

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #08-04895-A Communication Sent to Prospective Clients For Personal Injury Cases**

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 September 8, 2008. The proposed print advertisement is a cover letter and accompanying flyer to be mailed to potential personal injury clients as found in articles on accidents and disasters in local newspapers. The requesting attorney states that pursuant to Rule 7.3(b)(5) he will wait 40 days until after the occurrence of an accident or disaster to send out the communication to potential clients or their relatives. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The advertisement provides the following information: a cover letter on firm letterhead that provides the name, address, phone and fax numbers of the law firm at the top center of the letter. The firm's attorneys are listed on the top left. Underneath the attorney listings, above the addressee's information is the phrase "ADVERTISING MATERIAL" in red ink.

The first sentence of the cover letter, after the salutation, states: "If you have already retained a lawyer for this matter, please disregard this letter. If you have received this letter, and it has not been forty days since you or your relative have experienced an accident or disaster, please disregard this letter. I understand you or your relative have been involved in an accident or disaster and would like you to consider using our firm for legal

representation." The letter proceeds to describe the responsible attorney's experience in representing clients in personal injury matters for over 30 years, provides his biographical information and professional credentials, and lists the types of personal injury cases he has handled. The letter also recites the practice areas of the requesting attorney's law firm.

The cover letter concludes with the phrase: "The initial consultation is free. For personal injury matters only, there is no fee without recovery." An asterisk at the end of the letter indicates the name of the attorney responsible for the content of the message, and another asterisk indicates that two major credit cards are accepted.

The second part of the proposed advertisement is the accompanying flyer. We have issued a previous opinion on this same flyer in Advisory Opinion #08-04627-A available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm). That advisory opinion is incorporated by reference into this advisory opinion.

The envelope in which the cover letter and flyer 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 which complies with the requirements of Rule 7.3(c).

Relevant to this advisory opinion is the section of the flyer captioned: "All Injuries To The Body," "Consult An Attorney Free For Initial Interview," "No Recovery-No Fee\* For Personal Injury Matters Only," "Death Claims" and "Medical and Hospital Malpractice." The asterisk references a sentence on the bottom right section of the flyer, beneath the firm's phone number that states: "Court Costs & Expenses of Litigation Must Be Paid By Clients."

The cover letter and flyer in the proposed advertisement comply with Rule 7.1 and 7.2(i) of the Rules of Professional Conduct in listing the firm's name and address and other similar information. See Advisory Opinion #08-04627-A. The accompanying flyer also complies with Rules 7.4 and 7.4A in the listing of the various practice areas of the firm, and with Rules 7.2(i) and 7.2(f) by providing information about appointments, free initial consultations and the explanation of costs and expenses in no fee situations. See Advisory Opinion #08-04627-A.

The cover letter, however, does not comply with Rule 7.2(f). Rule 7.2(f) provides:

Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee...

At the end of the cover letter the statement is made that "[f]or personal injury matters only, there is no fee without recovery." There is no language accompanying this statement in the letter explaining that court costs and expenses of litigation will be paid by the client. The accompanying flyer provides the information about costs by using an asterisk. The cover letter could utilize the same method or state the policy in the body of the letter. Either way, the cover letter must disclose the policy on costs to prospective clients pursuant to Rule 7.2(f).

Rule 7.3 and of the Rules of Professional Conduct regulates communications with prospective clients and provides limitations on that contact. The proposed advertisement is in

compliance with the provisions of Rule 7.3 concerning communications with prospective clients as detailed in Advisory Opinion #08-04627-A. The proposed advertisement will be sent to a different group of prospective clients than the advertisement discussed in Advisory Opinion #08-04627-A. Subsection (b)(5) of Rule 7.3, which regulates communications concerning the solicitation for representation in an action for personal injury or wrongful death, is at issue in the proposed advertisement. Rule 7.3(b)(5) provides:

(b) 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 forty days prior to the mailing of the communication.

The requesting attorney has indicated he will wait forty days before mailing the proposed advertisement to prospective clients. The language in the cover letter, asking the reader to disregard the letter if received before the required forty days, is not a substitute for complying with the forty day waiting period and does not provide a defense to any claimed violation of that waiting period. It is the responsibility of the requesting attorney to ascertain and comply with the required forty day waiting period of Rule 7.3(b)(5) before mailing the proposed advertisement.

Accordingly, this reviewing committee opines that for the above discussed reason, the failure in the cover letter to disclose costs pursuant to Rule 7.2(f), the advertisement does not comply with the Rules of Professional Conduct.



Attorney Howard M. Gould

*Peter M. Jenkins*  
Mr. Peter Jenkins