

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #14-06504-A Self-Mailing Postcard Sent to Home Sellers Rule 7.3 Requirements

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 September 5, 2014. The proposed print advertisement is a self-mailing postcard to be mailed to persons who have listed their home for sale. This reviewing committee concludes that the proposed advertisement complies with the Rules of Professional Conduct.

The advertisement is in the form of a self-mailing postcard. The postcard contains graphics on both sides, including one side which depicts a coupon advertising in large print a \$499 flat fee for house closing services. The coupon offers that while selling a house may be stressful, the attorney and her “team of real estate professionals” can assist. The attorney states that people call her “LadyClosings”™ and offers that she can save “you hundreds of dollars on your real estate transaction.”

An asterisk by the flat fee price provides that the fee is for legal services only and does not include costs. The same fee is stated to be available for legal services on a house purchase. Underneath the address panel is the phrase “Advertising Material” in red ink. To the left of the coupon is a list of towns where the flat fee service is presumably available. Above the coupon is a phone number and an email address that is comprised of the words “closing” and “lady legal group.” Next to this information is the name and picture of the attorney who denominates herself

as “Lady Closing.” The return address in the address panel is “Lady Closings” and the address of the law firm.

On the reverse side of the post card in very large print is the phrase “up to 50% off or more on an average closing,” a graphic of the scales of justice, a reference to the coupon on the other side of the postcard and the phrase “LadyClosings.”

The proposed advertisement complies with Rule 7.2(d) of the Rules of Professional Conduct and provides the name of an attorney admitted in Connecticut who will be responsible for content. Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the above referenced information which references the lawyer’s phone number and 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.

Attorney advertising is subject to the requirements of Rule 7.1 of the Rules of Professional Conduct. Rule 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

The claim on the reverse side of the proposed advertisement that the advertised flat fee for a house closing is “up to 50% off or more” the price of an average closing is so worded, in a conditional manner, as to avoid misleading implications under Rule 7.1. The phrase essentially asserts that the advertised price could be less than half off the average price of a closing or could be more than half off the average price. This reviewing committee has no independent knowledge

of the average closing cost in the towns listed in the advertisement, and this opinion assumes the attorney can substantiate that claim under Rule 7.1 with closing information from the listed towns. Similarly, the above referenced claim on the coupon, that the attorney is assisted by her “team of real estate professionals” is assumed to be her office support staff and not a partnership with realtors.

The proposed advertisement provides disclosure information about court costs and expenses, which are stated as not part of the flat fee offer. Disclosure about costs and expenses when advertising a lawyer’s fee is required by Rule 7.2(f) of the Rules of Professional Conduct.

Rule 7.2(f) provides:

Every advertisement and written communication that contains information about the lawyer’s fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation.

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 that the outside of the communication conceal the nature of the legal problem (Rule 7.3(e)). The proposed advertisement is a postcard which contains only the label

“Advertising Material” in the address panel and does not comply with the requirements of Rule 7.3(d) and (e) 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. Please 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 persons being solicited 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 a 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. The advertisement would need to contain the first sentence required by Rule 7.3(d) and conceal the nature of the legal problem as required by Rule 7.3(e). It is the responsibility of the attorney to take reasonable measures to ascertain that the homeowner has merely listed the house for sale. For further discussion of the attorney’s responsibility before sending solicitations, see Advisory Opinion #08-04988-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm.

In the proposed advertisement the attorney refers to herself under the trade name “Lady Closings,” and her trade name is used in conjunction with the address of her law firm. The trade name is one of several “lady” trade names used as an advertising concept under the general “Lady Legal Group,” which is the name of the website advertised on the postcard combined with the term “closing.” The website was not reviewed in connection with this advisory opinion request. The use of the phrase “Lady Closings” is a type of trade name which is governed by Rules 7.1,

7.4 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 “Lady Closings” is a reference to the type of legal services offered by the attorney listed in the proposed advertisement and its use as a trade name does not violate either Rules 7.1, 7.4 or 7.5 of the Rules of Professional Conduct. The name describes the type of services offered and does not imply specialization.

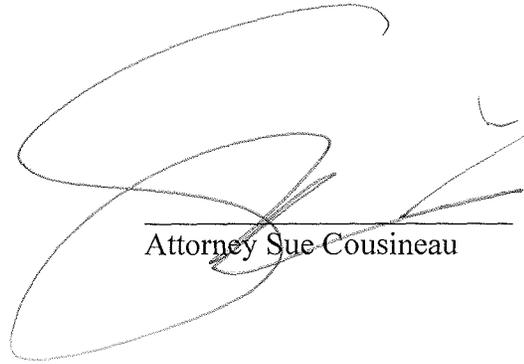
Subject to the above discussion, this reviewing committee opines that the proposed advertisement complies with the Rules of Professional Conduct.

(E)

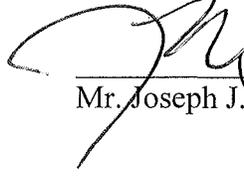
ISSUE DATE: October 1, 2014

A handwritten signature in black ink, appearing to read "Donna E. Woviotis". The signature is fluid and cursive, with a large initial "D" and "W".

Attorney Donna E. Woviotis



Attorney Sue Cousineau



Mr. Joseph J. Matthews