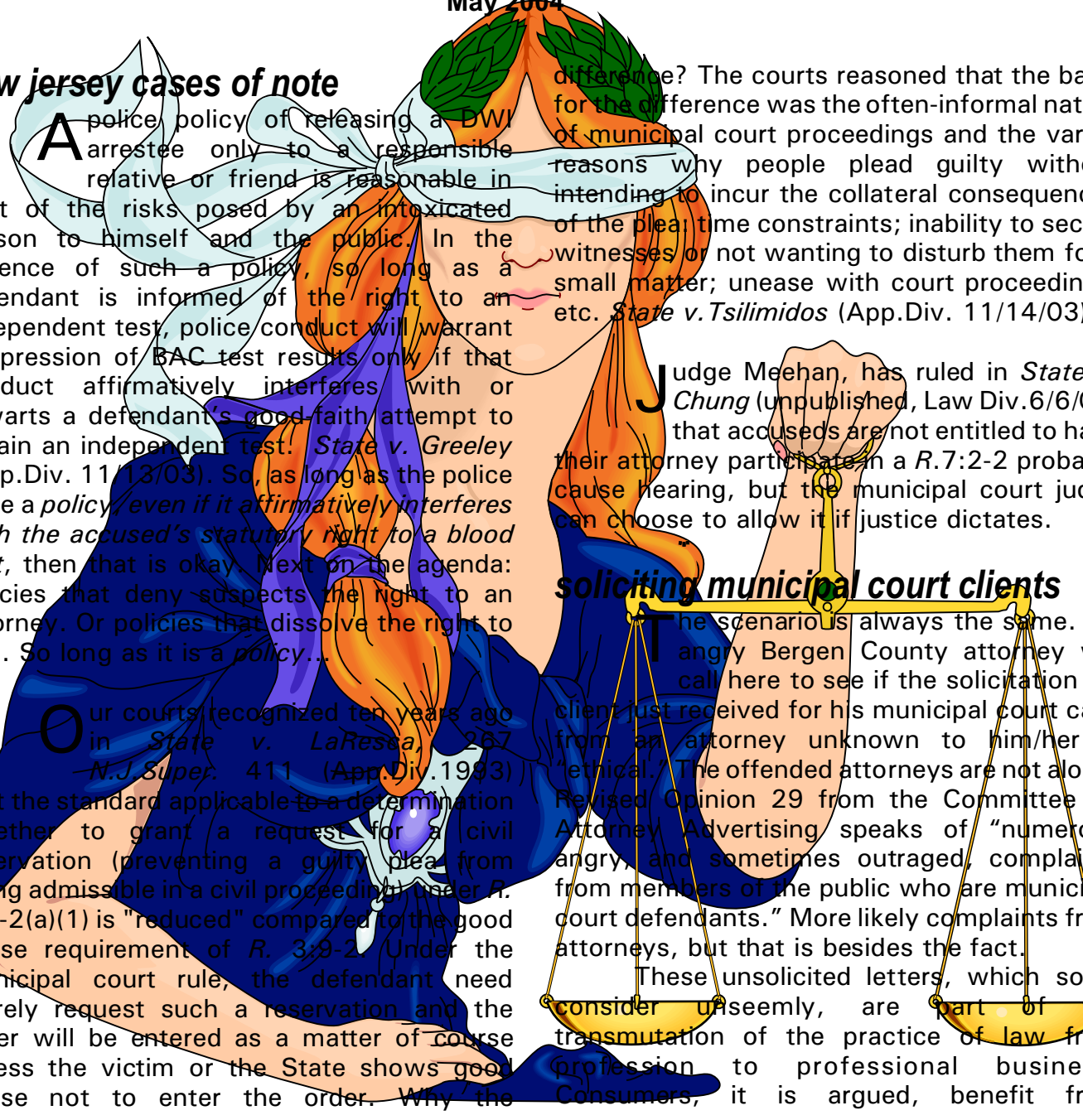

CRIMINAL LAW UPDATE

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new jersey cases of note



A police policy of releasing a DWI arrestee only to a responsible relative or friend is reasonable in light of the risks posed by an intoxicated person to himself and the public. In the absence of such a policy, so long as a defendant is informed of the right to an independent test, police conduct will warrant suppression of BAC test results only if that conduct affirmatively interferes with or thwarts a defendant's good-faith attempt to obtain an independent test. *State v. Greeley* (App.Div. 11/13/03). So, as long as the police have a policy, even if it affirmatively interferes with the accused's statutory right to a blood test, then that is okay. Next on the agenda: policies that deny suspects the right to an attorney. Or policies that dissolve the right to trial. So long as it is a policy...

