

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #15-02007-A Website by Divorce Services Group Rule 5.4, Collaboration with Nonlawyers

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 6, 2015. The proposed advertisement is a website that will be put on the internet by a collaborative group offering divorce related services which includes the requesting attorney. Pursuant to Practice Book §2-28B (d), the reviewing committee requested additional information on March 11, 2015. The attorney complied on March 30, 2015, and supplied additional information. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict proposed website content. The comments in this advisory opinion are limited to the content of the seven website pages submitted for approval. This opinion is limited to the Rules of Professional Conduct related to attorney advertising and the professional and ethical obligations of the attorney. No opinion is offered regarding other professionals who are part of the collaborative group. Fee agreements were not reviewed as part of this opinion. Other areas of law, such as divorce, mediation and tax planning or financial advice and the unauthorized practice of law are not considered here as they are outside the scope of the request and the opinion process set forth in Practice Book §2-28B.

The proposed website consists of sections labeled "Homepage," "Services," "About Us,"

“Contact” and “Testimonials.” The Homepage describes the firm as a “resource center” comprised of “legal, mediation and financial professionals offering ancillary divorce services to clients and their attorneys.” The professionals work in a “collaborative setting.” The requesting attorney indicated in her submission that the resource center is set up as an LLC owned by a non-attorney mediator. In the upper left of the Homepage is a logo and the name of the divorce services resource center with the phrase: “Specializing in parenting, tax and financial planning.” (Emphasis added)

The Services section of the website is divided into two sections: “Services for Clients,” and “Services for Attorneys.” In the Services for Attorneys section, the website states the professionals have “joined together under ‘one roof.’” Various legal and nonlegal services are listed and briefly described on this page such as “implementation and mediation of the Parenting Plan,” post-divorce tax planning and “litigation support.” An asterisk and footnote indicate that any “services involving legal advice or the drafting of legal documents are performed by a collaborating attorney.”

In the Services for Clients section several different types of services are discussed, including, pre-divorce consultation, financial/tax planning and post-divorce support. The same disclaimer language is found on this page by asterisk and footnote that only the attorney will draft legal documents or provide legal advice. The client services page links to further sections that provide a more substantive explanation of the services and pertinent legal documents, such as parenting plans or financial affidavits along with a general description of the divorce process.

In the Who We Are section of the proposed website the biographies of the three professionals involved in the collaborative practice are provided, including the requesting attorney. The website states that the professionals work individually and collaboratively “within their areas of expertise.” (Emphasis added) An asterisk and footnote state that “each professional operates and bills independently. When working in collaboration, each team member will send the client a separate invoice.” In her biography, the attorney lists that she is “an experienced family law attorney and a trained and certified Guardian Ad Litem.”

In response to the request for more information, the requesting attorney indicated she will bill for her services under her own LLC which is solely devoted to the practice of law. She also indicated that there are no documents regarding the formal business relationship between the professionals in the group. While the professionals are “under one roof” they will only coordinate services according to their areas of practice and will meet both separately and together with a client, depending on the client’s needs.

The last page of the website consists of testimonials about the services of the divorce resource center. Two testimonials are by anonymous clients, one testimonial lists the full name and the professional designation of a licensed social worker and the other testimonial lists only a first name. The testimonials detail the services provided to them by the resource center and in the case of purported clients a testimonial of their divorce experience.

The proposed advertisement complies with Rule 7.2(d) of the Rules of Professional

Conduct because it provides the name of an attorney admitted in Connecticut who will be responsible for content. This reviewing committee had concerns whether the attorney can be responsible for content on the website when she is not an owner of the LLC. Since the website provides information regarding the attorney's services and is therefore advertising, the website should be filed quarterly pursuant to Practice Book §2-28A(3). The attorney should be listed as responsible for the information about her legal services on the website. As stated earlier this advisory opinion is limited to only the content of the website as it concerns attorney advertising.

We considered several issues in conjunction with the proposed website content: 1) whether the content on the website is misleading as to the relationship between the attorney and non-attorney professionals in violation of Rules 5.4 and 7.1 of the Rules of Professional Conduct; 2) whether the website contains the proper disclosures required by Rule 7.1 of the Rules of Professional Conduct; and 3) whether language on the website violates Rule 7.4 and 7.4A of the Rules of Professional Conduct.

Rule 5.4 of the Rules of Professional Conduct regulates the professional relationship of lawyers and nonlawyers in order to protect the lawyer's professional independence of judgment. A lawyer may not share legal fees with a nonlawyer except in certain circumstances involving a deceased lawyer's estate, or involving compensation or retirement plans for nonlawyer employees. Rule 5.4 (b) provides "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." The commentary to Rule 5.4 provides:

These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subsection (c), such arrangements should not interfere with the lawyer's professional judgment.

