

# REPORTS OF STANDING COMMITTEES

## 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 offices of the Virginia State Bar in Richmond. The committee and assistant bar counsel review in detail selected broadcast media, yellow page 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, 58 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.

The committee issued Legal Advertising Opinion A-0114 concerning whether claims such as "Best Lawyers in America" are self-laudatory and amount to comparative statements that cannot be factually substantiated. The committee opined that it has always been, and continues to be, of the opinion that any self-laudatory claims or statements that cannot be factually substantiated are a violation of Rule 7.1(a)(3). The committee adheres to the belief that such statements that use extravagant or self-laudatory words are designed to, and in fact do, 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.

The committee also proposed a modified version of Model Rule 7.1 that the council approved at the June 2002 council meeting. The committee decided to split Rule 7.1 as originally adopted into two rules and create new Rule 7.2. Rule 7.1 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. The council petitioned the Virginia Supreme Court to approve the proposed modifications.

I wish to thank the members of the committee—John Basilone, past committee chair; Boyd Collier, John Drescher, Brian Eckert, John Fletcher, Donald Gee, Jeffrey Krasnow, Alison Landry, William Miller, Daniel Rosenthal and William Schmidt—for their dedication and contributions to the work of the committee during the past year.

