

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #08-04914-A Advertisement Sent to Former Clients and Other Attorneys 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 September 9, 2008. The proposed print advertisement will be sent only to former clients and other attorneys to inform them that the requesting attorney is narrowing the scope of his practice to family law. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The advertisement provides the following information: a letter sized advertisement that provides the name, address, phone and fax numbers and website address of the attorney at the top side of the page. At the center top of the page is printed: "The Law Offices of [attorney's name], LLC, Family Law Matters, *Caring. Seasoned. Steadfast.*"

Underneath is text describing the attorney's experience in family cases. The statement is made: "That's why he has decided to focus on family matters as his primary area of practice." The next paragraph contains a client testimonial reciting how the requesting attorney responded promptly to phone calls and explained everything to the client. The client is identified by initials and town. A second similar testimonial is found at the end of the advertisement which praises the attorney's handling of the case and his ability to help the client anticipate potential difficulties the client's children may encounter in the divorce process. The client states, "[b]ottom line is that I

ended up with a very good settlement I was happy with." This client is also identified by initials and a town. The advertisement concludes with biographical information about the attorney and includes a photograph of the requesting attorney.

Practice Book § 2-28A mandates the filing of certain types of attorney advertising with the Statewide Grievance Committee. There are several exceptions to the mandatory filing requirements. Practice Book § 2-28A(b) lists the types of advertisements and Rule 7.2(i) of the Rules of Professional Conduct lists the types of information that are exempt from the mandatory filing requirements of Practice Book § 2-28A. Practice Book § 2-28A(b)(5)(i) provides that the filing requirements of Practice Book § 2-28A(a) do not apply to "a communication sent only to: [e]xisting or former clients." Practice Book § 2-28A(b)(5)(ii) provides that the filing requirements of Practice Book § 2-28A(a) do not apply to "a communication sent only to: [o]ther attorneys or professionals." Therefore, if this brochure is sent exclusively to former clients and to other attorneys, this advertisement does not need to be filed with the Statewide Grievance Committee.

Since the attorney has requested an advisory opinion regarding the contents of the brochure as attorney advertising, we reviewed the Rules of Professional Conduct that are implicated in the brochure, even though it is not subject to the mandatory filing rules.

Connecticut's Rules of Professional Conduct contain no separate provisions 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 Rules 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 purport to be from actual clients who provide their initials and a town of residence, giving the impression they are real persons. This advisory opinion is predicated on the representation that the testimonials are from actual clients of the firm. 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 clients describing their actual experience or opinion of the attorney, they are not misleading under Rule 7.1. Nothing in the language of the testimonials violates any other Rule of Professional Conduct.

The proposed advertisement indicates the requesting attorney has "decided to focus on family matters as his primary area of practice." Rule 7.4 controls the way in which attorneys may describe their areas of practice. In Advisory Opinion #08-04739-A, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm, the current version of Rule 7.4 and the forthcoming change to Rule 7.4 are discussed. Rule 7.4 states:

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not state or imply that the lawyer is a specialist except as follows and as provided in Rule 7.4A.

The commentary to the current rule further provides:

If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" or that the lawyer's practice "is limited to" or "concentrated in" particular fields is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist.

Rule 7.4 will change effective January 1, 2009. The limitation on terms of "secondary

meaning" has been substantially modified. The commentary will now state:

A lawyer may indicate that the lawyer "concentrates in," "focuses on," or that the practice is "limited to" particular fields of practice as long as the statements are not false or misleading in violation of Rule 7.1. However, the lawyer may not use the terms "specialist," "certified," "board-certified," "expert" or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A.

The phrase in the proposed advertisement that states the requesting attorney will focus on family law as his primary area of practice violates the commentary to the current version of Rule 7.4, but is in compliance with the amendments to the Rule that are effective on January 1, 2009. Since Rule 7.4 is to change effective January 1, 2009, this reviewing committee will not require the proposed advertisement to comply with the more restrictive requirements of the current Rule 7.4.

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

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