

**STANDING COMMITTEE ON LAWYER ADVERTISING
AND SOLICITATION**

Stephen E. Baril, Chair

The Standing Committee on Lawyer Advertising and Solicitation (SCOLAS) monitors lawyer advertising and solicitation in Virginia, responds to inquiries regarding the propriety of certain lawyer advertising and issues advisory opinions when, in the judgment of the committee, it is helpful to do so. SCOLAS meets every other month at the VSB offices in Richmond.

The committee and assistant ethics counsel review in detail selected broadcast media, Yellow Pages and other printed advertising material, to determine compliance with the applicable *Rules of Professional Conduct*. If the committee finds that an ad is in violation of a rule, a letter is written to the responsible lawyer pointing out the problem with the ad and requesting that the advertisement be modified accordingly. This fiscal year, 71 such letters were sent to lawyers who, in most cases, voluntarily complied with the committee's request. In the three instances where they did not, the matter was referred to discipline.

In March 2003, the committee submitted to the Virginia Supreme Court LAO A-0114, issued in June 2002, which addresses whether claims such as "the best" or "the greatest" are comparative statements that cannot be factually substantiated and, therefore, are in violation of Rule 7.1(a)(3). After receiving informal comment from members of the bar, the committee revised and reissued LAO A-0114 in October 2002, and again in December 2002. At the February 2003 meeting of the VSB Council, the December 2002 opinion was revised to state—as the committee did in its October 2002 opinion—that "it is not unethical for a lawyer to advertise the fact that he or she is listed in a publication entitled, *Greatest Lawyers in the Country*." The council approved the opinion at that time with an added proviso that "any advertisement which makes statements or claims beyond the fact that the lawyer is listed in such a publication must comply with Rule 7.1." The opinion is currently pending approval/modification/rejection with the Supreme Court.

In November 2002, the Virginia Supreme Court approved the committee's proposed modifications to Rules 7.1 of the Virginia Supreme Court *Rules of Professional Conduct*. The approved revisions split Rule 7.1, as originally adopted, into two rules and created new Rule 7.2. Rule 7.1 now applies to all communications from a lawyer, including advertising that is covered under Rule 7.2. Rule 7.2 was specifically segregated, due to the unique issues created by the inclusion of paragraph (e), requiring the full name and address of the attorneys responsible for the advertisement and the fact the committee determined that these specifics were meant to apply to advertising, but not generically to all communications. The committee expanded paragraph (c) to include all written or e-mail communication. In addition, Rule 7.2(a)(3) was added to specifically address the advertisement of specific case results only, with an appropriate disclaimer that meets the rule's requirements.

I wish to thank the members of the committee—Daniel L. Rosenthal, committee chair; Alan S. Anderson; Gina M. Burgin; John Drescher; Brian Eckert; Donald Gee; Jeffrey Krasnow; Alison Landry; William Miller; William Schmidt; and George L. Townsend—for their dedication and contributions to the work of the committee during the past year.

