

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #14-03932-A Internet Advertisement Regarding Illegal Phone Calls**

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 May 1, 2014. The proposed advertisement is a website advertisement aimed at consumers who may have a claim for damages under the Telephone Consumers Protections Act in Federal Court. On May 7, 2014, this reviewing committee requested additional information and on May 12, 2014, the attorney complied with our request and provided the requested information. This reviewing committee concludes that the proposed television advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict the advertisement as it will appear on Google Ad Network. The proposed advertisement solicits clients for the law firm by offering the installation of a mobile application designed to run on mobile devices, commonly known as an "App." The name of the App is "BlockCallsGetCash" and is licensed by the law firm from a third party. The installed App will create a log of illegally received calls on the user's phone or other mobile device. For the users of the App who request it, the firm will review the log and determine whether a claim can be made under the Telephone Consumers Protections Act, 47 U.S. Code §227, *et seq.* The requesting attorney provided the additional information that the content in the App could be modified by the law firm if necessary.

The proposed internet advertisement provides the following information in large print at the top: the phrase, "BlockCallsGetCash," followed by the sentence, "The Call Blocker that

gets you money.” A picture of a mobile phone is depicted which shows a display for incoming calls along with a caller identification screen or “ID” display. The advertisement offers to report “harassing calls” from various entities such as debt collectors and telemarketers, “block any number and provide free caller ID checks.” The next phrase states that the firm will “help you get what you deserve, up to \$1500 per call.” The “\$1500” is in the largest print found in the advertisement. The link to the App is depicted by a green rectangle and the phrase “Got it!” along with the name of the attorney who requested the advisory opinion, who is stated as responsible in Connecticut for the content of the attorney advertisement.

The proposed advertisement complies with Rule 7.2(d) of the Rules of Professional Conduct by providing the name of an attorney admitted in Connecticut responsible for its content.

The requesting attorney had three particular questions for this reviewing committee regarding the statements made in the proposed advertisement and their compliance with Rule 7.1 of the Rules of Professional Conduct. First, the attorney was concerned about the name of the App which is “BlockCallsGetCash”; second, the phrase, “The Call Blocker that gets you money”; and third, the claim that, “Our team will help you get what you deserve, up to \$1500 per call.”

Attorney advertising is subject to the requirements of Rule 7.1 which provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

The commentary to Rule 7.1 elaborates on the types of statements that are potentially misleading:

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’s services for which there is no reasonable factual foundation.

The commentary also provides that in some circumstances for potentially misleading statements:

The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

This reviewing committee considered all three phrases or claims which are prominently displayed in the proposed advertisement. An advertisement which offered the similar phrase, "Get up to \$1000 for Abuse," was submitted to a reviewing committee in 2012 for an advisory opinion. See Advisory Opinion 12-07210-A, available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm).

Concerning the name of the App, "BlockCallsGetCash," the question for this reviewing committee then is whether the name is misleading because it creates unjustified expectations that the consumer installing it will receive compensation for blocked calls, in violation of Rule 7.1 of the Rules of Professional Conduct. The phrase, "get cash," is an assertion of entitlement to compensation for the blocked calls and is not conditionally worded. This reviewing committee finds that phrase is potentially misleading because a potential client, in reading the proposed advertisement and not knowing the applicable law, would be led to believe they are entitled to compensation without regard to the particular circumstances of the matter.

The same concern applies to the second phrase, "The Call Blocker that gets you money." This phrase is not conditionally worded and promises the consumer or potential client will "get money." Both phrases could be brought into compliance with Rule 7.1 by the use of disclaimer language. The disclaimer language should remind the potential client that results obtained are dependent on the "specific factual and legal circumstances of each client's case." Rule 7.1 of the Rules of Professional Conduct (Commentary). The disclaimer language should be readable and could be placed either in the proposed advertisement or in the content of the App.

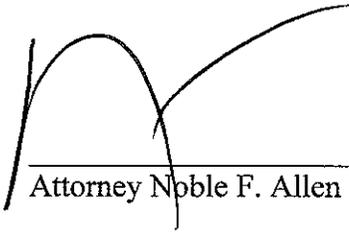
Concerning the statement, "Our team will help you get what you deserve, up to \$1500 per call," this reviewing committee finds that phrase is not misleading under Rule 7.1. A consumer reading this statement will immediately be apprised that they may be awarded \$1500 per illegal phone call. The statement is conditioned somewhat by the phrase, "help you get what you deserve." The statement is concise, in the nature of advertising, though and is not complete; but this reviewing committee must ascribe some level of reasonableness that a potential client will understand that they must prevail first. Disclaimer language would further enlighten and clarify, but unlike the first two phrases discussed previously is not mandatory. A reasonable consumer will understand that an award of any money to them must be based on a successful claim.

Accordingly, this reviewing committee opines, for the reasons outlined in this opinion, namely the need for disclaimer language to rectify the misleading implications of two statements, that the proposed advertisement does not comply with the Rules of Professional Conduct.

ISSUE DATE: May 27, 2014

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