

# “Simply the Best?”

by Jennifer M. Young

## A Comparison of Lawyer Rating Systems

This past decade has seen an influx of ranking systems and guides for everything from vacuum cleaners, private elementary schools, golf courses and online search engines to, as we all know, legal counsel. Ratings, available in neatly organized guides, are intended to enable consumers, with a few clicks of a mouse, to immediately differentiate between the "mediocre" and the "exceptional." Across the board, ranking systems purport to employ objective methods to condense data gathered from painstaking research processes and studies and present findings through a comprehensive and reliable list. Such systems provide consumers the feeling of being able to own, use, visit, or hire "the best."

For the most part, lawyer ranking

systems claim to do the same. While word-of-mouth referrals remain a considerable source of business, clients seeking legal counsel may now consult any one of the many lawyer ranking guides to supplement their search. Based on this search, clients may proceed to hire rated attorneys, whose exceptional legal ability and professionalism have earned them accolades. Those attorneys, who have been deemed outstanding enough to be awarded a coveted spot amongst the elite of their peers, are able to describe themselves as one of "the best."

But what really goes into the determination of such an honor? How are criteria, research protocol and methodology for each rating system established? which individuals comprise the selection committee? Can a listing be bought for a price? This article seeks to identify the key elements of such rankings and compare the main differences between the more established and familiar lawyer rating systems currently available: Best Lawyers, Chambers & Partners, Martindale-Hubbell, Super Lawyers and Who's Who Legal.<sup>1</sup>

### Best Lawyers in America

The Best Lawyers in America ("Best Lawyers") is an annual peer-review publication established in 1983, published by the national legal search firm, Woodward/White, Inc.<sup>2</sup> *Honolulu* magazine publishes the Best Lawyers in Hawaii list biennially, identifying "the

best counselors the Islands have to offer" by practice area.<sup>3</sup>

In 2007, 222 Hawaii attorneys in 38 specialties were listed in the Hawaii edition of Best Lawyers, several of whom were editorially featured. Best Lawyers describes its guide as the "gold standard for accuracy and integrity"<sup>4</sup> amongst legal referral publications, and the "most reliable, accurate . . . useful . . . [and] . . . transparent guide to the best lawyers available anywhere."<sup>5</sup> Best Lawyers prides itself on fulfilling its mission of being a guide based entirely on rigorous peer review, on the belief that "the quality of a peer-review survey is no better than the quality of its voting pool."<sup>6</sup>

In securing nominations, Best Lawyers applies the following methodology.<sup>7</sup>

First, nominations are gathered for the candidate pool. All attorneys listed in the previous edition are automatically included in the pool. These attorneys are asked to nominate "outstanding" attorneys not previously nominated (ballots generally include previous nominees from two years prior). Marketing directors are also permitted to nominate attorneys from their firms. Once a list of nominees has been generated, Best Lawyers creates customized ballots for each geographic area and specialty within such area. The attorneys listed in the previous edition (and sometimes, nominees who have received exceptionally high votes) are asked to vote by grading the candidates in all established specialties. If new specialties are added, attorneys in related specialties and/or attorneys in the same specialty in a different



jurisdiction, as well as nominees with exceptionally high votes, may vote. Generally, in large legal communities, voters may only vote for lawyers in the same specialty within that community. In mid-sized legal communities, voters may vote for attorneys in related specialties in the same community or the same specialty in the entire state. In small legal communities, lawyers may cast votes for attorneys in all specialties within that community.<sup>8</sup> Best Lawyers describes the state of Hawaii as a small market, and the city of Honolulu as a mid-sized market.<sup>9</sup> Despite these classifications, Best Lawyers maintains a level of flexibility in the voting process and the pool of candidates for which the voting attorneys may cast their vote.<sup>10</sup>

Each voting attorney is asked: "If you could not handle a case yourself, to whom would you refer it?"<sup>11</sup> Attorneys casting votes then assign A, B, or C letter grades to their respective peers, with +/- symbols, if desired, for precision. A grade of "A" means the attorney "would certainly refer" a case to that candidate; "B" means "would probably refer" and "C" means "might hesitate to refer."<sup>12</sup> After "eccentric" grades are discarded, the grades are converted to a numerical score and averaged. Provided that they are in good standing with their respective bar association, attorneys with the highest average scores within the specialty are selected for inclusion in Best Lawyers.<sup>13</sup>

To protect the integrity of its process and product, attorneys may not provide the names of professional references who will be asked to rate them. Best Lawyers sets no quotas or percentages for the number of attorneys named to the Best Lawyers list, and it does not require any payment for an attorney to be listed. Certain limitations are imposed on the publicizing of one's listing in Best Lawyers.<sup>14</sup> While Best Lawyers recognizes the inherent subjectivity of every poll, it states that the "breadth of our survey, the candor of our respondents, and the sophistication of our polling methodology largely correct for any biases."<sup>15</sup>

