

Social Media for
State Agencies
and Public
Information
Officers





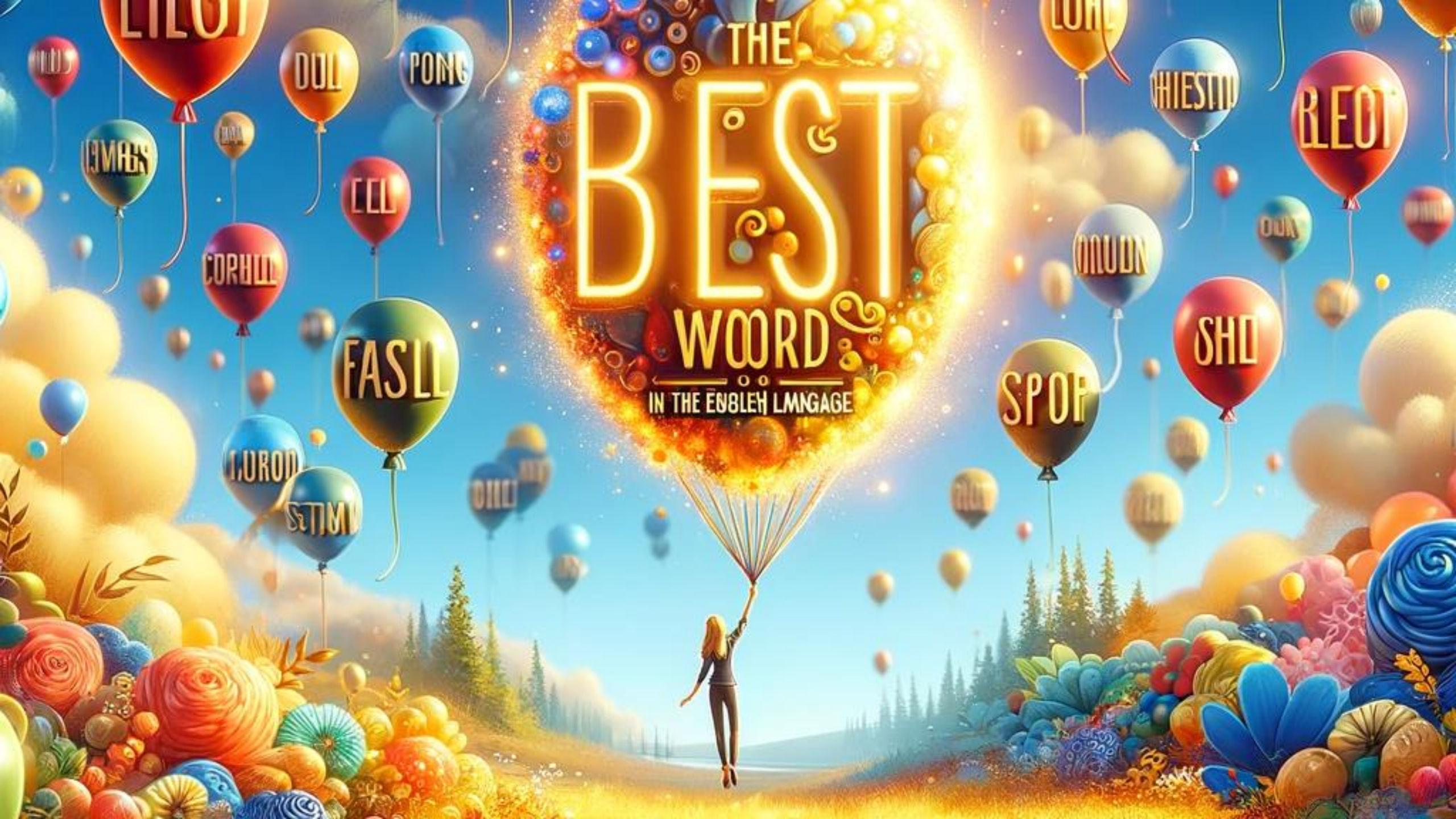
As a result of attending this course, participants will be better able to:

1. Identify potential liability arising from social media posts and content moderation.
2. Apply best practices for social media content and moderation.
3. Become aware of recent legal developments in the field.

