

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #17-07439-A Modified 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 October 13, 2017. The proposed advertisement is a website advertising a “prepaid legal services plan” for victims of car accidents. The proposed plan will be operated by the requesting attorney as a limited license corporation, (hereinafter, “the company”). This reviewing committee concludes that the proposed advertisement does not comply with the advertising rules in the Rules of Professional Conduct.

The proposed advertisement was submitted in print form to depict proposed website content. Some of the content was the subject of two prior advisory opinion requests, Advisory Opinion #14-04961-A and #16-3823-A available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm) which are incorporated by reference into this advisory opinion. The proposed website content was submitted in a “marked-up” form with the new content underlined and also as an unmarked or “clean” copy. The requesting attorney has modified the content in an effort to comply with the prior advisory opinions.

The comments in this advisory opinion are limited to the proposed new content of the website pages submitted for approval. This opinion is limited to the Rules of Professional Conduct related to legal advertising only, namely Rules 7.1 through 7.5, and is based on the assumption that the proposed website is 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. It is beyond the scope of an

advisory opinion made pursuant to Practice Book §2-28B to approve of a business model. This advisory opinion does not preclude the possibility that aspects of the company's business model and its formation as a limited liability company, may be subject to other regulation, including the laws of other states. Other possible ethical issues between the company, its attorneys and its clients, such as confidentiality and conflict of interest, are outside the scope of an attorney advertising opinion. This opinion concerns only the advertising rules applicable to the website as submitted to this reviewing committee.

The proposed website consists of four pages, a homepage, two pages containing eight frequently asked questions ("FAQ's") and a page providing information about the company and the requesting attorney who is named as the president and owner. On the homepage, the company advertises it is a "low cost-\$100 per person or \$200 per family-prepaid legal service plan that offers representation to any member who becomes a car accident victim in Connecticut." In connection with the "car accident victim" claim is an asterisk which leads to a statement at the bottom of the page that the company is not offering "conventional car insurance" because the company's plan "differs from conventional car insurance in that conventional car insurance protects you if you **cause a car accident**; [the company] protects you if you **become a car accident victim**."

The proposed advertisement further provides that a member who signs up for the company's program does not pay legal fees for a lawyer's services, but only the costs of litigation and court fees. The first year of membership is advertised as free. A chart, similar to prior versions of the website, demonstrates the net recovery to a consumer who is awarded \$30,000 in the standard 1/3 contingency fee arrangement as contrasted with the company's zero legal fee. Underneath the chart is further explanation which highlights the monetary difference to a member.

The first FAQ provides information about what happens if a member becomes an accident victim; namely, they contact the company, are given contact information for an

attorney who the member should contact and arrange to meet. The member and the attorney will enter into a written retainer agreement and the attorney will pursue the claim. The agreement will reflect that the member pays no attorney's fees but is required to pay litigation costs and court fees.

The second FAQ addresses how a claim by a member to be an accident victim is evaluated. The participating lawyer will use information gathered to make a final decision to pursue the claim or not. The third FAQ indicates that decision is final and the company will not review or override it.

The fourth FAQ addresses how attorneys are selected by the company to represent members and the general qualifications they have. FAQ five characterizes the relationship between the company and the lawyers as being their agreement that the company "is a better way to pay lawyers who represent car accident victims: based on the work they do, not based on the extent of their client's injury." The sixth FAQ provides information on the typical costs and fees of litigation a member can expect. The seventh FAQ addresses the situation where a member and attorney do not get along and indicates the company will hire another lawyer. Question eight advises that a member is free to hire the lawyer for other legal work but the fees are the member's responsibility.

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. The proposed website in several places explains that the plan member will be responsible for court costs and litigation expenses, including a sampling of typical costs. According to the website, the provision will be included in any fee agreement with the participating attorney, who will charge no legal fees. The advertisement complies with Rule 7.2(f) of the Rules of Professional Conduct which provides that an advertisement that states there is no legal fee in a matter shall disclose "whether and to what extent the client will be responsible for any court costs and expenses of litigation."

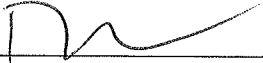
Attorney advertising is subject to the requirements of Rule 7.1 which provides that an attorney “shall not make a false or misleading communication about the lawyer or the lawyer’s services” either by assertion or omission. This reviewing committee finds that the asterisked statement found on the home page of the website is misleading under Rule 7.1 because it suggests that the company’s plan is some sort of unconventional type of insurance by stating it “is not conventional car insurance.” The second advisory opinion issued on this proposed website extensively discussed how the company’s plan does not qualify to be termed “insurance” which is a term of art. See Advisory Opinion #16-3823-A available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm). The home page characterization of the company as a “low cost...prepaid legal service plan” which covers a limited legal situation is the more accurate characterization of the company’s services as detailed in the information throughout the website.

FAQ #5 which purports to explain the company’s relationship to participating attorneys is very general in nature. This advisory opinion assumes that the fee agreement between the member and the participating attorney will disclose if any legal fees are split between the company and the attorney pursuant to the requirements of Rule 1.5(e).

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.

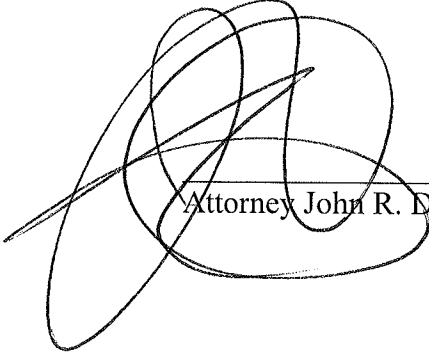
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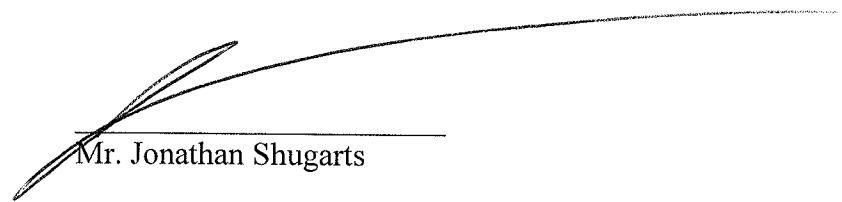


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Attorney Tracie Molinaro



Attorney John R. Donovan

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Mr. Jonathan Shugarts