

## STATEWIDE GRIEVANCE COMMITTEE



### **Advisory Opinion #13-08337-A Letter Soliciting Homeowners Undergoing Foreclosure Rule 7.4A Certification as Specialist**

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 18, 2013. The proposed advertisement is a letter and accompanying envelope that will be sent to homeowners who are defendants in a foreclosure lawsuit as identified in public records. The reviewing committee concluded that the advertisement complies with the Rules of Professional Conduct.

The proposed advertisement provides the following information: in the center top letterhead, the law firm's name and address; on the left side letterhead, the names of the firm's attorneys and additional state bar admissions; on the right side letterhead is the firm's telephone and fax address, website address and the requesting attorney's direct phone number and email. One of the attorneys listed on the letterhead is designated a "Child Welfare Law Specialist (NACC)." On the top of the page below the letterhead is the phrase "Advertising Material" in red ink. The same phrase in red is found in the lower left side of the accompanying envelope.

The letter begins with the sentence: "If you have already retained a lawyer for this matter, please disregard this letter." The proposed advertisement advises the recipient that public records disclose that a foreclosure action has been filed against them for "a delinquent mortgage or other obligation for which the property is collateral." The letter provides that the requesting attorney

may be able to assist with a number of options to stop the foreclosure, depending on the circumstances. The proposed advertisement discusses several possible options: a defense to the action, a "short sale" of the property, foreclosure mediation or direct negotiation to modify the mortgage loan. The letter also offers that Chapter 7 or Chapter 13 Bankruptcy may be an option to consider and the attorney is available to discuss the various options. The attorney will provide a free, no obligation, consultation, and invites the recipient to be proactive and contact the attorney or the firm without delay.

Underneath the attorney's signature name at the bottom of the proposed advertisement is the phrase: "We are a debt relief agency. We help people file bankruptcy relief under the United States Bankruptcy Code" in capital letters.

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, attorneys' names and jurisdictions of admission, address, phone and fax numbers, website and email 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 letter also complies with Rule 7.2(d) by providing the name of an attorney admitted in Connecticut who is responsible for its content.

In the proposed advertisement, one of the attorneys listed in the letterhead is designated as a "Child Welfare Law Specialist" as certified by the National Association of Counsel for Children (NACC). Rules 7.4 and 7.4A of the Rules of Professional Conduct control a lawyer's ability to discuss practice areas and specialization. Rule 7.4 prohibits an attorney from stating or implying that he is a specialist unless the attorney is certified as a specialist in accordance with Rule 7.4A.

Rule 7.4A permits the lawyer to state he or she is a specialist in a field if he or she has received a certification in that area of the law and the certification is recognized by the Rules Committee of the Connecticut Superior Court. On January 14, 2008, the Legal Specialization Screening Committee recommended the certification of the National Association of Counsel for Children to certify lawyers as specialists in the field of Child Welfare Law, and on January 14, 2013, recertified that entity and certification through January 14, 2018. Accordingly the certification listed in the proposed advertisement is in compliance with Rule 7.4A.

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 public 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)

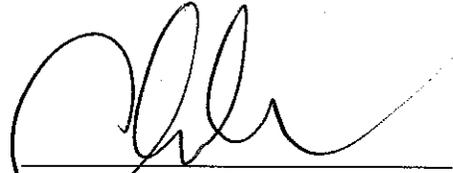
The prospective clients are solicited because their homes are in some stage of foreclosure and are therefore "known to be in need of legal services" as provided by Rule 7.3(c). The proposed advertisement complies with Rule 7.3(c) by providing the required label "Advertising Material" clearly and prominently in red ink on both the letter and envelope. Please see Advisory Opinions 09-01229-A and 09-06477-A available at [http://www.jud.ct.gov/sgc/Adv\\_opinions/default.htm](http://www.jud.ct.gov/sgc/Adv_opinions/default.htm) for other similar advertisements soliciting homeowners in foreclosure.

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.

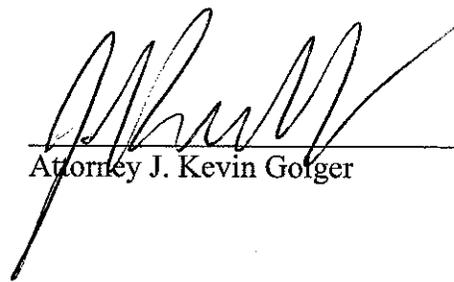
Accordingly, this reviewing committee opines that the advertisement complies with the Rules of Professional Conduct. This reviewing committee offers no opinion as to whether or not this communication complies with the federal Bankruptcy Code advertising rules.

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ISSUE DATE: November 4, 2013



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