



IEC Journal: A New Way for Government Lawyers to Share Information

The IEC Journal, <http://www.iecjournal.org>, is a new website created by the Interagency Ethics Council (IEC), an informal interagency working group of federal lawyers and standards of conduct specialists who meet on a monthly basis to share knowledge about executive branch employee ethics issues. The site is a useful research tool even for state lawyers, many of whom deal with similar or identical employee standards of conduct rules. Additionally, the site serves as a model that could be replicated by other interagency working groups at both the state and federal levels. The Public Lawyer (PL) interviewed the site's moderator, Jerry Lawson (JL), a lawyer with the Small Business Administration Office of Inspector General and the author of *The Complete Internet Handbook for Lawyers* (ABA 1999).

PL: When and how was the Interagency Ethics Council created?

JL: Some years ago, a group of public-spirited federal lawyers who have responsibility for ethics issues (more precisely, standards of conduct for government employees) took it upon themselves to create an unofficial organization to share resources. It is not formally sponsored by the federal government and there are no dues for membership. Probably about 80 percent of the attendees are lawyers from federal agencies, with the rest being nonlawyers who are experts in federal employee standards of conduct. The group presently meets at the FDIC auditorium in Washington, D.C. once a month,

usually during lunchtime. Attendance at the meetings varies from 50 to 100 people or more, depending on the subject.

PL: What is the IEC Journal website, why was it created and how is it used?

JL: The website is a free resource for anyone with an internet connection and, again, is not endorsed by any particular agency. The desire to extend the benefits of the IEC was a motivation for establishing the website. The site is used to post decisions by courts or administrative agencies, information about the group's monthly meetings, copies of handouts, training aids like slide shows, and more. In the future, we hope to host online discussions featuring question-and-answer sessions with guest speakers or discussions between participants, similar to what would occur on an email discussion list, but archived and readily searchable.

PL: How do the Interagency Ethics Council's participants benefit from this website?

JL: First, it provides a news function, alerting participants to significant developments.

Second, it provides an archive of information about ethics issues. Archival information includes original material and links to other websites, sometimes with commentary. Neither the link collection nor the original

material is easily available from other sources.

Third, the site makes it simple for lawyers to find information. Many lawyers have poor paper-filing systems or engage in ethics duties on only a part-time basis. They find the *IEC Journal* very useful. The newest posts are always available on the front page of the website. Material in the archives may be located in several ways:

- The site's keyword search engine may be used to search a topic. For example, to search the Boeing tanker ethics case, one may search for *Boeing* in the site's search engine. Multiple posts on the topic will appear.
- Under the site's system of categories, all posts on a particular topic are filed together. For example, to see all posts on the Hatch Act, look under the categories list for *Hatch Act*.
- Users may also search the listing of archives by month.

Finally, the website is accessible worldwide to federal lawyers with ethics responsibilities. Not all lawyers can visit Washington for the IEC's monthly meetings, but they all have internet access.

PL: How does the IEC Journal compare with official government websites like those of the Office of Government Ethics (OGE) (<http://www.oge.gov>), the Office of Special Counsel (OSC) (<http://www.osc.gov>) and the Government Accountability Office (GAO) (<http://www.gao.gov>)?

JL: It complements them. Only OGE, for example, can issue authoritative interpretations of the Standards of Conduct for Federal Employees. OSC is the only source for authoritative information about the Hatch Act and whistleblower protection. GAO provides a wealth of information about fiscal law and government contracting issues. However, the *IEC Journal* provides added value by consolidating ethics and related information from those agencies and other sources. This consolidated information includes

The screenshot shows the IEC Journal website. At the top, it says "IEC Journal Interagency Ethics Council: Standards of Conduct for Federal Employees". There is a navigation menu with links like "Misuse of Government Credit Card", "Main", and "Cooling-Off Period Proposed for Federal Bank Examiners". A search box is on the right. Below the navigation is a calendar for September 2004. The main content area features a post titled "Hatch Act and Use of E-Mail" dated September 22, 2004. The post text discusses a press release from the Office of Special Counsel regarding complaints against employees who used government e-mail accounts to send political messages. It mentions a 2002 advisory on the use of e-mail and notes that sending e-mails to 15 or 70 recipients is outside the scope of a "water-cooler" conversation. The post is attributed to the IEC Team. On the right side, there is a list of archives by month from February 2004 to September 2004, and a list of categories including "Key Statutes", "Principles of Ethical Conduct", and "Standards of Ethical Conduct".

