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RPC 189

October 21, 1994

Communications by DA's Staff with Unrepresented Traffic Violators

Opinion rules that the members of a district attorney's staff may not give legal advice about pleas to lesser included infractions to an unrepresented person charged with a traffic infraction.

Inquiry:

In County X, when a citizen receives a traffic citation, he or she is often told by the police officer or state trooper making the stop to call the district attorney's office directly in order to get the charge reduced or to get a prayer for judgment continued. If the citizen subsequently calls or goes to the district attorney's office, he or she will speak with an assistant district attorney, a victim/witness coordinator, or a secretary. The member of the district attorney's staff counsels the citizen about pleas to lesser infractions available to the citizen which will reduce insurance points and save the citizen money on his or her insurance premiums. If relevant, the staff member might also give the citizen advice about pleas that would prevent a forfeiture of the citizen's driver's license. Following the discussion, a Form CR-202, from the Administrative Office of the Courts, entering the citizen's guilty plea to a lesser included infraction, is prepared for the citizen. Is the practice of advising citizens as to their plea options allowed under the Rules of Professional Conduct?

Opinion:

No. An assistant district attorney or nonlawyer member of the district attorney's staff who is supervised by the district attorney may not give legal advice to a citizen charged with a traffic infraction who is not represented by a lawyer. The district attorney and his or her legal staff represent the State of North Carolina when they negotiate a traffic citation against a citizen. Where the interests of an unrepresented person and the interests of a lawyer's client are in conflict, Rule 7.4(b) and Rule 7.4(c) prohibit

the lawyer from (1) giving advice to the unrepresented person other than the advice to seek counsel and (2) implying that the lawyer is disinterested. If the lawyer knows or should know that the unrepresented person misunderstands the lawyer's role, the lawyer must make reasonable efforts to correct the misunderstanding. Rule 7.4(c). In addition, Rule 7.3(b) imposes upon a prosecutor a special duty to advise unrepresented individuals who are charged in a criminal matter of the individual's right to obtain counsel. The district attorney and the other lawyers in his or her office must make reasonable efforts to ensure that the conduct of nonlawyer members of the staff is compatible with the professional obligations of the lawyers not to give legal advice to an unrepresented citizen charged with an infraction. See Rule 3.3(b). The foregoing opinion does not prohibit a member of a district attorney's staff from responding to questions from an unrepresented citizen regarding the pleas the district attorney's office would be willing to approve.



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