

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #11-07108-A Print Advertisement Soliciting Plaintiffs Injured by Medical Device**

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 November 8, 2011. The proposed print advertisement will solicit clients injured by a recalled medical device and will be placed in numerous local newspapers throughout the state for a period of three weeks. On November 9, 2011, this reviewing committee requested additional information about the advertisement pursuant to PB §2-28B(d). On November 16, 2011, the attorney complied with the request. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed print advertisement provides the following information: in large print at the top is the phrase "Hip Implant Recall"; underneath is a sentence soliciting contact for a free consultation to determine the viability of a claim against a named corporation; and below in bold print is the name of the attorney who submitted the proposed advertisement and a phone number. The last sentence in the proposed advertisement states: "No representation is made that the quality of legal services to be performed is greater that the quality of legal services provided by other lawyers."

The proposed advertisement contains the name of the attorney who submitted the

advertisement for an advisory opinion and is therefore in compliance with Rule 7.2(d) of the Rules of Professional Conduct, because it provides the name of at least one attorney admitted in Connecticut who is responsible for its content.

Attorney advertising is subject to the requirements of Rule 7.1 of the Rules of Professional Conduct and cannot be misleading. The proposed advertisement does not contain any assertions or representations as to quality that violate Rule 7.1 or that require the disclaimer language that is found in the last sentence.

This reviewing committee requested additional information from the submitting attorney as to whether any cases resulting from the proposed advertisement would be referred to another firm since such solicitations are frequently part of national class action lawsuits. The submitting attorney supplied the reviewing committee with the following information: two attorneys in a firm in Alabama “could be assisting” the submitting attorney or her firm with any cases that arise from the solicitation and the two firms are splitting the costs of advertising.

Cases resulting from the proposed advertisement may be referred by the submitting attorney to other attorneys, who will share the costs of advertising. Accordingly, Rule 7.2(h) of the Rules of Professional Conduct applies to the proposed advertisement.<sup>1</sup> Rule 7.2(h) provides:

No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

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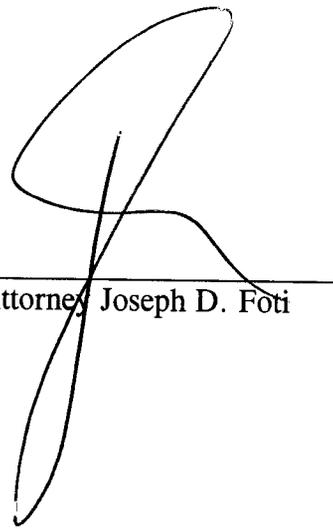
<sup>1</sup> Rule 7.3(h) contains a similar requirement for cases or matters solicited through personal contact that will be referred to another lawyer and states: “any written communication concerning a specific matter shall include a statement so advising the client.”

The proposed advertisement provides a disclaimer as to quality of legal services, but does not contain the name and address of the attorneys in Alabama who are sharing the costs of the advertisement. The proposed advertisement also does not disclose that cases received through responses to the advertisement may be referred to the same Alabama law firm.

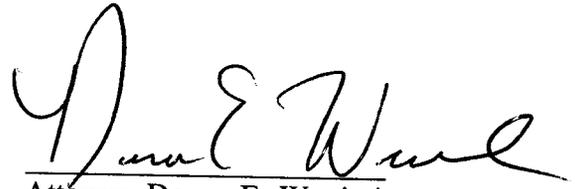
Accordingly, this reviewing committee concludes that the proposed advertisement does not comply with the Rules of Professional Conduct, because the advertisement does not contain the name and address of the nonadvertising lawyers who are paying partial costs of the advertisement and does not disclose the potential referral of cases as required by Rule 7.2(h) of the Rules of Professional Conduct.

(E)

ISSUE DATE: November 23, 2011



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Mr. Peter M. Jenkins