

You advise that you were employed to represent a client on a charge of driving under the influence in August of this year. In October your client received a solicitation letter and a business card from another attorney in the mail. The solicitation sent to your client advised your client the attorney worked primarily with DUI's, traffic infractions and criminal offenses. The letter also stated that the attorney does not charge for initial consultation and the attorney's fees are substantially lower than the normal rates of the community. The letter further stated that if your client had already retained counsel or been appointed counsel to disregard the letter. You state that when you spoke with the attorney, she said she obtained your client's name from public records. You state that if your client's name was obtained from public records, the attorney should have known your client was represented by counsel, since your name appeared on the warrant.

You wish to know whether the attorney's solicitation of your client's business was proper.

A very similar inquiry was addressed by LE Op. 862. In that situation the solicitation letter also was sent to all persons recently charged with any criminal offense and stated that the soliciting attorney works "primarily with DUI's, traffic infractions and criminal offenses." The Committee opined and reiterates here that that statement was not a per se statement of some limited expertise. The Committee felt it was without facts to enable it to opine as to whether or not the soliciting attorney had made a "false, fraudulent, misleading or deceptive statement or claim" as prohibited by DR:2-101.

As in your inquiry, the solicitation letter in LE Op. 862 also stated "I am sure you will find that my fees are substantially lower than the normal rates of this community." The Committee opined, and does so here, that the statement is improper and noted that only factual assertions should be made in advertisements and personal communications.

The Committee believes that LE Op. 862 is dispositive of your inquiry.