## Chambers & Partners

Chambers USA: America's Leading Lawyers for Business ("Chambers USA"), a legal referral guide and directory, is published annually by the British ratings company, Chambers & Partners Publishing ("Chambers"). Chambers USA, one of six legal referral guides published by Chambers, made its debut on the U.S. market in 2003. Since then, Chambers USA has quickly grown in size of content and readership.<sup>16</sup> Chambers issues rankings for practice areas in each state where a competitive market exists.<sup>17</sup> In Hawaii, Chambers currently issues rankings for firms and individual attorneys in six areas of law: Bankruptcy/Restructuring; Corporate/Commercial; Labor & Employment; Litigation: General Commercial; and Real Estate.<sup>18</sup> Unlike certain other ranking systems, Chambers assigns a greater weight to views of clients in calculating its rankings and describes the client feedback it receives as the "bedrock" of its research.<sup>19</sup> Chambers describes firms and lawyers, in part,

by featuring recent work highlights, major clients, and through the use of illustrative, anonymous client quotes, which Chambers believes reflect the prevailing view of the community.<sup>20</sup>

The Chambers research team, comprised of 40 full-time researchers,<sup>21</sup> conducts confidential, thorough, half-hour interviews with attorneys, corporate counsel and clients to evaluate the strengths and reputations of lawyers and firms. Interviewees are asked to rank firms and individual attorneys from 1 to 6, 1 being the best, on qualities such as: "technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment and other qualities most valued by the client."<sup>22</sup> Additionally, the Chambers team researches and reviews



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researches and reviews "submissions put forward by legal practices" and its "own database resources."<sup>23</sup> Law firms may submit information to Chambers for consideration for inclusion in the publication. Chambers limits the number of submissions accepted from each firm to one submission per state, per practice area.<sup>24</sup> After Chambers collects and processes all firm and attorney information, it ranks firms and attorneys alphabetically in "bands," ranging from Band 1 to Band 6. The number of bands in which firms and attorneys are ranked depend upon the size of the market and perceived range of quality in that market. Individual attorney bands may include the following categories: "Senior Statesman" (attorneys who do not practice with the same level of intensity but maintain relationships with major clients and play key roles in their firm's success), "Star Performers" (attorneys who receive exceptionally high recommendations), "Up and Coming" (attorneys whose reputation has not yet been established but who are steering the firm's growth) and "Associates to Watch" (senior level associates who have played a key supporting role in major cases or transactions).

Chambers asserts that the rankings and comments about the attorneys and firms are "independent and objective," maintaining "[n]o-one can buy their way in."<sup>25</sup> Unlike certain other listings, Chambers sets no minimum or maximum number of firms or attorneys that may be ranked in each band. Additionally, ranking of attorneys and firms within Chambers USA does not require purchase of an "enhanced profile" listing. Although Chambers does not openly disclose the cost of the profiles, Chambers' managing editor has described the cost -- being reported by other sources as a few thousand dollars or less -- as "peanuts" compared to other directories such as Martindale-Hubbell.<sup>26</sup>

### Martindale-Hubbell Peer Review Ratings

Established in 1887, The Martindale-Hubbell ("Martindale") Peer Review Ratings system is the oldest of the legal rating services on the market. Martindale, a member of the Lexis-Nexis group of the British-Dutch publishing company Reed Elsevier, Inc.,

describes its multi-tiered rating system for attorneys in the U.S. and Canada as "the most prestigious and widely respected lawyer rating system in the world." Martindale ratings, created "by lawyers for lawyers," are intended to assist corporate counsel and other sophisticated consumers in their search for legal counsel by identifying attorneys who have demonstrated the "highest ethical stan-

dards and professional ability."<sup>27</sup> Martindale ratings reflect the confidential opinions of attorneys and judges. Martindale explains that attorneys recognize the accuracy of the ratings because "the people best suited to assess their peers . . . are directly involved in the process."<sup>28</sup>

Martindale provides questionnaires and conducts confidential interviews

Lawyer Rating Systems Comparison					
	Year Est.	Nominators	Voters / Selection Committee	Selection Methodology	Method of Ranking
<b>Best Lawyers</b>	1983	Attorneys listed in previous edition	Attorneys listed in previous edition	Peers grade candidates (A+ to C-)	Listing
	1997 (HI)	Nominees from past two editions Firms * May not nominate self		Attorneys with highest averaged scores selected for inclusion	
<b>Chambers &amp; Partners</b>	2003	In-house research team  Submissions by Firms	In-house research team	Telephone Interviews with Attorneys and Clients  Review of Submissions	Bands (Tiers) 1-6  Additional Bands for Attorneys:  Senior Statesman Star Performers Up & Coming Associates to Watch
<b>Martindale Hubbell</b>	1887	Attorneys Firms  *May request ratings review for self	Attorneys Judges  In-house research team	Interviews with Attorneys and Judges  Questionnaires  Personal References (if insufficient information)	AV BV CV
<b>Super Lawyers</b>	1991	All Attorneys in State (must be licensed 5+ years)  In-house research team	"Blue Ribbon Panel" - Attorneys receiving high marks in respective practice area	Attorneys evaluated and scored by peers  Attorneys with highest averaged scores selected for inclusion	Listing
<b>Who's Who Legal</b>	1996	"Attorneys of Renown" in Private Practice  Corporate Counsel  *May nominate self	In-house research team	Nominations weighted based on standing of nominator  Interviews  Questionnaires soliciting comments	Listing  Law Firm of the Year  One overall attorney per practice area

with attorneys and judges in the same geographic location, practice area or industry as the attorney being evaluated. Martindale instructs the evaluating attorneys or judges to assess the legal ability and ethical standards of the attorney, if they have personal knowledge about the attorney under review. The range and type of survey recipients generally depend on the size of the legal community. Martindale then compiles the opinions from the various sources to arrive at a consensus. If the information Martindale has gathered as a result of the surveys is insufficient, Martindale may request professional references from the lawyers under review.<sup>29</sup>