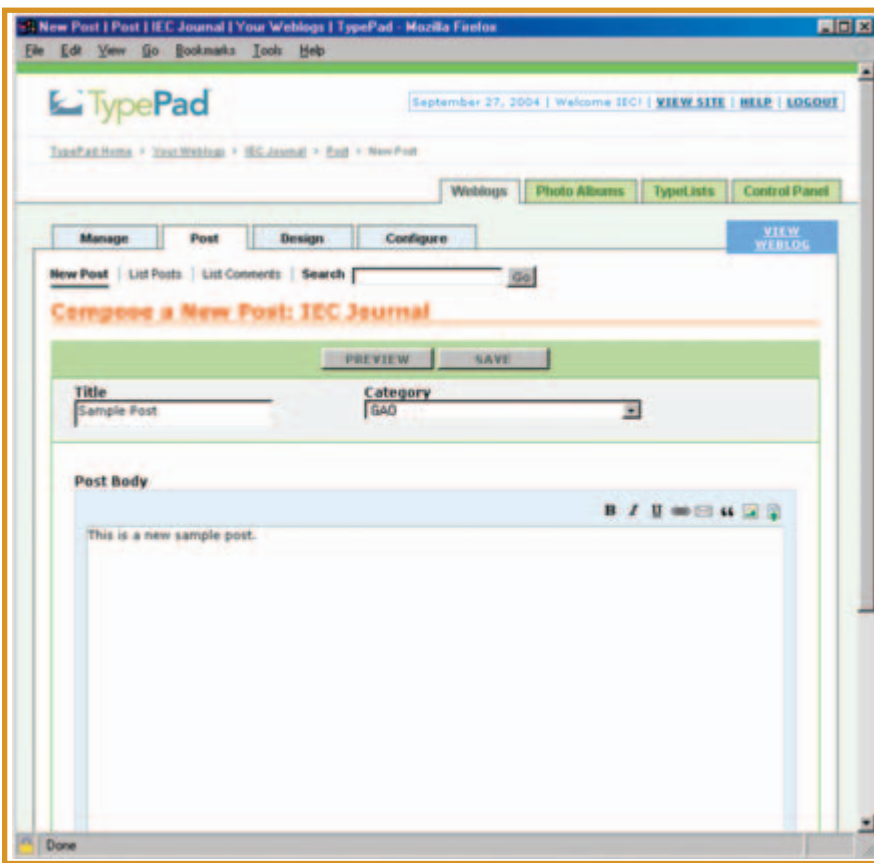
Examples of Disclaimers for Blogs

From Cumulative Impacts, <http://www.cumulativeimpacts.com>:

This weblog is not associated in any way with any branch of the federal government. It is a personal endeavor, meant to help inform fellow agency e-lawyers of developments in the environmental world. Any views expressed herein are mine and should not be attributed to the U.S. government or to any other person or organization. A link or discussion that appears on this site does not mean I (or the federal government) approve or disapprove of an article's content or viewpoint. You're getting the drift here, right? I make no guarantees about completeness or accuracy - if you're a lawyer, do your own research, don't rely on me. If you're not a lawyer, nothing on this site is intended as legal advice - if you need legal help, hire a lawyer.

From Second Circuit, <http://2ca.blogspot.com>:

The news items & links that appear on this blog may contain information created and maintained by other public and private organizations. They are provided for the user's convenience. The USCA Second Circuit Library does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. The Judiciary neither endorses the products nor organizations at these external destinations.



agencies' training manuals. While it would probably be inappropriate for one agency, such as OGE, to distribute training materials prepared by lawyers at another agency because such distribution would be taken as a seal of approval, the *IEC Journal* shares training and other materials from all agencies. In other words, it fills gaps left by official websites. The *IEC Journal* has the potential to provide "one-stop shopping" for lawyers who need to keep up with ethics developments.

PL: How does the *IEC Journal* format differ from other websites?

JL: It's updated much more frequently. There are also organizational and technical differences. The biggest organizational difference is that the content is provided not by one person, but by a team of contributors. All these differences flow from the fact that the *IEC Journal* uses the weblog, or blog, platform.

PL: What are blogs?

JL: Blogs are basically chronological online journals. While many blogs deal with trivial subjects, the more serious blogs have become increas-

ingly influential. For example, blogs were widely credited as the first source to question the authenticity of the documents used by CBS in its reporting on President Bush's National Guard service.

Lawyers have been blogging pioneers (see sidebar p. 20). Denise Howell's *Bag and Baggage*, <http://bgbg.blogspot.com>, and Howard Bashman's *How Appealing*, <http://legalaffairs.org/howappealing>, are two of the trailblazers.

PL: What are the benefits of the blog format?

JL: Blogs are much cheaper and easier to use than conventional websites. Cheap and easy has a lot of appeal.

