

DAILY REPORT

AT ISSUE

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Send ideas for At Issue columns or letters to the editor to *Daily Report* Managing Editor Jonathan Ringel at jringel@alm.com or (404) 419-2839.



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Victims' Grieving Families Should Report 'Ambulance Chasers'

KEN SHIGLEY | Special to the Daily Report

THE FAMILIES OF the five Georgia Southern University nursing students killed and the two injured last week when a tractor-trailer ran over them on I-16 bear a huge burden of pain and grief. As a parent, I cannot imagine anything worse than the sudden death of a child who has had you wrapped around her finger from the first time you held her in your arms.

The families need time, space, privacy and gracious consideration from others to have space to grieve, each in their own way.

After any such tragedy, though, waves of welcome and unwelcome people descend upon the survivors. First may come the well-meaning relatives, friends, neighbors and pastors. That loving embrace can help one keep going through the early days.

But after the funeral, most folks go back to their everyday lives, leaving parents and siblings to sit in the departed child's bedroom and weep for hours in the dark. Each must process the stages of grief.

Soon come the claims adjusters, feigning sympathy, lulling the parents into complacency, and giving the impression that they will do everything they can to make things right. They are well trained to insinuate themselves into the confidence of grieving families for the calculated purpose of minimizing the cost for the trucking company and its insurers. Think of wolves in sheep's clothing. No matter what they say, they are not on the side of the victims. They are there with one purpose, to save the company as much money as humanly possible.

And then, unfortunately, are the members of my profession who ignore ethics rules against solicitation. These are the proverbial "ambulance chasers," who descend upon the families, either in person or through agents often called "runners" or "cappers." Defying both State Bar of Georgia ethics rules and Georgia criminal law, they solicit cases from grief-stricken families.

Over the years, clients and others have told me stories of being approached even in hospitals and funeral homes, in the first hours or days after a tragedy, by people who represent themselves as "counselors," "investigators" and even clergy, who slip into conversation a question about whether they have a lawyer yet.

One client whose wife was killed when their car was run over by a tractor-trailer on an Interstate highway, and whose son called me to meet with him at home the week after the funeral, showed me a thick FedEx package he had received from a law firm in Washington, D.C., that apparently solicits victims of major catastrophes all over the country.

Georgia Rule of Professional Conduct 7.3 specifically prohibits lawyers from solicit-

ing employment through direct personal contact or through live telephone contact, with a nonlawyer who has not sought advice regarding employment of a lawyer. It also prohibits written communication to a prospective client in cases of personal injury or wrongful death within the first 30 days after the accident or disaster.

This bar ethics rule further provides that a lawyer shall not compensate anyone for recommending the lawyer's employment except under a bona fide lawyer referral service approved by the bar. Thus, paying someone else to solicit cases is a disbarment offense.

While the maximum penalty for a violation of Rule 7.3 is disbarment, it is difficult for the bar's general counsel to prosecute those cases because there are seldom people motivated to both file grievances and show up to testify. Even out-of-state lawyers are theoretically subject to reciprocal discipline in their home state for violation of these rules in Georgia if the bar has solid evidence upon which to prosecute the case.

Respectable plaintiffs' personal injury lawyers across the country have almost universally condemned this insidious practice of solicitation of cases through runners. In some states there have been damage suits against lawyers who use runners on the basis of violation of Fair Business Practices statutes.

Bottom-feeding, ambulance-chasing lawyers who are not concerned about their professional reputation have felt free to violate this rule. Because many people who are solicited hang up immediately or fail to recognize a problem, these cases are difficult to prosecute without a sting investigation, which the bar's general counsel has not felt equipped to do.

One of my great frustrations as state bar president in 2011-12 was the difficulty of aggressively prosecuting such violations. Lacking law enforcement resources, the general counsel's office was reluctant to organize the kind of sting investigation

I knew, as a former prosecutor, could be effective.

I appointed a committee to organize training for state court solicitors, law enforcement and hospital attorneys on how to carry out these investigations. Included were former FBI agents, state court solicitors and hospital counsel. While we passed as much of a strengthening of lawyer advertising rules as would meet constitutional muster, which the Supreme Court later approved, we were unable to get overburdened law enforcement agencies or prosecutors interested in making cases against runners.

The state bar needs to enforce the ethical rules and uphold virtue in the legal profession, but it cannot make strong disciplinary cases against such unethical lawyers without evidence required to support a prosecution. Anyone who receives such a solicitation should get the name and number of the caller and then immediately call the State Bar of Georgia Office of General Counsel at 404-527-8720, and offer to assist in investigation and file a grievance for violation of Rule 7.3.

Sting investigations could be undertaken by law enforcement, but they are reluctant to commit resources when the criminal offense is only a misdemeanor. I eventually came to the conclusion that the only way to get meaningful enforcement is to make it a felony.

In 2014, the Georgia General Assembly passed legislation to do just that for second or subsequent violations, with penalties to include up to 10 years in prison and a fine of up to \$100,000. However, its weakness is that law enforcement agencies are seldom motivated to initiate effective investigations for a misdemeanor first offense, so there is unlikely to ever be a second offense to prosecute.

I hope that the families affected by last week's tragedy will reject those who solicit them in violation of the state bar and Georgia criminal law prohibitions, do their own due diligence research, and select qualified lawyers to seek justice. ☞

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