

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #07-01009-A Television Advertisement Critical of Insurance Companies**

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 September 7, 2007. Pursuant to Practice Book §2-28B(d), the committee requested additional information on September 19, 2007. The requesting lawyer partially complied with our request on October 4, 2007 and upon further inquiry offered no other substantiation on November 5, 2007. The proposed television advertisement is scheduled to appear on local television stations from the fall of 2007 until the fall of 2008. This reviewing committee concludes that the proposed television advertisement does not comply with the Rules of Professional Conduct.

This committee notes the important role television advertising plays in providing legal services to low and moderate income members of the public. "Television is now one of the most powerful media for getting information to the public, particularly persons of low or moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public." Rule 7.2 of the Rules of Professional Conduct, commentary. Advertising in general involves an active quest for clients, contrary to the traditions of the bar. *Id.* The interest in providing the public with information

about legal services must prevail over these traditions. Id.

The television advertisement has been submitted in the form of a script and does not include graphics. It will be presented by a spokesperson. The advertisement displays the name, address and telephone number of one lawyer responsible for the advertisement in bold print, which is readable, for at least fifteen seconds pursuant to Rule 7.2. The firm will provide a readable disclaimer that the speaker is a paid spokesperson.

In this television advertisement, the speaker will state:

It's all about success, winning. It's all about you and what you deserve.

That's where the intricacies of the law come in.

[The firm] lays down the law. [Sound effect: GONG]

This is Connecticut.

These are our streets.

None of these New York insurance companies are allowed to come here and treat you unfairly [or No out of state insurance company is allowed to come in here and treat you unfairly.]

That's what your team is for. FOR YOU.

Call 1-800-WIN-WIN-1.

We asked the requesting lawyer to substantiate and justify the claim: “[n]one of these New York insurance companies are allowed to come here and treat you unfairly or [n]o out of state insurance company is allowed to come in here and treat you unfairly.” The requesting lawyer stated that the legal basis for this claim was “the duties and obligations imposed by the Connecticut Unfair Insurance Practices Act §38a-815, et seq., and the Connecticut Unfair

Trade Practices Act §42-110(b) et seq....” He stated the “clear thrust of the line is to highlight the fact that out of state and/or New York insurance companies cannot unfairly treat the citizens of Connecticut and when conducting business in Connecticut must comply with Connecticut law.” We asked the requesting attorney to supply us with “[e]vidence to substantiate your implied claim that out-of-state insurance companies treat Connecticut residents unfairly, and/or that they treat Connecticut residents more unfairly than Connecticut insurance companies do.” The attorney responded, but failed to provide additional information.

The proposed advertisement violates Rule 7.1 of the Rules of Professional Conduct because 1) the references to winning are likely to create an unjustified expectation as to success; and 2) the requesting lawyer failed to substantiate the implication that out-of-state insurance companies act in bad faith. Rule 7.1 governs the restrictions on false or misleading communication. It is misleading for a lawyer or firm to report truthful achievements on behalf of clients or former clients if it leads a reasonable person to believe that a lawyer can achieve those results for them without reference to the specific factual and legal circumstances of the case. See Rule 7.1 of the Rules of Professional Conduct, commentary. It is misleading for a lawyer to make claims in an advertisement that cannot be substantiated. In some instances, an appropriate disclaimer given equal weight could correct a statement that is likely to create unjustified expectations or otherwise mislead a consumer. *Id.*

By stating, “It’s all about success, winning. It’s all about you and what you deserve”, the firm is creating unjustified expectations for prospective clients. The firm is suggesting that it wins every case and that it will win a prospective client’s case regardless of the merits. The statement is misleading. The firm could correct this misleading statement by including a

disclaimer, explaining that results are based on the merits of the case and that success in the past does not guarantee success in the future.

The phone number, 1-800-WIN-WIN-1, is also misleading, because it creates an unjustified expectation of success for prospective clients. As the Florida Supreme Court noted in *The Florida Bar v. Pape*, 918 So.2d 240 (Fla. 2005), cert. denied, 547 U.S. 1041 (2006): “[p]hrase-based phone numbers are memorable because of the images and associations they evoke.” In that case, the “1-800-PIT-BULL” phone number “sticks in the memory precisely because of the image of the pit bull also featured in the ad, the association of pit bulls with the characteristics discussed herein, and the ‘go for the jugular’ style of advocacy that some persons attribute to lawyers.”

Similarly, we find this phrase-based phone number (WIN WIN) evokes the association of winning the case at any cost and raises unjustified expectations in the consumer. There is no disclaimer that could be given sufficient weight to disclaim the expectations created by this phone number that a prospective client will call to hire the attorney. The phone number must be changed to its digits rather than the words, “Win Win” to comply with Rule 7.1.

The suggestion that out-of-state or New York insurance companies come to Connecticut and treat residents unfairly, violates Rule 7.1, because it is potentially misleading and has not been substantiated. The statement is potentially misleading, because it suggests that all out-of-state or New York insurance companies treat Connecticut residents unfairly. The literal statement is that out-of-state or New York insurance companies are not allowed to treat Connecticut residents unfairly. The requesting lawyer explained this statement is meant to apprise consumers of the law against insurance companies acting in bad faith. However, we find the statement implies out-of-state insurance companies actually treat Connecticut residents

unfairly and the lawyer has failed to substantiate this claim.

In order to make such a claim, an advertising lawyer would have to have evidence to verify that the statement is factually true, *i.e.*, evidence that out-of-state insurance companies actually treat Connecticut residents unfairly. This committee requested information from the lawyer pursuant to Practice Book §2-28B(d) that would substantiate this claim, but the lawyer provided no such information. The requesting lawyer has not substantiated his statement; therefore he cannot make the claim.

Accordingly, this reviewing committee opines that the proposed advertisement does not comply with the Rules of Professional Conduct.

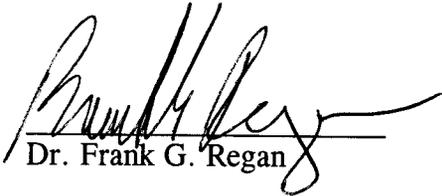
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ISSUE DATE: 11/21/2007



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