

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #23-06079-A Television Commercial # 1 Firm Advertising Specialty and Contingent Fee**

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 August 30, 2023. The proposed advertisement consists of a sixty-eight (68) second video to be streamed on the following platforms: YouTube TV, YouTube, Hulu Live, and Facebook. This reviewing committee concludes three portions of the advertisement do not comply with the Rules of Professional Conduct.

The proposed video to be streamed advertises the services of the requesting law firm in the areas of medical malpractice and personal injury. A complete script of the proposed content accompanied the video for review and provided a verbatim transcript of the words spoken throughout the video.

The video begins with one of the requesting firm attorneys discussing the firm protocol when first undertaking client representation. The name of the attorney speaking is prominently featured on the screen in white lettering for approximately eight (8) seconds. The firm attorney continues with his monologue by stating the firm “specializes” in the practice areas of “medical malpractice” and “other complex personal injury matters”. The attorney then discusses the procedures the attorneys in the firm follow to gather pertinent information from clients and to

discover the salient facts surrounding the client's matter. The firm attorney also indicates that the firm is compensated on a contingency fee basis. Throughout the attorney's monologue, the video depicts different views of the firm attorneys collaborating in a conference room, walking throughout New Haven, and "live" photos of the attorneys in front of New Haven landmarks. The video finishes with the display of the firm name accompanied with the firm logo. This display remains on the screen for four (4) seconds.

**Display Name:**

Rule 7.2 (e) of the Rules of Professional Conduct provides:

Any advertisement or communication made pursuant to this Rule shall include the name of at least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

The advertisement as submitted displays the speaking attorney's name for eight (8) seconds and then at the end of the video, the firm name and logo for four (4) seconds. Assuming the displayed attorney's name is the attorney responsible for the advertisement, to fully comply with Rule 7.2(e) the firm must display the name, address and telephone number of the lawyer admitted in Connecticut who is responsible for the advertisement in bold print for at least fifteen seconds as the eight seconds display fails to comply with Rule 7.2(e) of the Rules of Professional Conduct.

**Advertising a Specialty:**

The attorney in this advertisement states, "We specialize in medical malpractice cases and other complex personal injury matters".

Rule 7.2 (d) of the Rules of Professional Conduct provides:

A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

- (1) the lawyer is currently certified as a specialist in the field of law by a board or other entity which is approved by the Rules Committee of the Superior Court of this state or by an organization accredited by the American Bar Association; and
- (2) the name of the certifying organization is clearly identified in the communication.

Rules 7.4A(a) and (d) of the Rules of Professional Conduct provide in pertinent part:

- (a) A lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is 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 of this state or by an organization accredited by the American Bar Association....
- (d) Certification as a specialist may not be attributed to a law firm.

Rule 7.4A also lists the twenty-eight (28) areas of law for which an attorney could potentially be certified as a specialist. Neither medical malpractice nor personal injury is listed as a specialization. Accordingly, the firm cannot advertise that it specializes in medical malpractice or complex personal injury matters because: 1) this specialty is not recognized in Connecticut; 2) certification as a specialist cannot be attributed to a firm; and 3) the attorney has not listed the name of the certifying organization. Law firms are permitted to indicate that they “focus” their practice on or “concentrate” on a specific area of law. See Rule 7.2 of the Rules of Professional Conduct commentary.

**Contingent Legal Fees:**

The attorney in the video discusses the fee associated with the firm's services. The attorney states, "We handle all our cases on a contingency basis, which means we essentially charge based on the recovery".

Rule 7.2(f) provides in part:

- (f) Every communication that contains information about the lawyer's fee, including those indicating that the charging of the fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation.... If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken

This statement is not compliant with Rule 7.2(f) of the Rules of Professional Conduct as there is no indication within the video whether or not the client will be charged for any court fees and litigation expenses and if so, to what extent. To comply with Rule 7.2(f) the attorney in the video should verbally state whether or not the clients are responsible for the court costs and expenses associated with litigation.

Pursuant to Practice Book §2-28B(a) a suggested script was submitted with the advisory opinion request. The script is in keeping with the attorney speaking in the video and as such all suggested changes as previously stated herein apply not only to the video submitted but also to the script.

Accordingly, this reviewing committee opines that the foregoing portions of the advertisement video as previously discussed herein are not compliant with the Rules of Professional Conduct.

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