

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #14-03988-A Letter Soliciting Consumers Affected by Automobile Recall

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 5, 2014. The proposed advertisement is a letter and accompanying envelope that will be sent to potential clients who are listed in a consumer database as the owner of a motor vehicle subject to manufacturer recall. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed letter provides the following information: in the center top of the page is the term "Advertising Materials" in red ink, underneath is the firm's letterhead with an initial logo, and the law firm's name and address. The subject line of the letter identifies the car manufacturer and part subject to recall.

The letter begins with the sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The letter then advises the recipient that a "serious recall" has been issued for thousands of vehicles by a particular manufacturer and offers that the firm has a legal team formed to assist car owners with their claims. The letter lists several models of cars affected by the recall and asserts that owners may be eligible for a claim for damages as part of a consumer class. The types of damages potentially available are for "loss of value, repair costs, loss of use, and other associated expenses."

The letter concludes with the statement that there is no cost for the firm to review a

consumer's case and "you owe us nothing unless there is a recovery from [car manufacturer]." The requesting attorney's name is provided in the signature line and underneath is a web address which is comprised of an acronym of the car manufacturer's name, and the words "recall" and "attorneys." A phone number is also provided which consists of the manufacturer acronym and the word "recall." The bottom of the letter provides, with an asterisk, that the potential client received the proposed advertisement because they were listed as an owner of "one of the effected [sic] vehicles. Our firm may associate with co-counsel as needed to prosecute your claim."

The accompanying envelope has printed in red on the top half the phrase "Time Sensitive Safety Information Enclosed." The phrase "Advertisement" in red ink is printed on the lower half of the envelope.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the letter consisting of the firm's name and address 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 letter complies with Rule 7.2(d) by providing the name of an attorney admitted in Connecticut who is responsible for its content.

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 car owners whose vehicle has been recalled for a defect, subsection (c) of Rule 7.3 is applicable to the proposed advertisement since there are potential legal issues surrounding the recall. 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 ... (emphasis added)

The proposed advertisement complies with Rule 7.3(d) because 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 envelope provided with the proposed advertisement does not comply with the specific requirement of Rule 7.3(c) because it is labeled with the word "Advertisement" in red rather than the requisite "Advertising Material." The envelope contains additional language that the enclosed material is "time sensitive safety information," but complies with Rule 7.3 (e) because it does not reveal on the outside the nature of the client's legal problem beyond the time period statement.

The proposed advertisement states in the body of the letter that there is “no cost” for the firm to review a case and nothing is owed unless there is a recovery from the car manufacturer. Rule 7.2(f) requires a firm to disclose whether it collects costs or expenses of litigation if it advertises “no fee will be charged in the absence of recovery.” The plain meaning of the statement “nothing is owed unless there is a recovery” indicates that costs or expenses are not collected so the proposed advertisement complies with Rule 7.2(f). For additional discussion of Rule 7.2(f) requirements also see Advisory Opinions #08-04895-A and #11-03423 available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

The proposed letter asserts that a consumer “may” have a claim or be entitled to various listed damages or costs and expenses incurred due to the recall. The conditional language complies with Rule 7.1 of the Rules of Professional Conduct, because it does not promise the certainty of a favorable outcome or recovery, which in reality is dependent on the facts of the particular consumer’s circumstances.

The proposed advertisement discloses that the attorney may associate with co-counsel to prosecute claims, but the attorney does not need to disclose the name of potential co-counsel in the advertisement unless co-counsel contributes to the cost of the advertisement. Rule 7.2(h) of the Rules of Professional Conduct provides that if an attorney shares the costs of advertising with an attorney not in the same firm, the name and address of that attorney(s) shall be provided in the advertisement along with the fact that the cases may be referred. For further discussion of ethical requirements in the referral of cases, see Advisory Opinion #13-06957-A at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

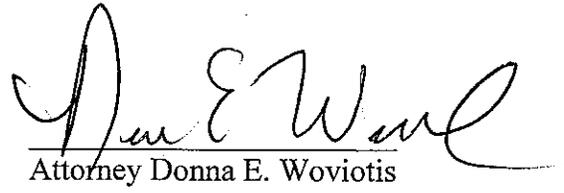
Although this advertisement displays a URL or website address, the website itself was not reviewed in connection with this advisory opinion request. The name of the website is not the name of the law firm, but instead the acronym of the car manufacturer and the words “recall” and “attorneys.” The phone number is the same acronym and the word “recall.” Both the website name and the phone number are apparently designed to facilitate advertising the automotive recall.

The website name and the phone number are not misleading under Rule 7.1 because the attorney is advertising his services for that specific type of case. For additional discussion of the use of phone numbers and URL addresses that are not the name of a firm or attorney, please see Advisory Opinions #10-01283-A and 13-02510-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because the envelope does not contain the specific phrase “Advertising Material” on the outside as required by Rule 7.3(c) of the Rules of Professional Conduct.

(E)

ISSUE DATE: May 19, 2014



Attorney Donna E. Woviotis

Atty. Thomas Sansone
Attorney Thomas Sansone

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A handwritten signature in cursive script, reading "Dr. Romeo Vidone". The signature is written in black ink and is positioned above a horizontal line.

Dr. Romeo Vidone