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COMMITTEE ON
ETHICS AND PRACTICE GUIDELINES**

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August 8, 2007

Mr. Dwight Dinkla
Executive Director
Iowa State Bar Association
521 E. Locust
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RE: Opinion regarding Law Lists
Opinion No. 07-04

Dear Mr. Dinkla

Once again the Committee is called upon to opine regarding the propriety of allowing one's name to be included in lawyer referral books or law lists that purport to rate the quality of the lawyer and advertising that one is recognized thereby. The question is made more complex by the fact that some publications use superlative names.

Traditionally the Bar has turned to "law lists" for information regarding lawyers in other jurisdictions. Some lists purport to rate the lawyers based upon recommendation of their peers. For example, Martindale Hubbell a, b and c "v" rating scheme and Chambers & Partners which markets widely in international market. See for example I.R. Prof. C 32: 7.2 comment 4:

[4] Nothing contained in these rules shall prohibit a lawyer from permitting the inclusion in reputable law lists and law directories intended primarily for the use of the legal profession of such information as traditionally has been

included in these publications whether published in print or on the Internet or other electronic system.

We view the following terms in comment [4] as instructive: "reputable law list," and "intended primarily for the use of the legal profession."

Some publications have adopted superlative names, such as "The Best Lawyers in America" or "Super Lawyers." both of whom purport to provide information primarily for use by the legal profession. See for example, in Opinion 92-11 our prior Committee found:

Since publication of Formal Opinion 91-26, February 13, 1992, this committee has received information from the publisher of "The Best Lawyers in America" that it is "marketed exclusively to the legal profession, priced for the legal profession and sold almost exclusively to the legal profession." In view of this, the committee has reviewed Formal Opinion 91-26.

In both instances lawyers are listed upon peer recommendation and without the necessity of paying a fee for the listing itself.

Ia.R.Prof.C 32:7.1 provides:

(a) 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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not communicate with the public using statements that are unverifiable. In addition, advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services.

The fact that one is listed in a law list and is rated by the publisher based upon peer ratings certainly does not in and of itself violate Ia.R. Prof. C 32:7.1 (a) or (b) especially in view of the fact that those publications are intended primarily for use by the legal profession. Additionally we note that Ia. R. Prof. C. 32:7.2.(a)(1) provides that communications between lawyers are not considered advertising.

Consequently we are of the opinion that it is permissible for lawyers to have their name and biographical information included in Martindale Hubbell, Chambers & Partners, The Best Lawyers in America and Super Lawyers inasmuch as they considered law lists intended primarily for use by the legal profession as was found by Opinion 92-11.

Further, because communications between lawyers is not considered advertising under Ia. R. Prof. C. 32:7.2.(a)(1) it necessarily follows that a lawyer may allow his or her name to be included in such a publication even if the publication publishes peer ratings for the lawyers.

This brings us to the issue as to whether the lawyer may advertise to the public that they are included in such law lists and that they have been rated by the list. Important to our analysis is whether the rating is truly independent and peer reviewed as a matter of fact.

Comment [3] to Ia.R. Prof. C. 32:7.1 is instructive:

[3] A lawyer should ensure that information contained in any advertising which the lawyer publishes, or causes to be published, is relevant, is dignified, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems that would hinder rather than facilitate intelligent selection of counsel. Appeals should not be made to the prospective client's emotions, prejudices, or personal likes or dislikes. . ."

The fact that a lawyer has been peer rated by an independent publication is certainly relevant to and would help "...facilitate the prospective client's ability to make an informed choice about legal representation.." assuming, of course that the rating is in fact a peer rated and reviewed and the publication is truly independent. Otherwise the so-called peer rating becomes extremely misleading and runs afoul of Ia.R. Prof.C 32:7.1 (a) prohibiting "...false or misleading communication about the lawyer or the lawyer's services."

A publication with rates only lawyers who have subscribed or otherwise paid a fee to be included in the list is not truly independent and potentially misleading and would violate Ia.R. Prof. C. 32:7.1 (a) "...A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits

a fact necessary to make the statement considered as a whole not materially misleading."

For the term "peer reviewed" to have meaning, we believe that all members of the Bar should have the opportunity to be reviewed and not just an exclusive few. Furthermore, the rating process should include a significant portion of the Bar familiar with the lawyer and the lawyers work, ethics and competency, otherwise the review is not by one's peers but by a select group which may or may not be representative of the profession.

Martindale Hubbell and Chambers and Partners are two publications that are independent as described above and their rating and peer review process would be an example of such an acceptable peer review. Both are open to all Iowa lawyers regardless of whether the lawyer subscribes to their service. All members of the Bar have the potential to be rated and they are rated by a significant portion of the bar familiar with the lawyers work. Consequently an Iowa lawyer may include in their advertisements that they are rated by either publication, their rating and the meaning thereof.

We have no information as to how other law lists such as "The Best Lawyers in America" or "Super Lawyers" conduct their peer review process. Counsel wishing to include in their advertisements that they are rated by these or other organizations should first satisfy themselves that the organization's peer review process is in accord with that described in this opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Critelli". The signature is written in a cursive, flowing style.

Nick Critelli