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Advisory Committee on Professional Ethics

Committee on Attorney Advertising

Appointed by the Supreme Court of New Jersey

JOINT OPINION

Opinion 698

Advisory Committee on Professional Ethics

Opinion 34

Committee on Attorney Advertising

Direct Mail Solicitation Letters and
Conduct that is Prejudicial to the
Administration of Justice

At the request of the Committee on Attorney Advertisement (CAA), we have reviewed several solicitation mailings which are in essence advertisements from law firms to prospective clients. The CAA has asked our views about whether there are ethical issues raised by these letters beyond those addressed in advertising rules. All advertisements and unsolicited mailings seeking to attract clientele are subject to various *RPC*'s and opinions of the CAA and this Committee, notably CAA Opinion 29 (revised) (175 *N.J.L.J.* 609, 13 *N.J.L.* 310, February 16, 2004). In this opinion we examine solicitation letters for defects beyond those covered by the advertising rules, *RPC* 7.1 through 7.5.

One mailing makes the following statements: "We know that the cops and prosecutors will not tell you everything you need to know to protect your rights" and "so

you can avoid being taken advantage of by police and prosecutors” and “perhaps they listened to the police officer who told them all they needed to do was show up in court and everything ‘would be ok’.” There is an entire paragraph describing the local town’s revenue source as being traffic tickets. There is no evidence of any factual basis for such statements. Absent such a basis, we find that such references cast baseless aspersions upon, and are prejudicial to, the administration of justice within the meaning of *RPC* 8.4(d). In accordance with *RPC* 3.8, a prosecutor has a duty to refrain from prosecuting a charge he or she knows is unsupported and to make timely disclosure of all evidence that supports innocence. Although these responsibilities pertain specifically to criminal cases, this committee believes these responsibilities apply with equal force to the prosecution of a traffic offense, quasi-criminal matter, or any other municipal court proceeding. As was relied upon in our *Opinion 661*, “The primary duty of a prosecutor is not to obtain convictions, but to see that justice is done”, *State v. Farrell*, 61 N.J. 99, 104 (1972). Thus, “[I]t is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” *Id.* at 105 (quoting *Beyer v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 70, 79 L. Ed. 1314, 1321(1935)).

The statements in these letters as to what prosecutors and “cops” do suggest that prosecutors, and law enforcement officials as their agents, regularly violate *RPC* 3.8, and their responsibility to the public. Such sweeping statements offend *RPC* 8.4(d). Furthermore, the reviewed solicitation offends *Opinion 29* (revised) of the Committee on Attorney Advertising, which states:

“In the future, attorney’s who send solicitation letters seeking to obtain clients from among those persons charged with municipal court violations must:

5. Not attempt to indicate a special relationship or knowledge which will or may provide a more favorable result other than 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 specific offense charged.
7. Not misstate the role of the prosecutor or municipal court judge, or their functions in the justice system.”

Similarly, several mailings contain statements that the job of the prosecutor is to convict. This offends *RPC* 8.4(d) in that it misstates the duty of a prosecutor pursuant to *RPC* 3.8. In the same vein, one mailing includes the statement “You should be aware that the State of New Jersey is represented by a Prosecutor and their job is to find you guilty.” In addition to the 8.4(d) violation, this is a misstatement of fact which raises problems under CAA Opinion 29 (revised) and *RPC* 7.1(c) (1), as well as *RPC* 8.4(c). The mailing also states that the sender is a “former MUNICIPAL COURT JUDGE.” The CAA has found such a statement to be permissible only if the attorney includes the years and location(s) of service in the advertisement.” CAA 22 (148 *N.J.L.J.* 1338 and 6 *N.J.L.* 1635, June 30, 1997)

Other direct mail advertising letters brought to our attention fail to adhere to the rules and to explicit directions contained in CAA Opinion 29 (revised). Notable deficiencies include the absence of the required word “Advertisement”, prominently displayed, violating *RPC* 7.3(b) (5) (i), and failing to disclose how the potential clients’ information was obtained, also required by CAA Opinion 29.

Other problems also are presented. In one example, a brochure is headed “**Confidential Special Report.**” In fact, the brochure is an advertisement; there is nothing confidential or special about it. Such words are misleading and in violation of *RPC* 7.1(a) (1) and *RPC* 8.4(c). The body of the advertisement contains extreme statements such as “You will always be looking over your shoulder for the IRS! This usually means you have to work until you die!”; “For taxpayers who don’t file an Offer In Compromise - They request the IRS to ... Abate the IRS penalties for “Reasonable Cause”. This can be as simple as explaining to the IRS that your basement flooded” (emphasis supplied). The implication is that a non-truth may get a person out of difficulty with an administrative agency, contravening 8.4(d). Similarly, statements such as “Then the IRS pulls out all of the stops. They simply seize your assets and sell them at an auction!” are misleading, in the extremity of their representations, without a basis in fact, in violation of *RPC* 8.4(c) and (d).

The Committee on Advertising joins in this opinion as to the conclusions concerning advertising violations.