Martindale may issue

one of three types of ratings to an attorney who has displayed high ethical standards and legal ability: "AV", "BV" and "CV". If subsequent evaluations warrant such action, these ratings generally improve, but can also be revised downward or removed.<sup>30</sup> The "V" designation denotes the "General Ethical Standards Rating" component of a Martindale rating; ethical standards are measured by an attorney's "ability to fulfill professional responsibilities, comply with professional standards of conduct and ethics, reliability and diligence."<sup>31</sup> The "A" through "C" designations denote the "Legal Ability Rating" component of a Martindale rating; the qualities considered for this rating include years of practice, expertise, and standard of professional ability in the attorney's respective practice area. Martindale describes the "AV", "BV" and "CV" ratings as follows:<sup>32</sup>

"AV" Peer Review Rating:

- Legal Ability Rating: Very High to Preeminent
- "An AV rating is a significant accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence."
- A lawyer must be admitted to the bar for at least 10 years to receive this rating.

"BV" Peer Review Rating:

- Legal Ability Rating: High to Very High
- "The BV rating is an excellent rating for a lawyer with more experience."
- This is the highest rating a lawyer who has been admitted to the bar 5-9 years can receive.

"CV" Peer Review Rating:

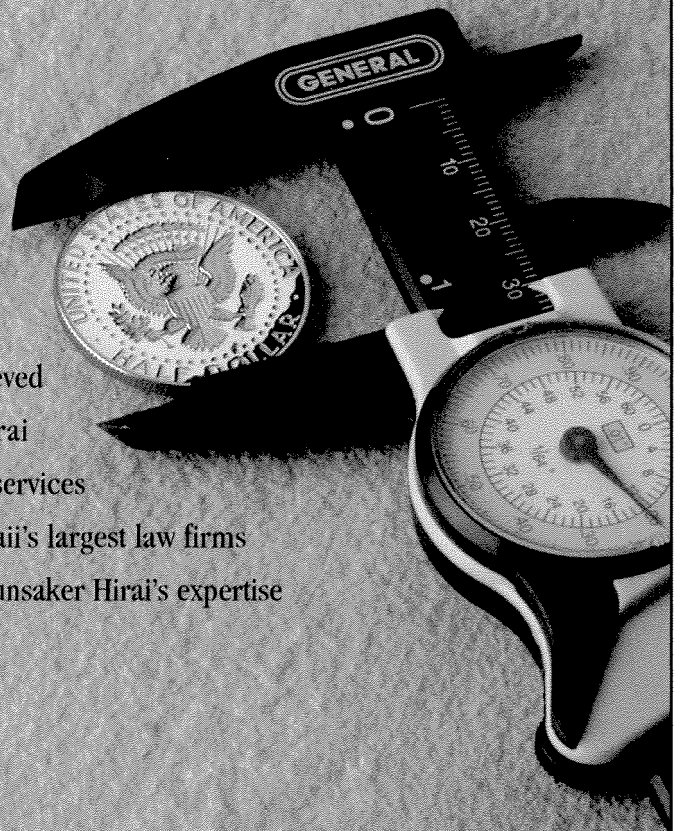
- Legal Ability Rating: Good to High.
- "The CV rating is a good first rating for lawyers and a definitive statement of their above-average ability and unquestionable ethics."
- This is the highest rating a lawyer who has been admitted to the bar 3-4 years can receive.

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Martindale initiates most reviews after an attorney has been in practice for at least five years. In larger legal communities such as Hawaii, New York or Fort Lauderdale, Martindale undertakes the first rating review for attorneys after they have been admitted to the bar for at least ten years. After the initial ratings review, subsequent reviews are performed in five to eight year increments.<sup>33</sup> An attorney may request a ratings review for him or herself, or a rating review may be requested by a partner, marketing director or colleague. Generally, a law firm is given the rating of its highest rated active partner.

Although an attorney is not required to pay any fee to receive a Martindale rating or to be listed in the Martindale legal directory, a recently instituted annual "administrative fee" of \$50.00 is now required for an attorney's rating to be displayed in his or her listing.<sup>34</sup> Martindale also imposes strict guidelines on advertising of its rankings. Use of Martindale ratings is prohibited in certain media, such as the yellow pages, newspapers, outdoor ads, political or campaign promotions, radio, televi-

sion, and letters to editors. Where use of the ratings is permitted, Martindale requires inclusion of specific explanations and provisions.<sup>35</sup>

