

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #08-01297-A Communication Sent to Prospective Business Clients Exemption to Mandatory Filing Requirements

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 January 30, 2008. The proposed print advertisement is a yellow letter sized flyer to be sent on company letterhead by a law firm with offices in Stamford, Connecticut and White Plains, New York. The advertisement would be mailed to newly formed businesses that are announced weekly in the "New Business" section of the Westchester County Business Journal. The law firm provides immigration law services. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The advertisement provides the following information: the name of the law firm at the top center of the flyer, which is "Law Offices of [the attorney], LLC"; a practice area listed underneath-"U.S. Immigration and Naturalization Law"; and the names of three lawyers-two of the lawyers are listed on the upper left side and one on the upper right side of the flyer. At the bottom of the flyer are the two office locations of the firm, each with their address, telephone and fax numbers listed. One office location is listed on the left side and one on the right side of the page. In between, on the bottom center of the flyer, is the firm's website and email address. Pursuant to Rule 7.2 (i) of the Rules of Professional Conduct, all of the above referenced information, which is in the firm's letterhead, is presumed not to violate the provisions of Rule 7.1

of the Rules of Professional Conduct and therefore is not false or misleading. This opinion assumes that the attorneys are all licensed in Connecticut and New York since no other jurisdictional limitations are listed on the firm's letterhead. If any of the attorneys are not licensed in Connecticut and New York the firm's letterhead should reflect the jurisdictions where those attorneys are admitted. Furthermore, the field of law listed in the letterhead also complies with Rule 7.4 of the Rules of Professional Conduct since there is no other language stating or implying that the lawyers or law firm are specialists in this area of law.

Underneath the letterhead in large upper case type is the sentence "WELCOME TO THE WESTCHESTER BUSINESS COMMUNITY". In bold, but slightly smaller, type is the statement "US Immigration is a hot potato for employers." Underneath, again in slightly smaller type, are the following sentences:

WHEN YOU START HIRING STAFF: ENSURE you are in I 9 COMPLIANCE

EVEN US CITIZENS must complete an I 9 FORM

For more helpful tips

VISIT

[Law firm website]

Employer: Frequently Asked Question section

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients and provides the parameters of that contact. Subsections (b) and (c) of Rule 7.3 regulate written communications for the purpose of obtaining professional employment. The numbered

subsections of Rule 7.3 (b) distinguish between several types of written (and electronic) communications, specifically those concerning personal injury or wrongful death cases, persons already represented by counsel in a specific matter or who are unfit or unwilling to receive such communications. This opinion assumes those fact patterns are not applicable to the proposed advertisement since nothing in the requesting attorney's submission indicates those circumstances. Subsection (c) of Rule 7.3 concerning communications to prospective clients also is not applicable to the proposed advertisement. Rule 7.3 (c) provides:

Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written communication...If the written communication is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. (emphasis added)

The requesting attorney for the proposed advertisement indicates that the prospective clients are businesses selected for mailing because they are listed in the new business section of a local weekly business journal. The firm practices immigration law and solicits the businesses for that type of legal service as indicated by the proposed flyer. This opinion assumes, since the businesses are selected from the business journal because they are newly created, the law firm does not know of any need for legal services in a particular matter that the businesses have, aside from the fact that they are new businesses. Additionally the proposed advertisement is a one page flyer on firm letterhead, not a self mailing brochure or pamphlet with an address panel. Therefore the

requirements of Rule 7.3 (c) mandating the label "Advertising Material" in red ink do not apply to the proposed advertisement.

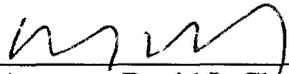
The proposed advertisement complies with the provisions of Rule 7.3 (g) as well. Subsection (g) of Rule 7.3 provides that written communications to prospective clients (that are not brochures or pamphlets) shall be on letter-sized paper rather than legal-sized paper and shall not resemble legal documents. The proposed advertisement is therefore in compliance with the provisions of Rule 7.3 concerning communications with prospective clients.

The requesting attorney has also asked if the proposed advertisement is subject to the mandatory filing requirements for advertisements set forth in Practice Book Section 2-28A. Specifically the question is whether the advertisement is exempt pursuant to Practice Book Section 2-28A (b) (5) (ii) which provides that "[t]he filing requirements of subsection (a) do not extend to any of the following materials... (5) [a] communication sent only to... (ii) [o]ther attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies..." Since the proposed advertisement is a direct mailing for new businesses only, the advertisement qualifies for exemption pursuant to Practice Book Section 2-28A (b) (5) (ii). The proposed advertisement does not need to be filed with the Statewide Grievance Committee under the mandatory filing requirements of Practice Book Section 2-28A.

Accordingly, this reviewing committee opines that the advertisement complies with the Connecticut Rules of Professional Conduct. This reviewing committee offers no opinion as to whether or not this communication complies with the rules on attorney advertising in New York.

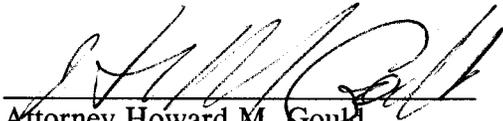
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