

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #13-04044-A Brochure Advertisement Regarding Family Mediation 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, 2013. The proposed advertisement is a brochure advertising the services of the requesting attorney and her firm in the area of family law mediation. This reviewing committee concludes that the proposed advertisement complies with the Rules of Professional Conduct.

The proposed advertisement is a multi-page folded brochure that provides general information about the law firm's practice. The brochure lists the types of family law services the firm provides such as divorce and custody mediation, legal clinics about the divorce process and public speaking engagements. General information about the mediation process is provided in the brochure. The proposed advertisement states that the firm was founded by two attorneys as an alternative to costly legal battles, and the primary focus is family mediation, which is incorporated in the trade name of the firm. The firm's attorneys are also available to answer general questions about the traditional divorce process in order to assist in the determination if mediation is the preferred choice for the client.

The brochure also states that the firm provides a service called "legal coaching," which is apparently a limited-scope representation for pro se clients. The "legal coaching" will consist of helping to "fill out legal paperwork, answer questions you have, and give you an

overview of your rights and what to expect in court.” The firm’s office address in two locations is provided along with a phone number. The firm’s website address is listed and accompanied by a “QR code” (Quick Response Code) which connects to the firm’s URL or website. For purposes of this advisory opinion the firm’s website was not reviewed.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information which references the firm's name, address, phone and website information is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. The name of the firm, which is a trade name incorporating the firm’s primary practice area, does not imply specialization and therefore complies with Rules 7.4 and 7.4A. The brochure complies with Rule 7.2(d) by providing the name of an attorney admitted in Connecticut responsible for the content.

Rule 7.3 of the Rules of Professional Conduct regulates attorneys’ communications with prospective clients and provides the parameters of that contact. The requesting attorney does not indicate who will be the recipients of the proposed brochure advertisement. Rule 7.3 makes a distinction between communications that are sent to prospective clients depending on their known legal needs. Rule 7.3(c) provides that advertisements sent to persons who are “known to be in need of legal services in a particular matter” shall be labeled as advertising in accordance with the provisions of subsection (c). There is a further requirement found in Rule 7.3(d) that a caveat be included in the communication if the person has already obtained an attorney. Communications sent to the general public whose legal needs are unknown do not need to be labeled or contain this caveat. This advisory opinion assumes the firm has no foreknowledge of the particular legal needs of the prospective clients. If the proposed advertisement will be sent to prospective clients that the law firm knows are in need of legal services in a particular matter, the brochure should comply with the requirements of Rule 7.3(c) and Rule 7.3(d). See Advisory Opinion #08-04627-A available at

http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for further discussion of these requirements.

We also note that this proposed advertisement, depending on how it is utilized, should be filed with the Statewide Grievance Committee under the mandatory filing requirements of Practice Book Section 2-28A. If the proposed advertisement will be provided only to existing or former clients or given to prospective clients upon request at seminars or at the firm's offices, the advertisement qualifies for exemption pursuant to Practice Book Section 2-28A(b) (5) (i) and (6). If the firm wishes to make use of the brochure in other situations it would be necessary to file the advertisement pursuant to the requirements of Practice Book Section 2-28A.

The proposed advertisement because it concerns mediation services could be exempt from the filing requirements of Practice Book Section 2-28A, if mediation is exclusively the practice of the firm. Mediation (and related services) is specifically excluded from the definition of the practice of law under Practice Book §2-44A(b)(3). If an attorney offers mediation as a component of their legal practice (but otherwise practices law) they should file their advertisement pursuant to Practice Book §2-28A. The content of the proposed advertisement indicates that the attorneys also provide advice and offer legal clinics on the general divorce process. Since the law firm does not offer exclusively mediation services, the proposed advertisement would not be exempt on the basis of the definition of the practice of law found in Practice Book §2-44A(b)(3).

The law firm advertises that it will provide "legal coaching" to persons who are representing themselves. The proposed advertisement states that the "Attorney-Mediators can help you fill out legal paperwork, answer questions you have..." There are no other details concerning the particulars of this "legal coaching" service provided in the brochure.

There are several other Rules of Professional Conduct implicated in the "legal

coaching” service offered in the proposed advertisement in addition to those regulating attorney advertising. The arrangement the law firm proposes implicates Rule 1.2(c), which governs the scope of representation between attorney and client, which in this instance is a proposed limited-scope arrangement. An attorney may limit the scope of the representation if reasonable and the client gives informed consent. The agreement must be in writing pursuant to Rule 1.5(b), and the attorney must comply with Rule 1.16 upon terminating the representation. The commentary to Rule 5.5 indicates "a lawyer may counsel nonlawyers who wish to proceed pro se."

This opinion assumes that the requesting attorney and firm will comply with Rules 1.2(c), 1.5(b) and 1.16 of the Rules of Professional Conduct by fully informing clients in the fee agreement of the limited-scope of the representation in the “legal coaching” matters solicited by the proposed advertisement. Limited-scope representation raises the concern of ghostwriting if the attorney's services go beyond background advice and counseling to the drafting of pleadings and litigation documents that are then filed in court by pro se parties. For further discussion of this issue see Advisory Opinion #09-00658-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

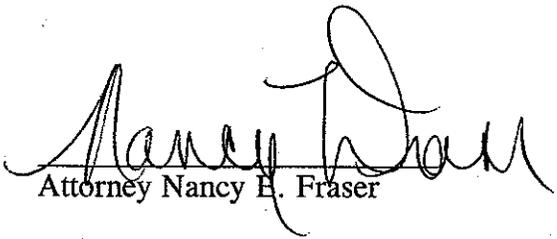
The Rules Committee of the Superior Court is currently contemplating a rule change in order to allow attorneys to file a limited appearance in the area of family law. As of the date of this advisory opinion, changes to Rules 1.5, 1.16, 4.2 and 4.3 of the Rules of Professional Conduct and to Practice Book §§3-3, 3-8, 3-9, and 4-2 were awaiting approval by the judges of the Superior Court. The legal question whether the arrangement offered in the proposed advertisement is permissible is outside the scope of this attorney advertising advisory opinion and the authority vested in this reviewing committee and the Statewide Grievance Committee under Practice Book §2-28B. We do note that it would be misleading to offer legal services that violate the Rules of Professional Conduct. See Rule 8.4(5) and commentary to Rule 7.1

(prohibiting the advertisement of an ability to achieve results by means that violate the Rules of Professional Conduct).

Accordingly, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct. This opinion is also limited to the discussion of the rules of attorney advertising as detailed above.

ISSUE DATE: June 7, 2013

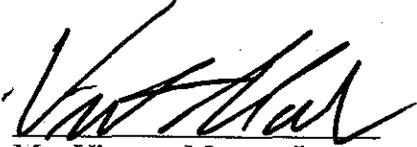
(E)



Attorney Nancy E. Fraser



Attorney William J. O'Sullivan

A handwritten signature in black ink, appearing to read "Vincent Mauro, Jr.", written in a cursive style.

Mr. Vincent Mauro, Jr.