

**STATE BAR ASSOCIATION OF NORTH DAKOTA
DRAFT ETHICS OPINION
Opinion No. 09-08
(Withdrawal of Ethics Opinion No. 08-02)**

The Ethics Committee received a request that it reconsider Ethics Opinion 08-02, which addressed whether lawyers could market themselves as "Super Lawyers." The Committee elected to reconsider the opinion, and it has decided to withdraw Ethics Opinion 08-02.

FACTS

On April 10, 2008, the Ethics Committee adopted Ethics Opinion No. 08-02, related to "Super Lawyers." The opinion should be consulted for the details of the Super Lawyers designation. In summary, the opinion concluded that the "Super Lawyers" designation implicated N.D.R.Prof. Conduct 7.1 governing communications regarding a lawyer's services. The opinion expressed specific concerns about using the designation in advertising "without an explanation of the purpose for the designation and the methodology used to select identified attorneys...." In part, the opinion was based on a July 24, 2006, ethics opinion issued by the New Jersey Supreme Court Advisory Committee on Attorney Advertising, N.J. Ethics Op. 39(2006), which essentially prohibited New Jersey attorneys from using the "Super Lawyers" designation. It appears to the Committee that Opinion 08-02 was perceived by some North Dakota lawyers to have the same effect.

On December 17, 2008, the New Jersey Supreme Court vacated N.J. Ethics Opinion 39 with specific detailed rationale, and remanded the matter to the Advisory Committee on Attorney Advertising to develop specific rules consistent with its decision. See In re Opinion 39 of Comm. on Attorney Adver., 197 N.J. 66, 78-80 961 S.2d 722, 730-731 (2008). The New Jersey

Supreme Court decision was based on the report of a special master, who devised twelve regulatory components related not only to Super Lawyers, but also Best Lawyers in America and Martindale-Hubbell designations. Id. at 76-77, 961 A.2d at 729. The requesting lawyer asked the Committee to consider the N.J. Supreme Court Opinion and the fact that Minnesota Law & Politics had changed its criteria for identifying "Super Lawyers."

DISCUSSION

The Ethics Committee has the power to reconsider and withdraw the ethics opinions it has issued. It appears that the New Jersey Supreme Court decision vacating N.J. Ethics Op. 39 (2006) has changed the framework for discussion of not only the use of the "Super Lawyers" designation, but also use of the "Best Lawyers in America" and Martindale-Hubbell designations. On November 2, 2009, the New Jersey Supreme Court approved amendments to RPC 7.1 (Communications Concerning a Lawyer's Services). The amendments contain specific directives to lawyers who want to use designations in advertising that are comparative to other lawyers or which identify accolades a lawyer may have received. The Committee believes that this matter may be best addressed through amendments to N.D.R.Prof. Conduct 7.1. The Committee, therefore, has elected not to issue another opinion on this subject at this time. St. Bar Ass'n. N.D. Ethics Op. 08-02 is hereby withdrawn and is no longer considered operative. The opinion will remain available at the Bar Association's website with a designation that it was subsequently withdrawn by this opinion.

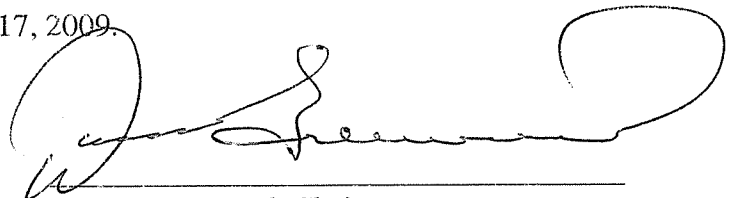
CONCLUSION

Ethics Opinion 08-02 is hereby withdrawn.

This opinion is provided pursuant to North Dakota Rules of Lawyer Discipline 1.2(B),
which states:

A lawyer who acts in good faith and reasonable reliance on a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter.

This opinion was drafted by Alvin O. Boucher and James S. Hill, and was approved by the majority of the Ethics Committee on November 17, 2009.



Dann Greenwood, Chair