Blogs are cheap partly because blog vendors aim for a mass audience. They frequently offer free versions but charge for extra features. Blogger (<http://www.blogger.com>), one of the most popular hosts, offers free sites but inserts an ad banner at the top of each page. The *IEC Journal* is hosted by another blog vendor, Typepad (<http://www.typepad.com>). It

charges from \$4.95 to \$14.95 a month for varying levels of service. IEC member volunteers presently donate this nominal fee for the *IEC Journal*.

PL: Why are blogs easier to use than conventional websites?

JL: Again, it's a consequence of their popularity and aiming for a mass market. Some services, like Blogger, let you start a site in about five minutes. You don't have to know anything about graphic design; you merely select from a number of professionally designed templates. If you want to use a fancier format, there is a wide variety of templates from third-party designers, like Blogplates (<http://www.blogplates.com>), at nominal prices. Adding content is also easy. Instead of having to learn Internet protocols like HTML and FTP, or buy and master programs like MS FrontPage or Dreamweaver, bloggers simply enter the text they want into a window and then select a button marked *publish*. If they want to convert the words *Office of Special Counsel* into a hypertext link to the agency's official website, they don't have to remember the HTML code; they just highlight the phrase *Office of Special Counsel*, select an icon on the screen that says *link* (or something similar), and then paste in the address. No tech expertise is needed.

Blogs' low cost and ease of use are revolutionary. They remove barriers of cost and technical skill that have prevented many public law offices and public lawyers from active use of the internet. The Interagency Ethics Council does not have a big budget, so blogs are ideal.

PL: Are there any other technical advantages?

JL: Nearly all blogs make it easy for readers to keep up with new developments by using the built-in option to include an RSS feed. Originally called Rich Site Summary, but renamed Really Simple Syndication, RSS is a form of the Extensible Markup Language (XML) that puts codes into blog postings to make it easier for blogs to be manipulated by computers.



Restricting Government Lawyers' Blogs

By Jerry Lawson

Some agencies may attempt to restrict their lawyer bloggers because they are concerned that opposing parties, politicians or special interest groups may use blog material as ammunition to attack the agency.

If I learned one thing when I was an entry-level prosecutor detailed to the Department of Justice, it was that skilled litigators can sometimes get great mileage out of apparently innocuous material. My favorite example of this was successfully impeaching an expert witness using only his own résumé. If someone's carefully drafted résumé can be used to attack that person, imagine how much impeachment fodder is contained in a typical collection of more casually drafted blog postings.

On the other hand, agency attempts to restrict blogging employees remind me of the outdated legal principle, "Husband and wife are one, and the one is the husband." We've gotten away from that notion, but it appears we may still be entangled by another: "Employer and employee are one, and the one is the employer."

Disclaimers should prevent this problem by clearly stating that the blog is, in no way, affiliated with any government entity. Another way to reduce the risk is to ensure that government lawyer bloggers are familiar with the relevant provisions of the Standards of Ethical Conduct for Employees of the Executive Branch:

- Prior approval for outside employment and activities

This opens the door to all kinds of clever uses, including what are called "news readers," or "news aggregators." They can gather RSS feeds from scores of sites and make it easier to keep up with changes on other websites – at least the ones that also have added RSS feeds.

Sophisticated conventional sites like Cornell's Legal Information Institute, the *Washington Post* and the *New York Times* have added, or plan to add, RSS feeds. Most blogs, including the *IEC Journal*, have had them since their inception.

PL: *Don't the high-tech features make the blog harder to use?*

JL: No, that's part of the beauty of blogs. The user is shielded from the technical guts of the blog. From the user's point of view, it just works. For example, most blog services automatically insert the codes needed to create an RSS feed. Contributors don't have to think about it or even understand what RSS is.

PL: *What has been the most satisfying part of moderating the IEC Journal?*

- Conflicting outside employment and activities
- Disclosure of nonpublic information
- Compensation for outside teaching, speaking and writing

When considering restrictions on government employee bloggers, supervisors should keep three points in mind:

- Employee blogging involves First Amendment rights.
- Discouraging overt blogs may lead to employees blogging under pseudonyms. This could result in less accountability and multiple problems, such as more casual attitudes about the use of nonpublic information.
- Blogging has potential benefits for the employee's agency, for other government agencies, and for the public.

These benefits should not be underestimated. Metcalfe's Law advises us that the value of a network increases by the square of the number of users connected to it.

Lawyers may be more comfortable thinking of the concept in terms of Justice Holmes's analysis of the "marketplace of ideas." The more voices ("idea vendors") we have, the better off we all are. Metcalfe and Holmes have the same idea, i.e., a variety of voices in the network or marketplace is beneficial to solving problems. While some restrictions may be unavoidable, allowing lawyers the maximum possible freedom will, in the long run, benefit not just the lawyers individually, but their agencies, other state and federal agencies, and the public.

