

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #14-04961 Website Advertising Prepaid Legal Services**

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 7, 2014. The proposed advertisement is a website advertising prepaid legal services for victims of car accidents. The proposed legal services plan will be operated by the requesting attorney under a trade name, (hereinafter, “the company”). On July 16, 2014, this reviewing committee requested additional information and on August 29, 2014, the attorney complied with our request. This reviewing committee concludes that the proposed advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict proposed website content. The entirety of the proposed advertisement as submitted is attached as an exhibit to this opinion. The comments in this advisory opinion are limited to the content of the four website pages submitted for approval. This opinion is limited only to the Rules of Professional Conduct related to legal advertising. Other areas of law, such as insurance or consumer protection are not considered here as they are outside the scope of the request and the opinion process set forth in Practice Book §2-28B. Also, in light of the brevity of the proposal, we cannot comment on proposed issues that may arise under other Rules of Professional Conduct such as conflicts, fees, confidentiality, and communication. This opinion concerns only the advertising rules applicable to the participating attorney(s) and the content of the website as submitted to this reviewing committee.

The proposed website consists of a homepage, a frequently asked questions (“FAQ”)

page consisting of three questions, an “about the company” page, and a contact page. The “about the company” page of the website states that the requesting attorney is the “President and owner” of the company who will oversee the daily operations, which include “marketing, enrollment and hiring a lawyer to represent members.” The proposed advertisement offers an annual “membership” of \$100 (\$200 for a family) for which the member will receive legal services in the event that they become a car accident victim in the state of Connecticut. The member will pay no legal fees and will retain one hundred percent of any monetary recovery minus the costs of litigation and court fees. The website offers the first year of membership in the plan for free.

On the website, the company offers that it is “a prepaid legal service plan that provides a lawyer to any member who becomes a car accident victim in the State of Connecticut.” The website states that the company “revolutionizes legal fees by creating a zero fee alternative to the standard 1/3 contingency legal fee” and opines that the company creates a plan that “no consumer can afford not to belong to [*sic*].” The proposed advertisement claims the concept “revolutionizes car insurance by creating car accident insurance for car accident victims.”

The “FAQ” section elaborates on the “zero legal fee” concept and provides a sample chart for comparison of the amount of legal fees paid in a conventional one third contingency fee arrangement versus no fee paid by plan members. The second “FAQ” offers that membership of \$100 annually “could save you thousands of dollars” which would otherwise be paid as legal fees in the conventional contingency fee arrangement.

The third “FAQ” elaborates on the statement made on the Homepage that the company is “car accident insurance” by stating that similar to conventional insurance the proposed service is purchased before any accident occurs. The website further provides:

Like conventional insurance, [the company] provides a lawyer for you at no additional charge if you are involved in a car accident. [The company] differs from conventional insurance in that it provides a lawyer at no additional cost for car accident *victims*.

A website offering a similar service, with the same company name, operated by the

requesting attorney was the subject of a grievance complaint. New Haven JD Grievance Panel for Bethany, New Haven and Woodbridge vs Joshua Winnick, #12-0235. The grievance was dismissed on October 5, 2012, and the website was taken down by agreement. The reviewing committee, in dismissing the matter, had several concerns regarding the ethics of the business model and how it operated under the Rules of Professional Conduct. The requesting attorney revised the website content and submitted it to us for an advertising advisory opinion.

We have similar questions as the reviewing committee in grievance complaint #12-0235 regarding how this proposed legal service will comply with attorney ethical requirements. This reviewing committee submitted several questions to the attorney regarding the mechanics of how legal representation will be afforded to members of the plan, since the website contains minimal information. The attorney provided additional supplemental information to the reviewing committee's questions by letter sent via email on August 29, 2014.

The requesting attorney indicated that the annual membership fee is deposited into the company's operating account to be used for expenses, including paying the attorneys retained to provide legal services. The requesting attorney will not provide representation to members but will hire other attorneys based on their experience and ability. These attorneys will enter into a written agreement with the company, who will retain and pay them from the proceeds of the membership fees.

If members of the plan become the victim of a car accident in Connecticut, they will contact the company and the company will provide a participating attorney's contact information. The member and the participating attorney will then enter into an agreement for legal services directly at no additional cost. The participating attorney will address the details of the representation, including the viability of the member's legal claims and any necessary coordination with insurance company attorneys.

To secure client confidences, the company will enter into retainer agreements with attorneys prior to a member's involvement and only will provide the member the attorney's

contact information. After that, the company's involvement is limited to paying the participating attorney's previously agreed upon fee. The requesting attorney indicated that if the participating attorney terminates representation of a member because he or she has determined that there is no viable legal claim, the company will not review that decision

The proposed website advertisement complies with Rule 7.2(d) of the Rules of Professional Conduct by providing the name of an attorney admitted in Connecticut responsible for its content.

Attorney advertising is subject to the requirements of Rule 7.1 which 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:

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's services for which there is no reasonable factual foundation.

The commentary to Rule 7.1 also provides that in some circumstances "the inclusion of an appropriate disclaimer or qualifying language" can prevent a statement from being misleading.

The proposed advertisement submitted to this reviewing committee for an advisory opinion asserts that the company "revolutionizes" both prepaid legal services and car insurance. This reviewing committee finds that these statements are misleading and violate Rule 7.1 because there is insufficient information on the website to substantiate the claims.

