



Sotomayor Law

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Mediation & Arbitration Services

Are You Blogging or Advertising? Have You Crossed the Line?

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Lawyers are learning that despite the traditions of dignity and distinction that many believe characterize their profession, they must maintain an “online presence” that provides valuable information to present and potential clients. These days that effort includes the concept of “blogging.”

In a proposed formal opinion (No. 12-0006), the California State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) considers the circumstances under which “blogging” by an attorney is subject to legal restrictions on attorney advertising.

After discussing a number of sample scenarios, COPRAC’s proposed opinion concludes:

1. Attorney blogs are subject to the requirements and restrictions of rule 1-400 and the related provisions of the Business and Professions Code (§§6157 – 6158.3) if the blog expresses the attorney’s availability for professional employment directly through words of invitation or offer to provide legal services, or implicitly through a description of the attorney’s legal practices and successes in such a manner that the attorney’s availability for professional employment is evident.
2. A blog that is a part of an attorney’s or law firm’s professional website is subject to the rules regulating attorney advertising to the same extent as the website of which it is a part.
3. A non-legal blog by an attorney is not necessarily subject to the rules or statutes regulating attorney advertising because it includes a hyperlink to the attorney’s professional web page.

Most lawyers outside of law schools are not likely to invest the time and energy in blogging if it were not for the ultimate purpose of making it “evident” that they are available for professional employment. So, although the proposed COPRAC opinion does establish a form of “test,” I would think it safer to assume that legal blogs written on behalf of an attorney should comply with attorney advertising regulations. Do you agree?

The proposed opinion is available here:

http://www.calbar.ca.gov/Portals/0/documents/publicComment/2014/2014_12-0006Blogging.pdf

Public comment on the proposed opinion is invited until 5:00 p.m. on March 23, 2015.

<http://www.calbar.ca.gov/AboutUs/PublicComment/201417.aspx>

Contact us for your ADR needs today.

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