### Super Lawyers

Super Lawyers is a listing that recognizes attorneys practicing in the private or public sector of all fifty states and the District of Columbia "who have attained a high degree of peer recognition and professional achievement."<sup>36</sup> The Super Lawyers lists are published annually in supplements to newspapers and magazines across the country by the publishing company, Key Professional Media, Inc.<sup>37</sup> Its objective in creating the list is to establish a comprehensive and credible resource to assist attorneys and sophisticated consumers in choosing legal representation. In Hawaii, unlike other local and regional editions of Super Lawyers, the list of Hawaii Super Lawyers is not widely disseminated or made available in a local publication. Rather, it is published in the Washington edition of Law & Politics magazine.<sup>38</sup>

The Super Lawyers' research team collects a list of nominees for inclusion in

the list.<sup>39</sup> Additionally, ballots are mailed to all active members of the bar in that state (or region) who have been licensed for at least five years, who are asked to nominate the best attorneys they have "personally observed in action" or observed in the courtroom. Super Lawyers also conducts independent research to identify nominees, by searching professional databases<sup>40</sup> and legal journals, as well as conducting interviews with law firms<sup>41</sup> in each jurisdiction. Once candidates are identified, they are grouped by practice area. Attorneys receiving high scores based on ballots and team research findings in each practice area are asked to serve on a "blue ribbon" panel to evaluate candidates in that specialty.<sup>42</sup> The panel evaluates and scores each candidate, "searching for evidence of peer recognition and professional achievement."<sup>43</sup> Super Lawyers considers factors such as verdicts and settlements, transactions, representative clients, experience, honors and awards, special licenses and certifications, position within the firm, bar and other professional activities, pro bono and community service, scholarly



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lectures and writings, education and employment background, and other outstanding achievement. Attorneys with the highest point totals are selected for inclusion in the list. Finally, Super Lawyers verifies that each candidate is in good standing with their respective bar association and requires each candidate to affirm that they have not been subject to disciplinary or criminal proceedings. Super Lawyers performs an internet search on each candidate to ensure that no adverse matters surface.<sup>44</sup>

Super Lawyers implements certain safeguards to ensure against biases and manipulation of the outcome. For example, attorneys are not permitted to nominate or vote for themselves. While attorneys are permitted to vote for members of their firm (which carries a lesser weight than an outside vote), the total number of in-firm nominations cannot exceed the number of outside nominations.<sup>45</sup> Super Lawyers also limits its list to no more than 5% of the lawyers in the state.<sup>46</sup> Super Lawyers is widely distributed to every lawyer and judge in a particular state or region, and all companies listed in the Russell 3000 list.<sup>47</sup> Super Lawyers does not charge attorneys to be listed or featured in the publication, but expanded advertisements are available for purchase. The cost of a full page firm or attorney profile can range from several thousand to over ten thousand dollars, depending on the size of the legal market.<sup>48</sup>

## Who's Who Legal: The International Who's Who of Business Lawyers

Who's Who Legal: The International Who's Who of Business Lawyers ("Who's Who"), first established in 1996, is a legal referral directory published by Law Business Research Limited, an international publishing firm based in London, England.<sup>49</sup> Who's Who identifies the "preeminent" and "foremost legal practitioners" in their fields from more than 100 national jurisdictions in an assortment of somewhat narrow, business-related specialties. Listings in Who's Who are limited to active attorneys in private practice. Who's Who, according to its publisher, is "designed to reduce the short-term costs incurred in finding a lawyer" and "minimize the transactional expense and risk

of receiving poor counsel." Moreover, Who's Who aims to act as a "reference source for companies seeking to corroborate the reputations of expert lawyers recommended by another party" and serve as a networking tool among listed attorneys.<sup>50</sup>

Who's Who researchers conduct interviews with "private practice lawyers of renown" and corporate counsel to identify recommended attorneys in the same or related practice areas. Each recommendation is weighted according to the nominator's "standing."<sup>51</sup> The recommended attorneys and firms are provided questionnaires, and data derived from the surveys is compiled and supplemented with information obtained from "legal and financial media" and corporate counsel. Super Lawyers generates and distributes a list of all attorneys identified in the research process, and attorneys are also asked to submit comments and written opinions. Prior to final selection, Who's Who conducts telephone and in-person interviews to evaluate the attorneys recommended for inclusion in the publication.<sup>52</sup>

Annually, Who's Who invites between 200 and 600 lawyers who have met the publisher's research criteria to be listed. Internationally, between 8,000 and 9,000 attorneys are selected for inclusion in Who's Who each year. In addition, Who's Who names one "Law Firm of the Year" and recognizes one outstanding attorney in each of the featured practice areas.

Attorneys are permitted to submit their own names to Who's Who for consideration in the research and nomination process. Who's Who emphasizes that financial considerations play no role in the identification of featured professionals. However, a fee is required for nominated attorneys to be listed in the publication.<sup>53</sup>

## Ethical Considerations Regarding Advertising One's Ranking

In the past few years, certain well-known rating systems have come under heavy scrutiny by attorneys, competitor marketing firms and one state ethics committee.<sup>54</sup> Lawsuits addressing the constitutionality of restrictions on advertising attorney rankings have called attention to the differences in method-

ologies utilized by the various legal rating systems, as well as other distinctions such as purpose, target audience, cost of the listing, advertisements of rankings, and even the name of the publication. To date, the Disciplinary Board of the Supreme Court of Hawaii has not issued any formal opinion on the topic of advertising one's inclusion in certain lawyer ratings publications or participation in the ratings process.