The attorney in her request for an advisory opinion indicated that the resource center is an LLC owned solely by a non-attorney mediator. The attorney will not participate in any profits of the group and will bill clients independently. The disclosure that the professionals operate independently and bill separately is found on the page of the website containing the professionals' biographies. The disclosure is at the bottom of the page with an asterisk and is clearly readable and of similar font size as the content on the rest of the page. A similar disclosure provides that only the attorney will provide legal advice or draft legal documents. A reading of the website content reveals a variety of services, legal and non-legal are offered "under one roof" but the resource center is not a law firm and is owned by a nonlawyer. The legal services are disclosed to be offered only by the attorney who bills separately and is a not an owner.

A related consideration in maintaining the professional independence of an attorney is the requirement to keep client confidences found in Rules 1.6 and Rules 1.9(c). This reviewing committee has no information as to the measures put in place by the requesting attorney to comply with Rules 1.6 and 1.9(c). Her office practice within the collaborative group needs to comply with Rules 1.6 and 1.9(c) by providing a method to secure and disclose client information in the course of her communication with the other professionals and that is beyond the scope of an advertising

opinion. This reviewing committee assumes the attorney provides for client consent in disclosing information in compliance with Rules 1.6 and 1.9(c) in her fee agreement and or in the details of a representation agreement when the client is retained.

This reviewing committee finds the website content complies with Rule 5.4 because the resource center is not a law firm, and consists of several professionals rendering divorce related services who are not splitting fees with the attorney. The statements on the website sufficiently disclose the nature of the relationship between the professionals and the content is not misleading under Rule 7.1 because the separate relationship is sufficiently illustrated. The attorney maintains separate billing and invoicing with clients.

Connecticut's Rules of Professional Conduct contain no separate provision or rules 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.

All but one testimonial on the website purports to be from clients who provide either a first name or are "anonymous." This advisory opinion is predicated on the representation that the testimonials are from actual clients or persons who as stated have had experience with the center's services. 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, they are not misleading under Rule 7.1. Nothing in the language of the testimonials violates any other Rule of Professional Conduct.

Rules 7.4 and 7.4A regulate the manner in which an attorney or a law firm may characterize practice areas. Rule 7.4 provides that an attorney shall not “state or imply” that he or she is a specialist in an area of law and Rule 7.4A(d) states that specialization cannot be attributed to a law firm. The commentary to Rule 7.4 provides that an attorney should not use terms such as “specialist,” “certified,” or “expert” or “similar variation” unless the attorney is properly certified.

The website on the Home page characterizes the divorce services resource center as “specializing in parenting, tax and financial planning.” (Emphasis added) On the About Us page the statement is found before listing the biographies of the three professionals, including the attorney that they work together “within their areas of expertise.” (Emphasis added)

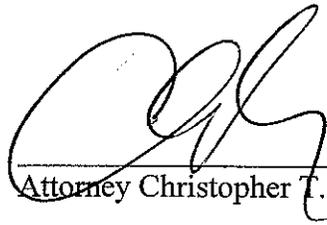
The above two statements violate Rule 7.4(d) of the Rules of Professional Conduct in so far as they apply to the requesting attorney because they create the implication that she is a specialist or expert in divorce law. The statements should be modified accordingly. The underlined terms could be removed or reworded or disclaimer language added to clarify that the Judicial Branch does not presently have a certification in divorce or family law and the attorney makes no representation that she is a specialist in that area. The disclaimer language could be added by an asterisk where the statements are made or added to the attorney’s biography, provided it is readable

and sufficiently displayed. The statement that she was trained and certified as a Guardian Ad Litem is permissible and not misleading because it is a factual statement and does not characterize the attorney as a specialist or expert.

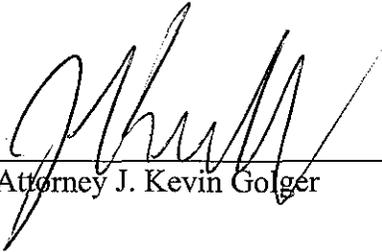
Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because two statements do not comply with Rules 7.4 and 7.4A of the Rules of Professional Conduct.

(E)

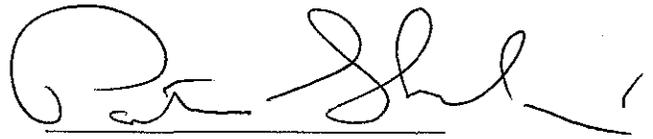
ISSUE DATE: April 14, 2015

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'T. Goulden' in a cursive script.

Attorney Christopher T. Goulden



Attorney J. Kevin Golger

A handwritten signature in black ink, appearing to read "Patrick Sheridan". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Mr. Patrick Sheridan