ethics Opinions and Interpretive Comments. So let’s see what they have to say, directly or indirectly, about LinkedIn.

Is my LinkedIn profile an “advertisement” subject to the Rules?

Rule 7.07(b) requires that any “advertisement in the public media” by a lawyer or law firm be filed with the Advertising Review Committee of the State Bar of Texas in accordance with the requirements of that Rule.

There might be ways to prevent your LinkedIn profile from becoming part of the “public media.” The settings on your LinkedIn page allow you to limit what is viewed by people who are not in your network, including what people will see in search results on Google, Yahoo!, Bing and other search engines. Go to settings and click on “Edit your public profile.”

But the whole point is networking—you want people you don’t know to be able to see your profile, at least to some extent. So if your LinkedIn profile is in the “public media,” is it an “advertisement”? With regard to LinkedIn, the State Bar has removed all uncertainty in Interpretive Comment 17 (1996, revised 2003):

C. Social Media Sites. Landing pages such as those on Facebook, Twitter, LinkedIn, etc. where the landing page is generally available to the public are advertisements. Where access is limited to existing clients and personal friends, filing with the Advertising Review Department is not required.

So are you required to file your LinkedIn profile with the State Bar? Not necessarily. Even some communications that are clearly “advertisements in the public media” are exempt from Part VII’s filing requirements. Rule 7.07(e) provides a laundry list of exempt information. Said another way, if your LinkedIn page contains anything that is NOT listed in Rule 7.07(e), you probably have an obligation to file. You can find a copy of all of the Rules and Comments in Part VII, including Rule 7.07 and the Interpretive Comments, on the State Bar website located at <http://www.texasbar.com/Content/NavigationMenu/ForLawyers/AdvertisingReview/RulesCommentsandOpinions/default.htm>.

Are InMail or OpenLink messages “solicitations” governed by Rule 7.05?

Suppose you read an article about someone who has a legal problem directly within your area of expertise. You don’t have the person’s contact information, but you find a matching profile on LinkedIn. All you have to do now is write an InMail or OpenLink message to contact the person. But wait—is the message a “solicitation”? Are you required to put “ADVERTISEMENT” in the subject line as required by Rule 7.05(b)(2) for email solicitations?

Subsections (b) and (c) of Rule 7.05 impose certain requirements for any “written, electronic or digital” commu-

nication sent to “prospective clients for the purpose of obtaining professional employment.” But before you start dropping “ADVERTISEMENT” into your subject lines (Rule 7.05(b)(2)) and writing long disclosures about what prompted you to contact the person (Rule 7.05(b)(5)), there are some broad exclusions contained in subparagraph (f).

For example, if you are writing to a family member, or if the recipient is a present or former client, subsections (b) and (c) don’t apply. Rule 7.05(f)(1). Even if the person is someone you don’t know, if he or she asks you for information, you aren’t bound by the solicitation requirements. Rule 7.05(f)(4). Also, communications that are not specifically addressing a particular past occurrence or event, or a series of past occurrences or events, and that are not “motivated by or concerned with the prospective client’s specific existing legal problem” don’t come under the solicitation requirements. Rule 7.05(f)(2).

Comment 4 to Rule 7.05 clarifies that newsletters or other works published by a lawyer that are not circulated for the purpose of obtaining professional employment are not within the ambit of 7.05(b) and (c).

Conclusion – Keep Networking!

So keep posting updates, sending messages and otherwise using LinkedIn to the fullest extent—it’s a great tool for keeping in touch with clients, colleagues and friends. Just remember that it’s an “Advertisement” and keep the Rules in mind.

Steven H. Thomas is a commercial litigator with McGuire, Craddock & Strother, P.C. in Dallas, Texas. He can be reached at stthomas@mcsllaw.com.