Course Outline

- First Amendment Overview
- Legal Liability in Social Media
- Do's and Don'ts
- Interactive Activity
- Recent Legal Developments
- Questions & Discussion





THE
BEST
WORD
IN THE ENGLISH LANGUAGE

LILLO
DOL
PONG
LIMBS
CORHU
CELL
FASLL
LURON
STIM

LURE
HIESTU
RLEOT
SHO
SPOF



The First Amendment

- Applies to government action
- The government is powerless “to restrict expression because of its message, its ideas, its subject matter, or its content.”
- Exceptions for “incitement to imminent lawless action,” obscenity, etc.



New technology, old concepts

- Forum analysis
- Publishers
- Common Carriers
- Section 230



Emerging Consensus

- The interactive space on a government social media profile is a “designated public forum.”
- The government is prohibited from engaging in “viewpoint discrimination” in any type of public forum.



Best Practices

- One-way communication
- Social media policy
- Report abusive posts
- Mute as a last resort



Common Forms of Liability

- Defamation
- Intellectual Property
- Breach of Confidentiality
- Harassment
- Ethics Violations
- Freedom of Speech



Defamation

- Publication
- Falsity
- Knowledge or reckless disregard
- Damages
- Reputational harm





The NFL needs to speak out against the Kansas City Chiefs fan in Black face, Native headdress



NEWSMAX



**DEADSPIN FACES LAWSUIT FOR
DEFAMING YOUNG CHIEFS FAN**

AP Photo/David Becker

Intellectual Property

- Copyright
- Trademark
- Trade Secret



Copyright

- Protects works produced by authors, artists, photographers, musicians, and other creative producers.
- Used to protect expression, but does not extend to ideas, methods, concepts, procedures, systems, principles, or discoveries.



Trademark

A word, symbol, phrase, design, or combination of those elements identifying a service or a good.



Trade Secret

- Information that has “actual or potential independent economic value by virtue of it not being widely known.”
- Must have value to individuals who cannot legitimately obtain it.
- Must be subject to “reasonable efforts” to maintain the secrecy of that information.



Breach of Confidentiality

- If knowing, first degree misdemeanor, and up to \$1,000 fine.
- If unknowing, noncriminal infraction, up to \$500 fine.
- Liquidated damages if contractual.



Harassment

- Every employee has a right to work at a place free from harassment and discrimination.
- Workplace harassment can occur online.



Rules of Ethics

- The Professionalism Expectations
- The Rules Regulating The Florida Bar
- The Florida Bar Creed of Professionalism
- The Oath of Admission to The Florida Bar.



Rules of Ethics

- A lawyer is an officer of the legal system and a public citizen having special responsibility for the quality of justice.
- A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials.



