

# THE CONNECTICUT LAW TRIBUNE

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## New Rules Intended To Raise Professionalism

Revisions to ethical rules promulgated for lawyers' ads and web sites

By **ROBERT ADELMAN**

On June 26, 2006, the judges of the Superior Court adopted extensive revisions to the Connecticut Rules of Professional Conduct. These revisions covered 115 pages of the July 25, 2006 Connecticut Law Journal. Most of these revisions will take effect on Jan. 1, 2007.

Of particular note for personal injury attorneys are revisions pertaining to lawyer advertising and communications, including web sites. These revisions were recommended by the Lawyer

Advertising Committee chaired by the Honorable C. Ian McLachlan. (The report of the Lawyer Advertising Committee is available for review on the judicial branch website.) What follows is a brief summary of the revisions of most concern to personal injury lawyers.

### Communications Re: Services

Connecticut Rules of Professional Conduct Rule 7.1 prohibits misleading communications. A lengthy addition to the commentary section of the rule takes specific aim at advertisements and communications that feature large settlements and

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*Robert Adelman, of Adelman Hirsch and Newman LLP in Bridgeport is a personal injury lawyer who specializes in malpractice.*

verdicts. The commentary provides that:

An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading, if presented so as to lead a reasonable person to form an unjustified expectation that the same results should be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case.

The commentary also brands as misleading communications which imply that the lawyer is better—or cheaper—than other lawyers.

Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated.

However, the Commentary to Rule 7.1 provides a safe harbor for the lawyer who includes "an appropriate disclaimer or qualifying language . . ."

### Advertising

Professional conduct Rule 7.2 has been updated to catch up with the Internet. Web sites are subject to the same rules as other advertising.

Rule 7.2(b)(1) requires that all electronic advertisements or communications be copied once every three months on a compact disk or similar technology and kept for three years after their last dissemination. Our firm is currently struggling with the mechanics of how to copy our firm's web site.

Rule 7.2(b)(2) requires lawyers to file copies of some advertisements and communications with the statewide grievance committee before dissemination. The procedure is set forth in a new Practice Book Section 2-28A.

### Mandatory Filing

Connecticut Practice Book §2-28A takes effect July 1, 2007. That section states that the format for filing advertisements and communications will be prescribed by the statewide grievance committee. The format has not yet been promulgated. It is anticipated that the filing may be done electronically. For a web site, it appears that all that will be required will be a filing listing all of the domain names used by the attorney, updated quarterly. P.B. §2-28A(a)(3).

Section 2-28(b) of the Practice Book exempts certain communications from the filing requirement. A lawyer is not required to file advertisements or communications with the statewide grievance committee if the content of the communication is limited to the information specified in ethical Rule 7.2(i).

That rule permits only basic contact information, licenses, certifications, foreign language ability, membership in prepaid or legal service plans, and information regarding fees. An informal review of the web sites of a few personal injury law firms indicates that this provision will not provide shelter for the web sites of personal injury lawyers.

There are, however, a number of communications we utilize regularly which we will not be required to file. Lawyers are not required to file advertisements and communications in telephone directories and law lists. We are not required to file copies of our traditional announcements regarding changes in associations or offices. We are not required to file advertisements or com-

munications sent only to existing or former clients, or to nonprofits. Finally, we are not required to file advertisements or communications requested by prospective clients.

Connecticut Practice Book §2-28A requires the Statewide Bar Counsel to review advertisements and communications filed pursuant to this section on a random basis. In addition, lawyer and firm advertisements and communications brought to the attention of Statewide Bar Counsel by competitors or anyone else offended by the communication will be separately reviewed by the Statewide Bar Counsel.

### **Advisory Opinions**

Another new Practice Book Section which provides that a lawyer can secure an advance opinion regarding compliance

with the ethical rules by submitting the planned communication to the Statewide Grievance Committee at least 30 days before its first dissemination. The Statewide Grievance Committee must respond within 30 days (45 days if the request is made within 60 days of the effective date of this section, July 1, 2007). If no advisory opinion is issued within this time frame, the advertisement or communication shall be deemed in compliance.

In sum, the revisions to Connecticut Rules of Professional Conduct regarding advertising and other communications which take effect Jan. 1, 2007 make both substantive and procedural changes to the ethical rules.

The most important substantive change is to try to rein in the boasting about large

verdicts and settlements.

Procedurally, the revisions impose two new and important requirements: (1) starting Jan. 1, 2007 we must copy our electronic communications, including our web sites, every three months and keep those copies for three years; and (2) domain names must be filed with the statewide grievance committee by July 1, 2007.

The fact that the Statewide Bar Counsel has been instructed to review these filings on a random basis should encourage personal injury lawyers to reexamine advertisements and communications for compliance with the new ethical rules. Hopefully, this will raise the level of professionalism exhibited in these communications, which was the intent of the Lawyer Advertising Committee. ■