

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #10-01361-A Law Firm Telephone “On Hold” Message Rule 8.4(5)

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 February 9, 2010. The proposed advertisement is a printed script of the message played when a person is placed “on hold” in the firm’s telephone system. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement is a nine paragraph script of an audio message that will be played for persons placed “on hold” in the law firm’s telephone system. The message details the type of services the firm provides, characterizations of its attorneys’ legal experience and the firm’s philosophy of client service. Several practice areas of law are discussed, such as family law, personal injury law, tax and estate planning, real estate transactions and business law. The firm practices land use law and makes the following statement:

Based upon our experience as town attorneys for several municipalities, and the knowledge of our attorneys who have served on various municipal boards and commissions, we have a **unique** perspective regarding representing our land use clients before planning & zoning commissions, inland/wetland & conservation commissions and zoning boards of appeal, as well as other state and local boards & commissions. (emphasis added)

The “on hold” message concludes with basic information about the firm’s address, office hours and website address. The firm’s website was not reviewed as part of this advisory opinion.

Practice Book § 2-28A mandates the filing of certain types of attorney advertising with the Statewide Grievance Committee. There are several exceptions to the mandatory filing requirements. Practice Book § 2-28A(b) lists the types of advertisements and Rule 7.2(i) of the Rules of Professional Conduct lists the types of information that are exempt from the mandatory filing requirements of Practice Book § 2-28A. Practice Book § 2-28A(b)(6) provides that the filing requirements of Practice Book § 2-28A(a) do not apply to a “communication that is requested by a prospective client.”

The proposed advertisement, by its nature as an “on hold” message, is played when a party telephones the law firm and proceeds to wait on the telephone line. Since the caller initiates the telephone call to the firm and agrees to stay on the line subsequently, the “on hold” message is a requested communication. The caller is free at any time to disconnect the phone call and not listen to the message. Accordingly pursuant to Practice Book § 2-28A(b)(6), the proposed advertisement does not need to be filed with the Statewide Grievance Committee.

Since the attorney has requested an advisory opinion regarding the contents of the proposed advertisement, we reviewed the Rules of Professional Conduct that are relevant to the “on hold” message, though it is not subject to the mandatory filing rules. Rules 7.1, 7.2 and 8.4(5) are implicated in reviewing the proposed communication.

Rule 7.2 sets forth the requirements for both attorney advertising and communications about an attorney’s services. Rule 7.2(d) provides that “any advertisement or communication made pursuant to this Rule shall include the name of at least one lawyer admitted in Connecticut responsible for its content.” The proposed advertisement does not include the name of a

responsible attorney but only mentions the name of the law firm.

Rule 7.1 regulates the content of attorney advertising and provides: “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.” The commentary to Rule 7.1 elaborates further:

Statements, even if literally true, that are misleading are also prohibited by this Rule....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 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 above quoted description of the firm’s land use practice, which characterizes their perspective in the representation of their land use clients as “unique,” violates Rule 7.1 of the Rules of Professional Conduct. Similar language was the subject of Advisory Opinion #07-00193-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. We find the statement that the firm has “a unique perspective” in representing their land use clients to be misleading because there is no reasonable factual foundation to substantiate the claim. Furthermore, this statement creates an unjustified expectation about the results the lawyer can achieve in the representation of land use clients, particularly since the law firm cannot represent clients before a town or agency that it also represents and it may not be able to represent a client before an agency if any lawyer serves the town as a public official. The attorneys must abide by Rules 1.7(b) and 1.10 in determining whether the law firm has a conflict of interest that prevents the firm from appearing before a governmental board or commission when a member of the firm

serves on that board or commission. "Office holders should not use their public office to advance the interests of clients in matters pending before agencies over which the office holder exercises oversight." CBA Formal Opinion 47 (1999).

The above referenced statement regarding the firm's representation of land use clients also violates Rule 8.4(5) of the Rules of Professional Conduct. Rule 8.4(5) provides:

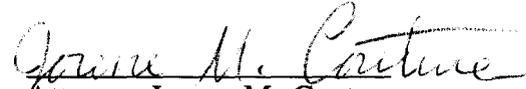
It is professional misconduct for a lawyer to: (5) State or imply an ability to influence improperly a governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

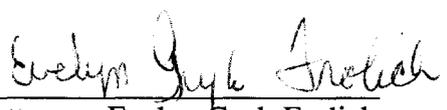
It is permissible for the law firm to recite its attorneys' factual experience in serving as town attorneys and on various municipal boards and local commissions. The coupling of this factual assertion, however, with the statement that those experiences give the firm's attorneys "unique perspective" in representing clients before those boards violates Rule 8.4(5) of the Rules of Professional Conduct because it implies an ability to influence these government agencies and officials. It is permissible, however, to recite a lawyer's professional experience by indicating what boards or commissions the lawyer has served on and when the service occurred. Rule 8.4(5) is also discussed in Advisory Opinion #07-00193-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

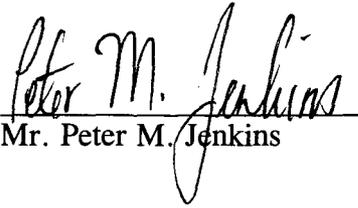
Accordingly, this reviewing committee opines that the proposed communication does not comply with the Rules of Professional Conduct.

(E)

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