


"Legal Advice" on LinkedIn?

By Paul T. Jackson 

Recently, a friend of mine who's never worked in a law-related field, gave me a lefthanded compliment. Since I like to receive only those compliments which may be deemed ingenuous, I paid close attention to what he said: First, he congratulated me on taking the lead among LinkedIn's legal "experts." But then he expressed his concern about me giving "legal advice," which a paralegal cannot do.

How do I respond to this concern? That is the subject of this essay.

Please note [Cal. Bus. & Prof. § 6450](#)'s use of the conjunctive ("and who performs . . .") Hence, a "paralegal" is defined under four elements; and if any of the four do not exist as to a person, such person is no "paralegal" governed by that section.

Ever since giving my first response to a legal question on LinkedIn in March 2010, I've neither contracted with nor been employed by any attorney, law firm, corporation, governmental agency, or other entity. Nor, at any time during this period, have I performed "substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, . . ."

Therefore, at all times relevant, two of the four statutory elements have been absent as to myself; only a "paralegal" is subject to Bus. & Prof. Code, § 6450. (See ¶ (b)(1) prohibiting legal advice, and ¶ (b)(5) prohibiting "conduct that constitutes the unlawful practice of law.")

My concerned friend began feeling better about my LinkedIn answers; but I had not yet allayed all his concerns. Apart from § 6126(a) and § 6450, *supra*, § 6125 prohibits any person, not an active state bar member, from practicing law.

"As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court."
(*People v. Merchants Protective Corp.* (1922) 189 Cal. 531 [209 P.363, 365].)

It must be conceded that ascertaining whether a particular activity falls within this general definition may be a formidable endeavor. (*Agran v. Shapiro* (1954) 127 Cal.App.2d Supp. 807, 812 [273 P.2d 619].) This essay has such a "formidable endeavor" as its very purpose.

In none of my LinkedIn answers do I prepare any legal instrument or contract, or recommend any legal form. This leaves only the question of legal advice, and leaves us right back on the question posed by my concerned friend.

Now, each answer I give on LinkedIn is flanked with a disclaimer: **‘The following is intended for educational purposes only. I always suggest you consult an attorney of your choosing. Further, I encourage you to use the first link below to contact an attorney who can give you legal advice.’**

Thus, all visitors to the Q & A page, including the questioner, are directed to contact an attorney for legal advice. The first link is to the ARS of the questioner’s local bar association (whenever it can be found on line). Much less do I advertise or hold myself out as “practicing or entitled to practice law or otherwise practicing law . . . or otherwise authorized pursuant to statute or court rule to practice law in [California]” (Bus. & Prof. § 6126(a)).

I’ve never sought or received a referral for any legal work from questioners on LinkedIn. However, while a lawyer performing nonlegal services may disclaim any intent to provide legal services, “no disclaimer will be effective if [a legal professional] is in fact performing legal services or offering legal advice.” (State Bar Standing Com. on Prof. Responsibility and Conduct Formal Opn. No. 1999-154.)

My intent in giving each and every answer to a legal question on LinkedIn is to educate all visitors to its Q & A web pages. Further, my answers to legal questions are lengthier, and usually more pedagogical than those given by other LinkedIn users.

Moreover, the context of a radio call-in show or other similar format is unlikely to support a reasonable belief by the caller that the attorney fielding questions is agreeing implicitly to act as the caller’s attorney or to assume any of the duties that flow from an attorney-client relationship. (State Bar Standing Com. on Prof. Responsibility and Conduct Formal Opn. No. 2003-164.)

A radio call-in show, which is the California State Bar opines is unlikely to give rise to an attorney-client relationship, provides a format for communication that is more interactive than what may take place on LinkedIn's Q &A. A "know your legal rights" radio show also involves greater one-on-one communication. Therefore, LinkedIn’s Q & A feature is even less likely to support a reasonable belief that it’s somehow a source of reliable legal advice.

LinkedIn, unlike Avvo and others, does not advertise itself as as being a source of any information from “lawyers.” So, if a user of the Internet were to entertain a belief that a legal professional who responds to questions on LinkedIn is agreeing implicitly to act as his attorney or legal representative, such belief would be even less reasonable than what the State Bar opines is likely unreasonable (Formal Opn. No. 2003-164, *supra*).

What is reasonable for a LinkedIn questioner to believe about her relationship with answerers? Legal document assistants (LDAs), unlike attorneys, usually require payment up front. The LinkedIn questioner is neither a client nor consumer. (Cf. Bus. & Prof. Code, § 6400(g), prohibiting an LDA from giving any kind of advice, explanation, opinion, or recommendation to a “consumer” about possible legal rights, remedies, defenses, options. . . .”) Unlike answerers on other websites, LinkedIn’s receive no quid pro quo for our responses to a question. An answerer on LinkedIn is really not so different from a friendly stranger who, upon request, gives driving

directions to a newcomer. Having shared these points with my aforementioned friend, I put to rest his concern about me providing "legal advice" on LinkedIn.

Now, many of my answers are lengthy and thus educate LinkedIn visitors, including the questioner. By the same token, those lengthy answers go into some detail that some might consider to be "particularized advice" such as constitutes legal advice. But, my answers often employ vague terms like "may" and "might," and phrases like "it appears . . ." Without even engaging in one-on-one communication as do the aforementioned radio show hosts do, my answers consider a complex question from different viewpoints, and express ideas that "may" lead to a conclusion depending on whether some things are true. The clincher is the above quoted disclaimer, followed by a link to the ARS of the questioner's local bar association. Such vague and meandering discussions, flanked by disclaimers ending with a nudge to go see an attorney, do not constitute legal advice, which the courts have held is touted as reliable (i.e., expressed as though it were a reliable source of legal information). There is no legal advice where an answer cannot be particularized to a set of facts, which aren't given in a layperson's question in the first place.

In sum, my activities on that site do not violate Business and Professions Code, § 6125, § 6126(a), or § 6450.

If you have any question, please don't hesitate to contact me.

Sincerely,

Paul T. Jackson
(310) 673-0433