

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #08-04627-A Communication Sent to Prospective Clients From Police Arrest Logs**

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 July 28, 2008. The proposed print advertisement is a letter and a flyer to be mailed to prospective clients by a law firm. The cover letter and accompanying flyer will be mailed to persons who have been arrested for a criminal or motor vehicle matter. The potential clients will be identified from police logs of arrested individuals in the newspaper. 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 and the firm's website address is listed on the top right. 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. I understand you have been arrested for a criminal or motor vehicle matter and would like you to consider using our firm for legal representation." The letter proceeds to describe the responsible attorney's experience in criminal defense for over 30 years and provides his biographical information and professional

credentials.

The cover letter concludes with the phrase: "The initial consultation is free. Court costs and expenses of litigation must be paid by clients." 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. The name of the firm in bold print is on the top left side and underneath are the words "General Practice Law Firm" and "Arrested???". A banner with the word "INJURED?" is displayed vertically on each side of the page. In between this banner, various practice areas are listed along with a graphic representing the practice area. For example, along with a listing of "Motorcycle Injuries" is a picture of a motorcycle. Underneath this practice area it states: "Home, Weekends & Evening Appointments Available. Hospital Appointments Also Available."

Underneath the motorcycle injuries practice area are the phrases: "All Injuries To The Body," "Consult An Attorney Free For Initial Interview," "No Recovery-No Fee\* For Personal Injury Matters Only." The asterisk references a sentence on the bottom right section of the flyer, beneath the firm's phone number that states: "Court Costs & Expenses of Litigation Must Be Paid By Clients."

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the firm's letterhead consisting of the firm's name, address, phone number, website and email address, and the names of the attorneys is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. Similar

information found in the accompanying flyer also complies with Rule 7.1 and 7.2(i).

Pursuant to Rule 7.2(i)(5) the information found in the accompanying flyer, listing the fields of law in which the lawyer or firm practices with the accompanying graphics, is also presumed not to violate Rule 7.1. The various practice areas listed do not contain language implying specialization which would violate Rules 7.4 and 7.4A. Instead the types of proceedings typical in the practice area are listed. For example under the category "Criminal Law" is listed: "Criminal Defense & Trials," "Drunk Driving/Motor Vehicle," "Drug Charges/Assault," and "All Other Crimes."

The accompanying flyer provides information about appointment availability and scheduling and advertises free initial consultations, information which is also presumed in compliance pursuant to Rule 7.2(i). The flyer also complies with Rule 7.2(f) because it contains a sentence referenced above and connected by an asterisk explaining that costs and expenses of fees will be paid by clients even if no legal fees are charged. Rule 7.2(f) provides:

Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee...

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. 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 found in subsection (b) of Rule 7.3 are not applicable to the proposed advertisement. Since the proposed advertisement will be sent to persons arrested for criminal and motor vehicle offenses based on published police logs, they would not be otherwise known to the requesting attorney. Subsection (c) of Rule 7.3, concerning communications to prospective clients, is applicable to the proposed advertisement. Rule 7.3(c) provides:

Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any, ...If the written communication is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. (emphasis added)

The prospective clients are solicited because they have been arrested and are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by providing the label "Advertising Material" clearly and prominently in red ink on the first page which is the cover letter. No envelope was submitted with the proposed advertisement. The proposed advertisement is a one page letter and accompanying flyer, not a self mailing brochure or pamphlet with an address panel. Therefore, the envelope in which the

proposed advertisement is mailed should have the label "Advertising Material" in red ink in the lower left corner to meet the requirements of Rule 7.3(c). The envelope should also comply with Rule 7.3 (e) by not revealing on the outside the nature of the client's legal problem. This opinion assumes the envelope that will be utilized to mail the prospective advertisement will comply with these sections of Rule 7.3.

The proposed advertisement complies with other relevant provisions of Rule 7.3. Pursuant to Rule 7.3(d) it contains the requisite first sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The proposed advertisement complies with the provisions of Rule 7.3(g) as well. Subsection (g) of Rule 7.3 provides that written communications to prospective clients (that are not brochures or pamphlets) shall be on letter-sized paper rather than legal-sized paper and shall not resemble legal documents. The proposed advertisement is therefore in compliance with the provisions of Rule 7.3 concerning communications with prospective clients.

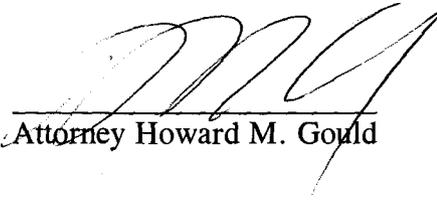
Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct.

(E)

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