STATEWIDE GRIEVANCE COMMITTEE

Advisory Opinion #09-01229-A
Print Advertisement 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 January 29, 2009. The proposed print advertisement is a letter and accompanying brochure that will be sent to homeowners who have lis pendens filed against their homes. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The proposed advertisement provides the following information: a letter with letterhead consisting of the name, address, telephone and fax number of the law firm; the names of the firm's attorneys and areas of admission. The letter begins with the sentence, "If you have already retained a lawyer to represent you please disregard this letter." The letter provides information about the firm's experience in handling foreclosure actions. The letter offers that there is no charge for an initial consultation and that one or more of the firm's seven attorneys could be assigned to the potential client's case. A postscript notes that a copy of the firm brochure is attached.

The brochure is a three fold letter sized advertisement consisting of general information about the law firm. The front page of the brochure has the name of the firm on the bottom and the phrase "A Full Service Law Firm." On the top of the front page is the phrase "OUR MISSION" and underneath is the phrase, "To provide our clients with *the best legal strategy and support*

available, helping them excel in today's business climate." The next page provides a general description of the firm's legal services. The statement is made: "Since 1950, [the firm] has provided clients with outstanding legal support and guidance using a consistent legal approach centered on service and responsibility."

The next two pages of the brochure provide more detailed information about the firm's practice areas by listing sample types of services provided within each practice area. Before listing sample services, statements are made about the firm's ability to handle the particular area of law. In the Commercial Litigation and Transactions area the statement is made: "At every step of your company's growth, [the firm] will prove to be of invaluable assistance." In the Real Estate Law section the statement is made: "While real estate law is continually evolving, no one is on top of the current trends more than our real estate legal team."

On the bottom of the second of the two pages describing the practice areas is a section entitled "NOTE" which states that the firm's attorneys "are not specialists certified by... the Rules Committee of the Superior Court as set forth in Rule 7.4 and 7.4A of the Connecticut Practice Book nor do we hold ourselves out to be. Further, any legal developments, affirmations or accomplishments described in these materials should not be assumed an indication of future results."

The next page of the brochure contains the profiles of the firm's attorneys, listing their names, email address and areas of practice. The fields of law listed in the attorney profiles comply 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 these areas of law. The back page of the

brochure lists the firm name, address, fax and phone numbers and web site address.

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 the names and jurisdictions of admission of the attorneys is presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct, and therefore is not false or misleading. Similar information found in the accompanying firm brochure also complies with Rule 7.1 and 7.2(i).

Pursuant to Rule 7.2(i)(5) the information found in the accompanying brochure providing the fields of law practiced by the firm and listing sample types of services, is also presumed not to violate Rule 7.1. The named practice areas with listed sample services do not contain language implying specialization which would violate Rules 7.4 and 7.4A. The types of sample services are typical of those found in the practice areas. For example, under the practice area Construction Law is listed the sample services (among others), "Construction Financing, Contract Negotiations and Litigation of Construction Disputes."

The section of the brochure entitled "Note," as described above, contains a disclaimer that the firm's attorneys are not holding themselves out as specialists pursuant to Rule 7.4 and 7.4A. By simply listing their areas of practice and providing sample services, an attorney or firm is not implying specialization that would violate Rule 7.4 and 7.4A and which would require a disclaimer.

As detailed above, the brochure contains descriptions about the firm's services in the two pages providing information about the firm's practice areas. Some of these statements, as outlined

above, characterize the services the firm provides in terms of their superiority or uniqueness. All attorney advertising is governed by Rule 7.1 of the Rules of Professional Conduct. The commentary to Rule 7.1 provides that statements made in attorney advertising must have a "reasonable factual foundation." The commentary to Rule 7.1 states:

> A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

On the second page of the brochure in the proposed advertisement is the statement that the firm "has provided clients with outstanding legal support and guidance..." (emphasis added) This statement is inherently misleading because it is a statement as to quality that is merely an opinion that cannot be objectively verified or substantiated. Statements made by attorneys in advertisements must be based on a factual foundation and not opinion. A reasonable factual foundation should be an objectively verifiable fact.

The common meaning of outstanding is prominent, eminent and distinguished. Webster's New World Dictionary (3d College Ed. 1988). Synonyms include: superior, remarkable, extraordinary and excellent. Roget's International Thesaurus (4th Ed. 1977). The common understanding of the word "outstanding" in the context of the firm's legal services implies the highest level of quality. There is no way to objectively verify the firm's opinion of itself. This opinion leads consumers to form a specific conclusion that they will receive "outstanding" legal services from the firm that are by implication superior to those of other firms. The use of the term "outstanding" to describe the firm's services must be removed.

Similarly, the phrase found in the Commercial Litigation and Transactions section of the brochure that states that "the [firm] will prove to be of invaluable assistance" must be removed. (emphasis added) The dictionary defines "invaluable" as meaning extremely valuable, priceless and having value too great to measure. Webster's New World Dictionary (3d College Ed. 1988). Synonyms include: inestimable and beyond price. Roget's International Thesaurus (4th Ed. 1977). The phrase in the Real Estate Law section of the brochure maintaining that "no one is on top of the current trends more than our real estate team" must also be removed for the same reasons. (emphasis added)

By stating its services to clients are "outstanding" or "invaluable" or by implying those services are unique, the firm creates an unjustified expectation as to the ability of the firm's lawyers to achieve particular results. The statements also amount to unsubstantiated comparisons of the attorneys' services to those of other attorneys in violation of Rule 7.1. Such inherently misleading statements cannot be cured by a disclaimer and must be removed. See Advisory Opinions #07-00188-A, #07-00776-A and #07-00859-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. These types of statements, describing the attorneys' services in superlative terms, should not be utilized in any other forms of advertising used by the firm such as the firm website.

The phrase found on the front page of the brochure of the proposed advertisement, described above, under the caption "Our Mission to provide our clients with the best legal strategy and support available..."(emphasis added) contains a superlative about the firm's services. Since the statement is placed in the context of a goal or aspiration, namely that the firm's "mission" or goal is

to provide that level of service, the statement does not violate Rule 7.1. The context of the statement prevents it from being misleading pursuant to Rule 7.1. If the statement promised or asserted that the firm's services are the best, the statement would violate Rule 7.1 for the reasons described above.

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 lis pendens filed against their homes and are presumably located by the firm based on public records, they would not be otherwise known to the requesting attorney. 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 <u>known to be in need of legal services in a particular matter</u>, 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, ...If the written communication is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the

brochure or pamphlet. (emphasis added)

The prospective clients are solicited because they have had a lis pendens filed against their home are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement does not comply with Rule 7.3(c) because it does not contain the label "Advertising Material" clearly and prominently in red ink on the first page which is the cover letter.

No envelope was submitted with the proposed advertisement. The proposed advertisement is a one page letter and accompanying brochure. The envelope in which the proposed advertisement is mailed must have the label "Advertising Material" in red ink in the lower left corner to meet the requirements of Rule 7.3(c). The envelope must also comply with Rule 7.3 (e) by not revealing on the outside the nature of the client's legal problem. 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."

Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because the proposed advertisement fails to satisfy the labeling requirements of Rule 7.3(c) and contains statements that cannot be factually substantiated in violation of Rule 7.1 of the Rules of Professional Conduct.

(E)

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Advisory Opinion 09-01229-A

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