



Arkansas Association of Defense Counsel

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Accolade Advertising: The Good, The Bad, The Misleading

By Taylor Bish

The discussion surrounding the way lawyers choose to advertise is not a new one. A quick search on any legal database will pull up plenty of articles commenting on the effect advertising has on the legal profession, good or bad. The way lawyers choose to advertise has changed over the years and The New Jersey Supreme Court Committee on Lawyer Advertising recently addressed a popular advertising trend.

The use of accolades like “Super Lawyers,” “Best Lawyers,” and “Rising Stars” in advertising was the cause of many complaints to the New Jersey committee according to the ABA Journal. Debra Cassens Weiss, *‘Super lawyers’ and ‘rising stars’ are warned about accolade advertising*, ABA Journal, May 23, 2016, available at http://www.abajournal.com/news/article/super_lawyers_and_rising_stars_are_warned_about_accolade_advertising/. After receiving a number of grievances, the committee issued a notice stating that lawyers may refer to such honors in their advertising “only when the basis for comparison can be verified” and the group bestowing the accolade “has made adequate inquiry into the fitness of the individual lawyer.” *Id.*

This New Jersey notice is relevant to Arkansas because the same type of advertising could be against the Arkansas Rules of Professional Conduct. Rules 7.1 and 7.3, which address communicating about legal services and soliciting clients, also control advertisements described in Rule 7.2. Rule 7.1(c) provides, “A lawyer shall not make a false or misleading

communication about the lawyer or the lawyer's services. A communication is false or misleading if it compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.” AR R RPC Rule 7.1. Comment 2 further elaborates, “[A]n unsubstantiated comparison of the lawyer's services...may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.” *Id.*

The big issue with advertising as Rule 7.2 Comment 1 further cautions is that advertising by lawyers entails the risk of practices that are misleading. AR R RPC Rule 7.2. In *Eaton v. Supreme Court of Arkansas*, a lawyer's advertisement was found to be impermissible because part of the ad said ““Other legal problems?” coupled with the phrase ‘There is no time or subject limitation.’” *Eaton v. Supreme Court of Arkansas*, 270 Ark. 573, 580, 607 S.W.2d 55, 59 (1980). The court found that the phrasing could indicate to the lay person that the lawyers were competent to consult and advise on any legal problem. *Id.* This sort of misleading communication is what the Rules of Professional Conduct set out to avoid and the use of accolades in advertising hedges the line.

As the New Jersey Supreme Court Committee commented, there are several awards, honors, and accolades that do not include a bona fide inquiry into the fitness of the lawyer. Debra Cassens Weiss, *‘Super lawyers’ and ‘rising stars’ are warned about*

accolade advertising, ABA Journal, May 23, 2016, available at http://www.abajournal.com/news/article/super_lawyers_and_rising_stars_are_warned_about_accolade_advertising/. Some of the honors that do not rise to the level of a bona fide inquiry are contests that tally votes by telephone, text, or email and award the most popular. *Id.* Without an explanation, the use of such accolades can be misleading because superlatives, like super, best, or leading, could suggest that the lawyer has the attribute named.

The New Jersey committee's suggestion on how to use awards that do meet the inquiry requirement is to provide a description of the award's methodology by referencing a publicly available source. *Id.* If the award includes a superlative then the advertisement must state that the lawyer was included in the list with that name. *Id.*

Not every lawyer is a "super lawyer." In order for the designation to not be misleading it needs to be explained. Our qualifications as lawyers need to be as clear as possible to those seeking our services, given how important they are. Misleading a consumer into thinking he or she is getting the best cup of coffee does not cause the same consequences as misleading them into thinking they are getting the best lawyer.

The thanks of the AADC go out to Taylor Bish a third year student at the University of Arkansas School of Law currently clerking with The Barber Firm for writing this article.



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