

# Virginia State Bar Council to Review Legal Advertising Opinion A-0114 Concerning a Lawyers Claim to Being “The Best” or “The Greatest”

**RICHMOND**—Pursuant to Part Six: Section IV, Paragraph 10(c)(iv) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on February 21–22, 2003 in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, a proposed advertising opinion issued by the Standing Committee on Lawyer Advertising and Solicitation (“SCOLAS”).

## LAO A-0114

SCOLAS issued LAO A-0114 on June 17, 2002. After receiving comment from members of the bar, the Committee revised and reissued the opinion on October 24, 2002 and again on December 10, 2002. The opinion generally addresses whether claims such as “the best” or “the greatest” are comparative statements which cannot be factually substantiated and, therefore, in violation of Rule 7.1(a)(3). The Committee opines, that it has not yet determined whether it is unethical for a lawyer to advertise the fact that he or she is listed in a publication entitled, for example, *Greatest Lawyers in the Country*, however, it is unethical for a lawyer to

advertise that he or she is “the best” or “the greatest” lawyer in his or her geographical or practice area because he or she is listed in that publication.

## Inspection and Comment

The proposed legal advertising advisory opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendment can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar’s Web site at [www.vsb.org](http://www.vsb.org).

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the advisory opinion by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than January 29, 2002.

## LEGAL ADVERTISING OPINION A-0114

### WHETHER CLAIMS SUCH AS “THE BEST” OR “THE GREATEST” ARE COMPARATIVE STATEMENTS WHICH CANNOT BE FACTUALLY SUBSTANTIATED

You have presented a hypothetical situation in which “The Law Firm,” located in “Any Town” has undertaken an extensive broadcast media advertising program. The advertisement which is the subject of this inquiry states the following:

It says a lot when “Any Town” Lawyers choose three members of a single personal injury law firm to be included in the book *Greatest Lawyers in the Country*, three of only four “Any Town” 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 greatest. “The Law Firm.” The strength of family. The greatest in personal injury.

Under the facts you have presented, you have asked the committee to opine as to 1) whether the advertisement’s directive that the

public should “. . . call the lawyers other lawyers have called the greatest . . .” is false, deceptive and misleading; 2) whether the statement “‘The Law Firm’ . . . The greatest in personal injury,” is false, deceptive, and misleading; and 3) whether the claim “It says a lot when ‘Any Town’ lawyers choose three members . . . to be included in the book *Greatest Lawyers in the Country*,” 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" or "the greatest" 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 greatest." The Committee finds this statement to be misleading and believes that the intended implication of the statement, as well as this advertisement in general, is that three lawyers in "The Law Firm" are so outstanding by virtue of inclusion in a publication *Greatest Lawyers in the Country*, and are thus elevated to the status of being "the best" or "the greatest." You have accurately pointed out in your request that the encyclopedic definition of "best" or "greatest" is "excelling all others; that without equal," which infers a chosen one, not one of many lawyers. Therefore, the Committee believes that this message is not only misleading, but in fact false and therefore improper.

The Committee further believes that the implication of the advertisement that these three lawyers are "the best" or "the greatest" strictly because of the chosen name of a publication 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 "even vaster greatness."

Your second issue inquires whether the statement "The Law Firm . . . The greatest 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 *Greatest Lawyers in the Country*. 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 "the best" or "the greatest" to include the entire firm which is factually unsubstantiated and inherently false.

As to your third issue, regarding the advertisement's claim "It says a lot when 'Any Town' lawyers choose three members of a single personal injury law firm to be included in the book *Greatest Lawyers in the Country*," 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 all "Any Town"

lawyers to come to this determination. As stated in your hypothetical no such survey was ever performed.

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."

In conclusion, the Committee has not determined whether it is ethical for a lawyer to advertise the fact that he or she is listed in a publication entitled *Greatest Lawyers in the Country*, or similar publication. The Committee believes this broader issue requires further study and will issue an opinion on this point at a later time. However, with respect to the specific hypothetical lawyer advertisement you present in your inquiry, the Committee opines that it would be unethical for a lawyer to advertise that he or she is "the best" or "the greatest" lawyer in his or her geographical or practice area because he or she is listed in that publication.

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

Committee Opinion  
Issued December 10, 2002

# Lawyers Helping Lawyers

Confidential help for substance abuse problems.  
For more information call (800) 838-8358.