

Are You a Super Lawyer?

by Keith A. Call

When I was in seventh grade, our class had an election for “Class Favorites.” By vote of all seventh-graders, one boy would be chosen as the most popular boy in the class and would have the “honor” of dancing with the most popular girl for one dance at an evening sock hop. Like many other seventh-grade boys, I secretly wanted to win the title of “Class Favorite” in the worst way. (I didn’t.)

I’m forty-something now, but I still receive similar ballots every few months. Like me, many of you have probably had the opportunity to cast your vote for the most Super, Elite, Best, Superb, or AV lawyer. And also just like me, you all secretly hope you win.

A few of our lawyer colleagues around town have told me they absolutely refuse to participate in such services, calling them things like “pseudo-popularity contests.” On the other end of the spectrum, who among us has not received some sort of a hint, nod, or wink suggesting, “I’d sure like your vote” or “You certainly don’t have to vote for me, but I wanted to let you know I’m voting for you”? It can make you feel compromised.

Lawyer rating services claim to provide a public service by allowing other lawyers and the public to identify lawyers who are particularly skilled in their field. Yet, we all recognize what a financial boon these services are for their sponsors and what a game they can become if lawyers try to manipulate them.

A lot has been written about whether a lawyer may ethically advertise himself or herself as Super, Best, Elite, or whatever. Perhaps the biggest battle was fought in New Jersey between 2006–2009. In July 2006, the New Jersey Committee on

Attorney Advertising ruled that advertisements describing attorneys as “Super Lawyers,” “Best Lawyers in America,” or “similar comparative titles” violate Rule of Professional Conduct 7.1. *See* Committee on Attorney Advertising, Op. 38, 185 N.J.L.J. 306 (July 24, 2006).

Utah’s Rule 7.1 states,

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.

“[M]embers of the Bar should reject the temptation and practice of ‘gaming’ lawyer rating services.”

Utah R. Prof’l Conduct 7.1 (2013).

The New Jersey Committee’s opinion created an uproar. A Special Master appointed by the New Jersey Supreme Court later released a 304-page discussion of the matter, and the New Jersey Supreme Court eventually vacated the Committee’s opinion and amended its version of Rule 7.1 to require certain disclaimers to any such rating rodomontade. *See In re Opinion 39*, 961 A.2d 722 (N.J. 2008).

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Utah courts and advisory opinion-makers have yet to provide specific instructions on the ethics of advertising your Superstatus. It is clear, however, that you cannot pay for positive inclusion in lawyer recommendation services. *See* Utah R. Prof'l Conduct 7.2(b) (“A lawyer shall not give anything of value to a person for recommending the lawyer’s services; . . .” (with certain exceptions)).

What is more troubling to me, however, is the potential for vote trading or soliciting among lawyers. Such practices are arguably covered by Utah Rule of Professional Conduct 8.4: “It is professional misconduct for a lawyer to: . . . (c) [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation. . . .” *Id.* R. 8.4(c). It is a dishonest misrepresentation to vote for someone if you are merely trading votes and do not believe the person you are voting for meets the established criteria. It is fraudulent to cast a “merit-based” vote if you have no basis to assess the lawyer’s abilities on the merits. And it is deceptive to the public to engage in non-merit vote trading that skews

rating results.

Some lawyer rating services make at least some effort to discourage vote solicitation or trading. For example, an email I received several months ago from Super Lawyers said, “A word about ‘campaigning’ *i.e.*, soliciting votes for *Super Lawyers*: Don’t do it. It’s against the rules (and could result in your disqualification), it doesn’t work, we can detect it, and it doesn’t reflect well on you or your firm.”

Even without a specific prohibition in the rules, individual members of the Bar should reject the temptation and practice of “gaming” lawyer rating services. If a lawyer chooses to participate, then he or she should cast a vote for those lawyers he or she honestly believes best meet the voting criteria. And I certainly agree with the statement that vote solicitation or trading “doesn’t reflect well on you or your firm.” Even a seventh-grader knows you don’t campaign for “Class Favorite.”

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