

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #11-01513-A Letter to Franchisees

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 February 10, 2011. The proposed print advertisement is a letter that will be mailed to franchisees of a national chain of sandwich shops. The letter is a self-mailer informing the franchisee owners of the services of the law firm in representing franchisees in disputes with the franchisor who is incorporated in Connecticut. The proposed advertisement will be mailed by regular mail throughout the country using a staggered mail schedule for a period of about six months until all franchisees are contacted. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The advertisement provides the following information: the letterhead of the law firm which consists of the name, address, telephone and fax number of the law firm in the top center of the page; the name of the two attorneys and their email addresses along the top left side of the page; and the types of services that the firm provides to franchisees on the right side.

The proposed advertisement states in the body of the letter that the franchise agreement between the franchisor and the franchisee provides that disputes between them are governed by Connecticut law and must be submitted to binding arbitration in Connecticut. The law firm maintains that it has experience in representing over 60 stores in various legal matters involving

the franchise agreement with the national chain. The letter explains the various types of franchise disputes the firm has handled and offers that it has designed a special flat fee schedule for the three most common types of disputes. The proposed advertisement offers a free initial telephone consultation. The letter is signed by the firm's two attorneys.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, all of the above referenced information contained in the letterhead is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct and therefore is not false or misleading. Furthermore, the listing of services provided by the firm also complies with Rule 7.4 of the Rules of Professional Conduct since there is no other language stating or implying that the lawyer or law firm is a specialist in the area of law. The proposed advertisement also complies with Rule 7.2(d) by listing the name of at least one attorney admitted in Connecticut who is responsible for the advertisement.

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 are not applicable to the proposed advertisement since nothing in the requesting attorney's submission indicates those circumstances. The franchisees are contacted because they have entered into a franchise agreement but there is no indication that they are in a contract dispute and need legal representation. Therefore, the

requirement delineated in subsection (c) of Rule 7.3 requiring certain proposed communications to be labeled as advertising is not applicable to the proposed advertisement. The proposed advertisement also does not need to comply with Rule 7.3 (d) which provides that communications concerning a specific matter start with the sentence: "If you have already retained a lawyer for this matter, please disregard this letter."

The proposed advertisement is exempt from the mandatory filing requirements for certain attorney advertising. Practice Book §2-28A (b) (5) (ii) provides that "[t]he filing requirements of subsection (a) do not extend to any of the following materials... (5) [a] communication sent only to... (ii) [o]ther attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies..." Since the proposed advertisement is a direct mailing to businesses owners, the advertisement qualifies for exemption pursuant to Practice Book Section 2-28A (b) (5) (ii) and does not need to be filed with the Statewide Grievance Committee.

This reviewing committee offers no opinion as to whether or not this communication complies with the rules on attorney advertising in any other states where the communication may be mailed. Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct in Connecticut.

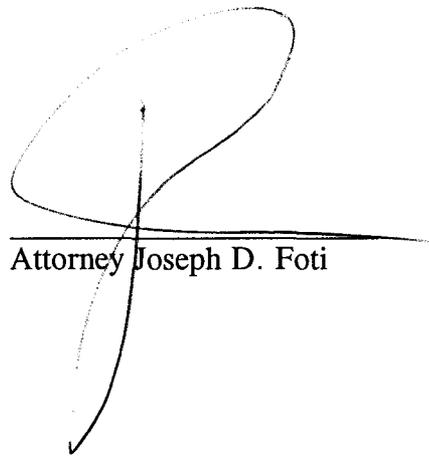
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ISSUE DATE: February 25, 2011

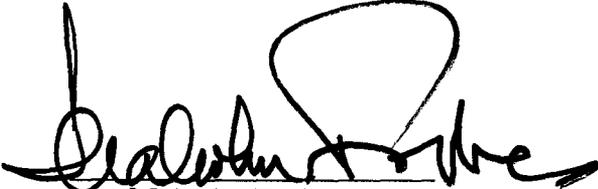
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A handwritten signature in black ink, consisting of a vertical line on the left, a curved line that dips and then rises, and a long, sweeping line that extends to the right.

Attorney Noble F. Allen



Attorney Joseph D. Foti



Mr. Malcolm Forbes