

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #10-05487-A Five Year Announcement Letter by Law Firm

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 October 1, 2010. On October 4, 2010, this reviewing committee requested more information regarding the proposed advertisement. The attorney responded on October 7, 2010. The proposed print advertisement is a two page letter that will be sent by a law firm to friends and family, other attorneys, and current and former 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 consisting of the name, address, telephone and fax number of the law firm; the names of the firm's two attorneys and states where admitted. The two attorneys have an email address listed underneath their names on the letterhead that is not the name of the firm, but the name of another person and one of the firm's attorneys. This reviewing committee's request for additional information concerned this discrepancy in the names used in the firm's email address. In response, the requesting attorney provided the information that the email address was the name of a prior partnership between a deceased attorney and one of the firm's partners. The requesting attorney and his current partner had been using this same email address for approximately fifteen years and

continued its use in the successor firm. The requesting attorney indicated that to avoid any potential confusion the firm would update its email address to the name of the requesting firm, which is the firm's two partners, and use that on any subsequent letterhead.

The proposed advertisement begins with the sentences: "We formed [the firm] almost five years ago. Since that time, we have strived to provide the absolute highest quality legal services at affordable prices." (emphasis added) The next paragraph begins: "We consider ourselves unique in that we maintain a small, congenial, work environment, which allows us to get to know our clients, to listen to their needs, and to be true 'general practitioners.'" (emphasis added) The letter continues with several paragraphs detailing the firm's legal services and discussing their services in three stated practice areas.

In a paragraph describing the firm's litigation services, the letter provides that litigation is expensive and that the firm counsels clients to avoid it when possible. The letter then states: "However, when it becomes unavoidable, [the firm] has experience and expertise to win cases having tried nearly 100 cases through to a final verdict or decision." (emphasis added) This statement contains a footnote which disclaims that the information the firm provides about its historical record of services and successes "is not necessarily indicative of the results we may, or may not, be able to obtain for you."

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the firm's letterhead, which references the firm's name, address, phone and fax numbers is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. This advisory opinion assumes that the proposed

advertisement will be mailed out with the updated email address listed on the letterhead, which will consist of the names of the firm's two partners and is also presumed not to violate Rule 7.1.

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 characterization of the firm's services as "unique" violates Rule 7.1 of the Rules of Professional Conduct. The similar use of the word "unique" was the subject of Advisory Opinion #07-00193-A and #10-01361-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. We find the statement, that the firm considers itself "unique" in its work environment and in getting to know their clients, to be misleading because there is no reasonable factual foundation to substantiate the claim.

The statement at the beginning of the letter that the firm "strives" to provide the highest quality legal services contains a superlative about the firm's services which is subject to the limitations of Rule 7.1. The context of the statement prevents it from being misleading pursuant to Rule 7.1. If the statement promised or asserted that the firm's services are the best, the statement would violate Rule 7.1 for the reasons described above. Since this statement is aspirational, we do

not find it to be misleading. For further discussion of this issue, please see Advisory Opinion #09-01229-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

The above-described claim that the firm has "expertise" in litigating cases is subject to the provision of Rules 7.4 and 7.4A of the Rules of Professional Conduct. Rules 7.4 and 7.4A regulate the manner in which an attorney or a firm may characterize practice areas. Rule 7.4A(d) provides that "certification as a specialist may not be attributed to a law firm." The statement violates Rule 7.4A(d) of the Rules of Professional Conduct by characterizing the law firm's services in terms of its expertise in litigation. The word "expertise" in the above statement must be removed.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. The requesting attorney indicates that the proposed advertisement will be mailed to current and former clients, friends and family and fellow attorneys with whom the firm worked in the past. Subsections (b) and (c) of Rule 7.3 regulate written communications for the purpose of obtaining professional employment. The numbered subsections of Rule 7.3(b) distinguish between several types of written (and electronic) communications, specifically those concerning personal injury or wrongful death cases, persons already represented by counsel in a specific matter or who are unfit or unwilling to receive such communications. This opinion assumes those fact patterns are not applicable to the proposed advertisement since nothing in the requesting attorney's submission indicates those circumstances. It is the responsibility of the firm to determine if any of the special provisions of Rule 7.3(b) apply to the parties receiving the proposed advertisement.

Subsection (c) of Rule 7.3 concerns communications to prospective clients and provides a

requirement to label communications as advertising material if the prospective clients are known to be in need of legal services in any particular matter. This opinion assumes that the letter announcing the firm's five year anniversary is not targeted to such prospective clients known to be in need of legal services in a particular matter. If the letter is to be sent to such prospective clients, it should conform to the labeling requirements of Rule 7.3(c). For more information on Rule 7.3 please see Advisory Opinions #08-04988-A and #09-04627-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

Practice Book §2-28A(b)(5)(i) and (ii) exempts from the mandatory filing rules communications sent to existing or former clients and communications sent to other attorneys, and subsection (6) exempts communications requested by a prospective client. The proposed advertisement does not need to be filed with the Statewide Grievance Committee if it is sent to current or former clients and other attorneys. In the case of family and friends, the rule is not as clear. If family and friends are prospective clients, but have requested the communication from the law firm, by either requesting or agreeing to be placed on their mailing list, the proposed advertisement would not have to be filed with the Statewide Grievance Committee. If family and friends have not "requested" the letter and are in fact prospective clients, the proposed advertisement should be filed as advertising. In the future if the letter is utilized in a different fashion, such as being mailed unsolicited to prospective clients, the attorney would need to comply with the mandatory filing requirements.

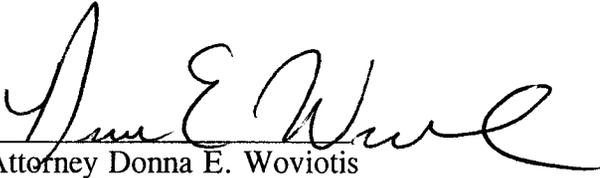
Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct as outlined above because the proposed advertisement contains statements that do not comply with Rules 7.1, 7.4 and 7.4A of the Rules of Professional Conduct.

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