

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #16-03823-A Revised Website Advertising Prepaid Legal 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 May 16, 2016. The proposed advertisement is a website advertising a “prepaid legal services plan” for victims of car accidents. The proposed plan will be operated by the requesting attorney under a trade name, (hereinafter, “the company”). This reviewing committee concludes that the proposed advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict proposed website content. Some of the content was the subject of a prior advisory opinion request, Advisory Opinion #14-04961-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm which is incorporated by reference into this advisory opinion. The requesting attorney indicates he is submitting new content in an effort to comply with the 2014 advisory opinion.

The comments in this advisory opinion are limited to the proposed new content of the website pages submitted for approval which was highlighted by the requesting attorney. This opinion is limited only to the Rules of Professional Conduct related to legal advertising. Other areas of law, such as insurance or consumer protection are not considered here as they are outside the scope of the request and the opinion process set forth in Practice Book §2-28B. This advisory opinion does not preclude the possibility that aspects of the company’s business model may be subject to other regulation. Other possible ethical issues between the company, its attorneys and its clients, are outside the scope of an attorney advertising opinion. This

opinion concerns only the advertising rules applicable to the participating attorney(s) and the content of the website as submitted to this reviewing committee.

The proposed website consists of five sections, a homepage, two sections of frequently asked questions, an “about the company” page and a contact or sign up page. On the homepage, the same three assertions are made that were the subject of Advisory Opinion #14-04961-A with slight variation in language:

1. The company “revolutionizes legal fees by providing a zero fee alternative to the standard 1/3 contingency legal fee for car accident victims.”
2. The company “revolutionizes prepaid legal service plans by providing a plan that is modeled after conventional car insurance.”
3. The company “revolutionizes the car insurance industry by providing car accident insurance for victims of car accidents.”

The first frequently asked questions section, (hereinafter “FAQ”) consists of three questions whose answers correspond to the three assertions that the company “revolutionizes” car accident legal fees. Much of the content is similar to the first version of the FAQ section submitted in connection with Advisory Opinion #14-04961-A but new content provides a little more illustration. For example, a chart, similar to the first version, demonstrates the net recovery to a consumer who is awarded \$30,000 in the standard 1/3 contingency fee arrangement as contrasted with the company’s zero legal fee. Underneath the chart is further explanation which highlights the monetary difference to a member.

The answer to the second FAQ in this section contains the statement that the company is “the only prepaid legal service plan that is modeled on conventional car insurance and seeks to become a universal insurance product, like conventional car insurance....This is a cost that every consumer could incur and that every consumer should insure against.” The third FAQ addresses the statement that the company “revolutionizes the car insurance industry by providing car accident insurance for victims of car accidents.” The assertion is made that the

company “is the first car insurance product that aims to meet the legal needs of *the car accident victim.*” Further into this paragraph is the statement: “We call this coverage ‘car accident insurance’ for victims of car accidents.”

The second section of FAQ’s in the proposed website consists of seven questions which address the details of the service provided by the company and how the service operates. This section is entirely new content from the prior version of the website reviewed in Advisory Opinion #14-04961-A. Much of the information addresses issues that were raised in the first advisory opinion. The FAQ’s numbered one through four address the procedural steps for a member to make a claim and how an attorney is retained and will proceed with the representation. The participating attorneys are selected by the requesting attorney, as president of the company, utilizing his legal knowledge and certain general requirements. The member and the attorney arrange to meet and execute a written retainer agreement. The fee agreement will reflect that the member will not be charged legal fees but only litigation costs and court fees. The attorney will make the decision about the legal viability of the member’s claim and the company will not review that decision.

The answer to the fifth FAQ addresses the relationship between the company and the participating attorneys and terms the relationship a “joint enterprise.” The assertion is made that experienced and qualified attorneys will be hired who will provide members “with the highest level of professionalism.” The next question addresses what will happen if a member does not get along with the original assigned attorney and the last question concerns whether other legal needs of the member, besides the car accident claim, can be provided. The answer to the former is that the company will assign another attorney if necessary, and the response to the latter is that the member is free to hire the attorney for other work but the company does not pay those legal fees.

The proposed website 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 proposed website complies with Rule 7.2(f) of the Rules of Professional Conduct which provides that an advertisement that states there is no legal fee in a matter shall disclose “whether and to what extent the client will be responsible for any court costs and expensed of litigation.” In two places the website explains that the member will be responsible for court costs and litigation expenses. This provision will be included in any fee agreement with the participating attorney, who will charge no legal fees.

This reviewing committee finds that the two main assertions made on the website, namely that the company plan “revolutionizes” legal fees, prepaid legal service plans, and the car insurance industry and the service provides “car accident insurance for victims of car accidents” to be misleading under Rule 7.1.

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.

First, addressing the claim made in several places in various forms that the company plan “revolutionizes” legal fees, prepaid legal service plans, and/or the car insurance industry, this reviewing committee finds this claim is potentially misleading. Nothing in the content of the website substantiates that this model is “revolutionary” to either legal services or insurance. We will specifically address the insurance aspect of these statements in the next paragraph of this opinion. The requesting attorney has explained in more detail on the website how the plan works but this does not support the claim it is “revolutionary.”

The second claim, namely that the company service provides “car accident insurance

for victims of car accidents” is inherently misleading. “Insurance” is a term of art that applies to a particular product that is highly regulated and subject to numerous rules and requirements separate from attorney ethical and advertising rules. The company plan does not operate in the same way as conventional insurance and insurance companies. A flat annual membership fee is not based upon the typical actuarial calculation made by insurance companies, which balances an assessment of risk, history of claim payouts, and adjusts premiums or payments accordingly. Insurance premiums are predicated on both the characteristics and risk assessment of the individual and the greater pool of insureds, along with the amount of losses incurred by the claims made. Insurance companies are highly regulated and subject to reserve capital requirements to assure that the company has sufficient money for the payment of claims.

The information on the website regarding the company’s service indicates none of these aspects of the insurance industry. Each member of the company plan advertised by the proposed website pays the same annual membership fee which cannot be characterized as a premium payment as found in the insurance industry. The assertions on the website that the company’s legal service plan provides “insurance,” is “modeled on conventional car insurance” or “seeks to become a universal insurance product like conventional car insurance” is confusing. A consumer reading these statements is told they are purchasing insurance which is misleading pursuant to Rule 7.1 of the Rules of Professional Conduct.

Lastly, the statement made on the proposed website that members will be provided attorneys “with the highest level of professionalism” (Second FAQ, answer five) violates Rule 7.1 of the Rules of Professional Conduct. Pursuant to Rule 7.1, statements made by attorneys in advertisements must be based on a factual foundation and not opinion. A reasonable factual foundation should be an objectively verifiable fact. The statement is a superlative about the attorneys' services that cannot be objectively verified. For more information about the use of superlatives in attorney advertising, see Advisory Opinion #09-01114-A, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

Accordingly, this reviewing committee opines, for the reasons outlined in this opinion that the proposed advertisement does not comply with the Rules of Professional Conduct concerning legal advertising.

ISSUE DATE: June 14, 2016

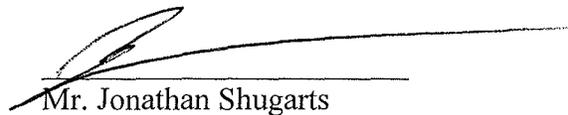
(E)



Attorney Sue Cousineau

A handwritten signature in black ink, consisting of a stylized 'T' followed by a cursive 'M' and a long, sweeping horizontal line that extends to the right.

Attorney Tracie Molinaro



Mr. Jonathan Shugarts