

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #17-02122-A Letter by Nonprofit Legal Services Soliciting Debtors

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 March 31, 2017. The proposed print advertisement is a letter and informational attachment that will be mailed to individual debtors with matters in small claims courts. The letter will offer them assistance with their legal defense, either by providing legal services or supplying self-help material. The legal assistance is offered as part of a joint project by a legal services organization in conjunction with two university schools of law. The organization and universities are seeking to increase legal aid to low-income persons experiencing financial distress. The requesting attorney questions whether the proposed advertisement must be labeled as “Advertising Material” in red ink as required in Rule 7.3(c) of the Rules of Professional Conduct. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct and does not need to be labelled.

The letter provides the following information: legal services letterhead with the address and toll-free phone number of a local legal services office along with its designation as a nonprofit organization. The envelope for the letter was not included as part of this advisory opinion request. The letter begins with the sentence: “If you have already retained a lawyer for this matter, please disregard this letter.” The letter proceeds to explain that the organization is writing to the addressee because they have been sued for money and offers there may be various options in

dealing with the lawsuit. The basic steps in the legal process are outlined. The letter explains that the legal services organization, in conjunction with law students and professors at the law schools, will provide legal assistance for free if the addressee qualifies.

Standard small claims answer forms with preaddressed envelopes are referenced as included with the letter as well as a contact postcard to be mailed back to the organization if the addressee chooses. The answer forms and the postcard were not reviewed as part of this advisory opinion. The letter concludes with the advice that the addressee should answer the small claims suit by mailing back the answer form and attend court whether or not they request help from the legal services program. At the bottom of each page in italics a phone number is provided as well as a statement that there will be no charge for help. The name of a legal services attorney closes the letter.

The informational attachment is an article discussing financial distress in general and debt collection abuse in the United States. Information about the joint project for legal services is provided with a discussion of the levels of assistance their program offers to clients. The attachment states that the financial distress project aims to assist debtors with their cases in flexible ways such as providing material on how to conduct a defense, telephone assistance, financial counseling and attorney representation. The project is also conducting a study to see if such assistance improves the number of people who contest their cases and their outcomes. The sources of funding and the research team are also disclosed in the informational attachment.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the letterhead consisting of the organization's name, office address and

phone number 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 advertisement complies with Rule 7.2 (d) by listing the name of at least one attorney admitted in Connecticut 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. As asserted in the commentary, “unrestricted solicitation involves definite social harms” which the rule seeks to prevent. Direct in-person contact, because it is the most intrusive, is subject to the highest level of restriction and is not permitted except for listed exceptions. Rule 7.3(a)(2) specifically exempts “public or charitable legal services organizations” from the direct in-person restrictions.

Subsection(c) of Rule 7.3 regulates written communications for the purpose of obtaining professional employment but does not contain a similar stated exemption for nonprofit legal services. 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)

Since the proposed advertisement will be sent to persons with debt collection cases in small claims court, the prospective clients are “known to be in need of legal services in a particular matter.” The question for this reviewing committee is whether in the absence of an express exemption are nonprofit legal services exempt from the advertising labeling requirements found in

Rule 7.3(c)?

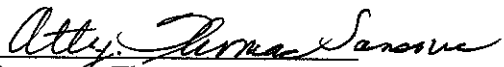
The commentary to the rule indicates that the restrictions imposed by Rule 7.3 which are designed to protect prospective clients from abusive advertising and intrusive solicitations are not relevant to certain situations such as: former clients, persons personally known or related to the attorney and where the attorney is “motivated by considerations other than the lawyer’s pecuniary gain.” (emphasis added) The commentary states that “the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in these situations.” Rule 7.3 in subsection (a)(2) already expressly exempts public or charitable legal services organizations from the general prohibition on direct in-person contact. This committee finds that despite the lack of an express exemption in Rule 7.3(c), the commentary evidences the intent of the rule to also exempt nonprofit legal services organizations from the labeling requirement of Rule 7.3(c). The proposed advertisement does not need to display the label “Advertising Material” in red ink on the first page and on the envelope.

Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct.


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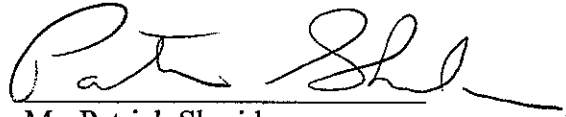
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Attorney Thomas Sansone

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Attorney Agustin Sevillano

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A handwritten signature in cursive script, appearing to read "Pat Sheridan", written in black ink.

Mr. Patrick Sheridan