All attorneys licensed in Hawaii are bound by the Hawaii Rules of Professional Conduct ("HRPC") and therefore should be familiar with the HRPC Rule 7.2 concerning attorney advertising<sup>55</sup> and HRPC Rule 7.1 concerning communications of a lawyer's services.<sup>56</sup> Specifically, HRPC Rule 7.1 provides as follows:

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:

- (a) 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) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or
- (c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

In New Jersey, issues surrounding a similar professional responsibility rule have been heavily discussed and are currently pending issuance of a decision by the New Jersey Supreme Court.<sup>57</sup> On July 26, 2007, the New Jersey Supreme Court's Committee on Advertising (the "Committee") issued Opinion 39 ("Opinion 39").<sup>58</sup> Opinion 39 was the first of its kind amongst the nation's ethics rules. It prohibited New Jersey attorneys from advertising their inclusion in the "Super Lawyers" and "Best Lawyers in America" publications and further proscribed New Jersey attorneys from mere participation in the selection processes (i.e., peer review surveys) for such publications. Because the

Committee found the advertisements to be misleading and likely to create an unjustified expectation of results, advertisements and participation in the selection processes were found to violate the prohibition against comparing the services of lawyers. The Committee explained that use of the "self-aggrandizing" superlative designations "best" and "super" in the titles of the two publications was inherently comparative, implied a level of quality and service provided by the advertising attorney, and constituted a comparison to other lawyers' services, causing unsuspecting consumers to believe that the level of quality would be superior to that of other lawyers.<sup>59</sup> However, the Committee distinguished the Martindale and Chambers publications from that of Best Lawyers and Super Lawyers, noting such differences as their respective methodologies, limitations on advertising, and recognition by the public. Various legal rating publishers challenged Opinion 39, joining the lawsuit as intervenors, and the Federal Trade Commission filed a *Amicus Curiae* brief in support of vacating Opinion 39.<sup>60</sup> Certain state bar associations and ethics commissions, in response to Opinion 39, have either clarified their rules or issued letters permitting attorneys in their respective states to advertise and participate in the ratings publications Opinion 39 condemned.<sup>61</sup> As a result, the New Jersey Supreme Court stayed the Committee's ruling and ordered a Special Master to develop an evidentiary record and submit conclusions.<sup>62</sup> The Supreme Court of New Jersey has not yet issued a ruling, though one is expected soon.

The New Jersey and Hawaii professional conduct rules regarding comparisons of lawyers' services are similar, but not identical.<sup>63</sup> To the extent that they are similar, the actions of Hawaii attorneys could be implicated by the impending New Jersey ruling. Those who seek to advertise a rating or certification should stay abreast of court or ethics commission rulings regulating such advertising and might consider requesting a formal opinion addressing this issue from the Disciplinary Board of the Supreme Court of Hawaii.

## Conclusion

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Under the Hawaii Public Procurement Code, Haw. Rev. Stat. Chapter 103D and the Revised Charter of the City and County of Honolulu, Section 5-204, the Corporation Counsel, City and County of Honolulu, is responsible for securing legal services from private attorneys as needed for City agencies and officials, including City boards and commissions. The Corporation Counsel is authorized to invite licensed private attorneys to submit statements of qualifications and expressions of interest for evaluation by the Corporation Counsel and inclusion on a list of private attorneys qualified to provide legal services as needed by the City.

Whenever circumstances require, the Corporation Counsel will select attorneys from the resulting pre-qualified list to serve as special deputy corporation counsel, special counsel, or legal consultant to City agencies, officers or employees.

In most circumstances, the legal services required will entail representation in civil and criminal actions, primarily in defense of a city agency or official. Following are the areas of law in which the Corporation Counsel anticipates a need to retain qualified private attorneys during the period of July 1, 2008 to June 30, 2009

Administrative Law	Government Ethics
Appellate Practice	Health Law
Antitrust	Information and Computer Technology
Bankruptcy/Receiverships	Insurance
Business Law, including Contract Law, Contracts Negotiation, and Corporate Law	Intellectual Property
Civil Rights	Labor
Collections	Law Enforcement
Complex Civil Litigation	Maritime Law
Constitutional Law	Plaintiff's Qui Tam
Condemnation	Probate Law, including Guardianship, Public Benefits Law, including ADA
Construction Law	Public Financing, including Bond Counsel, Investment Banking, and Financing Leases
Criminal Law	Public Utilities Law
Employee Benefits	Real Property, including Financing, Development, Subdivisions, and Land Use
Employment Law	Securities Law, including Class Action
Energy Law	Tax
Environmental Law, including Clean Water Act, Clean Air Act, HEPA/NEPA, Regulatory Compliance & Enforcement, Solid Waste Management, Environmental Attributes, and Storm Water Management	Telecommunications
Estates & Trusts	Tort Law, including Products, Design, or Construction Liability, and Professional Malpractice
Federal Legislation	Transportation Law, including Mass Transit, Transit Financing, and Land Use
Government Contracts & Procurement, including Federal Procurement	Water Law
	Workers' Compensation

Licensed attorneys interested in being retained to provide legal services in these areas are invited to submit a Statement of Qualifications and Expression of Interest to the Corporation Counsel. Attorneys will be considered for contract as the need arises. Attorneys from the same firm wishing to be considered must submit separate statements. Attorneys may list up to but no more than a total of **three areas** of practice which may include areas not listed above.

