

ETHICS COLUMN

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Advertisements Touting Designations as 'Super Lawyer' or 'Best Lawyer in America' Violate New Jersey Rules of Professional Conduct

Opinion 39 issued by the Committee on Attorney Advertising appointed by the New Jersey Supreme Court, on July 19, 2006 [185 N.J.L. 360], has determined that advertisements in any medium of distribution publicizing certain New Jersey attorneys as "Super Lawyers" or "Best Lawyers in America" violate the prohibition against advertisements that are comparative in nature, as proscribed under the New Jersey version of Rule 7.1(a)(3).

However, on August 18, 2006 the New Jersey Supreme Court stayed the enforcement of the opinion pending its further consideration of the matter. Nonetheless, a summary of the committee's conclusion merits discussion.

The committee concluded that the comparisons are also likely to create an unjustified expectation about results in violation of Rule 7.1(a)(2) of the New Jersey Rules of Professional Conduct. The committee was asked to address advertisements that appeared first in a 2005 *New Jersey Monthly* magazine and a subsequent stand-alone magazine both devoted primarily to advertisements by law firms promoting their designations as "Super Lawyers." A *New Jersey Monthly* "Super Lawyers" magazine and subsequent stand-alone addition were also published in 2006. The advertisements in question were primarily focused on congratulating the chosen lawyers for their designation as "Super Lawyers." The designation as "Super Lawyers" has led to increased marketing by attorneys in the form of advertisements in local publications, as well as brochures, telephone book listings and Web sites.

The committee also received inquiries concerning the propriety of advertising and promotion of a New Jersey attorney's status as a "Best Lawyer in America." The committee noted differences in the methodology of selection for those designations but reached the same conclusion that both designations, when advertised, violated the applicable New Jersey Rules of Professional Conduct.

In an interview for the *Wall Street Journal's Law Blog*, the chairman of the New Jersey Committee on Attorney Advertising said that although the committee could not prohibit the publisher from publishing such advertisements, the committee did have the power to penalize attorneys who participated in violation of the rules. Specifically, the chair of the committee was quoted on the *WSJ Law Blog* as warning that if the "Super Lawyers" edition is published next year and lawyers chose to advertise in it, "they will run afoul of the Rules of Professional Conduct and do so at their own peril."

See <http://blogs.wsj.com/law/2006/07/21/new-jersey-says-super-lawyers-is-super-misleading/>. The chair added that: "The state takes seriously its role of protecting the public from deceptive legal practices." *Id.*

The reasoning behind the decision of the committee was based on the proscription in Rule 7.1(a)(3), which states that a communication is misleading if it "compares the lawyer's service with other lawyers' services." The inherently comparative superlative designation is not within the approved ambit of the New Jersey rules because they are based on an assessment by the attorney or other members of the bar, or devised by persons or organizations outside the bar, that lack both court approval and objective verification of the ability of the lawyer. The committee further reasoned that the "self-aggrandizing titles have the potential to lead an unwary consumer to believe that the lawyers so described are, by virtue of this manufactured title, superior to their colleagues that practice in the same areas of law." Moreover, the advertisements violate Rule 7.1(a)(2), which provides that a communication is misleading if it "is likely to create an unjustified expectation about results the lawyer can achieve...." The committee reasoned that when a potential client reads such advertising and considers hiring a "super" attorney, the superlative designation induces the client to feel that the results that can be achieved by this attorney are likely to surpass those that can be achieved by a mere "ordinary" attorney. The committee concluded that "this simplistic use of a media-generated sound bite title clearly has the capacity to materially mislead the public." The Committee also described in detail the problems with the advertisements or "text that appears along with the designations as an article but may be paid for in a manner similar to an advertisement."

An August 1, 2006 article on *Law.com* quoted from an e-mail by the publisher sent to all the 1,669 New Jersey attorneys in the Super Lawyers survey, which said: "... we disagree with every aspect of the Committee's opinion and intend to challenge it with every means at our disposal." (emphasis added). According to the *Law.com* article, the New Jersey opinion is unique.

A cursory review of the ABA/BNA *Lawyers' Manual on Professional Conduct* did not reveal any similar opinions from any other states. If anyone is aware of any similar opinions or rulings in other states, I would appreciate you bringing that to my attention. Thank you. ♦

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