

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #12-07210-A Television Advertisement Regarding Debt Collection Practices

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 October 11, 2012. The proposed advertisement is a 30 second television commercial aimed at consumers who may have a claim for damages under the Fair Debt Collection Practices Act in Federal Court. This reviewing committee concludes that the proposed television advertisement does not comply with the Rules of Professional Conduct.

The television advertisement has been submitted in the form of a script and storyboard and does not include the actual video. The storyboard displays the content that will be seen on the television screen and the script of the words that are spoken. The proposed advertisement consists of ten graphics which depict the screens which will be seen behind a spokesman, who poses a series of questions and statements regarding debt collector practices.

The storyboard indicates that displayed throughout the proposed advertisement is a 1-800 toll free number; the phrases "Stop Debt Collector Abuse!" and "100% Free Service"; along with the website "StopCollector.com." In the course of the commercial, additional phrases appear such as "Stop the Calls," "Get up to \$1000" and "100% Free You Pay Nothing." The final screen on the storyboard displays the phrase "Get up to \$1000 for Abuse" and contains qualifying language in a much smaller font indicating that the proposed

advertisement is attorney advertising offered by the named law firm who is responsible for its content, along with the firm's address. There is further language explaining the following:

Our services are **FREE** because debt collectors are liable to pay our fees. We will advance **ALL COSTS** of litigation. We represent consumers only in Federal Courts on Federal claims. Prior results do not guarantee a similar outcome. No representation is made that the quality of the legal services performed is greater than the quality of legal services performed by other lawyers. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability. I am a paid non-attorney spokesperson. Dramatization.

The proposed advertisement does not comply with Rule 7.2(d) of the Rules of Professional Conduct because it does not contain the required display of the "name, address and telephone number of the lawyer admitted in Connecticut" for at least fifteen seconds in a commercial which is fifteen seconds or longer.

The requesting attorney had particular questions for this reviewing committee concerning the claims in the proposed advertisement that the service is "100% free" and that a client can "Get up to \$1000" and whether these statements are misleading under Rule 7.1 of the Rules of Professional Conduct. 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 and provides that in some circumstances: "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 both claims, whether a client can “get up to \$1000” and the statement that services are “free.” Both claims are prominently displayed throughout the commercial and the disclaimer found on the final screen is shown in a much smaller size and for a shorter period of time.

Concerning the claim that the firm’s services are “100% free,” the information displayed on the last screen of the proposed advertisement further explains that debt collectors are liable to pay the attorneys’ fees. So while the firm’s services are “100% free” to potential clients viewing the proposed advertisement, the attorneys are not necessarily unpaid or providing free service when pursuing debt abuse claims. The question for this reviewing committee then is whether the statement that the attorneys’ services are “free” is misleading because the attorneys, if they prevail, will be paid by the losing side in the debt collector abuse action.

This reviewing committee finds that the claim that the services are “100% free” is misleading under Rule 7.1. The statement that the firm’s legal services are free is true as regards potential clients only. The more accurate statement is that the services are free “to you” or to the client, since the attorneys will in fact be paid for their services should they prevail. The disclaimer on the last screen provides the additional information regarding who pays the attorneys’ fees, but this reviewing committee has concerns that the disclaimer may not be readable within the time allowed. Therefore, the statement found throughout the commercial that the firm’s services are a “100% free service” is misleading without further explanation that the attorneys will be paid by one side upon success in their claims.

Concerning the statement “Get up to \$1000,” which is varied on one screen to state “Get up to \$1000 for Abuse,” this reviewing committee finds that those phrases are not

misleading under Rule 7.1. A consumer reading these statements will immediately be apprised that they may be awarded \$1000 for debt collection abuse. The statements are concise, in the nature of advertising, though they are not complete; but this reviewing committee must ascribe some level of reasonableness that a potential client will understand that they must prevail first. We do not find the statement false and the lack of further explanation in the phrase itself does not constitute a material omission under Rule 7.1. This reviewing committee does not view the disclaimer language found on the last screen as helpful on this issue, because it is briefly displayed and does not contain clear language that collection of “up to \$1000” is predicated on the success of a debt collection abuse claim. All the same, a reasonable consumer will understand that an award of any money to them must be based on a successful claim.

In the request for the advisory opinion, the requesting attorney indicates that as part of the fee shifting provisions of federal law if a claim of collection abuse is successful, the debt collector pays legal fees and costs. The costs of litigation are initially advanced by the law firm and in the case of unsuccessful cases are written off by the firm. As a result, the proposed advertisement does not need to include a disclosure regarding the collection of costs and expenses as required by Rule 7.2(f) of the Rules of Professional Conduct which mandates such cost collection disclosure when an attorney's fees are advertised as “free.” For discussion of Rule 7.2(f) requirements also see Advisory Opinion #08-04895-A and Advisory Opinion #11-03423-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.

ISSUE DATE: November 7, 2012

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Advisory Opinion 12-07210-A

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a series of overlapping loops and a long, sweeping tail that extends towards the upper right.

Attorney Noble F. Allen

Advisory Opinion 12-07210-A



Attorney William J. O'Sullivan

Advisory Opinion 12-07210-A



Rev. Simon Castillo