Forms are available for download at <http://www.honolulu.gov/cor/stmtqual.pdf> or may be requested by telephone (808) 768-5123, or facsimile (808) 768-5104 (Attention: Administrative Services Officer).

**All forms should be post-marked or delivered no later than 4:30 p.m., July 18, 2008 to receive full consideration for upcoming selections.**

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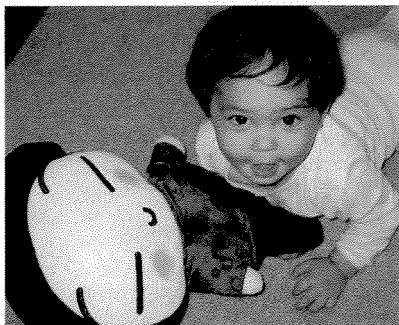
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have import and impact on the legal profession and the public. This article has attempted to provide greater transparency in ratings processes, and a comparison of some of the lawyer ratings publications that may affect our reputations and our pocketbooks.

Objective rating systems deliver benefits, such as providing consumers and fellow practitioners with access to information about an attorney or firm's practice and reputation within the community, and it undoubtedly is a distinct honor to be recognized for superb work and strong ethics by one's colleagues and clients. However, it is important to keep in mind the numerous variables in each system's methodology, and the inherent subjectivity and flaws each is susceptible to.

Due to these variables, and the fact that the value assigned will naturally differ for each individual, no rating system can be entirely objective, precise, or comprehensive. Lawyers can neither be "shopped for," nor ranked, in the same manner as a consumer product such as a vacuum cleaner or cellular phone. As such, and because of the ethical considerations that could be implicated, attorneys and clients should be cognizant, critical and discerning of publications that purport to evaluate the quality of one's legal ability or professionalism, whether as a voter, candidate or consumer of these publications.

A ranking or certification is not, and should not, be considered determinative of the quality of an attorney's work or potential. Rather, it is excellent work that should drive our respective practices and reputations. The words of the award-winning NBC television producer and CEO Grant Tinker, whose career was dependent upon strong viewer ratings, may sum it up best: "First be best, then be first."

<sup>1</sup> A number of other lawyer and law firm ranking systems are not discussed in this article. See, e.g., Avvo (<http://www.avvo.com>) (providing attorney ratings ranging from 1-10, based on information such as years in practice, professional achievements, recognition in the industry, disciplinary records derived from court records, bar associations, attorney websites and submissions by attorneys); Vault ([http://www.vault.com/nr/lawrankings.jsp?law2008=1&ch\\_id=242](http://www.vault.com/nr/lawrankings.jsp?law2008=1&ch_id=242)) (providing rankings for law firms in categories such as Prestige; Quality of Life; Diversity; Practice Area, Top 100; and

Regional).

<sup>2</sup> The Best Lawyers lists are issued in all 50 states and the District of Columbia and its annual listings includes 29,575 attorneys in 78 specialties. The listings are featured in regional publications such as *The Los Angeles Times* and *New York* magazine. See Best Lawyers, <http://www.bestlawyers.com/aboutus/default.aspx> ("About Best Lawyers.")

<sup>3</sup> *Honolulu* magazine, <http://www.honolulumagazine.com/Honolulu-Magazine/July-2007/The-Best-Lawyers-in-Hawaii-8216i/>. The Best Lawyers in Hawaii list is excerpted from the national Best Lawyers list.

<sup>4</sup> Best Lawyers, <http://www.bestlawyers.com/aboutus/default.aspx> ("About Best Lawyers").

<sup>5</sup> Best Lawyers, <http://www.bestlawyers.com/aboutus/selectionprocess.aspx> ("Best Lawyers Selection Process").

<sup>6</sup> About Best Lawyers.

<sup>7</sup> See Best Lawyers Selection Process; *In Re Opinion 39*, Intervenor Best Lawyers' Reply Br., Docket. No. 60,003 (N.J. 2007) ("Best Lawyers Reply").

<sup>8</sup> Best Lawyers Selection Process.

<sup>9</sup> E-mail with Jeremy Wilson, Best Lawyers Representative, May 13, 2008 (on file with author). New York and Washington, D.C., for example, are considered "large" legal communities. San Jose, California and Columbia, South Carolina are considered a "medium" sized legal communities, and Corpus Christi, Texas and Rapid City, South Dakota are considered "small" legal communities. Best Lawyers Selection Process.

<sup>10</sup> For example, attorneys who practice in "niche" specialty areas may be asked to evaluate candidates in neighboring communities, states or across the nation. Telephone interview with Jeremy Wilson, Best Lawyers Representative, May 13, 2008.

<sup>11</sup> Best Lawyers solicits half of its votes each year by telephone; voting for the remaining half is done by e-mail or fax. The process is reversed for the following year to enable attorneys to provide "personal" votes and comments. Best Lawyers Selection Process.

