

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #14-06467-A Letter Sent to Home Sellers

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 August 29, 2014. The proposed print advertisement is a letter to be mailed to persons who have listed their home for sale. On September 5, 2014, this reviewing committee requested additional information and on September 8, 2014, the attorney complied with our request. This reviewing committee concludes that the proposed advertisement complies with the Rules of Professional Conduct.

The advertisement is in the form of a prospective letter that is addressed "Dear Homeowner" and references an impending house sale. The top left of the letter in bold print contains a graphic of a house and the phrase "Who Just Listed." The letter begins with the phrase: "If you have already engaged an attorney, please disregard this letter." The letter then offers that if the addressee has no attorney, the law firm is available to be of assistance. The name of the law firm is not listed and the office location is left blank. The letter asserts that the firm has handled real estate closings for both purchasers and sellers and opines that once a seller receives an offer on their home, they may come to realize they want the assistance of an attorney.

The proposed advertisement provides that the firm learned that the addressee's house is listed for sale and states the firm can handle the house closing and any new home purchase. There

is a blank space to list how many closings the firm has handled last year and invites the addressee to visit the firm website. The address of the website is not provided. The proposed letter is signed "Attorney at Law" but no actual attorney name is listed.

In his response for more information from this reviewing committee, the requesting attorney provided additional information about the proposed letter. The logo is a trademark of the law firm and the letter will also include the name and address of the law firm. The trademark phrase will also be the name of the website, whojustlisted.com. The letter may be utilized by undetermined attorneys in the office, but the requesting attorney states he will be responsible for the advertisement. The requesting attorney indicated that envelopes have not yet been printed, but both the envelope and letter will contain the phrase in red ink "Advertising Material."

Attorney advertisements must comply with Rule 7.2(d) of the Rules of Professional Conduct and provide the name of an attorney admitted in Connecticut who will be responsible for content. This opinion assumes a Connecticut admitted member of the requesting attorney's firm will be a signatory on the final form of the letter so that it will comply with Rule 7.2(d).

Attorney advertising is subject to the requirements of Rule 7.1 of the Rules of Professional Conduct and cannot be misleading. This opinion also assumes that the firm name and address will be displayed on the letter along with the graphic logo, since it would be misleading under Rule 7.1 for the law firm to send the proposed letter and not make clear the relationship with "Who Just Listed."

Rule 7.3 of the Rules of Professional Conduct regulates communications with prospective clients for the purpose of obtaining professional employment and provides the parameters of that

contact. In the soliciting of prospective clients by attorneys, Rule 7.3 distinguishes between solicitations to members of the general public and solicitations to persons “known to be in need of legal services in a particular matter.” The latter require the label “Advertising Material” in red ink (Rule 7.3(c)), a first sentence with disclaimer language about attorney representation (Rule 7.3(d)), and the requirement the outside of the communication conceal the nature of the legal problem (Rule 7.3(e)). As submitted to this reviewing committee, the proposed advertisement is a letter which provides the first sentence mandated by Rule 7.3(d), but does not provide the required advertising label “Advertising Material” of Rule 7.3(c), if it is sent to persons “known to be in need of legal services in a particular matter.”

The prospective clients are solicited because they have listed their house for sale. Rule 7.3 does not provide a definition of what constitutes being “in need of legal services.” The commentary to Rule 7.3 states: “Unrestricted solicitation involves definite social harms...Measures reasonably designed to suppress these harms are constitutionally legitimate...In determining whether a contact is permissible under Rule 7.3(b), it is relevant to consider the time and circumstances under which the contact is initiated.”

Several prior advisory opinions have considered the issue as to what constitutes “in need of legal services in a particular matter.” These advisory opinions found persons solicited from criminal, motor vehicle and foreclosure dockets, or from obituaries in the case of probate services, qualify as “being in need of legal services in a particular matter” and any solicitation should contain the requisite Rule 7.3 labels and conditions. See Advisory Opinions ##08-46727-A, 08-04933-A, 09-06652-A (Solicited from police logs), ##09-01229-A, 09-01453-A, 09-06477-

A,13-08337-A (Solicited from foreclosure dockets), ##08-04988-A (Solicited for probate services from obituaries), ##08-04895-A, 12-01871-A (Solicited from motor vehicle accident reports in media) and ##14-03988-A (Solicited from auto recall database) available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm for more information on Rule 7.3 advertising requirements.

