

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #10-04941-A Use of Disclaimers on Billboards

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 28, 2010. On August 9, 2010, pursuant to Practice Book §2-28B(d), this reviewing committee requested further information from the requesting attorney. The requesting attorney complied with that request on August 17, 2010. The proposed advertisement is a billboard. For the reasons set forth below, the reviewing committee concludes that the advertisement complies with the Rules of Professional Conduct.

A similar billboard advertisement was the subject matter of Advisory Opinion #10-01283-A, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. The proposed billboard displays a photograph of the attorney on the left side accompanied by the phrases "LadyDUI.com" and "DUI Defense Statewide" in large print. Underneath, in smaller print, are the moniker "Lady DUI," the attorney's name, and the telephone number "888-LADY-DUI." On the top right side of the billboard is the phrase "Text LadyDUI to 50500." In much smaller print is the name of a second attorney in the firm who is stated to be responsible for the advertisement's content, and the statement that the advertising attorney "is not recognized as a specialist in the area of DUI defense."

The advertisement complies with Rule 7.2 (d) by listing the name of at least one attorney

admitted in Connecticut responsible for its content. Several additional Rules of Professional Conduct are relevant to a review of the proposed advertisement, namely Rules 7.1, 7.4, 7.4A and 7.5.

Attorney advertising is governed by Rule 7.1 of the Rules of Professional Conduct. Rule 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

Furthermore, Rule 7.5 of the Rules of Professional Conduct regulates the content of a law firm's name, as well as any other "professional designation" used by attorneys or firms, including domain names.

Rule 7.5 incorporates the provisions of Rule 7.1 and provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. (emphasis added)

Several state bar ethics authorities have examined the ethical implications of the use of domain names which do not embody the name of the firm or of an individual attorney. The opinions frequently distinguish the practice of law under a trade name from the use of domain names which are different from the name of the firm. See, e.g., Ohio 99-4, (June 4, 1999), Arizona 97-04 (April, 1997), Arizona 01-05 (March, 2001), Committee on Attorney Advertising Opinion 32, 180 N.J.L.R. 654, (May 23, 2005) and Association of the Bar of the City of New York Formal Opinion 2003-01 (May, 2003). While finding that the use of domain names different

from the name of an attorney or law firm is permissible, state bar authorities have found that they are still subject to regulation and cannot be false or misleading.

‘Domain names’ function as addresses on the Internet...Individuals searching the Internet for a particular service or particular website use search engines to scan websites for particular words or phrases...clearly law firms want to choose a domain name that clients will remember easily and that will identify that law firm. Frequently lawyers include their website addresses on business cards, letterhead, telephone directory addresses, and other listings. The purpose of the domain name is to function as a professional identifier. While a domain name is not necessarily the same as the law firm name (and sometimes cannot be the firm name due to the length of the actual name), domain names are ‘professional designations’ within the meaning of the Rules of Professional Conduct. (Arizona 01-05 at2)

In Connecticut Bar Association (“CBA”) Informal Opinion 93-20 (published July 30, 1993), the use of the descriptive phrase “Business Lawyer” on letterhead was found permissible. The opinion examined the use of the phrase in connection with Rules 7.4 and 7.4 A, which regulate the manner in which an attorney or firm may characterize practice areas. If an advertisement violates Rules 7.4 and 7.4A, it may also be misleading in violation of Rules 7.1 and 7.5.

Rule 7.4 provides:

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.... (d) a lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

In turn, Rule 7.4A provides that only a lawyer “currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior

court” may state or imply specialization in a field of law. Rule 7.4 was amended June 30, 2008 and made effective January 1, 2009 to permit an attorney to “indicate the lawyer ‘concentrates in, focuses on,’ or [has a] practice ‘limited to’ particular fields of practice so long as the statements are not false or misleading in violation of Rule 7.1” See commentary to Rule 7.4.

The proposed advertisement displays the moniker “Lady DUI,” which is the same moniker discussed in Advisory Opinion #10-01283-A. This moniker is not the name of the attorney or the name of the attorney’s law firm, and it is used in both the domain name and the phone number. In accord with Advisory Opinion #10-01283-A, this committee finds that the use of the trade name “Lady DUI” does not violate Rule 7.5 of the Rules of Professional Conduct. This trade name does not imply an association to any “government agency or with a public or charitable legal services organization,” as prohibited in Rule 7.5. This committee also finds that the trade name “Lady DUI” does not violate Rules 7.4 or 7.4A, since the advertisement does not state or imply that the attorney is a DUI specialist, and in fact, expressly disclaims specialization.

In response to this reviewing committee’s request for more information about the readability of the disclaimer language, which is in a smaller font, the requesting attorney provided a letter from the billboard company that it would be readable by passing motorists on the highway. This reviewing committee finds that the provided disclaimer prevents the proposed advertisement, in this context, from implying specialization under Rules 7.4 and 7.4A. Therefore, the use of the trade name for the domain name and telephone number is not misleading in violation of Rules 7.1 and 7.5. Accordingly, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.

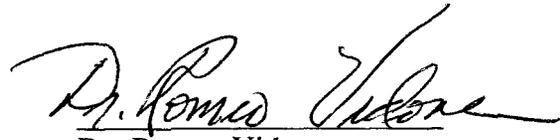
(E)

ISSUE DATE: 8/23/2010

A handwritten signature in black ink, appearing to read "Howard C. Eckenrode", written over a horizontal line.

Attorney Howard C. Eckenrode


Attorney Hugh W. Cuthbertson



Dr. Romeo Vidone