

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #14-08355-A **Firm Website, Rule 7.1 and 7.4** *Super Lawyers*[®]

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 October 23, 2014. The proposed advertisement is a website advertising the services of the requesting attorney and her firm. 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 the proposed website content. The proposed website consists of sections captioned "Home," "Practice Areas," "About" and a section that consists of the attorney's professional profile. There are five listed practice areas: Estate Planning, Land Use, Municipal Law, Probate Administration and Residential Real Estate. Each practice area has its own webpage and lists various services offered that are relevant to that area of law. The name of the law firm and the address and phone number are listed on each webpage.

On the Home page, at the top, the website provides under "Welcome" the phrase in italics: "When You Retain Our Services You Can Expect to Receive the Highest Level of Service From an Experienced and Compassionate Attorney who is Ready to Listen and Respond to Your Legal Needs." (emphasis added). The website further states in the Municipal Law section: "[The attorney's] thorough knowledge of real estate law, coupled with her extensive experience practicing as a municipal lawyer, make her highly qualified to offer superior representation to her clients in land use-related matters." (emphasis added).

On the Residential Real Estate page the statement is made: “Our firm employs the expertise of on-site Real Estate paralegals and other support staff to handle the high volume of closings we handle on a regular basis.” (emphasis added). The website page entitled “About” offers: “[The attorney’s] experience and expertise in representing municipalities throughout the State of Connecticut has earned her a strong reputation for her efficiency in achieving optimal results with less billable hours for her clients.” (emphasis added).

In the attorney’s profile her selection to a ranking publication is listed by stating: “Recognized by Super Lawyers magazine as a top attorney in New England in the practice area of land use/zoning, 2009.” A second listing underneath states: “Named a Connecticut top attorney by Super Lawyers, Corporate Counsel Edition, in the practice of land use/zoning, 2010.” The latter listing has a proposed link to the Connecticut selection information page on the *Super Lawyer’s*® website. The requesting attorney indicated that the website designer was finalizing that link which would be inserted for that *Super Lawyers*® listing when the website went live on the internet.

The last page of the website contains a stated Privacy Policy and a File Retention Policy. The File Retention Policy provides that at the conclusion of a client’s matter, the firm will retain the client’s file for seven years after which the file will be destroyed unless the client notifies the firm in writing that they will take possession of their file. The policy also states: “We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering the file.”

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.

This opinion assumes that the final version of the website will provide a link to the Connecticut selection information page found on the *Super Lawyer’s*® website at: http://www.superlawyers.com/connecticut/selection_details.html as stated by the attorney in

her request for an advisory opinion. The link to the selection information should be inserted as part of both listings to *Super Lawyers*® found on the website. Since the *Super Lawyers*®, Corporate Counsel Edition publishes the names of attorneys who were named as *Super Lawyers*® in selected business areas of practice, that listing should also provide the Connecticut selection information link. Both *Super Lawyers*® listings should contain the registered trademark symbol to identify the ranking as that of a commercial publication. See Advisory Opinions #'s 07-01008-A, 07-00776-A and 07-00188-A available http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for further discussion of the manner to list selection to *Super Lawyers*® magazine. Aside from the need to add the *Super Lawyers*® registered trademark symbol and the Connecticut selection information link, the proposed advertisement complies with the guidelines found in the above referenced advisory opinions by providing the practice area and year(s) of selection.

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 two statements found on the Home page and the Municipal Law pages which describe the firm or attorney as offering "the highest level of service" and "superior representation," respectively, violate Rule 7.1 of the Rules of Professional Conduct. The statements are inherently misleading because they are a subjective statement as to quality about the firm or attorney's services which are merely 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.

There is no way objectively to verify the stated opinion that services of the highest

level of quality are provided and this opinion leads consumers to form a specific conclusion that they will receive legal services from the firm that are superior to those of other firms. Accordingly, the use of the terms “the highest level of service” and “superior representation” on the Home page and Municipal Law page must be removed. Both statements could be reworded to provide that it is a goal or mission of the firm and the attorney to offer that level of service to clients.

The statement found in the “About” section of the website, which offers that the requesting attorney has “expertise in representing municipalities,” violates Rules 7.4 and 7.4A of the Rules of Professional Conduct. 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 commentary to Rule 7.4 states: “...[T]he lawyer may not use the terms ‘specialist,’ ‘certified,’ ‘board-certified,’ ‘expert’ or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A.” The above referenced statement violates Rule 7.4A of the Rules of Professional Conduct by characterizing the attorney’s services in terms of her expertise in municipal law. The word “expertise” in the above statement must be removed.

Similarly, the statement on the the Residential Real Estate page of the website that the firm employs paralegals with real estate expertise should also be modified to remove the term “expertise.” The statement violates Rule 7.4A(d) by characterizing the firm’s services in terms of “expertise” in real estate law through its nonlawyer employees.

Regarding the File Retention policy stated on the last page of the website, the Rules of Professional Conduct do not specifically address the issue whether an attorney may charge a copy fee for the entire file before returning it to the client. Rule 1.5 provides that fees and expenses charged by an attorney must be reasonable. The commentary to Rule 1.5 states regarding expenses during the representation:

A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses

incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Rule 1.16(d) the Rules of Professional Conduct addresses a lawyer's responsibilities at the conclusion of the representation of a client and states:

Upon termination of a representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing employment of other counsel, surrendering papers and property to which the client is entitled...

Connecticut Bar Association ("CBA") Informal Opinion 00-4 (published March 3, 2000) examined under what circumstances a client can be charged for copying a file before it is provided to the client's subsequent counsel. The opinion provides the following analysis:

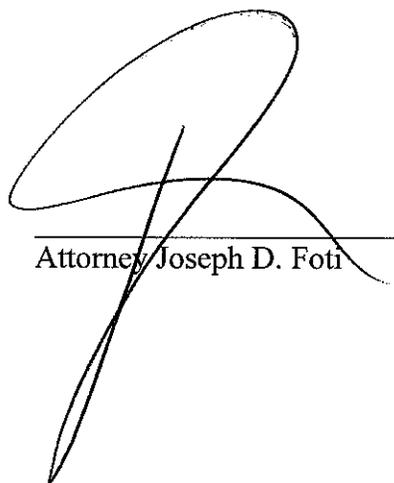
Other than a narrow range of work product documents, and materials of which copies have already been provided to a client, the files belong to the client. An attorney wishing to retain copies of the file materials does so for his or her own benefit, and absent an express agreement between a client and an attorney prior to the termination of that representation, it must be done at the attorney's sole cost and expense.

The File Retention Policy provided on the proposed website, while a general notice to readers of the website, does not qualify as an express agreement with the client to allow the charging of expenses related to copying and retrieval of the client's file. The stated policy therefore does not permit the attorney or firm to charge those expenses to a client for their file under Rules 1.5 and 1.6(d) of the Rules of Professional Conduct.

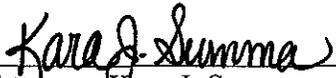
Accordingly, this reviewing committee opines, for the reasons outlined in this opinion that the proposed advertisement does not comply with the Rules of Professional Conduct concerning legal advertising.

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