The question for this reviewing committee is whether persons who have merely listed their homes for sale are “in need of legal services in a particular matter.” The above referenced advisory opinions involved circumstances where the prospective clients had experienced an event that made it certain or highly likely they would be involved in a court action of some type. Merely listing a house for sale does not fit into that fact pattern, however, the need for legal services becomes more certain as the sales process progresses, for example to a closing.

The proposed advertisement complies with Rule 7.3 in the circumstance of soliciting persons who have listed this house for sale. This opinion is confined to the circumstance where a person has initially listed their home for sale on the real estate market. In the event that the sale has progressed to transactions involving binders or contracts for sale, the requirements of Rule 7.3 and the various advertising labels and formats apply.

While the proposed advertisement as submitted could only be utilized to solicit persons who have merely listed their house for sale because it does not have the necessary advertising labels, the requesting attorney indicated in his supplemental response that they would be added. It is the responsibility of the attorney to take reasonable measures to ascertain that the homeowner has merely listed the house for sale or otherwise ensure that the format of the proposed

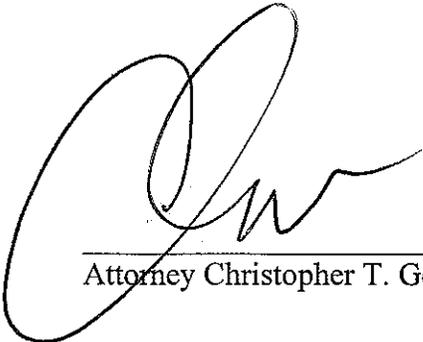
advertisement complies with both Rule 7.3(c) and (d). For further discussion of the attorney's responsibility before sending solicitations to prospective clients, see Advisory Opinion #08-04988-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

The proposed advertisement contains a reference to a website address which is the trade name "Who Just Listed." That phrase is also in the logo on the proposed letter. The website was not reviewed in connection with this advisory opinion request. The use of the phrase "Who Just Listed" as a logo on the letter or as a website or URL address is a type of trade name which is governed by Rules 7.1 and 7.5 of the Rules of Professional Conduct. Attorneys are permitted to use trade names, including website domain names, provided they are not misleading and do not violate other Rules of Professional Conduct. For a full discussion of the use of trade names by attorneys, please see Advisory Opinion #10-01283-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. In the proposed advertisement, the phrase "Who Just Listed" is a reference to the solicitation of persons who have listed their home for sale and its use as a trade name or as a domain name does not violate either Rule 7.1 or Rule 7.5 of the Rules of Professional Conduct.

Subject to the above discussion, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.

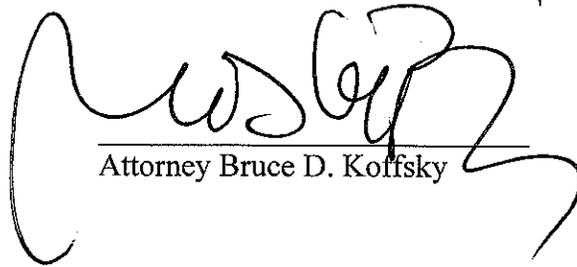
(E)

ISSUE DATE: September 30, 2014

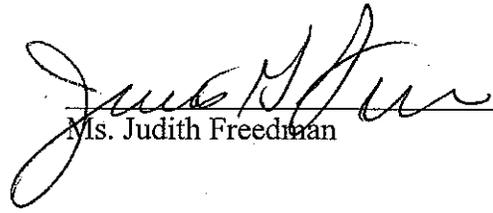
A handwritten signature in black ink, consisting of a large, stylized 'C' followed by 'T. Goulden' in a cursive script.

Attorney Christopher T. Goulden

9/4/14



Attorney Bruce D. Koffsky



Ms. Judith Freedman