

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #10-03032-A e·Local Link™ Internet Video Website Filing Requirements**

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 April 23, 2010. The proposed advertisement is a one minute promotional video which will be accessed from a municipal website. On April 26, 2010, this reviewing committee requested more information regarding the proposed advertisement. The attorney responded on April 26, 2010. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement was submitted in the form of a script and did not include the actual video. The script provides a storyboard of the graphics that will be displayed in the video portion of the proposed advertisement, along with a script of the voiceover that is spoken during the commercial. The advertisement will display a photo montage which commences with an aerial view that zooms into the law firm's location on a map, which is followed by various photographs of attorneys working in different settings and consulting with clients. Additional photographs of local places of interest and photographs and newspaper clippings showing the history of the firm over several decades will be displayed. The final visual display will be a group photograph of all the attorneys accompanied by a logo animation and the words "Tradition. **Excellence.**" (emphasis added)

The voiceover for the above described graphics provides information about the age and size of the law firm and the nature of its practice. The firm's commitment to the local community is described and the involvement of the firm's attorneys in various civic and community organizations and elected offices. The proposed advertisement concludes with the phrase: "As [the firm] celebrates its 60th anniversary, we look forward to handling your legal needs for many years to come in our **tradition of excellence.**" (emphasis added)

The proposed advertisement is a free video which will be accessed by viewers to the municipal website by clicking on a box for a "video tour" of the municipality and then clicking on the name of the firm, which will be listed along with other local businesses. A link to the law firm's website will also be available. Since the law firm has offices in two municipalities, the proposed advertisement will be available on both towns' websites. The law firm also intends to make the video available for viewing on the firm's website.

Rule 7.2(d) requires that attorney advertising contain "the name of at least one lawyer admitted in Connecticut responsible for its content." The proposed advertisement does not comply with Rule 7.2(d) because it does not contain the name of an attorney admitted in Connecticut, only the name of the law firm. The name of one of the firm's attorneys admitted in Connecticut responsible for the content of the video should be displayed in the proposed advertisement.

Rule 7.2(d) also provides additional requirements in the case of television advertisements, mandating that the name, address and telephone number of a Connecticut lawyer responsible for the content be displayed for 15 seconds, or the duration of the commercial if it is less than 15 seconds. See Advisory Opinion #09-03159-A Video on Demand Television Advertisement

available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm).

The proposed advertisement will be disseminated on the internet by way of a website link from a municipal website to a promotional video created by e·Local Link™ “internet television.” The proposed advertisement is characterized by e·Local Link™ as an online informational video made available from a web link. Limited to these facts and circumstances, the proposed advertisement does not need the additional display requirements for television found in Rule 7.2(d).<sup>1</sup> If the proposed advertisement is utilized in other media, or in a different way on the internet, it may need to comply with the additional display requirements. This opinion is confined to the use described by the submitting attorney.

Attorney advertising is subject to the requirements of Rule 7.1 of the Rules of Professional Conduct. Rule 7.1 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 also provides that statements made in attorney advertising must have a “reasonable factual foundation.” The commentary to Rule 7.1 states:

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 reasonable factual foundation.

The proposed advertisement characterizes the law firm’s services as “excellent” in two

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<sup>1</sup> In other facts and circumstances, the television display requirements of Rule 7.2(d) may apply to the dissemination of video on the internet.

statements. Under a group photograph of the attorneys, the word “excellence” is displayed and the audio script provides the proposed advertisement will conclude with the statement that the firm looks forward to “handling your legal needs for many years to come in our tradition of excellence.”

Both statements are inherently misleading because they are statements as to quality that are merely opinion that cannot be objectively verified or substantiated. 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. These types of statements, describing the attorneys' services in superlative terms, should not be utilized in attorney advertising.

The common meaning of excellent is outstandingly good of its kind and exceptional. Webster's New World Dictionary (3d College Ed. 1988). Synonyms include: superior, superb and better. Roget's International Thesaurus (4th Ed. 1977). The common understanding of the word "excellence" in the context of the firm's legal services implies the highest level of quality. There is no way to objectively verify the firm's opinion of itself. This opinion leads consumers to form a specific conclusion that they will receive "excellent" legal services from the firm that are by implication superior to those of other firms. The use of the term "excellence" to describe the firm's services must be removed.

By stating it provides a “tradition of excellence” in client services the firm creates an unjustified expectation as to the ability of the firm's lawyers to achieve particular results. The statements also amount to unsubstantiated comparisons of the attorneys' services to those of other attorneys in violation of Rule 7.1. Such inherently misleading statements cannot be cured by a disclaimer and must be removed. See Advisory Opinion #08-01500-A for discussion of the use of

excellence and Advisory Opinions #07-00188-A, #07-00776-A, #07-00859-A and #09-01114-A for discussion of the use of superlatives available at <http://www.jud.ct.gov/sgcAdvopinions/default.htm>.

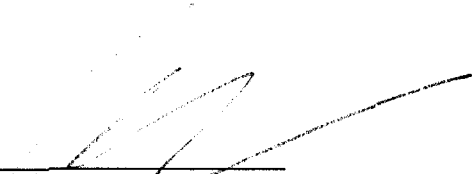
Rule 7.2(2) of the Rules of Professional Conduct provides that attorney advertising “shall comply with the mandatory filing requirements of Practice Book § 2-28A.” Practice Book §2-28A (3) provides that attorneys shall quarterly file “a list of domain names used by the attorney, which shall be updated quarterly.” The proposed advertisement must be electronically filed as attorney advertising. Since it is both a video, which is categorized as multi-media, and is internet advertising, the proposed advertisement is subject to two possible methods of electronic filing.

If the proposed advertisement is placed on the firm’s website it is considered filed as part of the content of the website when the website is quarterly filed pursuant to Practice Book §2-28A(3). Additionally, if the proposed advertisement is available via link from the municipal website and is capable of being located by pinpoint link, that link should be included in the list of domain names used by the firm in its quarterly website filing. If the video is utilized in a non-internet media or is not available by a pinpoint link, the proposed advertisement should be filed in compliance with the rules for electronic filing of multi media advertisements. See Rule 14E of the Statewide Grievance Committee Rules of Procedure available at [www.jud.ct.gov/SGC/rules.htm](http://www.jud.ct.gov/SGC/rules.htm).

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct as outlined above because the proposed advertisement fails to provide the name of an attorney responsible for the content and because it contains statements that cannot be factually substantiated in violation of Rule 7.1 of the Rules of Professional Conduct.

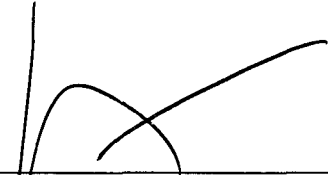
(E)

ISSUE DATE: May 6, 2010



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Mr. William J. Carroll