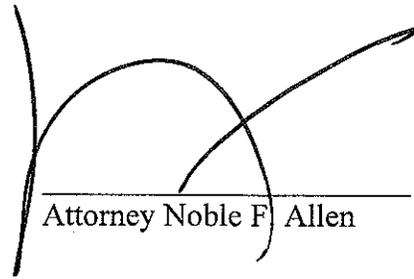
The proposed website discloses that the requesting attorney, as owner and president of the company, will hire attorneys to represent members, but no other details are provided, such as attorney qualifications or choice. The only attorney named on the website is the requesting attorney, who indicated in his supplemental response that he will not represent members as an attorney. The lack of information regarding how attorneys will be provided to plan members is

misleading and violates Rule 7.1, because the information provided is insufficient for a potential client to understand how the attorney is chosen, his or her qualifications, and the lack of recourse if the representation is terminated. Rule 7.1 provides that statements made in attorney advertising can be misleading if they fail to provide sufficient information or lead to conclusions about legal services that are not factually based. The failure to disclose more information concerning the specifics and the limitations of attorney representation under the prepaid plan is misleading under Rule 7.1.

Accordingly, this reviewing committee opines, for the reasons outlined in this opinion that the proposed advertisement does not comply with the Rules of Professional Conduct concerning legal advertising.

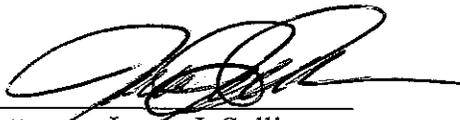
ISSUE DATE: September 17, 2014

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Attorney Noble F. Allen

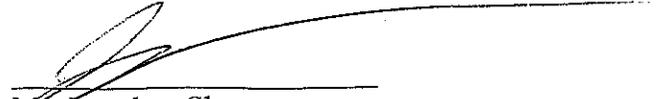
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Attorney James J. Sullivan

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Mr. Jonathan Shugarts

## **Join the ClaimsMax Revolution**

ClaimsMax is a prepaid legal service plan that provides a lawyer to any member who becomes a car accident victim in the State of Connecticut. The member does not pay any legal fee for the lawyer's services. The only expenses that a member who becomes a car accident victim incurs are the costs of litigation and court fees.

ClaimsMax revolutionizes legal fees by creating a zero legal fee alternative to the standard 1/3 contingency legal fee that most lawyers charge car accident victims.

ClaimsMax revolutionizes prepaid legal service plans by creating a plan that no consumer can afford not to belong to.

ClaimsMax revolutionizes car insurance by creating car accident insurance for car accident victims.

**FREE Membership - 1<sup>st</sup> Year**  
**Click to Enroll**

## Frequently Asked Questions

1. How is ClaimsMax a zero legal fee alternative to the standard 1/3 contingency legal fee that most lawyers charge car accident victims?

ClaimsMax is a prepaid legal service plan that provides a lawyer to any member who becomes a car accident victim. The member does not pay any legal fee for the lawyer's services.

Currently, most car accident victims pay their lawyers 1/3 of the amount recovered.

ClaimsMax changes this by charging a small annual fee - \$100 per person or \$200 per family - to become a member. ClaimsMax provides a lawyer to the member if the member becomes a car accident victim. The member retains all of the recovery, less the costs of litigation and court fees.

The first year of membership is free.

The ClaimsMax difference is clearly illustrated in this chart:

	Nonmember paying standard 1/3 contingency fee	ClaimsMax Member
Gross Recovery	30,000	30,000
Legal Fee	10,000	0
Net Recovery	20,000	30,000 (less cost of litigation and court costs)

2. How is ClaimsMax a prepaid legal service plan that no consumer can afford not to belong to?

Because the cost is so little, and the benefit is so great.

You pay nothing for your first year of coverage, and only \$100 per person or \$200 per family after that. In return, you save thousands of dollars on legal fees if you or a member of your family becomes a car accident victim.

As the chart above shows, in a claim where the victim receives \$30,000, a victim who is not a ClaimsMax member and who pays the typical 1/3 attorney's fee pays a \$10,000 legal fee and retains \$20,000. In that same claim, a car accident victim who belongs to ClaimsMax retains \$30,000 (less costs and expenses).

For \$100 per year, you obtain coverage that could save you thousands of dollars. Who can afford not to purchase that?

3. How is ClaimsMax car accident insurance for car accident victims?

Like conventional car insurance, consumers purchase ClaimsMax *before* a car accident happens. Like conventional car insurance, ClaimsMax provides a lawyer for you at no additional charge if you are involved in a car accident. ClaimsMax differs from conventional car insurance in that it provides a lawyer at no additional cost for car accident *victims*.

Just as you would never take the risk of causing a car accident without conventional car insurance, you cannot afford to take the risk of becoming a car accident victim without ClaimsMax.

## About ClaimsMax

The President and owner of ClaimsMax is Joshua A. Winnick. Attorney Winnick has degrees from Harvard University, The University of Chicago, and American University-Washington College of Law. He has been licensed to practice law in Connecticut since 1986. As President, Attorney Winnick oversees the daily operations of ClaimsMax, including marketing, enrollment and hiring a lawyer to represent any ClaimsMax member who becomes a car accident victim in the State of Connecticut.

## Sign Up

### Terms and Conditions/Contact Us

Your membership begins the day you enroll online and lasts for one year.

If you become a car accident victim in an accident that occurs in Connecticut after you enroll, contact ClaimsMax immediately via email at ----- or by telephone at 203-562-9677. ClaimsMax will provide a lawyer to represent you at no cost.

Name <input type="text"/>
Email Address <input type="text"/>
<input type="submit" value="Submit"/>