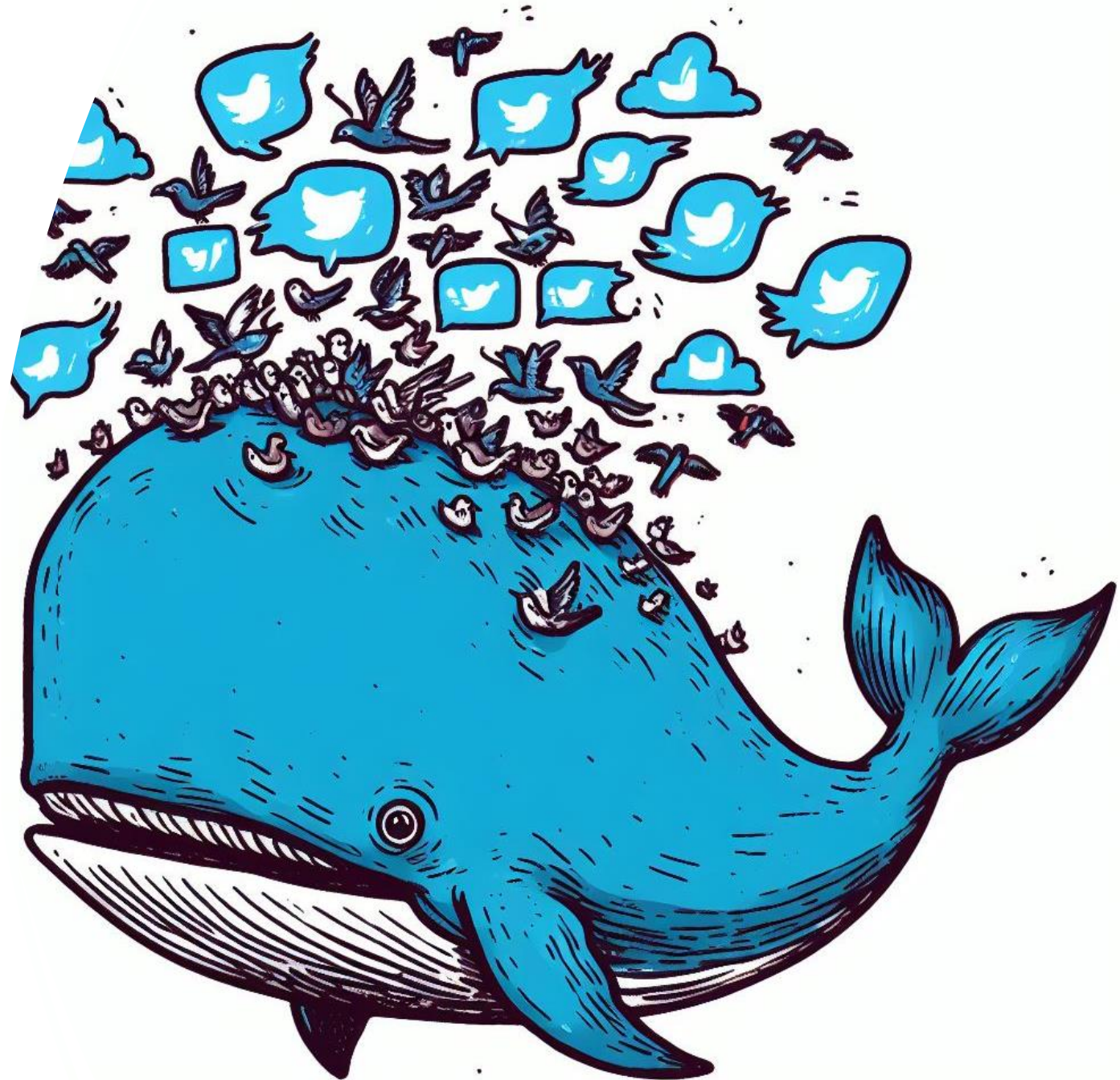
Professionalism Expectations

- 2.13: Social media must not be used to disparage opposing parties, lawyers, judges, and members of the public.
- 2.15: Social media must not be used to inappropriately contact judges, mediators, jurors, witnesses, or represented parties.
- 2.16: Social media must not be used for the purpose of influencing adjudicative proceedings.



