

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #12-01871-A Mailing to Prospective Clients In Serious Injury Case Rule 7.1 Misleading Statements**

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 22, 2012. The proposed print advertisement is a letter to be mailed to potential clients who have had been involved in a serious motor vehicle accident. The content of the proposed advertisement is very similar to the proposed advertisement discussed in Advisory Opinion 12-01870-A. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The advertisement provides the following information: a letter on firm letterhead that provides the name, address, phone and fax numbers, and website address of the law firm. The name of the firm is the name of the attorney who requested the advisory opinion along with "& Associates." The requesting attorney is admitted in Rhode Island, Massachusetts and Connecticut and these admissions are listed on the letterhead. The sample address in the letter is Rhode Island and the firm is located in Rhode Island. The attorney, upon request, clarified that the proposed advertisement would also be sent to prospective clients in Connecticut. This reviewing committee offers no opinion as to whether or not this communication complies with the rules on attorney advertising in Rhode Island.

The first sentence of the letter, after the salutation, states: "If you have already retained a lawyer for this matter, please disregard this letter." The letter introduces the attorney and his firm and states: "I was recently informed that you have been involved in a motor vehicle accident where you are not at fault." The proposed advertisement asserts that the firm only handles personal injury and disability cases and offers: "If you were injured as a result of the accident then you have RIGHTS and are entitled to compensation for your loss." The letter then lists various enumerated elements of damage that may result in compensation such as "pain and suffering, lost wages, and medical bills" and physical injuries.

The letter further provides that the firm is available 24 hours a day, seven days a week, has seven office locations or will come to the prospective client's house if needed. The letter states that the consultation is free if the client contacts the attorney and that "there are **NO FEES, COSTS, OR EXPENSES OF ANY KIND** unless the firm is successful in obtaining a settlement." The letter states that the potential client should be aware that there is a statute of limitations for personal injury matters and that if a claim is not brought within the proper time frame, it is barred. The potential client is asked to contact the attorney at a 1-800 number. On the bottom of the letter on the right side is the phrase "ADVERTISING MATERIAL" in red ink.

The envelope in which the letter will be mailed was also submitted with the proposed advertisement. The firm's name and address are listed in the upper left corner and the lower left corner of the envelope contains the phrase "ADVERTISING MATERIAL" in red ink.

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

numbers, website address and jurisdictions of admission to practice 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. The proposed advertisement also complies with Rule 7.2(f) by clearly stating that there are “no fees, costs or expenses of any kind” charged to the client unless money is recovered. This reviewing committee was puzzled by the use of the term “settlement” in the sentence about no fees or costs rather than using the more general term “recovery” as found in Rule 7.2(f). If the requesting attorney does not try cases, but only obtains settlements, that should be disclosed to prospective clients.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides limitations on that contact. Since the proposed advertisement will be sent to persons who have had a serious motor vehicle accident, there are several subsections of Rule 7.3 that are applicable. Rule 7.3(c) provides that communications sent to a “prospective client known to be in need of legal services in a particular matter” shall be labeled “advertising material” in red ink on the first page and on the lower left side of the envelope. The prospective clients are solicited because of a motor vehicle accident and are therefore “known to be in need of legal services in a particular matter” as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by providing the required label on both the letter and accompanying envelope.

The proposed advertisement also complies with Rule 7.3(d) because it contains the requisite first sentence: “If you have already retained a lawyer for this matter, please disregard this letter.”

The proposed advertisement complies with the provisions of Rule 7.3(g) as well. Subsection (g) of

Rule 7.3 provides that written communications to prospective clients (that are not brochures or pamphlets) shall be on letter-sized paper rather than legal-sized paper and shall not resemble legal documents. The envelope accompanying the letter complies with Rule 7.3 (e) by not revealing on the outside the nature of the client's legal problem.

The proposed advertisement is a letter to prospective clients who have had a motor vehicle accident and is subject to the provisions of Rule 7.3(b)(5). Please see Advisory Opinion #08-04988-A available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm) for further discussion of this Rule in relation to probate solicitations. Rule 7.3(b)(5) provides:

A lawyer shall not contact, or send, a written or electronic communication to, a prospective client for the purpose of obtaining professional employment if... (5) [t]he written or electronic communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 40 days prior to the mailing of the communication.

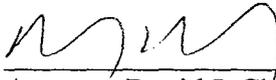
The plain language of Rule 7.3(b)(5) indicates that the forty day waiting period applies to the proposed advertisement in soliciting persons who have had a motor vehicle accident which may involve personal injury. It is the responsibility of the requesting attorney to take reasonable steps to comply accordingly with the required forty day waiting period of Rule 7.3(b)(5) before mailing the proposed advertisement. Provided the forty day waiting period is observed, the proposed advertisement is in compliance with the provisions of Rule 7.3 concerning communications with prospective clients.

This reviewing committee finds the statements made in the proposed advertisement about compensation for damages, as outlined earlier in this opinion, to be misleading under Rule 7.1 of the Rules of Professional Conduct. The requesting attorney has not indicated how he has ascertained that the addressee or prospective client was not at fault for the accident or how he could be certain that they “are entitled to be compensated” for the listed injuries or economic losses. The statements in the letter are made as assertions of entitlement to compensation for the enumerated damages and are not conditionally worded. This reviewing committee finds those statements are misleading because a potential client, in reading the proposed advertisement and not knowing the applicable law, would be led to believe they are entitled to compensation without regard to the particular circumstances of the matter.

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

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ISSUE DATE: April 12, 2012



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