

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #09-04741-A Firm Brochure; Rule 7.4A(d) Firm Expertise

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 July 24, 2009. The proposed print advertisement is a brochure that will be mailed to existing clients. Copies of the brochure will also be located in the firm's reception area for existing and potential clients to access. The requesting attorney also indicated that the brochures may be handed out at speaking engagements and meetings attended by the firm's attorneys and may be given to existing clients who would like to share the firm's information with others. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement is a multi-page folded brochure that provides general information about the law firm's practice. The first two pages of the brochure consist of two general phrases about the nature of law, a photograph of a man and boy and the name of the firm.

The next two pages of the brochure provide a general description of the firm's legal services and several paragraphs that detail information about the firm's various practice areas. A group photograph with the names of the firm's three attorneys is also displayed. Underneath the photograph is a paragraph providing information about the multilingual staff of the firm followed by the firm's letterhead type information, which provides the firm's name, address, telephone and fax numbers, email and website addresses.

Above the paragraphs detailing the practice areas is the statement in larger and bold print: "Exceptional capabilities. With a personal connection." (Emphasis added) In the paragraph entitled "**Litigation**" the statement is found: "With extensive success litigating many types of civil and criminal cases, we can handle any dispute such as those involving employment, property, construction, and landlord/tenant." (Emphasis added) In the paragraph after the description of the practice areas is a paragraph captioned "Offering our expertise to the community-at-large."

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information which references the firm's name, address, phone and fax numbers, e-mail and website 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.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. The requesting attorney indicates that the proposed advertisement will be mailed to existing clients and will be made available at the firm's office to existing and potential clients. The brochures may also be handed out at speaking engagements and meetings attended by the firm's attorneys.

This opinion assumes that the brochure will only be mailed to existing clients or will be made available to potential clients who request the brochure or choose to take it from the reception area. If utilized in this manner, the brochure does not need to comply with the advertising labeling requirements of Rule 7.3(c).

We also note that this proposed advertisement, as described by the requesting attorney, does not need to be filed with the Statewide Grievance Committee under the mandatory filing

requirements of Practice Book Section 2-28A. Since the proposed advertisement will either be mailed to existing clients or given to prospective clients who request it at seminars or obtain it at the firm's offices, the advertisement qualifies for exemption pursuant to Practice Book Section 2-28A (b) (5) (i) and (6). If the firm wishes to make use of the brochure in other situations it may then be necessary to file the advertisement pursuant to the requirements of Practice Book Section 2-28A.

The brochure contains descriptions of the firm's services in several practice areas. One of the statements, as outlined above, characterizes the services the firm provides in terms of their superiority or uniqueness. The statement is made that the firm has "Exceptional capabilities." (Emphasis added). There are several previously issued Advisory Opinions that discuss Rule 7.1 and the use of superlatives in attorney advertising. Please see Advisory Opinions #09-01114-A, #09-01229-A, #07-00188-A, #07-00776-A and #07-00859-A, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

Attorney advertising is governed by Rule 7.1 of the Rules of Professional Conduct. The commentary to Rule 7.1 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 phrase "exceptional capabilities" used on the second page of the brochure is inherently misleading because it is a subjective statement as to quality about the firm's services. The

statement is merely an opinion that cannot be objectively verified or substantiated. Statements made by attorneys in advertisements must be based on a factual foundation and not subjective opinion. A reasonable factual foundation should be an objectively verifiable fact.

The word "exceptional" is defined as meaning much above average in quality and ability, forming an exception. Webster's New World Dictionary (3d College Ed. 1988). Synonyms include: extraordinary, outstanding, rare and unique. Roget's International Thesaurus (4th Ed. 1977). The common understanding of the word "exceptional" in the context of the firm's legal services or "capabilities" implies the highest level of quality. There is no way objectively to verify the firm's opinion of itself. This opinion leads consumers to form a specific conclusion that they will receive "exceptional" legal services from the firm that are by implication superior to those of other firms. Accordingly, the use of the term "exceptional" to describe the firm's capabilities or services must be removed.

The second page of the brochure states that the firm offers "our expertise to the community-at-large" (emphasis added). Rules 7.4 and 7.4A regulate the manner in which an attorney or a firm may characterize practice areas. Rule 7.4A(d) provides that "certification as a specialist may not be attributed to a law firm." The statement violates Rule 7.4A(d) of the Rules of Professional Conduct by characterizing the law firm's services in terms of its expertise. The word "expertise" in the above statement must be removed.

As referenced above firm describes its "extensive success" in litigation. 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

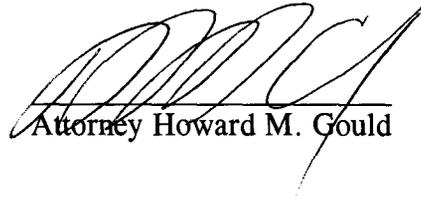
as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case....The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

The proposed advertisement does not contain details listing the past successes of the law firm or the basis of this claim of "extensive success." Pursuant to the commentary to Rule 7.1, even an advertisement that truthfully reports achievements on behalf of other clients may be misleading, because it may create unjustified expectations in prospective clients as to the results that can be obtained in their cases. Since the firm does not merely report it has success in litigation, but characterizes that success as "extensive," an appropriate disclaimer or qualifying language inserted at the end of the statement would bring it into compliance with any potential misleading implications discussed in the commentary to Rule 7.1.

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because the proposed advertisement contains statements that violate Rules 7.1, 7.4 and 7.4A of the Rules of Professional Conduct.

(E)

ISSUE DATE: August 13, 2009



Attorney Howard M. Gould



Attorney Margarita Moore

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A handwritten signature in black ink that reads "Peter M. Jenkins". The signature is written in a cursive style with a horizontal line underneath the text.

Mr. Peter Jenkins