

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #13-02222-A Joint Advertisement of Real Estate Services Law Firm and NonLaw Firm

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 March 29, 2013. The proposed advertisement is a post card that will be disseminated as a mass mailing to the residents of a local town by a real estate broker. The attorney requesting the advisory opinion and his firm rent satellite office space in the same building as the real estate broker and would like to participate in the mass mailing along with another tenant of the building, a mortgage originator. The reviewing committee concluded that the advertisement does not comply with the Rules of Professional Conduct.

The requesting attorney provided further details about the business arrangement between the law firm and the real estate broker. The law firm has a sign in front of the office building which is owned by the real estate broker. The mortgage originator firm is also a tenant of the building. The law firm will utilize space in the building as a satellite office for client meetings and real estate closings, but will not store files on site. There is no agreement or obligation between the law firm and the real estate broker to refer clients to each other or to share fees. The real estate broker intends to do a general mass mailing to town residents from a list obtained from the U.S. Postal Service as a way to introduce his company and to generate

new business.

The proposed advertisement is a color postcard which offers the statement on the top of the page: "Real Estate Services Under One Roof." On the left side page of the postcard is information about the mortgage originator firm and on the right side is information about the real estate broker's firm. In the middle of the page is information about the requesting law firm consisting of the name of the firm, the phone and fax number, the firm's website address, along with the name of the requesting attorney. Underneath the law firm's information is the statement: "A Name You Can Trust For All Your Legal Needs."

The proposed advertisement complies with Rule 7.2(d) of the Rules of Professional Conduct by listing the name of at least one attorney admitted in Connecticut responsible for its content. Pursuant to Rule 7.2(i), the above referenced information referencing the firm's address, phone and fax number 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.

We considered whether the relationship between the law firm and the real estate broker violates Rule 5.4 (the professional independence of the attorney and the firm), Rule 1.6 (maintaining client confidentiality), Rule 7.3 (solicitation of potential clients), or Rules 7.1 and 7.5(d) (misleading communications about partnerships) of the Rules of Professional Conduct.

Rule 5.4 of the Rules of Professional Conduct regulates the professional relationship of lawyers and nonlawyers in order to protect a lawyer's professional independence and judgment. A lawyer may not share legal fees with a nonlawyer except in certain delineated circumstances. Rule 5.4 (b) also provides "A lawyer shall not form a partnership with a

nonlawyer if any of the activities of the partnership consist of the practice of law." See Advisory Opinion #07-02500-A and #08-01271-A, which also concern joint advertisements, available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for additional discussion about Rule 5.4.

The information supplied by the requesting attorney indicates that the law firm will not share legal fees with the real estate broker or the mortgage originator and there is no partnership with the nonlawyers. The proposed advertisement and arrangement between the law firm and the nonlawyers does not violate Rule 5.4 since there are no fees shared or payments made for referrals. The arrangement does not implicate Rule 1.6 of the Rules of Professional Conduct, which provides that lawyers shall safeguard the information relating to the representation of a client. The satellite law office will not contain clients' files.

Since the proposed advertisement will be mailed to all residents of the town, without regard to their known legal circumstances, the provisions of subsections (c) and (d) of Rule 7.3 of the Rules of Professional Conduct are not applicable to the proposed advertisement. The proposed advertisement does not need to be labeled as "Advertising Material" and does not need to use language advising potential clients to disregard the communication if they have already retained an attorney.

Rule 7.1 prohibits misleading communications. Rule 7.5(d) indicates a lawyer may only state or imply that they practice in a partnership when that is the fact. While the proposed advertisement is divided into three sections, providing information about the mortgage originator, the attorney and the real estate broker, the top of the advertisement states "Real

Estate Services Under One Roof.” This language creates the impression that the three entities are related in providing real estate services. The failure to make clear the separate nature of each business in this joint advertisement implies that the entities are associated in some type of organization or partnership “under one roof” contrary to Rules 7.1 and 7.5 (d) of the Rules of Professional Conduct.

Qualifying language indicating that the three entities are not a partnership or that the entities are not legally associated should be placed in the advertisement to avoid confusing the consumer. This qualifying language should be placed somewhere in the portion of the postcard advertising the law firm’s services and contain language indicating that the three businesses are not a partnership.

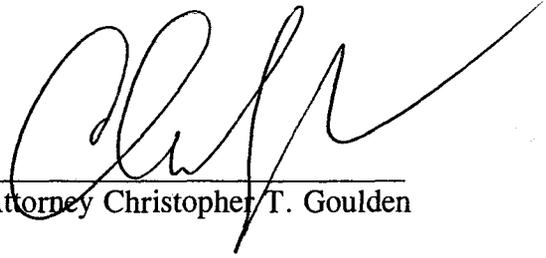
Accordingly, this reviewing committee opines that the advertisement does not comply with the Rules of Professional Conduct because it lacks qualifying language indicating that the law firm is a separate business entity participating in a joint advertisement.

(E)

ISSUE DATE: April 11, 2013



Attorney Frank J. Riccio, II



Attorney Christopher T. Goulden

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Mr. Patrick Sheridan