

Joint Committee on Attorney Standards

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North Dakota Supreme Court
600 E Boulevard Ave
Bismarck, ND 58505-0530
Phone: (701) 328-2689
Fax: (701) 328-2092

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SUPREME COURT JUL 15 2010

Hon. Michael G. Sturdevant, Chair
314 W. 5th ST., Suite 12
Bottineau, ND 58318-1200
Phone: (701) 228-3618

July 14, 2010

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JUL 15 2010
STATE OF NORTH DAKOTA

Honorable Gerald W. Vandewalle
Chief Justice
North Dakota Supreme Court
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

Re: Proposed Amendments to Rule 7.1, Rules of Professional Conduct

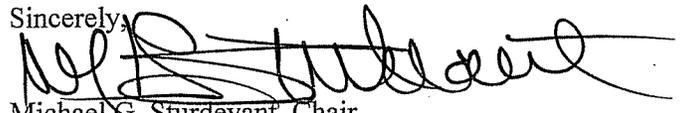
Dear Chief Justice Vandewalle:

In response to a referral to it by Bill Neumann, SBAND Executive Director, the Joint Committee on Attorney Standards has discussed issues related to the use in lawyer advertisements of the lawyer having received designation as a "Super Lawyer". This discussion included review of recent amendments adopted by the New Jersey Supreme Court to address the issue. The Joint Committee was also aware of the issuance by the SBAND Ethics Committee of an opinion, which was subsequently withdrawn, discussing the issue. The principle focus of Committee review concerned whether Rule 7.1 of the Rules of Professional Conduct, which governs permissible communications about lawyer services, provides sufficient guidance regarding the use of particular designations in lawyer advertisements and whether rule amendments similar to those adopted in New Jersey should be considered.

The Joint Committee recognized that lawyers are generally afforded broad latitude, consistent with constitutional protections, in the area of lawyer advertising. However, the Committee also generally concluded there may be a potential for misleading or confusing the public when a lawyer advertises having received a designation, such as "Super Lawyer", without additional information also being provided. After reviewing background material, the Joint Committee developed proposed amendments to include new subparagraph (d) in Rule 7.1, which would essentially incorporate the substance of the New Jersey rule amendments. The new provision would disallow, as misleading or false, comparison of lawyer services based on the lawyer having received an honor or accolade unless the name of the comparing organization is stated and the basis for the comparison can be substantiated. New language would be added to Comment [2], again reflecting the New Jersey amendments, which explain the criteria underlying the awarding of an honor or accolade. The Committee also proposes amending current paragraph (c) to generally address lawyer comparisons rather than limit comparisons to those involving lawyer services. I should note that the Committee's approval of the proposed amendments was not unanimous.

Following discussion and consideration of the proposed amendments, the Joint Committee approved the amendments for submission to the Supreme Court pending review and comment by the SBAND Board of Governors. The Board has reviewed the proposed amendments and at its June meeting voted to approve and support the amendments. I am pleased, therefore, to submit the attached proposed amendments to Rule 7.1 to the Supreme Court for its consideration

Sincerely,



Michael G. Sturdevant, Chair
Joint Committee on Attorney Standards

MGS/

cc: Penny Miller, Clerk of the Supreme Court
Jim Ganje