

STATEWIDE GRIEVANCE COMMITTEE



Advisory Opinion #07-01008-A **Print Media Advertisement** ***Super Lawyers*[®] Advertisement**

Pursuant to Practice Book §2-28B, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee¹, reviewed a request for an advisory opinion filed on September 7, 2007. On September 13, 2007, the undersigned requested additional information pursuant to Practice Book §2-28B(d). On October 26, 2007, the attorneys complied with our request and provided the requested information. The proposed print advertisement is scheduled to appear in *Connecticut Magazine's* February 2008 issue in a special advertising section devoted to *Connecticut Super Lawyers*[®]. The reviewing committee concluded that the proposed advertisement does not comply with the Rules of Professional Conduct.

The lower portion of the advertisement provides the following information: the name of the law firm, a logo depicting the scales of justice, two addresses, a list of the firm's attorneys, some of whom list other jurisdictions where they are licensed to practice, telephone and fax numbers, and email and website addresses.

¹ Mr. Peter Jenkins replaced the lay person member originally assigned to this reviewing committee, Mr. William Carroll, due to a medical emergency that arose on October 2, 2007 resulting in Mr. Carroll's unavailability.

The top portion of the advertisement contains the caption in large, bold type, “Congratulations to Our Four Attorneys in *Super Lawyers!*” Underneath, in the smaller type size used throughout the advertisement, is the sentence, “[w]e are proud to announce that four of our lawyers are among those chosen by their peers to be recognized in *Connecticut Super Lawyers*. We congratulate them on this honor.” The photograph, name and one practice area for each of the four attorneys named to “*Connecticut Super Lawyers*”[®] are located beneath these statements.

1. Firm Information and Practice Areas:

Pursuant to Rule 7.2(i) of the Rules of Professional Conduct, the listing of the firm’s name, logo, attorneys, jurisdictions admitted to practice, addresses, phone and fax numbers, website and email addresses is information presumed not to violate the provisions of Rule 7.1 of the Rules of Professional Conduct and therefore is not false or misleading.

Subject to our discussion of *Super Lawyers*[®] below and in our Advisory Opinions #07-00188-A and #07-00776-A, the practice areas listed by each of the four lawyers also comply with Rule 7.4 of the Rules of Professional Conduct because there is no other language stating or implying that the lawyer or law firm is a specialist in these areas of law. This opinion assumes that the listed practice area for each of the four individual lawyers is not self-selected, but is the practice area for which the attorney was selected for inclusion in *Super Lawyers*[®] through their selection process. The juxtaposition of the practice area under the caption congratulating them for being in *Super Lawyers*[®] creates the impression the attorney was selected for inclusion in *Super Lawyers*[®] in that practice area. If this is not the case, then the attorney should only list the area of

practice for which he was selected for inclusion in *Super Lawyers*[®] magazine because to do otherwise would be misleading under Rule 7.1. Furthermore, we find that the names of the four lawyers appearing in the advertisement satisfy the provisions of Rule 7.2(d) of the Rules of Professional Conduct, which requires an advertisement to name at least one lawyer admitted in Connecticut responsible for the advertisement. Based on those assumptions, this portion of the advertisement complies with the Rules of Professional Conduct.

2. The Listing of Attorneys as Chosen as “*Super Lawyers*”[®]:

We have addressed the use of the *Super Lawyers*[®] designation in attorney advertisements in Advisory Opinions #07-00188-A and #07-00776-A available at http://www.jud.ct.gov/sgc/Adv_opinions/default.htm. Those advisory opinions are incorporated by reference into this advisory opinion, and the proposed print advertisement needs to comply with the requirements outlined in those opinions.

In addition to complying with the disclaimer process described in our previous advisory opinions, the proposed advertisement should also list the actual calendar year and the practice area for which the four attorneys were selected for inclusion in *Super Lawyers*[®] magazine. We note that after the above-referenced advisory opinions were initially issued to the requesting attorneys, Key Professional Media, Inc. the publisher of *Super Lawyers*[®] magazine revised its website to include the empirical data for Connecticut that had not been previously available to the public.

Connecticut Selection Statistics — 2007

As part of the selection process conducted in 2007, Super Lawyers mailed 14,769 postcards to all active, resident Connecticut attorneys licensed for five years or more. This year, 331 (or 2.2%) returned ballots. That population provided 1,850 nominations. Since some lawyers receive multiple nominations, 1,098 lawyers were placed in the candidate pool.

In addition, the "Star Search" process produced a pool of 611 names for the 2007 candidate pool.

In 2007, 197 Connecticut attorneys were invited to participate as Blue Ribbon Panel members, evaluating candidates in their primary practice area. Over one-half of the attorneys participated contributing 2,696 evaluations of 746 candidates.

The Final Selection for 2007, was made from a pool of 2881 attorneys, producing the final 2007 Connecticut Super Lawyers list of 732 attorneys.

"Connecticut Selection Statistics-2007" available at <http://www.superlawyers.com/connecticut> last viewed on November 14, 2007. We find that this information appropriately disclaims any potentially misleading statement suggested by the term *Super Lawyers*® and conclude that a link to this webpage in the contemplated advertisement would provide an appropriate disclaimer. The disclaimer link should be located within the advertisement when it will appear in any media other than the *Super Lawyers*® magazine. For those advertisements appearing in the *Super Lawyers*® magazine, a disclaimer link appearing on the same page would be sufficient.

The commentary to Rule 7.1 of the Rules of Professional Conduct discusses advertisements that may be truthful, but misleading:

A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if

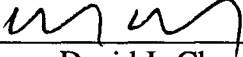
there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

This advertisement is potentially misleading because it fails to include a sufficient context as to what honor the attorneys have received. Any statement regarding the designation of *Super Lawyers*® should be explained and placed in the context of a designation by a commercial magazine for a particular year. An attorney that has been selected for inclusion in *Connecticut Super Lawyers*® magazine cannot state that he or she is a "super lawyer" without referencing this context. Listing the year and the practice area for which the attorney has been selected avoids the implication that the attorney is a "super lawyer" compared to other attorneys and makes clear the limitations of the selection to the consumer.

Accordingly, this reviewing committee opines that the forgoing portions of the advertisement do not comply with the Rules of Professional Conduct.

(E)

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Attorney David I. Channing


Attorney Shari Bornstein

Peter M. Jenkins
Mr. Peter Jenkins