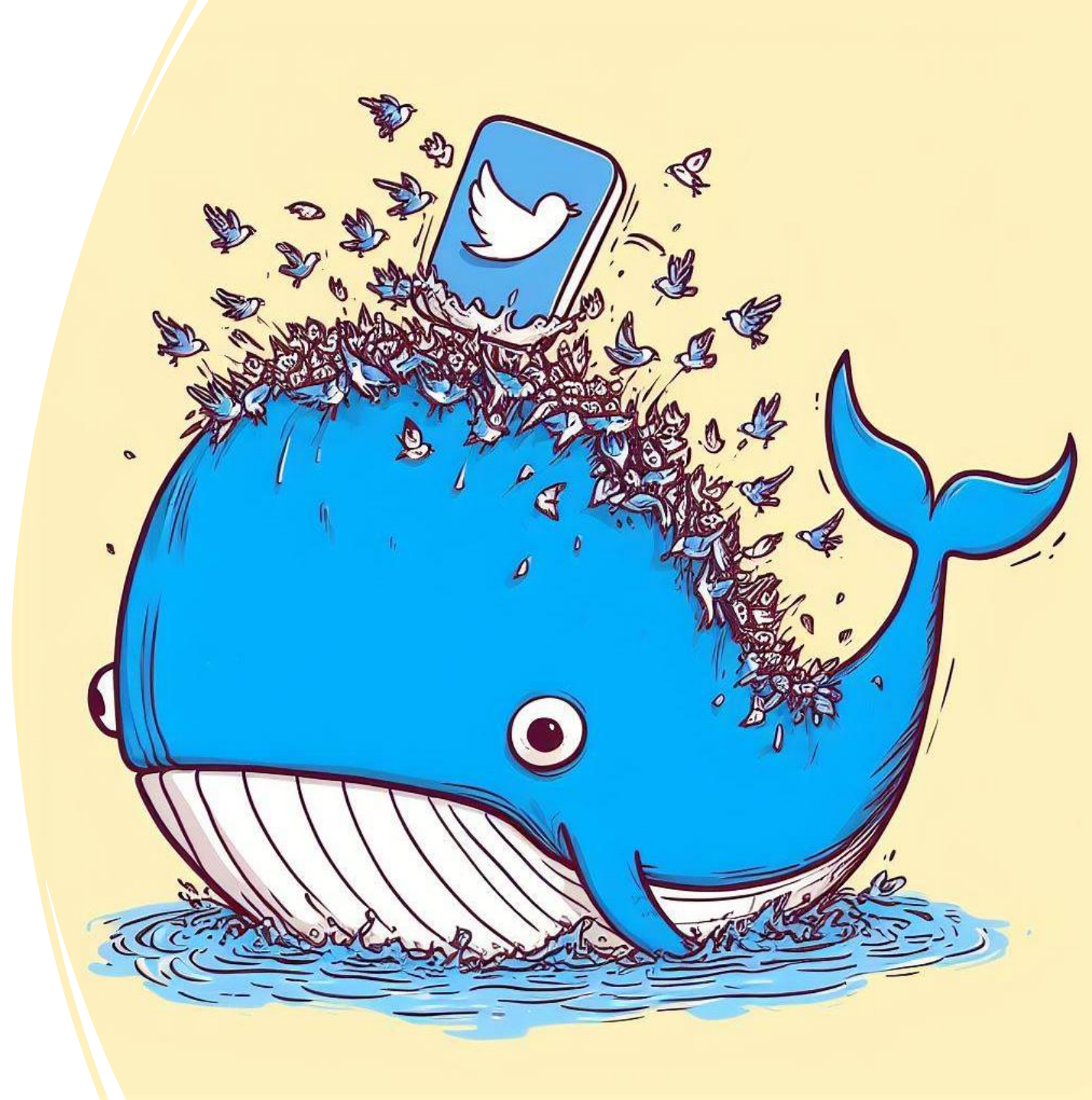
Rules of Ethics

- Rule 4-1.6
Confidentiality
- Rule 4-3.5 Impartiality
and Decorum of the
Tribunal



Rules of Ethics

- Rule 4-3.6 Trial Publicity
- Rule 8.2(a) Impugning Qualifications and Integrity of Judicial Officers



Rules of Ethics

- Rule 4-5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers
- Rule 4-5.2 Responsibilities of a Subordinate Lawyer
- Rule 4-5.3 Responsibilities Regarding Nonlawyer Assistants



Rules of Ethics

Rule 4-8.4 Misconduct

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis.



Rules of Ethics

- § 104.31, Fla. Stat.
Political Activities
- § 106.113, Fla. Stat.
Use of State Funds.
- § 106.15, Fla. Stat.
Prohibited Acts



