

WHETHER CLAIMS SUCH AS "BEST LAWYERS IN AMERICA" ARE SELF-LAUDATORY AND AMOUNT TO COMPARATIVE STATEMENTS WHICH CANNOT BE FACTUALLY SUBSTANTIATED

You have presented a hypothetical situation in which Law firm Able, Bright and Strong has undertaken an extensive broadcast media advertising program. The ad which is the subject of this inquiry states the following:

It says a lot when Richmond Lawyers choose three members of a single personal injury law firm to be included in the book "Best Lawyers in America," three of only four Richmond personal injury lawyers for the plaintiffs so honored. It says even more when that same firm has had lawyers included since the book began, 18 years running. If you've been injured, call the lawyers other lawyers have called the best. Able, Bright and Strong. The strength of family. The best in personal injury."

Under the facts you have presented, you have asked the committee to opine as to 1) whether the ad's directive that the public should "call the lawyers other lawyers have called the best" is false, deceptive and misleading ; 2) whether the statement "Able, Bright and Strong, The Best in Personal Injury," is false, deceptive, and misleading; and 3) whether the claim "it says a lot when Richmond lawyers choose three members...to be included in the book'Best Lawyers in America,'" is false, misleading, and untrue.

The appropriate and controlling disciplinary rule relative to your inquiry is Rule 7.1(a)(3):

**RULE 7.1 Communications And Advertising Concerning
A Lawyer's Services**

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication or advertisement violates this Rule if it:

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

The Committee has repeatedly opined that the use of statements or claims such as "the best lawyers" are self-laudatory and amount to comparative statements which cannot be factually substantiated, in violation of Rule 7.1(a)(3). LEO 1750. Advertisements or claims that convey an impression of the lawyer's astuteness rather than the merits of the claim as determinative of the outcome are similarly deceptive. LEO 1297.

The first issue presented asks for the Committee's opinion regarding the statement "call the lawyers other lawyers have called the best." The Committee finds this statement to be misleading and believes that the intended implication of the statement, as well as this ad in general, is that three lawyers in the firm are so outstanding by virtue of inclusion in the publication "Best Lawyers in America," and are thus elevated to the status of being "the best." Your facts state that there are sixteen lawyers who practice in personal injury law and civil litigation in Richmond, Virginia alone who have been included in this publication. You have accurately pointed out in your request that the encyclopedic definition of "the best" is "excelling all others; that without equal," which infers a chosen one, not one of the sixteen attorneys in the Richmond area. The Committee believes that this message is not only misleading, but in fact false and therefore improper.

In addition, you have included information in your request regarding the criteria required for an attorney to be included in the publication, "The Best Lawyers in America." The Committee was interested to learn that lawyers listed in this publication are nominated and selected by those already listed therein and that the lawyer completes the selection process by paying a fee for his inclusion. Failure to disclose this process, and implying by this omission that inclusion in the publication is based on fair and unbiased criteria, and is open to all qualified lawyers in America, may itself be deceptive.

The Committee further believes that the implication of the ad that these three lawyers are "the best" strictly because of the chosen name of a publication, thereby named to sell quantities of books, is a *non sequitur*. This creates an unjustified and unsubstantiated inference for all those listed in the publication. This publication could have been named "The Greatest Lawyers in the World," however, that would not elevate the status or ability of any lawyer named therein to "greatness."

Your second issue inquires whether the statement "Able, Bright and Strong, The Best in Personal Injury," is false, deceptive and misleading. This Committee has opined in the past that factually unsubstantiated self-laudatory comments are inherently misleading and therefore a violation of Rule 7.1(a)(3). In addition, no law firm has ever been selected for inclusion in the publication "Best Lawyers in America." Inclusion in this publication is limited to individual lawyers. If the only substantiation offered for the validity of this statement is the inclusion of the three lawyers in the named publication, then this Committee is of the opinion that this law firm has exponentially expanded on the declaration of the "best" to include the entire firm which is factually unsubstantiated and inherently false.

As to your third issue, regarding the ad's claim "it says a lot when Richmond lawyers choose three members of a single personal injury law firm to be included in the book "Best Lawyers in America," the Committee finds this statement is misleading and false as well since it implies that these three lawyers were chosen by an objective survey or vote among the group to come to this determination. As documented in your request, no such survey was ever performed, and only those lawyers already selected to be in the publication. This is a severely restricted process when considering that there are over 3,000 lawyers in the Richmond area.

The Committee wishes to reiterate that its opinion has always been and continues to be that any self-laudatory claims or statements that cannot be factually substantiated are a violation of Rule 7.1(a)(3). There has been no relaxation or rescission of this rule or opinion by this Committee or by the Legal Ethics Committee. The Legal Ethics Committee first issued a legal ethics opinion on this topic in 1989 in LEO 1297, which was later incorporated into this Committee's opinion LEO 1750. This Committee continues to adhere to the belief that such statements that use extravagant or self-laudatory words are designed to and in fact mislead laypersons to whom they are directed and, as such, undermine public confidence in our legal system. The attorney-client relationship should not be established as a result of misleading statements. Comment 5 to Rule 7.1 specifically states that "[a]dvertising through which a lawyer seeks business by use of extravagant, or self-laudatory statements or appeals to fears and emotions could mislead laypersons."

This opinion is advisory only, based only on the facts you presented, and not binding on any court or tribunal.

Committee Opinion
June 17, 2002