

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #11-05307-A Letter and Brochure Mailed as Enclosure to Potential Clients

Pursuant to Practice Book §2-28B, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, reviewed a request for an advisory opinion filed on August 30, 2011. The proposed print advertisement is a letter and accompanying brochure that the law firm indicates will be enclosed with a payment reminder letter that is being mailed by an insurance agency to its clients. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement provides the following information: a letter with letterhead in the top center page consisting of the name, address, and phone number of the law firm. On the upper left side of the page are the names of the firm's attorneys with an asterisk providing their various areas of bar admission. On the right side of the letter are two other addresses of the firm—one in Connecticut and one in New York. The letter provides information about the firm's services, the practice of the firm's three attorneys and the types of matters they handle in local courts. The letter also states that various brochures about the firm's services in different practice areas are enclosed. This advisory opinion concerns only the personal injury brochure and accompanying letter submitted by the requesting attorney. At the bottom of the letter is an underlined sentence that states that the law firm and the insurance agency are in the same office suite but are separate and not otherwise connected.

The proposed advertisement also includes a three fold letter sized brochure which provides information about the firm's services in injury cases. The brochure contains advice regarding what to do if you have an accident, how to file an accident report and provides three telephone numbers in Connecticut and New York to call for a free consultation. The statement is made in the brochure: "For 40+ years, the Firm for results in legal matters for the HISPANIC COMMUNITY."

The requesting attorney indicates that the proposed advertisement will be mailed in one of three potential envelopes used by the insurance agency and estimates that approximately 2000 customers will receive the mailing. One envelope contains the return address of the insurance agency, the second contains the return address of a financial services company named after one of the listed insurance agents. The third potential envelope is blank.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the firm's letterhead consisting of the firm's name, address and phone numbers, the names and jurisdictions of admission of the attorneys is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. Both the letter and brochure contain the name of at least one lawyer admitted in Connecticut responsible for its content in compliance with Rule 7.2(d) of the Rules of Professional Conduct.

For the reasons expressed below, it is the opinion of this reviewing committee that the proposed letter and brochure violate Rule 7.1 of the Rules of Professional Conduct because they are misleading in two different respects: 1) the content of the brochure and 2) the manner of

mailing.

With respect to the first violation, the statement referenced above in the brochure that the law firm is “the Firm for results in legal matters for the Hispanic Community” violates Rule 7.1 of the Rules of Professional Conduct because it is an unsubstantiated comparison to the services of other firms.

All attorney advertising is governed by Rule 7.1 of the Rules of Professional Conduct. The commentary to Rule 7.1 provides that statements made in attorney advertising must have a "reasonable factual foundation." The commentary to Rule 7.1 states:

A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated.

The statement that the law firm is “the firm” for the services it provides to particular clients is misleading pursuant to Rule 7.1, because it is a statement that impermissibly compares the quality of the firm's services to that of other firms and is an opinion on that quality that cannot be objectively verified or substantiated. The statement should be removed or modified accordingly.

With respect to the second violation, the proposed advertisement is to be mailed by the insurance agency and the costs of postage will not be paid by the law firm. The requesting attorney indicates that the insurance agency and the law firm occupy their own exclusive office space on the premises and are separate business entities. This opinion assumes that there is no sharing of legal

fees which would violate Rule 5.4 of the Rules of Professional Conduct and that only the cost of postage is being provided to the law firm by the insurance agency.

This reviewing committee concludes that the method of mailing the proposed advertisement constitutes a separate violation of Rule 7.1 of the Rules of Professional Conduct. The letter and brochure are to be placed in the envelope that provides the return address of another business, an insurance company. Therefore, potential clients opening their mail from the insurance agency will be presented with an unrelated and unexplained enclosure from the law firm soliciting them for legal services. This is misleading and potentially confusing to the recipient, because the envelope provides no indication that the letter contains legal advertising from an unrelated law firm with no apparent connection to the content of the correspondence from an insurance agency.¹

Rule 7.2 of the Rules of Professional Conduct permits attorneys to advertise and the commentary to Rule 7.2 provides:

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele... The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

The interest in providing public information is therefore a preeminent concern and prevails

¹ In this regard, although there is no requirement under Rule 7.3 that the proposed advertisement be labeled as advertising material, because the prospective clients to whom the letter and brochure are to be sent are not "known to be in need of legal services" (see Advisory Opinions 09-01229-A and 09-04933-A, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm, for further discussion of the advertising labeling requirement under Rule 7.3), that does not resolve the issue regarding the misleading character of the mailing under Rule 7.1.

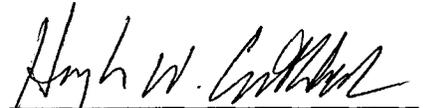
unless an attorney communication violates a Rule of Professional Conduct. As discussed above, the brochure contains one statement that violates Rule 7.1, which must be modified or removed. In addition, the inclusion of the proposed advertisement in an envelope containing correspondence from another business to its clients separately makes the advertisement misleading under Rule 7.1. While Rule 7.2 permits attorney advertising, as the commentary states, such advertising may not be misleading to the consumer of legal services.

Accordingly, this reviewing committee concludes that the proposed advertisement does not comply with the Rules of Professional Conduct because the brochure contains a statement that impermissibly compares the quality of the firm's services to that of other firms, and because the proposed advertisement is mailed in a misleading manner in violation of Rule 7.1 of the Rules of Professional Conduct. This reviewing committee offers no opinion as to whether or not this communication complies with the rules on attorney advertising in New York.

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ISSUE DATE: September 15, 2011

Advisory Opinion 11-05307-A


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