

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #09-01114-A Personal Injury Print Advertisement Use of Superlatives and Monetary Verdicts

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 January 2, 2009. The proposed print advertisement will run in a local newspaper. On January 27, 2009, additional information pursuant to Practice Book §2-28B(d) was requested. On February 2, 2009, the attorneys complied with the request. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The advertisement provides the following information: a logo and graphic with the firm's initials and name in the upper right corner, the photographs and names of three attorneys on the bottom third of the proposed advertisement, several practice areas listed above the attorney photographs, and the name, address, phone number, email and website address of the firm underneath the photographs. Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, all of the above referenced information is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct and therefore is not false or misleading.

On the center and upper right portion of the proposed advertisement in large letters, next to the firm's logo, is the phrase: "For the highest degree of legal skill, energy & personal attention."

Underneath in smaller print is the statement: "Our success rate for legal representation in divorce and family matters is well known. Did you know that we also get superb results for our personal

injury clients?" Underneath is the caption: "EXAMPLES OF OUR VERDICTS AND SETTLEMENTS." Listed underneath the caption are six types of cases, such as slip and fall or car crash with injury accompanied by a dollar figure. Underneath the listing of cases and award amounts is the statement: "IF YOU ARE INJURED IN AN ACCIDENT [THE FIRM] CAN HELP."

Attorney advertising is subject to the requirements of Rule 7.1 of the Rules of Professional Conduct. Rule 7.1 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 commentary to Rule 7.1 elaborates on the types of statements that are potentially misleading, including the recitation of past results obtained by an attorney and comparison of those services to those of other attorneys. The commentary to Rule 7.1 provides:

An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

As detailed above, the proposed advertisement contains a listing of examples of past verdicts or settlements in various types of personal injury cases and provides the monetary awards obtained in the cases by the firm. Pursuant to the commentary to Rule 7.1, such details of past successes for other clients, though truthfully reported, are potentially misleading because they may create unjustified expectations in prospective clients as to the results that can be obtained in their cases. An appropriate disclaimer or qualifying language inserted at the end of these statements would alleviate the potentially misleading statements and bring them into compliance with Rule 7.1. See Advisory Opinions #08-01500-A and #08-01271-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for further discussion regarding the use of disclaimers in listing past results or successes.

The commentary to Rule 7.1 also provides that statements made in attorney advertising must have a "reasonable factual foundation." The commentary to Rule 7.1 states:

A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

The proposed advertisement contains the statement, as detailed above, that the firm gets "superb results for our personal injury clients." (emphasis added) This statement is inherently misleading because it is a subjective statement as to quality that cannot be objectively verified or substantiated. Statements made by attorneys in advertisements must be based on a factual foundation and not opinion. A reasonable factual foundation should be an objectively verifiable fact. There is no objective way to verify the firm's opinion of itself. The proposed advertisement

is likely to lead prospective clients to form a specific conclusion that they will receive "superb" results or that the firm is "superb" and superior to other law firms.

The word "superb" is defined in the dictionary as meaning super, extremely fine or excellent. Webster's New World Dictionary (3d College Ed. 1988). Synonyms include: super, excellent, of the highest type, magnificent. Roget's International Thesaurus (4th Ed. 1977). The common understanding of the word "superb" therefore implies the highest level of quality. By stating it obtains "superb results" for clients, the firm creates an unjustified expectation as to the ability of the firm's lawyers to achieve particular results and the statement also amounts to an unsubstantiated comparison of the attorneys' services to those of other attorneys in violation of Rule 7.1. Such inherently misleading statements cannot be cured by a disclaimer and must be removed. See Advisory Opinions #07-00188-A, #07-00776-A and #07-00859-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

The phrase found at the top portion of the proposed advertisement, described above, that the firm maintains "the highest degree of legal skill" (emphasis added) must also be removed for the reasons stated above. The statement is a superlative about the attorneys' services that also cannot be objectively verified. These statements, describing the attorneys' services in superlatives, should also not be utilized in any other forms of advertising used by the firm such as the firm website.

Pursuant to the commentary to Rule 7.1 quoted above, the statement made in the proposed advertisement that "[o]ur success rate for legal representation in divorce and family matters is well known" should also be removed. This reviewing committee requested substantiation of this

statement from the requesting attorney. The statement that the firm's success rate is "well known" was not substantiated as requested, and accordingly as stated, it should be removed or modified to comply with Rule 7.1.¹

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct as outlined above because the proposed advertisement fails to provide an appropriate disclaimer and contains statements that cannot be factually substantiated. It therefore violates Rule 7.1 of the Rules of Professional Conduct.

(E)

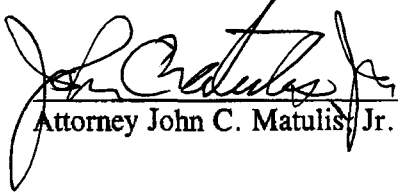
ISSUE DATE: February 26, 2009

¹ This opinion does not assume that success in family cases can actually be quantified.

A handwritten signature in black ink, appearing to be 'G. Naab', written over a horizontal line.

Attorney Geoffrey Naab

Advisory Opinion 09-01114-A



Attorney John C. Matulis, Jr.

Peter M. Jenkins

Mr. Peter M. Jenkins