<u>COMMITTEE ON ATTORNEY ADVERTISING</u>

<u>APPOINTED BY THE NEW JERSEY SUPREME COURT</u>

<u>OPINION 35</u>

<u>Solicitation of Prospective Clients Who
May Already Be Represented By Counsel</u>

The Committee has received an inquiry and a grievance concerning direct and e-mail solicitation of prospective clients who are already represented by counsel in the particular matter to which the solicitation is addressed. The issue presented to the Committee relates to solicitation of prospective clients by direct or e-mail, as permitted by *RPC* 7.3(a) and limited by the specific requirements of *RPC* 7.3(b) through (f) and Attorney Advertising Guidelines approved by the Supreme Court of New Jersey, who are already represented by New Jersey counsel in the same matter but of whom the soliciting attorney is unaware.

If an attorney who sends a direct mail or e-mail solicitation to a prospective client knows or through reasonable diligence should know that the intended recipient is represented in the matter by an attorney, the soliciting attorney may be in violation of *RPC* 4.2. In view of the alacrity with which these solicitations are being sent to prospective clients the proposed client may or may not have retained an attorney to represent his or her interests in the matter and that information may not be uniformly available to attorneys sending these solicitation letters. Accordingly, the text of any such solicitation e-mails or letters must contain the following language within the text in a font size which is the same as the text that: "If you are already represented by counsel in this matter, please disregard this advertisement."

The Committee has determined that this will achieve a fair balance between the free speech interest in sending a solicitation and the individual interest in being free from perceived pressure when receiving such a solicitation. It will also accommodate the expectations of the public that attorneys should not attempt to replace, without invitation, an attorney already representing that individual.