

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #15-02062-A Law Firm Website Advertising Client Cases, Confidentiality and Disclaimers

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 March 18, 2015. The proposed advertisement is a website advertising the services of the requesting attorney and his law 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 and was made available for previewing on the internet to this reviewing committee through a protected view and login procedure. The proposed website consists of sections captioned "Home," "Biography," "Cases" and "Testimonials." The Biography page includes a subsection entitled "Appointments, Articles and Awards." The address, phone number and email address of the firm is listed on each webpage, along with the phrase "Free Initial Consultation."

On the bottom of each webpage is a disclaimer which explains that the website materials are for information only and should not be construed as legal advice. The disclaimer also provides that the website information is not intended to create an attorney client relationship which is not formed until the prospective client meets with the attorney and signs a retainer and/or monies are furnished.

On the Home page, at the top, the website displays the phrase: "Defending Your Rights and Freedom." The attorney's areas of practice are listed. Underneath the attorney's

photograph is the phrase "Commitment. Experience. Results" and several paragraphs which contain a general discussion of the legal system and the attorney's experience. The Biography page provides more detailed information about the attorney's legal career and experience, including the types of cases he has handled and his educational background. As part of this page there is a section that lists awards and news articles about criminal cases the attorney has handled. One of the awards is a citation for "outstanding civic work" from a city board of alderman. A full copy of the award and the news articles can be obtained by clicking on the graphic displayed.

The next section of the website provides a list of cases handled by the attorney. Some of the recited cases list only client initials and some list full names. The latter appear to be habeas cases. A brief synopsis of the case and the outcome is provided. The criminal cases recite sentences that were obtained or reduced for the client and one civil case lists a monetary settlement. The amount of \$250,000 was obtained as a settlement for the attorney's client, who is listed only as "J."

The remaining sections of the website consist of directions and contact information and two client testimonials which are anonymous. 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 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." Connecticut's Rules of Professional Conduct contain no separate provision or rule regulating the use of client testimonials. Client testimonials, like all attorney advertising, are regulated by the provisions of Rule 7.1 and cannot violate any other Rule of Professional Conduct. Rule 7.1 of the Rules of Professional Conduct 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 testimonials on the website are anonymous. This advisory opinion is predicated on the assumption that the testimonials are from actual clients of the attorney as stated in the testimonials. Testimonials in lawyer advertising must comply with the Rules of Professional Conduct by operation of Rule 8.4(1). Therefore, assuming the testimonials are from real persons describing their actual experience or opinion of the attorney, they are not misleading under Rule 7.1. Nothing in the language of the testimonials on the website violates any other Rule of Professional Conduct.

In the Cases section of the website there is a list of legal decisions some of which provide a full client name, while others contain only initials or partial names. Rules 1.6(a) and 1.9(c)(2) of the Rules of Professional Conduct state that a lawyer shall not “reveal information relating to representation” of a client” unless the client gives “informed consent” (Rule 1.6(a)) or except as otherwise permitted or required for the client. (Rule 1.9(c)(2)) The desire to market successful outcomes is a concern primarily of the attorney but not necessarily the client. The language of Rules 1.6(a) and 1.9(c)(2) is broad and not confined to confidences or certain adverse information but to “information relating to representation.”

The American Bar Association in Formal Opinion 10-457 has analyzed this language and how it applies to lawyer websites which list case summaries and client names. Connecticut’s rule follows the ABA Model Rule in maintaining the lawyer’s confidentiality obligation pertains to “information relating to representation.” Even in the case of otherwise publicly available information, such as client and case names, the ABA opinion advises attorneys to obtain informed consent from clients which can be written or oral, since the definition of informed consent does not mandate it be in writing. See Rule 1.0(f) Terminology. Concerning the cases listed on the website that provide full client names, this opinion assumes the attorney obtained the consent of those clients to list their legal matters on the website.

The Cases section of the website provides a list of results obtained for clients including one monetary amount listed for a settlement. The commentary to Rule 7.1 of the Rules of Professional Conduct discusses advertisements that may be truthful, but misleading:

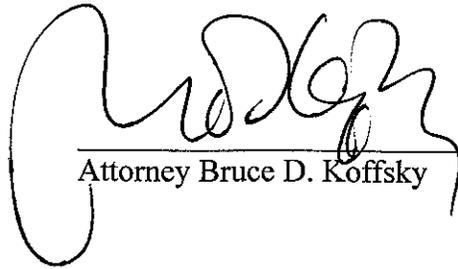
An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case...The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

An appropriate disclaimer or qualifying language inserted at the end of these statements about prior outcomes for clients, or in the general disclaimer found on the bottom of each webpage, would prevent the advertisement from being misleading pursuant to the commentary to Rule 7.1.

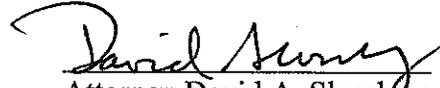
Accordingly, this reviewing committee opines, that the proposed advertisement does not comply with the Rules of Professional Conduct concerning legal advertising because it lacks a disclaimer regarding prior client results as required by Rule 7.1 of the Rules of Professional Conduct.

ISSUE DATE: April 14, 2015

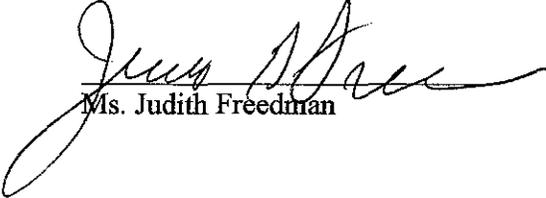
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