



COMMITTEE ON ATTORNEY ADVERTISING

Appointed by the Supreme Court of New Jersey

OPINION 48

Supplementing Opinion 42: Rule of Professional Conduct 7.1(a)(3) – Honors, Awards, and Accolades that Compare Lawyers’ Services With Other Lawyers’ Services

Rule of Professional Conduct 7.1(a)(3) prohibits statements by lawyers that “compare[] the lawyer’s service with other lawyers’ services” The Supreme Court Committee on Attorney Advertising continues to receive numerous grievances regarding attorney advertising of awards, honors, and accolades that compare a lawyer’s services to other lawyers’ services. The Committee issued Opinion 42 in 2010 and Notices to the Bar in 2016 and 2021 to inform lawyers of the rules with regard to advertising awards, honors, and accolades. The Committee hereby issues this Opinion to present more specific guidance to lawyers on this matter.

The ethics rules governing advertising are intended to protect the public from statements that are false, deceptive, or misleading. Bates v. State Bar of Arizona, 433 U.S. 350, 383 (1977). Advertising that makes claims about the “quality of the legal services . . . are not susceptible of measurement or verification; accordingly, such claims may be so likely to be misleading as to warrant restriction.” Id. at 383-84. When lawyers state that they are included on a list called “Top Attorneys,” for example, the lawyers are making a statement of fact – they were included on the list – but they are also making a statement that supports an inference about the quality of their legal services, that their services are “top” or better than other lawyers’ services. Such statements can be misleading. See Peel v. Attorney Registration and Disciplinary Comm’n of Illinois, 496 U.S. 91, 101 (1990) (advertising a lawyer certification issued by an organization that does not inquire into the lawyer’s fitness can be misleading). Accordingly, Rule of Professional Conduct 7.1(a)(3) prohibits lawyers from making comparative statements.

When referring to an accolade or honor that compares lawyers, the factual basis for the comparison must be verifiable. RPC 7.1(a)(3)(ii). Further, the conferrer of the award must have made appropriate “inquiry into the fitness of the lawyer.” Official Comment to Rule of Professional Conduct 7.1. See also In re Opinion 39, 197 N.J. 66, 76 (2008) (“The rating or certifying methodology must

have included inquiry into the lawyer’s qualifications and considered those qualifications in selecting the lawyer for inclusion”); Committee Opinion 42 (December 2010) (“RPC 7.1 – Comparing an Attorney’s Services With Other Attorneys’ Services: Permissible Language When Communicating Inclusion in ‘Super Lawyers’ and ‘Best Lawyers’ Lists or Referring to Membership in Organizations Such as ‘Million Dollar Advocates Forum’”); May 5, 2021 Notice to the Bar (“Advertising Awards, Honors, and Accolades That Compare a Lawyer’s Services to Other Lawyers’ Services”). This inquiry into the lawyer’s qualifications and fitness must be rigorous and independent.

When an award, honor, or accolade meets this test, the lawyer must include additional information when referring to it in attorney advertising, whether that advertising be a website, social media posting (including Facebook, LinkedIn, and other platforms), law firm letterhead, lawyer email signature block, or other form of communication. First, the lawyer must provide a description of the standard or methodology on which the award, honor, or accolade is based, either in the advertising itself or by reference to a “convenient, publicly available source.” Official Comment to RPC 7.1. Second, the lawyer must include the name of the comparing organization that issued the award; the name of the organization is often different from the name of the award or the name of the magazine in which the award results were published. RPC 7.1(a)(3)(i). Third, the lawyer must include

the following disclaimer “in a readily discernible manner: ‘No aspect of this advertisement has been approved by the Supreme Court of New Jersey.’” RPC 7.1(a)(3)(iii). All of this additional, accompanying language must be presented in proximity to the reference to the award, honor, or accolade. The accompanying information cannot be buried at the bottom of a page, or in tiny print, or placed outside the screen shot on a website. Only the selection methodology can be presented by reference or hyperlink, with an accompanying statement signaling that the methodology can be viewed at that website or hyperlinked page.

The Committee has reviewed numerous law firm advertising on websites, social media postings, email signature blocks, and print material that includes badges or logos of comparative awards, such as the yellow “Super Lawyers” badge, but does not include the required additional information in a discernible manner in proximity to the reference to the award. The Committee has also reviewed social media postings on Facebook, LinkedIn, and other platforms touting an award but not including the required additional information. Every reference to such an award, honor, or accolade – even when it is in an abbreviated form such as the badge or logo or it is posted on a lawyer’s social media page – must include the required accompanying information: (1) a description of the standard or methodology; (2) the name of the comparing organization that issued

the award; (3) the statement “No aspect of this advertisement has been approved by the Supreme Court of New Jersey.”

