

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #10-01283-A Billboard Advertisement Rule 7.5 Trade names

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 29, 2010. On February 5, 2010, this reviewing committee requested more information regarding the proposed advertisement. The attorney responded on February 11, 2010. The proposed advertisement is a billboard. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The proposed billboard displays the following information: a photograph of the attorney and underneath the moniker "Lady DUI"; the phrase "DUI DEFENSE!"; the name of the advertising attorney; the phone number "***-Lady-DUI;" and the domain name "LadyDUI.com." Underneath in much smaller print is the name of a second attorney who is stated to be responsible for the advertisement's content, and the statement that the advertising attorney "is not recognized as a specialist in the area of DUI defense." This is accompanied by a statement explaining that Connecticut does not recognize DUI Defense as a legal specialization. A pinpoint website link is provided containing more information about the statement regarding specialization. This pinpoint website link and the main "LadyDUI.com" website were not reviewed as part of this advisory opinion request.

The advertisement complies with Rule 7.2 (d) by listing the name of at least one attorney admitted in Connecticut responsible for its content. Several additional Rules of Professional Conduct are relevant to a review of the proposed advertisement, namely Rules 7.1, 7.4, 7.4A and 7.5.

Attorney advertising is governed by 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.

The proposed advertisement displays a domain name which is not the name of the attorney or of the attorney's law firm. The content of a law firm's name is regulated by Rule 7.5 of the Rules of Professional Conduct which also regulates any other "professional designation" used by attorneys or firms, including domain names. Rule 7.5 incorporates the provisions of Rule 7.1 and provides:

A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. (emphasis added)

Several states bar ethics authorities have examined the ethical implications of the use of domain names which do not embody the name of the firm or of an individual attorney. The opinions frequently distinguish the practice of law under a trade name from the use of domain names which are different from the name of the firm. See, Ohio 99-4, (June 4, 1999), Arizona 97-04 (April, 1997), Arizona 01-05 (March, 2001), Committee on Attorney Advertising Opinion 32,

180 N.J.L.R. 654, (May 23, 2005) and Association of the Bar of the City of New York Formal Opinion 2003-01 (May, 2003). While finding that the use of domain names different from the name of an attorney or law firm is permissible, state bar authorities have found that they are still subject to regulation and cannot be false or misleading.

‘Domain names’ function as addresses on the Internet....Individuals searching the Internet for a particular service or particular website use search engines to scan websites for particular words or phrases...clearly law firms want to choose a domain name that clients will remember easily and that will identify that law firm. Frequently lawyers include their website addresses on business cards, letterhead, telephone directory addresses, and other listings. The purpose of the domain name is to function as a professional identifier. While a domain name is not necessarily the same as the law firm name (and sometimes cannot be the firm name due to the length of the actual name), domain names are ‘professional designations’ within the meaning of the Rules of Professional Conduct. (Arizona 01-05 at2)

The use of the trade name “Lady DUI” does not imply an association to any “government agency or with a public or charitable legal services organization” as prohibited in Rule 7.5. By using the trade name “Lady DUI” the attorney is indicating the type of law in which she focuses her practice. The moniker, taken on its own terms, does not characterize that practice beyond listing the subject area-in this case DUI cases. In Connecticut Bar Association (“CBA”) Informal Opinion 93-20 (published July 30, 1993) the use of the descriptive phrase “Business Lawyer” on letterhead was found permissible. The CBA opinion examined the use of the phrase in connection with Rules 7.4 and 7.4A.

Rules 7.4 and 7.4A regulate the manner in which an attorney or a firm may characterize practice areas. Rule 7.4 provides:

- (a) A lawyer may communicate the fact that the lawyer does or does

not practice in particular fields of law.... (d) a lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

Rule 7.4 was amended June 30, 2008 and made effective January 1, 2009 to permit an attorney to “indicate the lawyer ‘concentrates in, focuses on,’ or [has a] practice ‘limited to’ particular fields of practice so long as the statements are not false or misleading in violation of Rule 7.1” See commentary to Rule 7.4.

Rule 7.4A provides that only a lawyer “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” may state or imply specialization in a field of law. The proposed advertisement does not state the attorney is a DUI specialist and in fact expressly disclaims it.

The question for this reviewing committee is whether by nominating herself “Lady DUI” and using the same descriptive phrase as both a domain name and a phone number, does the proposed advertisement imply a specialization in that practice area? This reviewing committee finds that the provided disclaimer prevents the proposed advertisement, in this context, from implying specialization under Rules 7.4 and 7.4A and therefore the use of the trade name for the domain name and phone number, is not misleading in violation of Rules 7.1 and 7.5.

This committee requested more information from the requesting attorney as to the readability of the disclaimer language by the viewer of the proposed billboard. As discussed in the commentary to Rule 7.1, the use of an “appropriate disclaimer” may obviate any misleading implications in attorney advertising and statements. The readability of a disclaimer is a factor in whether or not it is appropriate.

This reviewing committee requested more information from the requesting attorney as to the location of the bill board and the relative ability of a viewer to read the disclaimer language based on size and distance. The requesting attorney provided additional information regarding the disclaimer and the billboard in response to this reviewing committee's request. The proposed advertisement is a mobile billboard which will be parked next to a sidewalk on a mobile apparatus that looks like a truck. The expected viewing distance will be approximately 10 feet by pedestrian traffic. Accordingly this reviewing committee finds that the disclaimer language is readable and appropriate, and serves to avoid any misleading implications that violate Rule 7.1, 7.4 and 7.4A by using the trade name "Lady DUI."

In recent years, there has been rapid development in the law and the technology involved in attorney advertising. Attorney advertising is a type of commercial speech protected by the First Amendment. For a full discussion of this issue please see Advisory Opinions #07-00188-A and #07-00776-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. The use of the domain name "Lady DUI" is for the ease of location of the attorney by the public looking for DUI representation on the internet. Similarly, the use of the phone number comprising that same phrase is to facilitate retrieval of the attorney's name and contact information, particularly in an advertisement that is "drive by" in nature. The commentary to Rule 7.2 provides:

The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching....Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against 'undignified' advertising.

The interest in providing public information is therefore a preeminent concern and prevails unless an attorney communication violates a Rule of Professional Conduct. Accordingly, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.

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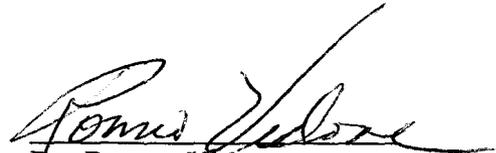
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