Our courts recognized ten years ago in *State v. LaRessa*, 267 N.J. Super. 411 (App.Div. 1993) that the standard applicable to a determination whether to grant a request for a civil reservation (preventing a guilty plea from being admissible in a civil proceeding) under R. 7:6-2(a)(1) is "reduced" compared to the good cause requirement of R. 3:9-2. Under the municipal court rule, the defendant need merely request such a reservation and the order will be entered as a matter of course unless the victim or the State shows good cause not to enter the order. Why the

difference? The courts reasoned that the basis for the difference was the often-informal nature of municipal court proceedings and the varied reasons why people plead guilty without intending to incur the collateral consequences of the plea: time constraints; inability to secure witnesses or not wanting to disturb them for a small matter; unease with court proceedings, etc. *State v. Tsilimidos* (App.Div. 11/14/03).

Judge Meehan, has ruled in *State v. Chung* (unpublished, Law Div. 6/6/03) that accuseds are not entitled to have their attorney participate in a R.7:2-2 probable cause hearing, but the municipal court judge can choose to allow it if justice dictates.

soliciting municipal court clients

The scenario is always the same. An angry Bergen County attorney will call here to see if the solicitation his client just received for his municipal court case from an attorney unknown to him/her is "ethical." The offended attorneys are not alone. Revised Opinion 29 from the Committee on Attorney Advertising speaks of "numerous angry, and sometimes outraged, complaints from members of the public who are municipal court defendants." More likely complaints from attorneys, but that is besides the fact.

These unsolicited letters, which some consider unseemly, are part of the transmutation of the practice of law from profession to professional business. Consumers, it is argued, benefit from

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competition, and competition requires advertising. What is banned is that which is unprofessional, undignified and unfair. Some letters exert pressure to accept immediate representation by cataloguing hypothetical penalties and consequences which may have no relationship to the actual offense charged, or indicate that the attorney is able to exert influence to obtain a result or is better equipped than other attorneys to successfully represent the defendant. Examples include:

- "My office knows the law and knows how to use the law to your best advantage."
- "Call my office today to find out how you can put the law on your side and even the score."
- "Do not surrender!"
- "The "Deck" is stacked against you...the State will use everything in its power to convict you!"
- "The Police Officer will team up with the Prosecutor. Finally, there's the Judge. He or she will hand down your sentence. They set fines, suspension time and/or jail time!"
- "Get a lawyer that has experience in the town where you got your ticket! Someone who knows 'the system' ...".

Or my favorite duo:

- "Remember, the police and Courts have attorneys represent them in prosecuting you." (*The courts have attorneys? Since when? And what do court clerks have? Paralegals?*)
- "It is extremely important that you understand that the State is represented by a Prosecutor, an attorney whose job it is to convict you of this offense." (*Really? Only if the prosecutor disregards his/her sworn duty to do justice, and not merely get convictions.*)

In the words of the great Roman emperor, Justinian the Law-Giver, "Oy vey."

"Complaints from the public as to these sales pitches in a volume too great to ignore" prompted the Committee to publish the revised Opinion. In future, attorneys who send solicitation letters seeking to obtain clients from among defendants charged in municipal court must, among other requirements:(1) personally verify the accuracy of all statements contained in the solicitation letter, including the name and address of the

defendant and the specific nature of the charge, which charge must be recited in the body of the letter; (2) be specific in the salutation to the individual to whom the letter is being sent; (3) insure that the defendant is not under age 18; (4) not attempt to indicate a special relationship or knowledge which will or may provide a more favorable result than other licensed New Jersey attorneys; (5) not raise unjustified expectations, and (6) not misstate the role of the prosecutor or judge (sure, sometimes some *judges* forget the distinction between themselves and the prosecutor, that is a different issue). Both the envelope and the letter itself must contain the word ADVERTISEMENT in all capital letters, prominently displayed at the top of the first page, with specific language identifying the letter as an advertisement at the bottom.

Our clients will not know these rules. Attorneys whose clients receive such letters should scrutinize them carefully for strict compliance. Remember, in our new world, Tiffany and K-Mart both make a lot of money. Each attorney must decide for himself/herself where in the spectrum they fit.

miscellaneous

You may not know (although feel free to claim to clients that you in fact did know) that there are Attorney General guidelines covering numerous and diverse subjects. Among the numerous topics covered are asset forfeiture, law enforcement operations on or near school property in drug free school zone, standards for applying for waivers of forfeiture of public office following conviction, the proper manner to conduct photographic and live lineups, use of force policies and vehicular pursuit policies. These polices, and many others, can all be found at www.state.nj.us/lps/dcj/agguide.htm.

The minimum suspension for a first time DWI offender with a BAC at or over .16% is still only seven (7) months. *Not nine (9) months*. Read the *statute*, not an AOC memo or legislative statement. *9 months!?! Hey, let's make DWI even tougher!*