<sup>12</sup> *Id.*

<sup>13</sup> The minimum average score required for inclusion in each practice area will differ based upon the average scores of all nominees in that specialty and geographic region. If necessary, editors may make final selections based on peer comments and the strength of the voting lawyer's own marks and predictions. Best Lawyers Selection Process.

<sup>14</sup> See Best Lawyers, Guidelines for Publicizing Inclusion in Best Lawyers, <http://bestlawyers.com/aboutus/guidelines.aspx>. ("Best Lawyers Guidelines").

<sup>15</sup> Of the approximately 26,500 ballots Best Lawyers sends out annually, more than 50% are completed and returned. As such, the Best Lawyers listings are based on approximately 2 million evaluations of attorneys in the U.S. and Canada. *In re Opinion 39*, Certification of Max Blackston, et. al, Docket No. 60,003 (N.J. Dec. 18, 2006) ("Certification"). Compare with return rate of Super Lawyers' ballots.

<sup>16</sup> In its first year, the Chambers U.S. guide featured 150 pages of firm profiles and 1,319 indi-



vidual lawyer profiles. Its current edition features 414 pages of firm profiles, 6,777 individual profiles and ranked a total of approximately 11,500 attorneys. Anthony Lin, *Martindale to Change Focus as Some Firms Opt Out*, N.Y.L.J. (May 21, 2007).

<sup>17</sup> Chambers and Partners, Schedules and Submissions, <http://www.chambersandpartners.com/about-us-schedules.aspx> ("Chambers Schedules").

<sup>18</sup> Chambers and Partners, Hawaii rankings, <http://www.chambersandpartners.com/usa/search32.aspx?cid=278> ("Chambers Rankings").

<sup>19</sup> Chambers Schedules.

<sup>20</sup> For example, an attorney might be described as "tremendously bright and straight-shooting" or "the best in the state" and a firm might be described as one that is "tireless and relentless" or where "there is no type of litigation that they cannot handle." See Chambers Rankings.

<sup>21</sup> Interestingly enough, none of the Chambers researchers appear to reside in or have earned degrees from within the U.S. As chambers is a London-based firm, the majority of the Chambers' research team appears to reside and/or have been educated in England. See Chambers and Partners, The Research Team, <http://www.chambersandpartners.com/about-us-researchers.aspx>.

<sup>22</sup> Chambers Rankings.

<sup>23</sup> *Id.*

<sup>24</sup> Chambers Schedules.

<sup>25</sup> Chambers Rankings.

<sup>26</sup> Anthony Lin, *Martindale to Change Focus as Some Firms Opt Out*, N.Y.L.J. (May 21, 2007).

<sup>27</sup> Martindale has maintained that their system "is not a consumer system." *In Re Opinion* 39, Br. in Supp. of Martindale-Hubbell's Motion to Intervene, Docket No. 60,003 (N.J. Jan 29, 2007) ("Martindale Brief").

<sup>28</sup> Martindale-Hubbell Peer Review Ratings, [http://www.martindale.com/xp/legal/About\\_Martindale/Products\\_and\\_Services/Peer\\_Review\\_Ratings/ratings.xml](http://www.martindale.com/xp/legal/About_Martindale/Products_and_Services/Peer_Review_Ratings/ratings.xml) ("Martindale-Hubbell Peer Review Ratings").

<sup>29</sup> *Id.*; Martindale Brief.

<sup>30</sup> Martindale will automatically remove the ratings for disbarred or suspended attorneys. Martindale-Hubbell Peer Review Ratings.

<sup>31</sup> Martindale Brief.

<sup>32</sup> Martindale-Hubbell Peer Review Ratings.

<sup>33</sup> E-mail with Betty Hromoko, LexisNexis Martindale-Hubbell Peer Review Rating Representative, May 8, 2008 (on file with author).

<sup>34</sup> See Martindale-Hubbell, <http://www.martindale.com/blog/BlogComments.aspx?bid=2173&tid=212&ct=15>

<sup>35</sup> See Martindale-Hubbell Peer Review Ratings.

<sup>36</sup> Super Lawyers, Selection Process ("Selection Process"), [http://www.superlawyers.com/about/selection\\_process.html](http://www.superlawyers.com/about/selection_process.html).

<sup>37</sup> Key Professional Media is also the publisher of the Super Doctors, Super Dentists and Law & Politics magazines. See Key Professional Media, Inc., <http://www.keypromedia.com/>; See also, Letter from William White, Publisher, to Jacqueline Earle, Esq., May 8, 2008 (on file with author) ("Super Lawyers Letter").

(Continued on page 18)

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<sup>38</sup> See Super Lawyers Letter.

<sup>39</sup> The polling, research and selection for Super Lawyers is performed by Law & Politics, a publication of Key Professional Media, Inc.

<sup>40</sup> Professional databases include law firm websites and, professional associations and journal publications. Selection Process.

<sup>41</sup> Interviews are conducted with managing partners and marketing directors of law firms.

<sup>42</sup> Selection Process. For further information about the selection process, see Certification.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *In Re Opinion 39*, Petr.'s Reply Br., Docket No. 60,003 (N.J. Dec. 18, 2006) ("Petitioner's Reply Brief"); Certification.