For example, a reference to the Martindale-Hubbell AV Preeminent accolade should provide:

Jane Doe was selected to 2022 list of AV Preeminent lawyers. This award is conferred by Martindale-Hubbell. A description of the selection methodology can be found at www.martindale.com/ratings-and-reviews/. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Further, when the name of an award, honor, or accolade contains a superlative, such as “preeminent,” “distinguished,” “super,” “best,” “top,” “superior,” “leading,” “top-rated,” or the like, the advertising must state only that the lawyer was included in the list with that name, and not suggest that the lawyer has that attribute. Hence, lawyers may state that they were included in the list called “Super Lawyers,” “The Best Lawyers in America,” or “Top-Rated Lawyers” and must not describe the lawyer as being a “Super Lawyer,” the “Best Lawyer,” or one of the “Top-Rated Lawyers.”

During the past fifteen years, the lawyer award business has flourished exponentially and there are numerous new organizations conferring awards and accolades on lawyers. The Committee has reviewed law firm websites with as many as 53 different comparative awards given to lawyers in the firm. The Committee has informed lawyers that they may not tout awards that do not include

a bona fide inquiry into the fitness of the lawyer. Some awards are popularity contests – the lawyer “wins” the award when enough people email, telephone, or text their vote. Other awards are issued for a price or as a “reward” for joining an organization. Still others are generated based in large part on the participation of the lawyer with the conferring organization’s website. For example, a lawyer can enhance his or her “rating” with the organization by endorsing other lawyers, becoming endorsed in return, responding to questions from the public about legal matters on the organization’s website, and the like. Factors such as the payment of money for the issuance of the award; required membership in the organization that will issue the award; and a level of participation on the organization’s internet website render such awards suspect.

Several awards, particularly those issued by regional magazines, are the result of a survey of lawyers in the area with no subsequent, independent vetting by the conferring organization. The Committee has not permitted lawyers to advertise comparative awards that are based solely on nominations or a survey. It requires the conferrer of the award to engage in a second step of review, to conduct a rigorous and independent vetting of the lawyer to support the inferred “quality of legal services” claim that the lawyer compares favorably to other lawyers by purportedly being among the “best” or “top” of the legal field.

Legal publications also confer awards with comparative names such as “Leaders of the Bar” and “Top” lawyers. These publications initially base the award on nominations. In the second step of review, the winners are often selected by editorial writers at the publications, whose knowledge of the fitness of the lawyer is primarily based on writing and reading what those publications consider to be newsworthy events. Lawyers who contributed to newsworthy events are favored to win the award. The second step review by the publications’ editors does not meet the threshold requirements. The selection process is admittedly subjective, based upon the judgment of the editors for each publication, but that judgment cannot help but be further affected by the publications’ business interests in selecting those lawyers who may boost “views” or “hits” of the pages containing their determinations. With some legal publications, there is an additional concern as the selection process may involve a dinner and/or advertising journal. Part of its criteria, consciously or unconsciously, might be which firms or colleagues of those selected would likely purchase tables at the publication’s award dinner, or purchase advertising space in a journal. In the end, this selection methodology is not much more rigorous, independent, and bona fide than that used by regional publications, where the names are selected by editors as well, although the Committee acknowledges that the legal publication editors would likely be more familiar with the legal community.

The Committee finds that Lawyer of the Year, Litigation Department of the Year, Lifetime Achievement, and similar awards issued by legal publications or legal organizations that focus on specific achievements of the lawyer during the past year or during the lawyer’s lifetime do not “compare the lawyer’s services with other lawyer’s services” within the meaning of Rule of Professional Conduct 7.1(a)(3). This type of award recognizes a lawyer for dedication to pro bono work or public service, success in a groundbreaking legal matter, and similar deeds during the prior year. While facially “comparative,” the focus of the award is to recognize a specific commendable effort in service of the law and the public interest. As such, lawyers may refer to this type of award in attorney advertising.

The Committee further notes that awards touting “customer service,” “client satisfaction,” or five-star reviews also do not “compare the lawyer’s services with other lawyer’s services” within the meaning of Rule of Professional Conduct 7.1(a)(3). This type of award reflects positive online reviews – and a lack of negative online reviews – posted about the specific lawyer. Customer service or client satisfaction awards, by themselves and without more, do not rate the quality of the lawyers; they only rate whether the clients felt that the lawyers took good care of them. Lawyers may advertise these awards.

Accordingly, lawyers may refer to comparative awards, honors, and accolades only when the basis for the comparison can be verified and the organization has made a rigorous and independent inquiry into the fitness of the individual lawyer. Further, whenever permissible references to comparative awards, honors, and accolades are made, Rule of Professional Conduct 7.1 requires that additional language be displayed to provide explanation and context.

If lawyers have questions about whether an award may be included in attorney advertising, they may make inquiry of the Committee on Attorney Advertising or contact the attorney ethics research assistance hotline. See Court Rules 1:19A-3 and 1:19-9.