

**ALASKA BAR ASSOCIATION
ETHICS OPINION 2009-2**

**Use of Membership in Lawyer Ranking System In Lawyer/Law Firm
Advertising**

Question

Is it permissible to reference ranking by a commercial rating system in a lawyer's or law firm's advertising materials?

Lawyers and law firms increasingly are listing a ranking in commercial publications such as SUPER LAWYERS, BEST LAWYERS IN AMERICA, and other similar rankings in their advertising materials. This opinion establishes guidelines for including such rankings in advertisements to avoid a violation of Alaska Rules of Professional Conduct 7.1 and 7.2.

Conclusion

Lawyers and law firms may refer to a listing in SUPER LAWYERS, BEST LAWYERS, or another commercial professional ranking so long as the reference includes the publication name, date, and the practice area, if one was specified, in which the lawyer was ranked or selected. By issuance of this ethics opinion, the Alaska Bar Association is not endorsing any of the commercial ranking systems referenced herein.

Specifically, a lawyer shall utilize essentially the following format when including a lawyer's professional ranking in advertising materials:

Attorney's Name was selected for inclusion in PUBLICATION
Date.

Thus, for example, a lawyer may state:

Jane Doe was selected for inclusion in ALASKA SUPER
LAWYERS 2008.

If the ranking was limited to a specific area of practice, such information shall be included as follows:

Attorney's name was selected for inclusion in PUBLICATION
Date in the area of field of practice.

Again, for example, the lawyer could state:

John Doe was selected for inclusion in BEST LAWYERS IN AMERICA 2008 in the area of family law.

Discussion

Alaska Professional Conduct Rule 7.1 prohibits a lawyer from making a false or misleading communication about the lawyer, the lawyer's services, or a prospective client's need for services. Communications are defined to be false or misleading if they contain a material misrepresentation of fact or law; if they are likely to create an unjustified expectation of results; or if they compare the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

The Commentary to Rule 7.1 explains that all statements about a lawyer's services must be truthful. It explains further that even truthful statements are prohibited if they may mislead a layperson.

Comment [3] to the Model Rules of Professional Conduct elaborates that an advertisement that truthfully reports a lawyer's achievements may be misleading if presented in a way that would lead a reasonable person to form an expectation that the same results could be obtained for other clients, since each case has unique factual circumstances. Thus, advertisements that contain information about results obtained on behalf of a client, the lawyer's record in obtaining favorable verdicts, or client endorsements are ordinarily precluded by Rule 7.1(b).

A comparison of one lawyer's services to another lawyer's services can also be misleading if the information would lead a reasonable person to believe the comparison could be substantiated, when in fact it cannot. The Annotation to Model Rule 7.1 explains that the key to avoiding a misleading comparison is the ability to verify the comparison. The Annotation concludes that, if a rating system is utilized in the comparison, the comparison may be verified, so it is not misleading even if the rating system is generally unknown by the public.

Companies focused on rating lawyers are not a new phenomenon. The first and arguably most well known is MARTINDALE-HUBBELL's rating system, which began in the late 1880s. Other companies prevalent in the United States include THE BEST LAWYERS IN AMERICA, CHAMBERS USA, LAWDRAGON, and SUPER LAWYERS.

The use of lawyer rankings in advertising and promotional press releases has become controversial. SUPER LAWYERS has received the most attention in recent ethics opinions.

A minority of jurisdictions has determined that references to rankings in a publication such as SUPER LAWYERS are unethical. For example, the New Jersey Supreme Court's Committee on Attorney Advertising ruled that advertising an attorney's inclusion in SUPER LAWYERS is a violation of Rule 7.1 because it is likely to create unjustifiable expectations and compares the "Super Lawyers" to non-"Super Lawyers."¹ This New Jersey Opinion has been stayed pending a challenge in the New Jersey Supreme Court.² The New York Appellate Division proposed an amendment to their disciplinary rules that prohibited "any nickname, moniker, motto, or trade name that implies an ability to obtain results."³ On July 20, 2007, the United States District Court found the amendment to be an unconstitutional limit on free speech.⁴

The majority view regards advertising that mentions a rating received from a commercial publication to be ethically permissible. The State of Connecticut Statewide Grievance Committee offered a particularly thoughtful analysis. The Connecticut Committee determined that an unexplained reference to an attorney as a "Super Lawyer" in an advertisement is "potentially misleading and confusing to consumers." The Connecticut Committee recognized that the SUPER LAWYER selection process is "subjective and arbitrary," but decided that a truthful reference to a ranking by SUPER LAWYERS is not unethical if sufficient information is provided to put the reference in context.⁵ To alleviate potential confusion, the Connecticut Committee requires that the reference to "Super Lawyer" must be explained. As an example, the Connecticut Committee indicated that announcing that a lawyer has been designated a Connecticut Super Lawyer in CONNECTICUT SUPER LAWYERS 2007 magazine is allowed, but stating simply that a lawyer is a Super Lawyer is not allowed.

¹ N.J. Ethics Op. 39. *Advertisements Touting Designation as "Super Lawyer" or "Best Lawyers in America."* July 24, 2006.

² *In re Opinion 39 of the Committee on Attorney Advertising*, 197 N.J. 66, 961 A.2d 722 (2008).

³ N.Y. Comp. Codes & Regs. Tit. 22 Sec. 1200.6.

⁴ *Alexander v. Cahill*, 2007 WL 2120024 (N.D.N.Y. July 20, 2007).

⁵ C.T. Advisory Opinion #07-00188-A. *Print Media Advertisement Super Lawyers*. October 4, 2007.

This Committee agrees with and adopts the approach of the Connecticut Statewide Grievance Committee. A lawyer does not act unethically in advertising his or her selection or ranking in a commercial publication, including SUPER LAWYERS and BEST LAWYERS OF AMERICA, so long as the complete context is provided -- meaning that the lawyer's advertising must state accurately the publication by which he or she was ranked, the year of the ranking, and the field of the ranking, if one was specified. Sample acceptable statements are set forth above.

Any advertising must also comply with Alaska Professional Conduct Rule 7.2. Under Rule 7.2, a lawyer may not provide compensation to a person for recommending the lawyer's services, though a lawyer may pay the reasonable cost of advertising. The Comment to Rule 7.2 explains that a lawyer may not pay another person to channel work to him or her. But the rules do not prohibit third persons from promoting or recommending a particular lawyer's services.

A lawyer's mentioning his or her ranking or selection by a professional publication does not violate Rule 7.2, so long as the lawyer did not pay to be selected. SUPER LAWYERS, BEST LAWYERS IN AMERICA, CHAMBERS, and MARTINDALE-HUBBELL do not charge a lawyer to be ranked. They may charge a lawyer to be listed or to advertise in the publication, and paying for such a listing or advertisement is not prohibited.

Finally, any advertising must comply with Rule 7.4, which, with narrow exceptions, prohibits a lawyer from stating or implying that the lawyer is a "specialist" or "certified." Including a professional ranking, such as described above, in a lawyer's advertising materials is not in itself a violation of Rule 7.4.

Approved by the Alaska Bar Association Ethics Committee on April 2, 2009.

Adopted by the Board of Governors on May 5, 2009.