Restrictions on Free Speech

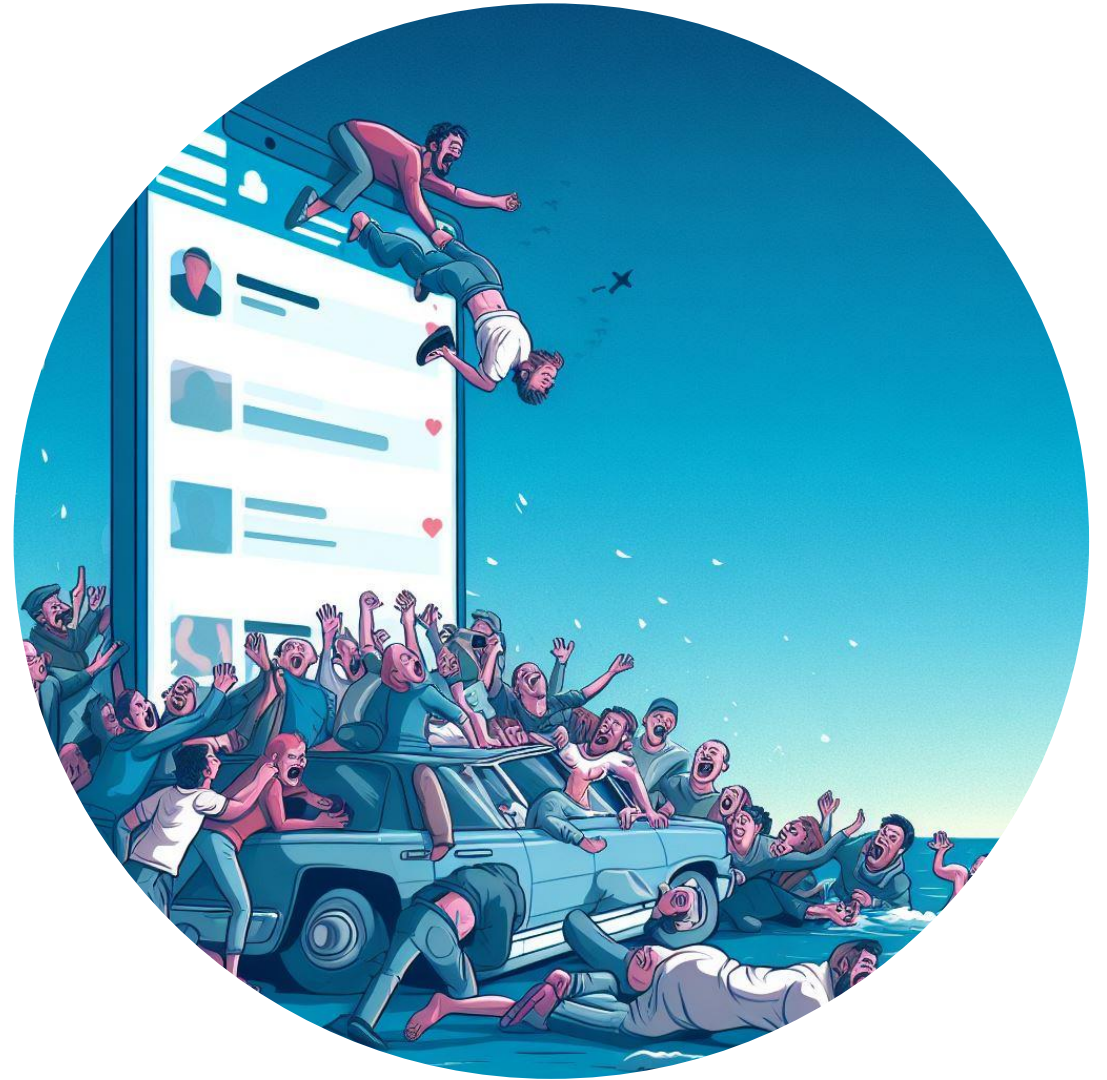
- Blocking a user from a government-run social media profile violates the First Amendment.
- Government officials may not deprive anyone “of any rights, privileges, or immunities secured by the Constitution.” § 1983, Title 42, U.S.C.
- Damages can be awarded for both the restriction on speech and the removal from the marketplace of ideas.



Do's & Don'ts

Do have a social media policy

- For the office's profiles
- For employees
- Additional considerations
 - Computer use policy
 - Confidentiality policy
 - Anti-harassment policy





Social Media Policy - Office

- Guided by Rules of Professional Conduct
- Only authorized administrators can post
- Scope of interaction
- No official business
- No campaign conduct
- Review process
- Content moderation
- Analytical tools
- Record retention



Social Media Policy – Considerations for Elected Officials

- Guided by Rules of Professional Conduct
- Friends, likes, follows, shares
- Active cases
- Campaign conduct
- Third-party content
- Commercial activities
- Use of state resources

Social Media Policy - Staff

- Identifying as an employee
- Public comments concerning the office
- Use of office resources
- Confidentiality
- Harassment
- Liability
- Reporting violations



Social Media Policy – Review Process

- Establish a committee to review all official social media posts.
- Engage the committee to moderate comments, if enabled.
- Incorporate a process for securing passwords.





JERKING ISN'T A JOKE.

#DontJerkAndDrive



British Embassy Washington ✓

@UKinUSA · [Follow](#)



Commemorating the 200th anniversary of burning the White House. Only sparklers this time!



6:23 PM · Aug 24, 2014



3.7K



Reply



Share

[Read 1.3K replies](#)

American
Apparel

americanapparel  plzstic 

Source: truangles



#Smoke #Clouds

11,004 notes



Do have a strategy and track metrics

- Each social media platform serves a different purpose.
- The audiences on each platform vary widely.
- Inconsistent posting reduces engagement.
- Carefully consider the appropriate metrics.



Do moderate content

- Actively monitoring engagement provides insight into the success of your social media strategy.
- Public misperceptions and mistakes can be addressed quickly.
- Some employee misconduct can be detected.
- Care must be taken before removing/muting comments.



Interactive Activity



Interactive Activity

- Your elected official notices positive comments about him/her and asks you to add the users as friends on the office's official account.
- Your elected official notices negative comments about him/her and asks you to block the users from the office's official account.



