

**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. 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 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, ninety-two such letters were sent to lawyers who, in most cases, voluntarily complied with the committee's request. In the two instances where they did not, the matter was referred to the disciplinary system.

One opinion, LAO A-0114, was carried over from FY 2003 and is currently pending approval/modification/rejection with the Supreme Court. The opinion issued in June 2002 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). 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 Council of the Virginia State Bar, Council revised the December 2002 opinion 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." Bar Council approved the opinion 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 committee is working on amendments to Legal Ethics Opinion 1750 on advertising issues. The revisions will bring this opinion up to date with the amendments to Rule 7.1-7.5 that were adopted by the Supreme Court in November 2002.

The committee proposed amendments to Rules 7.1 and 7.5, which were approved by the VSB Council on June 17, 2004, and submitted to the Supreme Court for consideration. The first amendment to Rule 7.2(b) would require attorney advertisers to submit to the bar a copy of any audio or video advertising within thirty days of the date of its first airing or publication. The impetus for this revision is based on the limited ability to adequately review all lawyer advertising under the committee's current monitoring process. The second amendment to Rule 7.2(e) would allow all attorneys who advertise to file a written statement with the VSB identifying the lawyer responsible for all firm advertising, rather than having to include that identifying information in each and every advertisement. This revision comes from suggestions of the practicing bar whose firms engage frequently in advertising. The committee also proposed an amendment to Comment [1] of Rule 7.5, which comes as a result of ethics counsel realizing that language in the disciplinary rules, specifically EC 2-13, was not included in the new rules when they were adopted in 2000. The language clarifies that a law firm could continue to use the name of a retired or deceased member in the firm's name, if the lawyer was a member of that firm, if doing so is authorized by law or by contract, and if the public is not misled.

In an attempt to educate lawyers about the advertising rules, the committee has posted on the VSB Web site a checklist for attorney advertisers to use as guidance in developing their legal ads. The committee was also featured in the *Virginia Lawyers Weekly* on December 1, 2003, in a further attempt educate bar members regarding rule amendments and the availability of ethics counsel to provide guidance regarding any advertising questions.

I wish to thank the members of the committee—Vice Chair Daniel L. Rosenthal, Alan S. Anderson, Kevin O. Barnard, Gina M. Burgin, Brian Eckert, Jeffrey Krasnow, Alison Landry, William Miller, William Schmidt, George L. Townsend and C. James Williams III—for their dedication and contributions to the work of the committee during the past year.