<sup>46</sup> *Id.* Note that in 2006, only 4.8% of New Jersey attorneys who were mailed Super Lawyers ballots returned them. *Id.* Compare with the approximately 50% ballot return rate of Best Lawyers, discussed *infra*. Approximately 5% of attorneys within a state were named in Super Lawyers. Each voting attorney was permitted to nominate up to 14 candidates. See Certification; see also Petitioner's Reply Brief.

<sup>47</sup> Terry Carter, *The Ratings Game*, A.B.A.J. (Jan. 2007) ("Ratings Game").

<sup>48</sup> A full page advertisement in the Indiana Super Lawyers was \$5,650 in 2007 and \$10,495 in Texas.

<sup>49</sup> Who's Who Legal, Research Methodology, <http://www.whoswholegal.com/about/research/> ("WW Research Methodology"). Who's Who Legal is not to be confused with Who's Who in American Law, released annually as one of fifteen reference guides published by the Marquis Who's Who publishing company. Marquis Who's Who, [http://www.marquiswhoswho.com/libraries\\_researchers/print\\_directories.asp](http://www.marquiswhoswho.com/libraries_researchers/print_directories.asp).

<sup>50</sup> Who's Who, Frequently Asked Questions, <http://www.whoswholegal.com/about/faq/>.

<sup>51</sup> Who's Who explains that an attorney with greater standing would be a corporate counsel of a major corporation, or one of a firm's lead attorneys, as opposed to a less frequently nominated lawyer. WW Research Methodology.

<sup>52</sup> *Id.*

<sup>53</sup> The 2007 publication is available on the Who's Who website at a "special rate of 1/3 off the cover price" at 270 British Pounds, equivalent to approximately \$531.00 U.S. Dollars. Who's Who explains that this fee enables it to perform its research and make the publications available to law firm subscribers. Who's Who Legal, Bookstore, [http://www.globalcompetitionreview.com/bookstore/bookstore\\_item.cfm?item\\_id=35&site=ww&logo=ww](http://www.globalcompetitionreview.com/bookstore/bookstore_item.cfm?item_id=35&site=ww&logo=ww).

<sup>54</sup> See discussion *infra* regarding Opinion 39; *In re Opinion 39*, Intervenor Best Lawyers' Reply Br., Docket No. 60,003 (N.J. Dec. 18, 2006); see also *Browne v. Avvo*, Case No. C07-0920RSL (W.D. Wash, Dec. 18, 2007) (U.S. District Court of the Western District of Washington dismissed complaint against defendant attorney rating system Avvo, which complaint alleged, in part, that the comparative rating system was inaccurate and subjective and violated the state

Consumer Protection Act. The court concluded that the rating system and publication of public records constituted protected commercial speech under the First Amendment).

<sup>55</sup> HRPC 7.2 provides as follows:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, or television, or through written or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or qualified legal assistance organization; and

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

<sup>56</sup> Haw. Rules of Prof'l Conduct R. 7.1.

<sup>57</sup> See N.J. Rules of Prof'l Conduct R. 7.1(a)(3). Note that this rule does not include the phrase "unless the comparison can be factually substantiated," as in HRPC 7.1.

<sup>58</sup> Ethics Op. 39, N.J. Sup. Ct. Advisory Comm. On Attorney Adver., (July 24, 2006) ("Opinion 39").

<sup>59</sup> *Id.* But see Best Lawyers Guidelines, which expressly prohibits attorneys from mentioning in advertisements Listed lawyers are permitted to mention in their advertisements "that they are 'best lawyers' or . . . suggest that a listing in Best Lawyers guarantees a desired result in a legal case or that they are necessarily more skilled than lawyers who are not listed in the publication."

<sup>60</sup> The Federal Trade Commission argued that consumers of legal services benefit from information regarding the legal system and competition, that truthful, non-misleading advertising was likely to harm consumers and that the advertising restrictions were required, under the First Amendment Commercial Speech doctrine, to be narrowly tailored to further a substantial government interest. See *In re Opinion 39*, Federal Trade Commission's Amicus Curiae Br. (N.J. May 8, 2007).

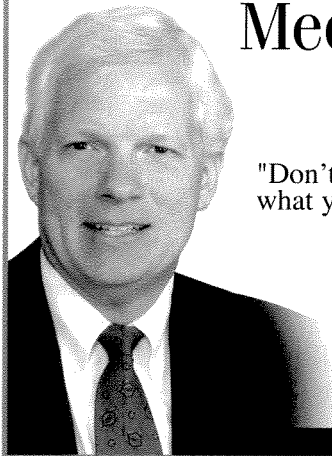
<sup>61</sup> See, e.g., opinions and letters issued by the Delaware, North Carolina, Iowa, Michigan, Ohio, Tennessee, and New York state bar associations and ethics commissions, Super Lawyers Facts, <http://www.superlawyersfacts.com>.

<sup>62</sup> *In re Opinion 39*, Order to Remand a Special Master (N.J. Aug. 18, 2006).

<sup>63</sup> N.J. Rules of Prof'l Conduct R. 7.1(a).

*Jennifer M. Young is a real estate attorney with the law firm of Goodsell Anderson Quinn & Stifel.*

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