

COMMITTEE ON ATTORNEY ADVERTISING
APPOINTED BY THE NEW JERSEY SUPREME COURT

Opinion 39
Committee on Attorney Advertising

**Advertisements Touting Designation as
“Super Lawyer” or “Best Lawyer in America”**

The Committee has received complaints and inquiries relating to New Jersey lawyers advertising themselves or their colleagues as “Super Lawyers” and/or “Best Lawyers in America.” The issue is whether advertisements in any medium of distribution publicizing certain New Jersey lawyers as “Super Lawyers” or “Best Lawyers in America” violate the prohibition against advertisements that are comparative in nature, *RPC 7.1(a)(3)*, or that are likely to create an unjustified expectation about results, *RPC 7.1(a)(2)*. It is the Committee’s position that this type of advertisement is prohibited by the *Rules of Professional Conduct*.

This new form of comparative advertising first appeared in an advertising insert to a 2005 *New Jersey Monthly* magazine and subsequent stand-alone magazine, both devoted primarily to advertisements by law firms promoting their designation as “Super Lawyers.” A 2006 *New Jersey Monthly* “Super Lawyers” magazine and subsequent stand-alone magazine have now been published.

The advertisements appearing in both magazines were solicited as paid-for advertising, with the size of the advertisements dependent on the price paid. The primary focus of those advertisements was to congratulate the chosen lawyers for their designation as “Super Lawyers.”

The “Super Lawyer” designations have spawned a new surge of attorney marketing in the form of advertisements placed in New Jersey lawyer-directed papers, in local newspapers and by distribution to the public through attorney mailers, flyers, brochures, telephone book listings, and on websites, all of which tout the “Super Lawyer” label and congratulate or promote the so-called “Super” lawyers.

The Committee has also received inquiries concerning the propriety of the advertising and promotion of a New Jersey attorney’s status as a “Best Lawyer in America.” There are some differences between the “Super Lawyer” and “Best Lawyer” descriptions. First, the “Best Lawyer” methodology of selection is based solely on peer review interviews with a premium placed on those who have been selected as a “Best

Lawyer” in previous years.¹ Second, the “Best Lawyer” selection is not focused upon encouraging lawyers to advertise in an advertising supplement and appears to market its “Best Lawyer” compendium primarily to other lawyers. However, “Best Lawyer” seems to be trending towards a “Super Lawyer” business plan with similar advertising supplements in other jurisdictions, but not yet in New Jersey.

This Committee has not previously addressed this issue. The Advisory Committee on Professional Ethics, however, has addressed the propriety of attorney advertising through *Who's Who in New Jersey*. ACPE Opinion 311, 98 *N.J.L.J.* 633 (July 24, 1975). That Committee concluded that an attorney may be listed in a directory which is used primarily for reference purposes but warned that attorneys must be wary of directories whose primary purpose is publicizing the listings and must also be careful of using self-laudatory statements in those listings. The Committee recognizes that this Opinion was issued prior to significant law changes in the field of attorney advertising but finds that some of the underlying concerns noted in the Opinion remain viable today.

Advertising which promotes a designation such as “Super Lawyer” or “Best Lawyer in America” does not comply with *RPC 7.1(a)(3)*. *RPC 7.1(a)(3)* states that a communication is misleading if it “compares the lawyer’s service with other lawyers’ services.” Use of superlative designations by lawyers is inherently comparative and, thus, not within the approved ambit of New Jersey’s *Rules of Professional Conduct*. Such titles or descriptions, based on an assessment by the attorney or other members of the bar, or devised by persons or organizations outside the bar, lack both court approval and objective verification of the lawyer’s ability. These 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 who practice in the same areas of law.

Similarly, this type of advertising does not comply with *RPC 7.1(a)(2)*. *RPC 7.1(a)(2)* states that a communication is misleading if it “is likely to create an unjustified expectation about results the lawyer can achieve” When a potential client reads such advertising and considers hiring a “super” attorney, or the “best” 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. This simplistic use of a media-generated sound bite title clearly has the capacity to materially mislead the public.

¹ The methodology used by the media corporation to award the “Super Lawyer” designation is unclear. Although the designations are purportedly based in part on a poll of practicing New Jersey attorneys and input from non-attorneys, then weighted in accordance with a non-disclosed system established by the publishers, Law & Politics and/or its sister corporation Key Professional Media, they do not make available the specific methodology for objective review or analysis. A careful review of the selective aspects of the promotional methodology, however, underscores the arbitrary selection and ranking process used by the publisher, and provides no empirical or legally sanctioned support for the results.

Moreover, the Committee notes that the entire insert to the *New Jersey Monthly* "Super Lawyers" publication, including biographical sketches and even the listing of attorneys, is marked by the magazine as an advertisement. For this reason, and also because of the proximity of attorney advertisements to magazine text on individual "Super Lawyers," any advertisements placed in the "Super Lawyers" magazine insert or stand-alone version are prohibited, even when such advertisements do not include the words "Super Lawyer." It is inevitable that a member of the public, reading an article about a certain attorney who has been designated by the magazine as a "Super Lawyer," will note a nearby advertisement congratulating that lawyer (though not using the prohibited words "Super Lawyer"), and will attribute the marketing designation to the subject of the advertisement. Hence, the placement of an attorney advertisement in the magazine insert serves the same purpose as the use of the superlative, inherently comparative, marketing title. Therefore, the Committee has decided that attorney advertisements, even those advertisements that do not repeat the moniker of "Super Lawyer," appearing in the "Super Lawyer" magazine insert, are prohibited.

Further, it may be that biographical sketches appearing in the "Super Lawyers" insert to the *New Jersey Monthly* magazine are paid for by the subject attorneys or written in whole or in part by the attorneys. If this is so, then the "article" is misleading as it appears to be journalistic material but is, in fact, mere self-promotion. Accordingly, to the extent biographical sketches or other "articles" in the "Super Lawyers" insert are paid for by the subject attorneys or written in whole or in part by the attorneys, such "articles" must bear the word "advertisement" in large print at the top.

Lastly, the Committee has reviewed the survey sent to New Jersey lawyers that supports the selection of attorneys for the "Super Lawyer" designation. It is the Committee's position that participation in a survey of this type, where an attorney knows or reasonably should know that the survey would lead to a descriptive label that is inherently comparative such as "Super Lawyer" or "Best Lawyer," is inappropriate.

The survey results for "Super Lawyer" designation are not intended to cater to other attorneys but, rather, are designed for mass consumption. In contrast, other ratings organizations such as Martindale-Hubbell, which rates attorneys AV, BV or CV, are directed toward other attorneys. Martindale notes that not all attorneys or firms are rated and that most attorneys as they become more experienced move from a CV towards an AV rating. These ratings are familiar to other lawyers and likely have minimal recognition to the public.

Accordingly, advertisements describing attorneys as "Super Lawyers," "Best Lawyers in America," or similar comparative titles, violate the prohibition against advertisements that are inherently comparative in nature, *RPC* 7.1(a)(3), or that are likely to create an unjustified expectation about results, *RPC* 7.1(a)(2).