

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #15-02038-A Television Commercial #One Rule 7.1-Results Disclaimers and Dramatization

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 12, 2015. The proposed advertisement is a 30 second television commercial. This reviewing committee concludes that the proposed television advertisement complies with the Rules of Professional Conduct.

The proposed commercial advertises the services of the requesting law firm in the area of personal injury services. A script of the proposed content of the commercial was provided for the advisory opinion. The script provides a description of the visual screens to be displayed and an audio transcript that will be spoken in the commercial.

The commercial begins with a spokesman inquiring whether the viewer has been injured and would like to have a "free consultation" with the firm's attorneys who will "fight to get the compensation you deserve." Next, a purported client, who is actually an actor, is shown on screen who states that the firm obtained a \$300,000 settlement for him instead of the insurance company offer of \$85,000. The requesting attorney in his request for an advisory opinion indicated that the money amounts discussed in the commercial were actual results obtained for clients by the firm.

The graphic "Get The Money you Deserve" is displayed next. The final screen placard will show the firm's name, address, phone number and website address. The requesting

attorney indicated that the name of the requesting attorney, his partner, address and phone number will appear for at least 15 seconds. The script provides that the two attorney names and office address will appear for 15 seconds. This opinion assumes the phone number will also be part of that 15 second display as stated in the attorney's request and as required by Rule 7.2(d) of the Rules of Professional Conduct.

The proposed advertisement contains disclosures on screen which are shown when the actor who is portraying a purported client appears discussing his case. When the actor first appears the screen will disclose "Paid Spokesperson" and while he is on screen the display will read "Dramatization-Paid Actor." The television commercial also contains a disclaimer during the commercial and on the end placard that states: "Past results are not indicative of the outcome of future cases."

Although this advertisement displays the firm's website address, the website itself was not reviewed in connection with this advisory opinion request. Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information consisting of the attorneys' names, phone number and address is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct and therefore is not false or misleading.

The proposed advertisement complies with Rule 7.2(d) of the Rules of Professional Conduct by providing the name, address and telephone number of an attorney admitted in Connecticut for fifteen seconds or the duration of the commercial whichever is less. Since the proposed advertisement was submitted as a script, this opinion assumes the display will be readable and in bold print as required by Rule 7.2(d).

Attorney advertising is subject to the requirements of 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. 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 commentary to Rule 7.1 elaborates on the types of statements that are potentially misleading, including the recitation of past results and monetary awards obtained by an attorney. The commentary to Rule 7.1 provides:

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.

As detailed above, the proposed advertisement contains a dramatization by a purported client stating that the firm obtained a \$300,000 compensation for his injuries. Pursuant to the commentary to Rule 7.1, reciting a past monetary award for one client, though truthfully reported, is potentially misleading because it may create unjustified expectations in prospective clients as to the results that can be obtained in their cases. This is particularly true when juxtaposed with other language advertising "get the money (or compensation) you deserve."

An appropriate disclaimer or qualifying language inserted at the end of these statements would alleviate the potentially misleading statements and bring them into compliance with Rule 7.1. An appropriate disclaimer is one that is readable and this opinion assumes the graphics displaying the information about past results will be readable to the television viewer and accordingly bring the statement about the \$300,000 award into compliance with Rule 7.1. See Advisory Opinions #09-1114-A, #08-01500-A and #08-01271-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for further discussion regarding the use of disclaimers when advertising past results or successes obtained for clients.

The proposed advertisement also depicts what is purported to be a testimonial by a client. Client testimonials, like all attorney advertising, are regulated by the provisions of Rule

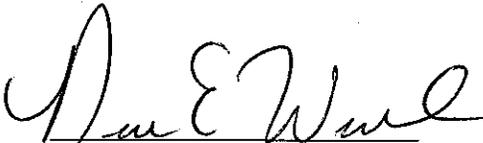
7.1. They cannot be false or misleading and cannot violate any other Rules of Professional Conduct. Connecticut does not have special rules regarding testimonials or paid spokespersons or actors and does not prohibit them though they must comply with Rule 7.1. Since the purported client is actually a paid spokesman, the disclaimer language placed in the advertisement when the spokesman appears, labelling him as a "paid spokesperson" or "actor" prevents the testimonial and depiction of a purported client from being misleading under Rule 7.1.

Nothing in the language of the testimonial violates any other Rule of Professional Conduct. The disclaimer, explaining results obtained for one client may not be obtained for others, prevents any misleading implication regarding client expectation in compliance with Rule 7.1. The disclaimer, indicating that the person appearing on screen is an actor/spokesperson, obviates any assumption that the person is an actual client and is not misleading under Rule 7.1. The \$300,000 settlement advertised was actually obtained for clients and is therefore also not misleading. If the monetary amounts were fictional, additional disclosure language would be required to indicate that the dramatization of a \$300,000 settlement was not an actual event.

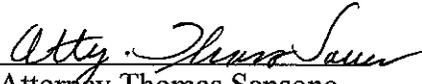
Accordingly, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.

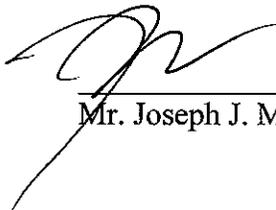
ISSUE DATE: March 31, 2015

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A handwritten signature in black ink, appearing to be 'J. Matthews', written over a horizontal line.

Mr. Joseph J. Matthews