STATEWIDE GRIEVANCE COMMITTEE

Advisory Opinion #07-00781-A
Television Advertisement
Referral of Litigation to Out-of-State Firm

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 August 9, 2007. On August 15, 2007, the undersigned requested additional information pursuant to Practice Book § 2-28B(d). On September 18, 2007, the attorney complied with our request and provided the balance of the requested information. The proposed advertisement is a mass tort television advertisement focusing on allegedly defective Kugel mesh patches. The proposed advertisement is submitted for review in the form of a printed script divided into two boxes with one box entitled "visuals" and the other entitled "audio".

The visual box lists what will be displayed in graphics and the audio box is a transcription. The visuals consist of two questions to the viewer regarding recent hernia surgery and the Kugel mesh patch. Underneath the questions is a vertical listing of the words "recalled, Kugel Mesh Patch, D'Oliveira Lwr 3rd." The answer to our request for information indicates that this means the graphic will be located on the lower third portion of the advertisement's screen. The next visual listing is a description of medical symptoms.

The audio side of the script asks a question regarding recent hernia surgery, describes the FDA recall, and solicits cases involving complications from hernia surgery or the Kugel patch.

The information is accompanied by a 1-800 phone number.

The law firm submitting the proposed television commercial is located in Rhode Island. The commercial would be advertised in Connecticut with the name of the firm's Connecticut licensed attorney as the responsible attorney, with her name, address and phone number in Rhode Island displayed. At the bottom of the script is a notation that graphics will be added displaying the name, address and phone number of the Connecticut licensed attorney which will be displayed in accordance with Rule 7.2 of the Rules of Professional Conduct. There is also a statement "that cases of this type are not handled by this firm but are referred to other attorneys who specialize in said cases." (emphasis added) In answer to the request for more information, the firm submitted a disclaimer graphic to be displayed for 5 seconds that further provides, "[t]he RI Supreme Court does not license or certify any lawyer or specialist in any field or practice. [Name of Law Firm] is not a partnership but a professional corporation, where [the named attorney] is the sole shareholder. Most cases of this type are not handled by the firm but are referred out to other attorneys." The name and address of the referral firm will also be included in the graphic with the statement, that they "specialize in these type of cases." This reviewing committee concludes that one portion of the advertisement does not comply with the Rules of Professional Conduct.

The use of the term "specialize", in the statement at the bottom of the script, and in the proposed disclaimer regarding referral to an out-of-state law firm violates Rule 7.4 of the Rules of Professional Conduct because it indicates specialization. This is inappropriate unless the lawyer is certified as a specialist in accordance with Rule 7.4A of the Rules of Professional Conduct. It is also inappropriate to attribute specialization to a law firm. Pursuant to Rule 8.4(1), an attorney or

law firm cannot impute specialization on another firm when it cannot make such a claim about itself. Pursuant to Rule 8.5(a), the Rules of Professional Conduct apply to an attorney who is not admitted in Connecticut if "the lawyer provides or offers to provide any legal services in this jurisdiction." With the removal of the word "specialize", this portion of the advertisement will comply with Rule 7.4.

Since the advertisement contains the disclaimer telling the viewer that cases will be not be handled by the advertising law firm but will be referred to another firm, the advertisement complies with Rule 7.3(h).

Accordingly, this reviewing committee opines that the foregoing portion of the advertisement does not comply with the Rules of Professional Conduct.

(E)

OPINION DATE: 10/04/2007

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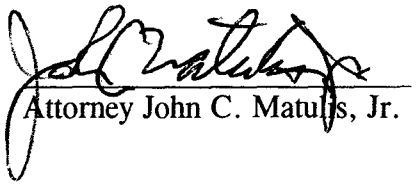
Attorney Tracie Molinaro



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Mr. Malcolm Forbes