

Hinderks' "Attys Shouldn't Assume Judicial Critique Is Protected Speech" Published in *Law360*

In the News

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[Mark Hinderks](#), Stinson LLP's former managing partner and current chair of the firm's Legal Ethics & Professional Responsibility practice group, published a column in *Law360* that provides insights concerning the boundaries of attorney speech critical of judges.

"Of course, the First Amendment protects free speech on these and other subjects as a cornerstone of American democracy," Hinderks writes. "But, unlike other commentators or speakers, lawyers are subject to state ethics rules that can affect their licensure and ability to practice. In many, if not most, instances, these rules have been applied to limit lawyer speech more stringently than the [Sullivan standard](#)."

Hinderks details the theoretical framework of attorney regulation by highlighting that for courts to hold an attorney liable for criminal defamation, "the lawyer must subjectively know the statement to be false or make it with reckless disregard for its truth." He adds that the Model Rules of Professional Conduct intentionally adopted the same subjective actual malice standard concerning attorney speech about judges, "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." However, in practice, many states have applied a different standard.

Hinderks concludes that if an attorney is contemplating judicial criticism, the attorney is well advised to assume that they will bear the burden of proving the truth of that criticism, and defending the manner and forum of its delivery.

Hinderks leads the firm's Legal Ethics & Professional Responsibility practice. He is the author of *Dear Ethics Lawyer*, a twice-monthly newsletter with questions and answers concerning legal ethics, and a co-founder and presenter of "Ethics for Good," a twice-annual stage show which uses humor, skits and real-world scenarios to teach legal ethics to lawyers. Hinderks has presented more than 125 programs on legal

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ethics over the past 30 years, has authored many articles and handbook chapters on legal ethics, and has been deeply involved in professional organizations with legal ethics and professional responsibility as their focus.

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