

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #19-01997-A Modified Website Advertising Prepaid Legal 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 March 19, 2019. The proposed advertisement is a website advertising a “low cost prepaid legal services plan” for any member “who becomes a car accident victim in Connecticut.” This reviewing committee concludes that the proposed advertisement complies with the advertising rules of the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict the proposed website content. The requesting attorney indicates the content is totally revamped from earlier versions of the website which were the subject of three prior advisory opinion requests: Advisory Opinion #14-04961-A, and #16-3823-A and #17-07439-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. These advisory opinions are incorporated by reference into this advisory opinion. Much of the substantive information about the company’s legal services plan (hereinafter, “the company”) is the same. New information and new slogans have been added and these will be the subject of this advisory opinion.

The comments in this advisory opinion are limited to the proposed new content of the website pages submitted for approval. This opinion is limited to the Rules of Professional Conduct related to legal advertising only, namely Rules 7.1 through 7.5, and is based on the

assumption that the proposed website is legal advertising. Other areas of law, such as insurance or consumer protection are not considered here as they are outside the scope of the request and the opinion process set forth in Practice Book §2-28B. It is beyond the scope of an advisory opinion made pursuant to Practice Book §2-28B to approve of a business model. This advisory opinion does not preclude the possibility that aspects of the company's business model and its formation as a limited liability company, may be subject to other regulation, including the laws of other states. Other possible ethical issues between the company, its attorneys and its clients, such as confidentiality and conflict of interest, are outside the scope of an attorney advertising opinion. This opinion concerns only the advertising rules applicable to the website as submitted to this reviewing committee.

The proposed website consists of a home page, a page detailing the company's fee structure including a page about personal and family plan rates, a section advocating the company's benefits to a member and a section of Frequently Asked Questions ("FAQ's"). The remainder of the website consists of links to sign up for the two types of plans and to contact the company. Four pages of Terms and Conditions, along with a privacy policy and data collection disclosures, are part of the submission. This advisory opinion will only comment on two terms and conditions that are applicable to the advertising rules. Website terms and conditions, privacy and data collection policies and disclosures are outside the scope of an attorney advertising advisory opinion.

The requesting attorney indicates that the actual layout of pages and any photographs or background colors are not reflected in the hard copy. The attorney indicates each page of the website will have the same banner across the top and bottom of the page. The top banner will be the company's logo and the slogan "We put you first if you become a car accident victim." The

bottom section of the pages will consist of links or tabs to the contact, the terms and conditions and the privacy policy pages.

The home page has a logo representing two cars colliding along with the statement that the company provides “a low cost prepaid legal service plan” which represents a member who “becomes a car accident victim in Connecticut.” A member “**does not pay any legal fee**” but does pay expenses such as “costs of litigation and court fees.” The statement is made: “We put you first if you become a car accident victim. Protect yourself and your family with [the company].”

The subsequent pages provide information on the annual membership fee along with an illustration explaining the company fee structure in the case of gross recovery minus expenses. A new feature from prior versions is a \$200 per family annual membership fee and a special rate for first time membership. The next page consists of information about the company’s types of plans. Statements are made offering the opinion that the insurance industry’s priorities are not primarily car accident victims. There is a link to learn more at the bottom of the page, but that content was not provided.

The next two pages are entitled “Why [the company].” The content elaborates on the idea that insurance companies are less concerned with accident victims and seek to limit compensation by trying to “squeeze every dollar” from any claim. The statement is made that what consumers need “is an affordable product modeled on car insurance.” Following this page are two sections which provide a comparison between amounts awarded in a typical contingency one third fee arrangement and the award a member will recover under the company’s model. Similar information was provided on prior versions of the website.

An additional section entitled “The [Company] Guarantee” is new. The “guarantee”

states that if a member rejects a settlement worked out by the assigned attorney and opts to hire outside counsel on a contingency fee, the company will refund membership fees if the resulting settlement is a larger net settlement than the company lawyer had obtained. An illustration of the mathematics is provided.

After a page of graphics and links to the personal and family plans, is the FAQ section. Language similar to prior versions of the website instructs how to make a claim, how it is evaluated and explains the relationship between the assigned attorney and the member. New content in this section states that an investigator might be retained if more investigation is needed than the information found in the police accident report. The expense will be the member's responsibility. If commissioned, the investigator will prepare a report for the attorney to review with the member. The investigator expense is nonrefundable even if the assigned attorney ultimately decides the case has no merit.

The next section of the proposed website provides information about what happens after the member is assigned an attorney and possible ways a claim might be resolved. The information in this section is more detailed than in previous versions of the website. New language is added regarding the fee agreement between the member and the assigned attorney. Language provides that the scope of representation does not include the cost of appeal. Details and monetary amounts are provided to illustrate typical costs of litigation.

New information is provided that the attorney will advance costs on the member's behalf except any investigator's report. The fee agreement obligates the member to repay the attorney if the claim is resolved by settlement or trial.

The next section contains similar language to the prior versions listing the minimum experience required of participating attorneys, describing the relationship between the member,

the company and the attorney and the procedure to request a new attorney or to hire the assigned attorney for other legal work outside the company.

The terms and conditions section contains eleven subsections, only two of which implicate the Rules of Professional Conduct. One section provides the policy if a covered person, who is part of the member's household under the family plan, is injured in an accident caused by the member. All covered persons, including the member, must consent in writing to the provider attorney proceeding with a claim against the member. The other relevant section provides that the member and in the case of households, a covered person, shall sign a retainer agreement with the provided attorney and agree to pay all costs of litigation and court fees when the matter is resolved.

The section of the proposed website submitted for review captioned Privacy Policy was not reviewed since its terms are outside the scope of an attorney advertising advisory opinion.

The proposed website advertisement does not comply with Rule 7.2(d) of the Rules of Professional Conduct by providing the name of an attorney admitted in Connecticut responsible for its content. The three prior versions submitted for an advisory opinion contained the name of the attorney who requested the advisory opinion. This reviewing committee assumes the name of the attorney will be on the modified website as it was on prior versions.

The proposed website in several places explains that the plan member while paying no attorney fees will be responsible for court costs and litigation expenses and states that this provision will be in any retainer agreement. The advertisement complies with Rule 7.2(f) of the Rules of Professional Conduct which provides that an advertisement which states there is no legal fee in a matter shall disclose "whether and to what extent the client will be responsible for any court costs and expenses of litigation." The new information on the modified website stating

that the provider attorney will advance the costs of litigation until resolution complies with Rule 1.8(e)(1). Additional information on the website addresses a potential conflict of interest in the case of the family plan and creates a policy to comply with Rule 1.7 of the Rules of Professional Conduct.

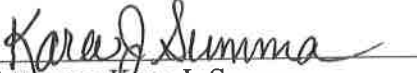
Attorney advertising is subject to the requirements of Rule 7.1 which provides that an attorney “shall not make a false or misleading communication about the lawyer or the lawyer’s services” either by assertion or omission. This reviewing committee finds that the revised website with the additional clarifying information does not violate Rule 7.1 and is not false or misleading content. Prior concerns about the company comparing its service to insurance are not present. The statement made in the “Why [the Company]” section which asserts that consumers need a product “modeled on car insurance” (emphasis added) to assist accident victims,” does not carry the implication that the company’s product is in fact insurance.

Accordingly, this reviewing committee opines, with the exception of providing a full attorney name pursuant to Rule 7.2(d), the proposed advertisement complies with the Rules of Professional Conduct concerning legal advertising.

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