

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #07-01099-A Use of Judicial Clerkships in Advertisements

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 21, 2007. The proposed printed communication is scheduled to appear in firm brochures and other printed material in the future. The requesting lawyers submitted excerpted quotes regarding their federal judicial clerkship experience in order to receive an opinion on whether or not they could refer to these appointments in their legal advertisements. This reviewing committee concludes that the proposed communication complies with the Rules of Professional Conduct.

The lawyers submitting this request are partners in a law firm. Both held federal judicial clerkships and practiced in large firms before opening the firm. Their advertisement states several examples of how they will mention their previous experience:

“Prior to its founding, our lawyers...served as law clerks to Federal Judges in the United States District Court for the District of Connecticut. With this experience, we are able to act as practical problem solvers and effective advocates for our clients.”

“[First requester] also served as a law clerk for U.S. District Court Judge Alan H. Nevas.”

“[Second requester] also served for two years as a federal law clerk for the Honorable Holly B. Fitzsimmons, U.S.M.J., in the United States District Court for the District of Connecticut.”

Based on the request, we assume the requesters are the only two lawyers in the firm and that they both have served as law clerks in the United States District Court. It would be impermissible to suggest that all lawyers in the law firm had served as clerks, if only some of the lawyers had served.

In determining whether or not it is acceptable to use biographical information, a lawyer should be guided by Rules 7.1 and 8.4(5) of the Rules of Professional Conduct. Rule 7.1 prohibits false or misleading statements in lawyer advertising. An advertisement that is truthful may be misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer for which there is no reasonable factual foundation. The commentary to Rule 7.1 notes that a lawyer should also consider Rule 8.4(5), which prohibits stating or implying an ability to influence a government agency or official. Any advertisement that suggests a lawyer might have insider knowledge or the ability to influence a government official is misleading *per se*.

In this case, the requesters plan to refer to their clerkships in order to highlight their experience in the United States District Court. Neither lawyer is implying an ability to get a better outcome in that court because of who he knows, nor claiming to have insider information, nor claiming any privileges not available to other lawyers licensed to practice in the court. A lawyer has the right to mention verifiable facts from which consumers can infer a distinction of quality when those facts are true, so long as the lawyer does not draw conclusions as to his or her own quality or insider knowledge in comparison to other lawyers. A prior judicial clerkship is something a consumer should be able to consider when hiring a lawyer. The lawyers' reference to

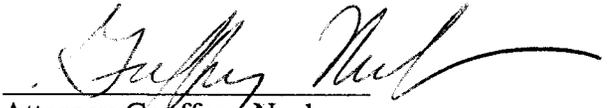
themselves as practical problem solvers and effective advocates does not rise to the level of claiming superiority or insider knowledge. Accordingly, the statements are permissible.

Because this request was submitted in regard to excerpted communications from future brochures, this opinion is limited to the excerpts quoted above, and does not address the entire brochure or biography to be used in the future. Also, because it was not asked of us, this reviewing committee takes no position on references to prior experience as a judge, prosecutor or government lawyer in advertising.

Accordingly, this reviewing committee opines that the proposed communication to be used in future advertisements complies with the Rules of Professional Conduct.

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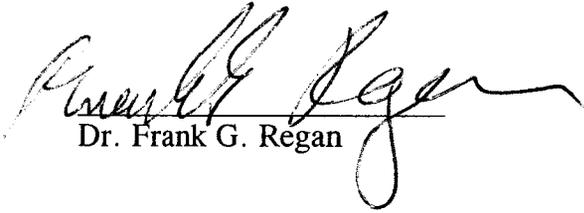
OPINION DATE: October 9, 2007



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