

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #08-04988-A Communication Sent to Potential Clients in Need of Probate Services

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 September 22, 2008. The proposed print advertisement is a cover letter and accompanying flyer to be mailed to potential probate clients as listed in obituaries from local newspapers. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The advertisement provides the following information: a cover letter on firm letterhead that provides the name, address, phone and fax numbers of the law firm at the top center of the letter. The firm's attorneys are listed on the top left. Underneath the attorney listings, above the addressee's information is the phrase "ADVERTISING MATERIAL" in red ink.

The first sentence of the cover letter, after the salutation, states: "If you have already retained a lawyer for this matter, please disregard this letter." The letter proceeds to describe the responsible attorney's experience in representing clients in probate, wills and trust matters. The letter also describes the firm's experience in handling personal injury matters including "all injuries to the body, death claims, medical and hospital malpractice, motorcycle injuries and uninsured motorist claims" as well as its experience in criminal defense, family law and in general practice. The requesting attorney's educational and professional associations are also described.

The cover letter concludes with the sentence: "The initial consultation is free. Home, weekend and evening appointments are available. Hospital appointments are also available." An asterisk at the end of the letter indicates the name of the attorney responsible for the content of the message, and another asterisk indicates that two major credit cards are accepted.

The second part of the proposed advertisement is the accompanying flyer. We have issued a previous opinion on this same flyer in Advisory Opinion #08-04627-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. That advisory opinion is incorporated by reference into this advisory opinion.

The envelope in which the cover letter and flyer will be mailed was also submitted with the proposed advertisement. The firm's name and address are listed in the upper left corner and the lower left corner of the envelope contains the phrase "ADVERTISING MATERIAL" in red ink which complies with the requirements of Rule 7.3(c). The cover letter and flyer in the proposed advertisement comply with Rule 7.1 and 7.2(i) of the Rules of Professional Conduct in listing the firm's name and address and other similar information. See Advisory Opinion #08-04627-A. The accompanying flyer also complies with Rules 7.4 and 7.4A in the listing of the various practice areas of the firm, and with Rules 7.2(i). See Advisory Opinion #08-04627-A.

The proposed advertisement will be sent to potential clients in need of probate services and is therefore being sent to a different group of prospective clients than the advertisement discussed in Advisory Opinion #08-04627-A. The provisions of Rule 7.3 apply and regulate an attorney's contact with prospective clients. The commentary to Rule 7.3 states: "Unrestricted solicitation involves definite social harms...Measures reasonably designed to suppress these harms are

constitutionally legitimate...In determining whether a contact is permissible under Rule 7.3(b), it is relevant to consider the time and circumstances under which the contact is initiated."

The requesting attorney indicates that the proposed advertisement will be sent to potential clients in need of probate services. The cover letter accompanying the flyer recites the requesting attorney's experience in representing clients in probate services. The cover letter also mentions that the firm handles personal injury matters, including "all injuries to the body, death claims, medical and hospital malpractice, motorcycle injuries and uninsured motorist claims."

Rule 7.3 (b)(5) applies to the proposed advertisement. Rule 7.3(b)(5) provides:

A lawyer shall not contact, or send, a written or electronic communication to, a prospective client for the purpose of obtaining professional employment if... (5) [t]he written or electronic communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 40 days prior to the mailing of the communication. (emphasis added)

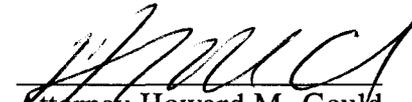
The plain language of Rule 7.3(b)(5) indicates that the forty day waiting period applies to an attorney's solicitation to represent a potential client in personal injury and wrongful death actions. The language of Rule 7.3(b)(5) also applies to solicitations of employment, however, for actions that "otherwise relate to" an accident or disaster. The probate services for a decedent's estate may involve actions that are related to or arise from accidents or disasters. The cover letter of the proposed advertisement mentions the firm's ability to represent potential clients in such personal injury matters. Solicitations by an attorney to represent potential clients in probate services that are related to an accident or disaster should conform to the forty day waiting period.

It is the responsibility of the requesting attorney to take reasonable steps to ascertain if there is such a relationship and comply accordingly with the required forty day waiting period of Rule 7.3(b)(5) before mailing the proposed advertisement.

Rule 7.3(b)(1) addresses the level of knowledge required of an attorney before sending out solicitations of employment to clients who may not be fit to receive them. A lawyer should not initiate contact with such persons if "[t]he lawyer knows or reasonably should know" that they are unfit to receive legal solicitations. Rule 7.3(b)(5) does not address the prerequisite level of knowledge to be used before sending out personal injury or wrongful death actions, so the standard provided in Rule 7.3(b)(1) is relevant. If the attorney "knows or reasonably should know" that the probate services relate to an accident or disaster, the forty day waiting period applies.

The standard of knowledge may be established by the fact, for example, that information about the accident or disaster is found in the obituary or widely publicized in other local media. It is the responsibility of the attorney to take reasonable measures to ascertain if a probate action is related to an accident or disaster before sending the solicitation. If information about the connection between the probate action and a personal injury claim is discovered only after sending the solicitation, there is no violation of Rule 7.3(b)(5) provided the attorney could not reasonably have known that prior to mailing the solicitation.

Subject to the above discussion, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.



Attorney Howard M. Gould

Jorene M. Couture
Attorney Jorene M. Couture

Peter Jenkins
Mr. Peter Jenkins