

COMMITTEE ON ATTORNEY ADVERTISING
APPOINTED BY THE NEW JERSEY SUPREME COURT

Revised OPINION 29*

Written Solicitation of Clients Charged in Municipal Courts

The Committee has received numerous angry, and sometimes outraged, complaints from members of the public who are municipal court defendants. They have been solicited by attorneys, unknown to them, who often market their availability through a catalogue of hypothetical consequences if they are convicted of charges which are, in fact, unknown to the soliciting attorney.

* Opinion 29 has been revised solely to replace the citation of the Open Public Records Act (N.J.S.A. 47:1A-1) with R. 1:38 appearing on pages 2 and 6 of the revised opinion. The Open Public Records Act (OPRA), N.J.S.A. 47:1-1 et seq., at N.J.S.A. 47:1A-1.1, excludes the Judiciary from its definition of a "public agency" by referring specifically to "any of the principal departments in the Executive Branch of State Government, and any division, board, bureau office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency." This statutory definition evidences an intent by the Legislature to exclude the Judiciary from its mandate. Further, in enacting OPRA, the Legislature included specific language acknowledging a separate governing structure for Judiciary records and providing in N.J.S.A. 47:1A-7(g) that "[t]he [Government Records] council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches." Municipal court records fall under the jurisdiction of the Judicial Branch and access to public records is, therefore, governed by Rule 1:38.

The names of these prospective clients are obtained directly by the attorney or through contractual arrangements with an outside agency which specializes in obtaining names of municipal court defendants under the provisions of Rule 1:38.

Although some solicitations are individually addressed, many lack a salutation or merely state: Dear Ms. or Sir; Dear Sir or Madam; Dear Fellow New Jersey Driver; Dear Prospective Client, or other similar generic heading.

The body of these solicitation letters is often formulaic, exhibiting a lack of any knowledge as to the nature of the actual charge faced by the individual being solicited.

Illustrative of these broad-based approaches are:

- “It has come to my attention that you recently received a Municipal Court summons which may subject you to one or all of the following: points on your license, loss of your license, increased insurance costs, jail, community service and/or a substantial fine.”
- “It has recently come to our attention that you may have received a motor vehicle summons or criminal complaint.”
- “A review of the docket in Municipal Court indicates that you have been issued a traffic ticket(s) and/or a criminal complaint.”
- “I am contacting you regarding the motor vehicle ticket you recently received.”
- “Public court records reflect that you’ve recently been cited for a traffic summons. If that summons is for a moving violation, then

you've been targeted by your insurance company for an increase in your already outrageously high insurance premiums!"

- "According to Court records, your hearing date is rapidly approaching for your recent traffic charges."
- "It has come to our attention that you have recently received a criminal complaint from the _____ Township Municipal Court."
- "Court records show that there may be charges pending against you in Municipal Court."
- "I am writing you this letter to offer my firm's professional services. A review of the _____ Twp. Municipal Court records reveals that you have received a traffic(s) and/or a criminal complaint."

Other solicitation letters have been addressed to minors and some have sought business by requesting that, "if you or someone you know has recently received a motor vehicle ticket, a summons to appear in municipal court or has been injured as a result of an accident, I may be able to help."

These unsolicited letters, sent to individuals unknown to the attorney, often exert pressure to accept immediate representation by (a) cataloguing hypothetical penalties and consequences which may have no relationship to the actual offense charged, (b) indicating that the soliciting attorney is able to exert extralegal influence to obtain a result or (c) is better equipped than other attorneys in the legal community to successfully represent the unknown individual charged with an unknown offense.