Interactive Activity

- In response to a negative comment about one of your witnesses, your investigator defends the witness' character by explaining the witness' traumatic past and mental health diagnosis.
- One of your attorneys posts that the SAO/PD "owns the judges" and that they are communists/fascists.



Interactive Activity

- Your elected official asks you to announce their re-election campaign on the office's official account.
- An incumbent SAO/PD in another circuit asks you to post a link to their campaign page on Facebook.



Interactive Activity

- Your PIO is outraged by the handling of an ongoing case in another circuit and posts on their personal account “Join me at the courthouse steps to protest this miscarriage of justice. We must fight for our rights.”
- Your elected official gives a press conference defending the actions of the PIO. You are asked to publish the press conference on social media.



Interactive Activity

- Your elected official is running for judicial office and posts from their personal account that the incumbent judge is biased in favor of/against law enforcement. Engagement is low, and they ask you to re-post from the official account.
- On their personal profile, one of your attorneys highlights a pattern of rulings that appear to be racially motivated.



Interactive Activity

- A defendant is acquitted of a heinous crime. Your intern mistakenly announced on your official account that the defendant was convicted. A mob forms outside the defendant's home and causes damage.
- The media pool camera takes photos of your elected official arguing a high-profile case, which are published in an article. The official thinks the photos look great and asks you to use the photos on social media.



Interactive Activity

- Employee A replies to a social media post about a recent case, suggesting that the judge is biased against the defendant.
- Coworker B replies to the post stating that “men just cannot get a fair trial in this circuit.”
- Coworker C replies, “If you were better looking, maybe you’d be wrong.”
- One of the bailiffs piles on, stating “I’ve never booked a 10, but Coworker B is big-ugly. Better stay out of trouble.”
- Your office manager chimes in and says, “None of this matters; the acquittal verdict will issue tomorrow morning.”



Interactive Activity

One of your attorneys anonymously posts disparaging comments about a defendant to a message board. Another user thinks they've established that your attorney made the posts and replies to one of your social media posts detailing their theory. The attorney asks you to block the user.



Interactive Activity

- An accident occurs while inmates are transported from a private prison. The prisoners file suit against the prison, obtain an unredacted copy of the security protocol, and forward it to you. You are asked to publish the protocol.
- A bot account continuously posts obscene material to your office's social media profile. The platform will not remove the content.
- A bot account repeatedly sends direct messages to your office's social media profile containing obscene material.
- A bot account continuously posts air-drop advertisements on your office's social media profile. The platform will not remove the content.



Interactive Activity

The following comments appear under one of your posts:

- “This prosecutor is out of control. First [public figure], now this. We’re all next.”
- “How many times does this have to happen before we take matters into our own hands?”
- “The lawyer lives at [address]. Would be a shame if someone taught him/her a lesson in the 2nd Amendment.”





Interactive Activity

- “Here’s [the elected official] campaigning for votes [link to deep fake video].”
- “We must do everything within our power to remove this stain on our community.”
- “Sometimes bad things happen to bad people. I hope this is one of those times.”

Interactive Activity

- Your elected official is being sued and wants to issue a press release refuting the allegations. You do not have the resources to fact-check before publication.
- Your monthly newsletter touts the benefits of Uniform Court Reporting (UCR). An attorney with a UCR trademark requests that you remove the references to UCR.





Interactive Activity

Your elected official's re-election campaign results in a manual recount. In a televised press conference, your elected official asserts there was rampant fraud and asks law enforcement to be on the lookout for any violations during the recount. You are asked to repost the press conference on the office's social media account.

Interactive Activity

Your elected official experiences a personal tragedy, and the office's employees are worried that he or she may not run for re-election. Along with the monthly pay statements, the official includes a letter to all employees announcing the campaign and stating that he/she values the employees' support in any way they can offer. You are asked to publish the letter on social media.



Recent Legal Developments

- *Twitter v. Taamneh*, 598 U.S. 471 (2023).
- *Gonzalez v. Google*, 598 U.S. 617 (2023).
- *O'Connor-Ratcliff v. Garnier*, 22-324
- *Lindke v. Freed*, 22-611
- *Moody v. NetChoice*, 22-277.
- *NetChoice v. Paxton*, 22-555.
- *Missouri v. Biden*, W.D. Louisiana, 3:22-CV-01213.



Questions & Discussion

