

ETHICS ADVISORY PANEL  
OPINION #94-20 REQUEST #475  
Issued March 23, 1994

The inquiring attorney is an assistant solicitor for Town A, responsible for all misdemeanor prosecutions brought by Town A's police department. Soon, Town A will assume all breathalyzer refusal prosecutions. The inquiring attorney would like to offer his/her services to other towns with regard to breathalyzer refusal prosecutions. The inquiring attorney asks if it is an improper communication to offer such services directly and whether these communications may be sent to the solicitor's office in each town.

The inquiring attorney may look to Rule 7.3 entitled "Direct Contact With Prospective Clients" for guidance. That rule states the following:

(a) A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, or by other communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

(b) Written communication.

(1) Written communication to prospective clients with whom the lawyer has no family or prior professional relationship are subject to the following requirements:

(a) Such written communications shall be plainly marked "advertisement" on the face of the envelope and at the top of each page of the written communication in type one size larger than the largest type used in the written communication.

(b) A copy of each written communication shall be sent to the Supreme Court Disciplinary Counsel and another copy shall be retained by the lawyer for three (3) years. If written communications identical in content are sent to two (2) or more prospective clients, the lawyer may comply with this requirement by

sending a single copy together with a list of the names and addresses of persons to whom the written communication was sent to the Supreme Court Disciplinary Counsel as well as retaining the same information.

The Panel concludes that the inquiring attorney may not solicit professional employment from prospective clients in person when the motive is the lawyer's pecuniary gain. Therefore, a direct solicitation by the attorney to the town's police chiefs would not conform to Rule 7.3(a). Pursuant to Rule 7.3(b)(1)(a) and (b), the inquiring attorney may send written communications to prospective clients provided that the communication is plainly marked "advertisement" and a copy of each written letter shall be sent to the Disciplinary Counsel.