

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #09-06477 Letter to Homeowners in Foreclosure**

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 October 19, 2009. The proposed print advertisement is a two page letter that will be sent to persons identified in Connecticut court records as homeowners whose real estate is in foreclosure. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The proposed advertisement provides the following information: the law firm's name and initials, and the phrase "Attorneys at Law" at the top of the first page. On the bottom of the first page is the firm's Connecticut and Massachusetts addresses, telephone and fax numbers, with the statement "PLEASE REPLY TO WEST HARTFORD ADDRESS" and the firm's website address. The letter begins with the sentence, "IF YOU HAVE ALREADY RETAINED A LAWYER FOR THIS MATTER, PLEASE DISREGARD THIS LETTER." At the bottom of both pages of the letter is the phrase "ADVERTISING MATERIAL" in bold red ink. The same phrase is stamped in red on the sample envelope provided by the requesting attorney.

The letter advises the recipient that if the information that the house is in foreclosure is not correct, to please disregard the letter and accept apology for the error. The letter provides that if the information is correct, the firm offers a free initial consultation to discuss the firm's

representation of the homeowner. The letter proceeds to explore the various programs that may assist the homeowner in resolving or delaying the foreclosure. The experience of the firm is discussed along with a discussion of the types of services that can be provided. The letter concludes with an invitation to telephone the firm for the initial free consultation and indicates that in the event the firm is retained, the fee agreement will be in writing, with no obligation for payment until it is executed. The letter finishes on the second page with a customary closing along with the name of the law firm. Underneath this is the word "By:" which is left blank.

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information found in the firm's letterhead consisting of the firm's name, address, phone and fax numbers, and website address is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. The language instructing the recipient of the letter to reply to the firm's Connecticut address, clarifies any potential confusion that might be created by the fact that the firm also has an office in Massachusetts.

Since the letterhead does not contain any names of the attorneys who are members of the firm and the letter concludes with only the firm's name, the proposed advertisement does not contain the name of at least one attorney admitted in Connecticut responsible for its content, as required by Rule 7.2(d) of the Rules of Professional Conduct. This opinion assumes that the name of a particular attorney in the firm will be inserted in the section of the proposed advertisement after the word "By:" located under the closing of the letter. This assumption is based on the fact that the area is left blank and several sentences in the proposed advertisement are framed in the first person.

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 found in subsection (b) of Rule 7.3 are not applicable to the proposed advertisement. Since the proposed advertisement will be sent to homeowners who have been identified as in foreclosure through superior court records and filings, subsection (c) of Rule 7.3, concerning communications to prospective clients, is applicable to the proposed advertisement. Rule 7.3(c) provides:

Every written communication, as well as any communication by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from a prospective client known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written communication and the lower left corner of the outside envelope or container, if any ... (emphasis added)

The prospective clients are solicited because their homes are in some stage of foreclosure and are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by providing the required label "Advertising Material" clearly and prominently in red ink on both the letter and envelope.

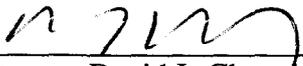
The proposed advertisement complies with the other relevant provision of Rule 7.3.

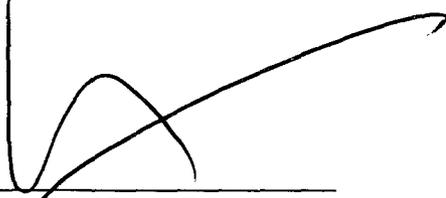
Pursuant to Rule 7.3(d) it contains the requisite first sentence: "If you have already retained a lawyer to represent you please disregard this letter." The envelope complies with Rule 7.3 (e) by not revealing on the outside the nature of the client's legal problem.

Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct, provided that upon mailing the proposed advertisement contains the name of at least one member of the firm admitted in Connecticut. This reviewing committee offers no opinion as to whether or not this communication complies with the rules on attorney advertising in Massachusetts.

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ISSUE DATE: October 30, 2009

  
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Attorney Noble F. Allen



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Mr John B. Walsh