Such examples of this approach (often with emphasis added) are:

- “My office knows the law and knows how to use the law to your best advantage.”
- “Call my office today at _____ to find out how you can put the law on your side and even the score.”
- “The police have an attorney to prosecute their case and so should you!”
- “The penalties for certain motor vehicle violations can be very costly.”
- “For almost all traffic tickets, both the Division of Motor Vehicles and your car insurance company will impose surcharges and eligibility points for up to three years.”
- “Do not surrender! Our law office can provide you with a competent, experienced attorney who can assist you in relieving many of your concerns.”
- “Remember, the police and Courts have attorneys represent them in prosecuting you.”
- “If you plead guilty or are found guilty of charges, you may face serious penalties such as suspension of Driver’s License, substantial fines and surcharges, increase in insurance premiums and possible incarceration.”

- “It is extremely important that you understand that the State is represented by a Prosecutor, an attorney whose job it is to convict you of this [unknown] offense.”
- “Please understand that motor vehicle violations may involve loss of license, motor vehicle points, surcharges, fines and potential incarceration.”
- “The “Deck” is stacked against you. Unfortunately, when you get a traffic summons, whether it’s a speeding ticket or a DWI charge, the State will use everything in its power to convict you!”
- “The Police Officer will team up with the Prosecutor. Finally, there’s the Judge. He or she will hand down your sentence. They set fines, suspension time and/or jail time!”
- “Get a lawyer that has experience in the town where you got your ticket! Someone who knows “the system” and knows New Jersey’s laws inside and out!”
- “Did you know that certain [unknown] traffic offenses carry severe penalties that may result in increased insurance premiums or loss of coverage, elevated fines, community service or jail time. In your case, you may have important constitutional rights that need to be protected.”
- “Many traffic tickets carry heavy fines and/or points on your driver’s license. And do not forget your automobile insurance company which will also impose expensive surcharges and

eligibility points for three years. Consequently, your insurance premiums may substantially rise.”

Attorneys who send these letters invariably exert pressure by reciting penalties and consequences that may have no application to the particular charge. The solicitation letters many times put forth promises, in violation of R.P.C. 7.3(c)(2), which unduly raise the prospective client’s expectations in violation of R.P.C. 7.1(a)(2), are comparative in nature in violation of R.P.C. 7.1(a)(3), and use marketing devices which may also, in the context of the specific charge, be false or misleading in violation of R.P.C. 7.1(a)(1).

Complaints from the public as to these sales pitches in a volume too great to ignore have prompted the Committee to publish this Opinion, setting municipal court solicitation requirements which will ensure that attorneys act within the Rules of Professional Conduct that govern written solicitation for professional employment.

In future, attorneys who send solicitation letters seeking to obtain clients from among those persons charged with municipal court violations must:

1. Personally verify the accuracy of all statements contained in the solicitation letter, including the name and address of the addressee and the specific nature of the charge, which charge must be recited in the body of the letter.

2. Advise the prospective client that his or her name and the offense charged in the specific municipal court was obtained by an appropriate inquiry under Rule 1:38.

3. Be specific in the salutation to the individual to whom the letter is being sent.

4. Satisfy himself or herself that the individual charged with the municipal court offense is not under the age of 18 years.

5. Not attempt to indicate a special relationship or knowledge which will or may provide a more favorable result than other licensed New Jersey attorneys.

6. Not raise unjustified expectations or use language which is susceptible of unduly pressuring a person because of possible consequences or potential penalties unrelated to the specific offense charged.

7. Not misstate the role of the prosecutor or municipal court judge, or their functions in the justice system.

Finally, the Committee urges that all attorneys who advertise their services to defendants in municipal court matters review the Rules of Professional Conduct in order to remind themselves of the obligations of an attorney seeking professional employment through written communications. These include the requirements that (a) the envelope used to forward any such letter [See Committee on Attorney Advertising Opinion 20, 144 *N.J.L.J.* 1046 (June 19, 1996) and 5 *N.J.L.* 1302 (June 17, 1996)] and the letter itself, contain the word ADVERTISEMENT in capital letters, prominently displayed at the top of the first page of text, R.P.C.7.3(b)(5)(i), in a font which is two sizes larger than the general text of the solicitation letter and (b) the notices required at the bottom

of the last page of text, R.P.C. 7.3(b)(5)(ii) and (iii), be in a font size no smaller than the general text of the letter.