JL: Working with our excellent team of selfless, volunteer reporters who post on the site, especially Karen Grosso, Pat Carney, Bert DiBella and Steve Epstein, has been a great experience. Those who voluntarily update the *IEC Journal* do not have set roles but gravitated toward their areas of interest. For instance, Karen Grosso tries to post daily ethics news updates, Pat Carney provides the latest on ethics from the *Federal Register* and meetings notices, Bert DiBella frequently discusses personnel cases related to

continued on page 20

Some Useful Blogs for Public Lawyers

Robert Ambrogi's LawSites tracks "new and intriguing websites for the legal profession":

<http://www.legaline.com/lawsites.html>

Mike Arkfeld has two blogs—The Digital Practice of Law (same themes as book of same name) and Electronic Discovery and Evidence:

<http://arkfeld.blogs.com/dpl>

<http://arkfeld.blogs.com/ede>

Jeff Beard, a lawyer/tech guy, produces LawTechGuru, a great source for law technology news:

<http://www.lawtechguru.com>

Susan Bird's Cumulative Impacts deals with environmental law:

<http://www.cumulativeimpacts.com>

Jerry Lawson's Fedlawyerguy deals with crosscutting issues of interest to federal agency lawyers, including fiscal law, labor/personnel law, FOIA and law office management:

<http://www.fedlawyerguy.org>

Jeralyn Merritt from Colorado publishes Talk Left, covering crime-related political and injustice news:

<http://www.talkleft.com>

Peter Nordberg's Daubert on the Web (Blog 702), is devoted to the discussion of evaluating scientific evidence:

<http://www.daubertontheweb.com/blog702.html>

Gary O'Conner's Statutory Construction Zone deals with statutory interpretation:

<http://statconblog.blogspot.com>

Rory Perry's weblog is operated by the Clerk of the West Virginia Supreme Court:

<http://radio.weblogs.com/0103705/>

SCOTUS Blog, from a DC law firm, provides news about the Supreme Court of the United States:

<http://www.goldsteinhowe.com/blog>

Second Circuit is a project of the staff of the U.S. Court of Appeals for the Second Circuit library:

<http://2ca.blogspot.com>

Eugene Volokh, a UCLA professor has a team blog, Volokh Conspiracy:

<http://www.volokh.com>

uses are more likely to be considered fair use, and hence allowable, an educational purpose does not give carte blanche to bloggers.

Most of the time, the danger is not so much that you or your organization will be sued, but that illegal copying hurts the credibility of your blog. Sites associated with the government are particularly vulnerable to criticism, so educate yourself and any other contributors in the basics of copyright law. Stanford University's *Copyright and Fair Use* website, <http://fairuse.stanford.edu>, is a great resource.

Following a few rules of thumb will reduce the likelihood of problems. Avoid reproducing complete articles on your website, unless you have permission of the copyright holder. Absent unusual circumstances (like linking to a site that encourages copyright violations), merely linking to other websites is usually not a problem. Summarizing or briefly quoting from copyrighted material and linking to the full text is normally permissible. Avoid any use that could cause the owner of the copyright to lose money.

PL: *Do you have any advice for other government lawyers interested in starting blogs?*

JL: Because spammers use automated "spiders" to collect email addresses, don't include email addresses on the website without encrypting or disguising them. Provide the option for subscribers to obtain regular updates via e-mail, at least until the advantages of RSS are more widely known. The most important tip: recruit a high-quality team of volunteers. ■

continued from page 9

ethics, and Steve Epstein posts articles of special interest. So far, this has been working to keep the *IEC Journal* fresh and useful for agency lawyers. Many people could step in tomorrow and handle the technical aspects, but the substantive expertise and enthusiasm of our volunteer reporters are irreplaceable.

PL: *What risks are associated with blogs operated by public lawyers?*

JL: There is a danger that comments on the blog will be taken to represent the views of the author's agency. To prevent this, it is important to include a well-worded dis-

claimer (see sidebar p. 7). A solution some people adopt is to simply not include their name on the blog. I believe this is the approach taken by the author of *NEPA Blog*, <http://nepablog.blogspot.com>. The downside is that the author remains anonymous. Yet another approach is to mention your name on the blog, but not that of your employer. The risk increases with team blogs. Blog coordinators should place a premium on good judgment when issuing invitations to contributors.

Copyright violations are another risk. The fact that something is published on the internet does not necessarily mean that it is within the public domain. While educational