STATEWIDE GRIEVANCE COMMITTEE

Advisory Opinion #14-06286-A
Letter Soliciting Clients for Mismanagement of Investment Claims

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 4, 2014. The proposed advertisement is a letter and accompanying envelope. The letter will be sent to persons who have been identified in the Central Registration Depository ("CRD") Report, as having filed complaints about the management of their investments by stockbrokers or brokerage firms. The CRD is a public database of stockbrokers and brokerage firms maintained by the federal government. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The proposed advertisement provides the following information: in the center top letterhead is the law firm's name and address, phone and fax number, the attorney's juris number, tax identification number and firm website address. On the left side letterhead is the requesting attorney's name and the statement that he is a Board Certified Workers' Compensation Specialist. On the right side opposite is listed the attorney's email address and the statement that he is also admitted in Maine. On the top center of the page below the letterhead is the phrase "Advertising Material" in red ink. The same phrase in red is found on the accompanying envelope below the address field.

The proposed advertisement begins with the sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The proposed advertisement states that the recipient's

name was obtained through the publicly available CRD Report, as having registered a complaint about the handling of investments by a stockbroker or brokerage firm. The letter advises that the attorney would like to speak to the addressee regarding potentially representing them in an arbitration proceeding against the broker or firm.

The letter details biographical information about the requesting attorney's education and legal experience. The letter offers that if a case for investment mismanagement is pursued the attorney is "likely to co-counsel with" another attorney, who is admitted to three other states but not Connecticut. The co-counsel's biographical information is provided, including his legal background and arbitration experience and his present office location in Florida. The letter states that co-counsel has an "AV rating from Martindale-Hubbell-very high to preeminent... Martindale-Hubbell's highest rating."

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the firm's letterhead consisting of the firm's name, attorney's name and jurisdictions of admission, address, phone and fax numbers, website and email 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 letter also complies with Rule 7.2(d) by providing the name of an attorney admitted in Connecticut who is responsible for its content.

In the proposed advertisement, the requesting attorney is listed in the letterhead as a "Board Certified Workers' Compensation Specialist." Rules 7.4 and 7.4A of the Rules of Professional Conduct control a lawyer's ability to discuss practice areas and specialization. Rule 7.4 prohibits an

attorney from stating or implying that he is a specialist unless the attorney is certified as a specialist in accordance with Rule 7.4A. Rule 7.4A permits the lawyer to state he or she is a specialist in a field if he or she has received a certification in that area of the law and the certification is recognized by the Rules Committee of the Connecticut Superior Court. The Legal Specialization Screening Committee has recognized the Connecticut Bar Association as the recommended entity to certify lawyers as specialists in the field of Workers' Compensation and on October 23, 2011, recertified that entity and the certification program until October 23, 2016. Accordingly the certification listed in the proposed advertisement is in compliance with Rule 7.4A.

The proposed advertisement states that the attorney who will act as co-counsel has an AV rating from Martindale-Hubbell which is characterized as "very high to preeminent." Pursuant to Rule 7.1 of the Rules of Professional Conduct statements made in attorney advertising cannot be misleading and must have a "reasonable factual foundation." Statements that describe legal services in superlative terms are problematic under Rule 7.1 and are usually proscribed unless they possess a reasonable and objective factual foundation or are disclaimed or explained. (See Advisory Opinions 07-00188-A, 07-00776-A and 07-01008-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for discussion of the ethics of advertising oneself with the designation Super Lawyer®.) The proposed advertisement states that the AV designation is the highest rating obtainable in Martindale-Hubbell's ranking system. This information clarifies that the rating is the opinion of a commercial ranking publication and the superlative description "very high to preeminent" is the name of the one of the publication's

categories. This manner of displaying the AV Martindale-Hubbell ranking therefore does not violate Rule 7.1.

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 found in subsection (b) of Rule 7.3 are not applicable to the proposed advertisement. Since the proposed advertisement will be sent to persons, identified through public records, as having registered complaints about investment mismanagement, subsection (c) of Rule 7.3, concerning communications to prospective clients, is 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 and the lower left corner of the outside envelope or container, if any ... (emphasis added)

The prospective clients are solicited because they have complained about the handling of their investments by stock brokers or brokerage firms and are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by

providing the required label "Advertising Material" clearly and prominently in red ink on both the letter and envelope.

The proposed advertisement complies with the other relevant provision of Rule 7.3. Pursuant to Rule 7.3(d) it contains the requisite first sentence: "If you have already retained a lawyer to represent you please disregard this letter." The envelope complies with Rule 7.3 (e) by not revealing on the outside the nature of the client's legal problem.

The proposed advertisement provides detailed information about the attorney who may serve as "co-counsel" with the requesting attorney on any cases that arise from response to the letter. Co-counsel is not an attorney admitted in Connecticut and that fact is disclosed. In the case of shared advertising, Rule 7.3(h) of the Rules of Professional Conduct provides that if cases may be referred by the advertising attorney to other attorneys or another firm, that information should be disclosed in the advertisement. Rule 7.2(h) provides:

> No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

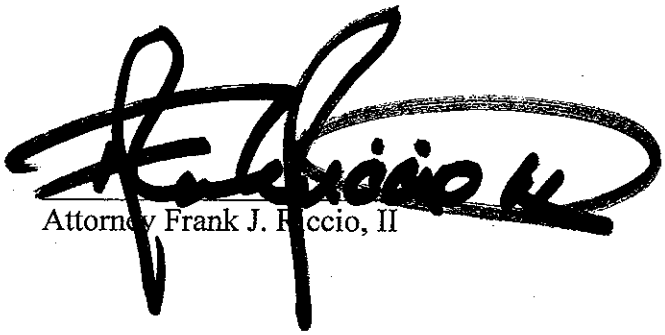
While it is not clear from the advisory opinion request whether the two attorneys are sharing the cost of the proposed advertisement, the attorneys plan to collaborate on potential cases and they are not members of the same firm. The proposed advertisement complies with Rule 7.2(h) by listing the name and address of the other attorney who may be referred cases obtained from responses to the proposed advertisement. This advisory opinion offers no opinion on whether this arrangement

complies with the requirements of Rule 1.5(e), which concerns the written disclosure of division of fees, or with Rule 5.5 of the Rules of Professional Conduct, which concerns the unauthorized practice of law, since that is beyond the scope of an advertising advisory opinion.

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

(E)

ISSUE DATE: August 20, 2014



Attorney Frank J. Riccio, II

Atty. Thomas Sansone

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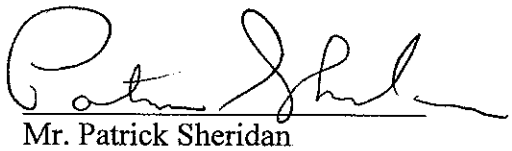

Mr. Patrick Sheridan