

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #16-03764-A Firm Brochure, *Super Lawyers*® Client Testimonials

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 2, 2016. The proposed print advertisement consists of two pages which will take the form of a tri-fold color brochure that will be utilized in three ways: in a display located in the lobby of the law firm, as a mailing to current and former clients and as an enclosure sent to other attorneys seeking referrals. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed brochure provides general information about the law firm's practice and profiles of the firm's attorneys. One page contains a list of numerous personal injury practice areas that are handled by the firm. Alongside this list are six attorney profiles accompanied by a photograph. The profiles describe each attorney's experience, types of cases they handle, along with educational background and awards received. One attorney lists his selection to *Super Lawyers*®, a commercial lawyer ranking publication. Several attorneys provide their rating from AVVO®, another commercial lawyer ranking website. On this same page is the offer of a free consultation as well as the statement: "No Legal Fees unless we recover for you." The firm's phone number and website URL are provided.

The second page of the proposed advertisement contains the firm's name along with a

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graphic of courthouse columns and a group photo of the attorneys. The firm's name, address, phone number and website address are listed. The statements are made: "Our team of lawyers is ready to help you" and "Personal Injury Lawyers protecting your interests." The offer of a free consultation is again displayed along with the statement that there are no legal fees absent a recovery. This page contains a section comprised of sample client testimonials. Statements are placed in quotations followed by a first name which describe positive experiences with several of the firm's attorneys. Some of the testimonials recite that the attorney is an "excellent communicator" or "excellent at what he does." Underneath these client testimonials is a disclaimer providing: "Each case has unique facts and circumstances, and similar or better results cannot be guaranteed."

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. Although this advertisement displays the firm's website address, the website itself was not reviewed in connection with this advisory opinion request. The offer of a free consultation is also permissible pursuant to Rule 7.2(i)(8). The list of the firm's practice areas and the profiles of the attorneys comply with Rules 7.4 and 7.4A of the Rules of Professional Conduct and do not contain any language regarding specialization or expertise.

Attorney advertising is governed by Rule 7.1 of the Rules of Professional Conduct. The commentary to Rule 7.1 provides that statements made in attorney advertising must have a "reasonable factual foundation." Connecticut's Rules of Professional Conduct contain no separate

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provision or rule regulating the use of client testimonials. Client testimonials, like all attorney advertising, are regulated by the provisions of Rule 7.1 and cannot violate any other Rule of Professional Conduct. Rule 7.1 of the Rules of Professional Conduct 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 testimonials in the brochure are from purported clients, who provide only their first name and detail their experience with several of the firm's attorneys. This advisory opinion is predicated on the assumption that the testimonials are from actual clients as represented in the testimonials. Testimonials in lawyer advertising must comply with the Rules of Professional Conduct by operation of Rule 8.4(1). Therefore, assuming the testimonials are from real persons describing their actual experience or opinion of the attorney, they are not misleading under Rule 7.1. Generally, attorneys should avoid describing legal services using superlative terms; particularly by stating or implying they provide superior service. Some of the testimonials use the term "excellent." However, in the context of the statements in general being about a particular skill and amplified by the disclaimer language that immediately follows, the testimonials do not impermissibly assert that the firm provides superior legal service. Nothing in the language of the testimonials on the website violates any other Rule of Professional Conduct.

The brochure states in two places that there is no legal fee unless the firm recovers for the client. Rule 7.2(f) provides that in the case where a firm offers no fee in absence of recovery, there shall be a disclosure "whether and to what extent the client will be responsible for any court

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costs and expenses of litigation.” This opinion assumes that since this disclosure is not made that the firm will not seek to recover costs and expenses of litigation along with legal fees in absence of recovery. Pursuant to Rule 7.2(f) the firm would need to add that disclosure to the proposed advertisement in order to recoup costs and expenses. For discussion of Rule 7.2(f) requirements also see Advisory Opinion #08-04895-A and #11-03423 available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. The requesting attorney indicates that the proposed advertisement will be made available in the firm’s lobby, mailed to existing and former clients, and mailed to other attorneys. In these circumstances, the brochure does not need to comply with the advertising labeling requirements of Rule 7.3(c), which mandates certain labeling requirements in circumstances where the need for legal services on the part of the recipient is known.

We also note that this proposed advertisement, as described by the requesting attorney, does not need to be filed with the Statewide Grievance Committee under the mandatory filing requirements of Practice Book Section 2-28A. Since the proposed advertisement will either be mailed to existing or former clients, other attorneys, or made available to prospective clients who obtain it themselves at the firm’s office, 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 may then be necessary to file the advertisement pursuant to the requirements of Practice Book Section 2-28A.

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One of the attorney profiles lists selection to *Super Lawyers*®, a commercial magazine and website, which undertakes to rank attorneys by practice area each year. We have addressed the use of the *Super Lawyers*® designation in attorney advertisements in Advisory Opinions #07-00188-A, #07-00776-A, and #0701008-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. Those advisory opinions are incorporated by reference into this advisory opinion, and the proposed advertisement needs to comply with the requirements outlined in those opinions.

Since the title of the *Super Lawyers*® designation is a superlative comment on an attorney's services, as outlined in our advisory opinions, information about the selection process employed by the ranking publication should accompany the advertising of selection to *Super Lawyers*®. The publisher has created a specific Connecticut selection information page to service as a disclaimer. The Connecticut selection information page is found on the *Super Lawyer's*® website at: http://www.superlawyers.com/connecticut/selection_details.html. In the case of a print advertisement this URL or website address should be placed near the *Super Lawyers*® designation, which can be accomplished by use of a parentheses, asterisk or footnote referencing the selection information URL.

The proposed advertisement does comply with the other requirements in advertising selection to *Super Lawyers*® by listing the year and the practice area for which the attorney was chosen and displaying the correct commercial designation of the publication. In the proposed brochure other of the firm's attorneys list different commercial ranking publications that do not contain a superlative title and do not require accompanying disclaimer language.

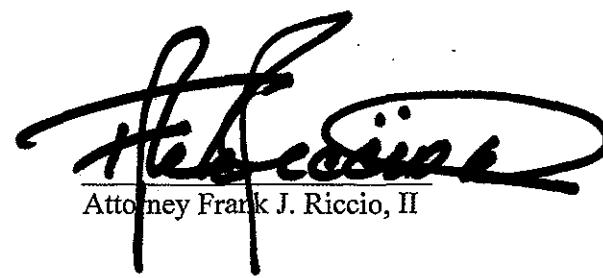
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Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because the proposed advertisement contains one statement that violates Rule 7.1 Rules of Professional Conduct. The statement may be brought into compliance by the use of a disclaimer as discussed in this opinion.

(E)

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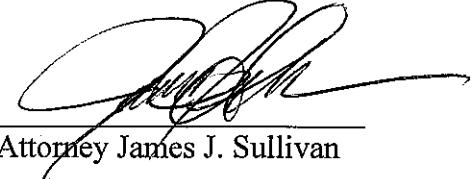
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A handwritten signature in black ink, appearing to read "frank riccio". Below the signature is a horizontal line.

Attorney Frank J. Riccio, II

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Attorney James J. Sullivan

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Ms. Joan Gill
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