

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #09-04933-A Letter to Individuals Listed in Police Arrest Logs

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 August 21, 2009. The proposed print advertisement is a letter to be mailed to prospective clients by the requesting attorney who will obtain the names from police arrest logs published in the Waterbury Republican American newspaper. A similar type of advertisement was the subject matter of Advisory Opinion #08-04627-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. The requesting attorney indicates that he intends to send the proposed advertisement to individuals listed daily in the newspaper as having been arrested for criminal and motor vehicle offenses, and he will maintain a system to try to insure that multiple letters are not sent to the same individual for the same matter. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The advertisement provides the following information: a letter on firm letterhead that provides the name, address, and phone numbers of the attorney at the top center of the letter. Underneath the letterhead in the center of the page is the phrase "ADVERTISING MATERIAL" in red ink. 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 rest of the letter contains a five point discussion of why potential clients may wish to hire the attorney to represent them. The letter provides the attorney's education and prior experience. The letter

provides that the initial consultation is free and fees are based on ability to pay. The attorney promises to keep the client informed about their case and asserts the convenient location of the attorney's office to the Superior Court.

The envelope in which the letter will be mailed was provided along with the letter in the advisory opinion request. In the lower left corner of the envelope the words "Advertising Material" are displayed 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 number, website and email address 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.

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. Subsections (b) and (c) of Rule 7.3 regulate written communications for the purpose of obtaining professional employment. The numbered subsections of Rule 7.3(b) distinguish between several types of written (and electronic) communications; specifically those concerning personal injury or wrongful death cases, persons already represented by counsel in a specific matter or who are unfit or unwilling to receive such communications. This opinion assumes those fact patterns found in subsection (b) of Rule 7.3 are not applicable to the proposed advertisement.

Since the proposed advertisement will be sent to persons arrested for criminal and motor

vehicle offenses based on published police logs, the requesting attorney is aware they are potentially in need of legal services based on the fact of their arrest. Subsection (c) of Rule 7.3, concerning communications to prospective clients, is applicable to the proposed advertisement.

Rule 7.3(c) provides:

Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any, ...If the written communication is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. (emphasis added)

The prospective clients are solicited because they have been arrested and are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by providing the label "Advertising Material" clearly and prominently in red ink on the first page which is the cover letter and on the accompanying envelope.

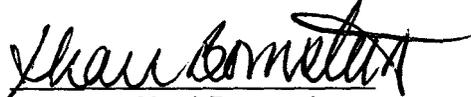
The proposed advertisement complies with other relevant provisions of Rule 7.3. Pursuant to Rule 7.3(d) it contains the requisite first sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The proposed advertisement complies with the provisions of Rule 7.3(g) 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 complies with the labeling requirements of Rule 7.3(c) and with Rule 7.3 (e) by not revealing on the outside the nature of the

client's legal problem. The proposed advertisement is therefore in compliance with the provisions of Rule 7.3 concerning communications with prospective clients.

Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct.

(E)

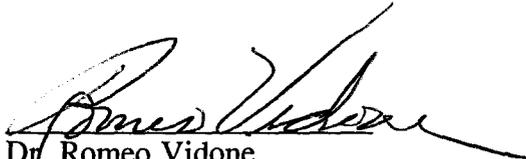
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Advisory Opinion 09-04933-A



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