



# CLIENT NEWS BRIEF

July 2011

Number 24

## COURT FINDS SCHOOL EMPLOYEE'S CRAIGSLIST ADVERTISEMENT SOLICITING SEX CONSTITUTES GROUNDS FOR DISMISSAL

In *San Diego Unified School District v. Commission on Professional Competence* (194 Cal.App.4th 1454), the court of appeal held that an employee's Craigslist advertisement soliciting sex, accompanied by pictures of his genitalia and graphic text, established evident unfitness to serve as a teacher and immoral conduct, both of which constituted grounds for his termination.

The teacher in question was employed by the San Diego Unified School District ("District") as the dean of students at a District middle school. The teacher posted an advertisement on Craigslist.org in the "Men Seeking Men" section. His advertisement contained graphic text and pictures of his face, body, and genitalia. The listing did not contain his name, profession, or employment with the District. The listing was posted for approximately two days.

An anonymous person identifying himself as a parent of a student at the middle school where the teacher worked notified the District of the Craigslist advertisement. The District placed the teacher on administrative leave and served him with a notice of suspension, intention to dismiss and dismissal charges alleging evident unfitness for service, immoral conduct and persistent refusal to follow Board guidelines or the law.

A Commission on Professional Competence ("Commission") heard the charges. The teacher testified at the hearing that he had previously posted five or six ads soliciting sex on the internet, and that he would continue to place ads soliciting sex. The Commission found the evidence failed to prove that the employee was unfit to teach or that he engaged in immoral conduct and ordered that he be reinstated as an employee of the District. After the Commission's findings were upheld in superior court, the District appealed to the court of appeal.

The court of appeal reversed the decision and found in favor of the District. In analyzing whether the conduct demonstrated unfitness to teach, the court used the seven factors set out in *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214: (1) the likelihood that the conduct adversely affected students or fellow teachers, and the degree of such adversity anticipated; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the party involved; (4) the extenuating or aggravating circumstances, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which the disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

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The court found that the teacher's conduct violated all of the Morrison factors and pointed to several notable facts in its analysis as demonstrating unfitness. Specifically, the court found that the matter was specific and adverse to the District because a parent found the listing and reported it to authorities, and the principal of the school lost confidence in his ability to serve as a student role model. The court further found that the conduct was inconsistent with the employee's secondary school credential for teaching middle school students, and his admissions of past postings soliciting sex and his intent to continue demonstrated likely recurrence. Lastly, the court found that discipline would have no chilling affect on his or other teachers' constitutional rights.

In addition to finding the employee unfit to teach, the court also held that his conduct met the elements for immoral conduct and justified the District's decision to terminate. The posting of pornographic pictures along with the obscene text of the advertisement was immoral conduct demonstrating indecency and moral indifference.

The court noted that under Morrison, there must be a nexus between the government employment, the job responsibilities, and the misconduct of the accused. Public school teachers are in a unique position and subject to responsibilities and limitations not found in other professions. In the end, the employee's conduct was at odds with his position as a teacher and a role model and thus demonstrated his unfitness to serve as an educator for the District.

This case demonstrates that an employee's private conduct is not always private, and can be cause for termination. Further, this decision provides districts with guidance on balancing the rights of free speech in the internet age while also protecting students against pornographic and sexual representations from role models.

If you have any questions regarding this decision or its application to evaluations of employee conduct, please do not hesitate to contact one of our [eight offices](#) located statewide or consult our [website](#).

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