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Attorneys for Petitioners
Jon-Henry Barr, et al., and
Intervenor-Petitioner Key
Professional Media, Inc

In re OPINION 39 OF THE
COMMITTEE ON ATTORNEY
ADVERTISING

JON-HENRY BARR, Esq., GLENN A.
BERGENFIELD, Esq., CARY B.
CHEIFETZ, Esq., MARIA DELGAIZO
NOTO, Esq., ANDREW J. RENDA,
Jr., Esq., and JOHN S. VOYNICK,
Esq.

       Petitioners,

       -and-

KEY PROFESSIONAL MEDIA, INC.
(d/b/a "Super Lawyers" and "Law
& Politics"),

       Intervenor-Petitioner.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 60,003

Civil Action

CERTIFICATION OF
MAX BLACKSTON, BRITT POWER &
NICK GOUREVITCH IN FURTHER
SUPPORT OF PETITIONS OF JON-
HENRY BARR, ESQ., ET ALIA,
AND INTERVENOR-PETITIONER KEY
PROFESSIONAL MEDIA, INC.

We, **Max Blackston, Britt Power,** and **Nick Gourevitch**, all being at least eighteen years of age and not a party to this action, do certify that:

1.   Global Strategy Group (GSG) is one of the nation's leading full service market research and consulting firms.   GSG has conducted studies for numerous clients worldwide, including non-profits, government agencies, corporations, and political candidates and committees.   We specialize in accurate and creative research that allows organizations to measure relevant public opinion.   GSG is recognized by the American Association for Public Opinion Research for our adherence to sound and ethical survey research practices.

2.   The personnel at GSG include nine principals and 21 professional staff, all with a strong background in research. GSG has offices in New York City (NY), Washington, DC, Little Rock (AR) and Hartford (CT).   GSG's current and past clients include:

> **Government agencies** such as the New York City Department of Health and the Metropolitan Transit Authority (MTA),

> **Corporations** such as Starwood Hotels and Resorts and Conde Nast Publications,

Non-profit organizations such as the American Cancer Society and the Rockefeller Foundation, and

Political candidates and officeholders such as former Vice Presidential candidate and Senator John Edwards and New York Governor-elect Eliot Spitzer.

3.   **Max Blackston**, a research partner of Global Strategy Group, has nearly 40 years of experience working in the market research industry. Mr. Blackston has held senior positions at major market research firms across the world including Ogilvy and Mather Advertising (New York), Research International (New York, Italy) Marplan LTD (London), and Mutagim (Israel). Mr. Blackston has a B.A. in econometrics from the University of Manchester in England and has published over 20 articles in market research and quantitative methods in the industry's leading trade magazines and journals.

4.   **Britt Power** is a Partner at Global Strategy Group and has been with GSG since April, 1995. Ms. Power is an experienced market researcher with expertise in both quantitative (e.g. survey research) and qualitative (e.g. focus groups, usability testing) methods. Ms. Power graduated cum laude from New York University with a B.A. in Communications and a minor in Politics.

5.   **Nick Gourevitch** is a Senior Associate at Global Strategy Group and has been employed by GSG since May, 2004. At GSG, Mr. Gourevitch's focus has been public opinion polling and quantitative research methods. Mr. Gourevitch has a B.A. from Brown University in computer science and economics and a Master's degree from Columbia University in Quantitative Methods in the Social Sciences.

6.   Global Strategy Group (GSG) has been retained by *Super Lawyers* to give an independent, unbiased assessment of the *Super Lawyers* methodology. GSG prepared for the writing of this document by reviewing all aspects of the *Super Lawyers* protocol, interviewing supervisors and analysts from the *Super Lawyers* research team and by receiving a full-feature presentation of the *Super Lawyers* database and data entry system.

7.   Based on the description of the process and the materials we have reviewed being accurate, it is our opinion that the process adopted by *Super Lawyers* to identify and select its nominees is as scientific and objective as any such model of a complex system could be and that the New Jersey Attorney General's criticisms of *Super Lawyers* do not appear to have merit.   It is our opinion that the *Super Lawyers* protocol provides consumers with an objective measure of lawyers' reputations. While an individual's evaluation of a lawyer's

reputation is subjective, it is incorrect to assume that a lawyer's reputation cannot be measured in an objective way. Just as any social scientist would, *Super Lawyers* measures reputation by aggregating subjective evaluations (e.g. the peer evaluations of lawyers and third-party organizations) in a systematic and unbiased manner. Their protocol follows the best practices of the social sciences and the outcome is driven by a number of different factors, including the most representative survey sample possible, multiple measurements by different observers and cross-checking of data for inconsistencies and bias. Finally, like any accepted social science model, the *Super Lawyers* protocol is validated further by the similarity of its ratings to its respected peers – 70% of those on the New Jersey 2006 *Super Lawyers* list are also on the Martindale-Hubbell AV rated list.

THE SUPER LAWYERS SELECTION PROCESS IS DIRECTLY ANALOGOUS TO MANY SOCIAL SCIENCE MODELS

8.   Key Professional Media's process for selecting lawyers into *Super Lawyers* magazines is directly analogous to many scientifically-valid social science models, which attempt to describe and make evaluative statements about complex real life systems. Typical examples of the latter would be economists' models explaining consumer behavior and political

scientists' models of voters' political attitudes. In this case, *Super Lawyers* created a model aiming to provide a resource to assist attorneys and sophisticated consumers in the search for legal counsel. What we will show in this study is that the *Super Lawyers* selection process is no less "scientific" or objective than any other type of modeling process.

9.   Whatever its purpose, a modeling process which follows the accepted social science standards must have three characteristics:

10.   **A hypothesis**; a theory about how the system works and what variables influence the outcome. The model or process is not identical to the real life system; it is a simplification or approximation of that system. As such, it involves making reasonable assumptions about the real world, and informed value judgments about which features of the system are more important and must be represented in the model. Different people will make different assumptions and value judgments. *Super Lawyers*' theory is that it is possible to objectively measure a lawyer's reputation. The assumption built into the *Super Lawyers* process is that for many lawyers, objective accomplishment in his/her field coupled with his/her professional qualities are important characteristics to be considered when choosing representation. *Super Lawyers* believes

it is in the interest of both attorneys and their clients that anybody needing legal counsel should be able to make their choice of lawyer based on a systematic source of informed recommendation.

11.   **Data**; the relevant population must be sampled adequately and representatively, and measurements made of the relevant variables. In many models, not all the variables can necessarily be measured objectively – for example, economists routinely make estimates of the consumer "utility" of certain factors. In the case of *Super Lawyers*, many of the relevant variables are measured via research – clients, cases, settlements, qualifications and certifications are all a matter of record. However, *Super Lawyers* has created a system that is more than just a database of compiled research; they have also devised a systematic methodology for measuring the "softer" human characteristics of legal counsel, those which can only be measured by the opinions of colleagues and peers.

12.   **Testing**; the real world is inevitably more "untidy" than the theoretical world of a model. So when real life data and theory meet, a process of reconciliation and re-evaluation is necessary. Judgments must be made about the level of tolerance of discrepancies, anomalies, exceptions. At what point do they pass the threshold of acceptability, invalidating

the process and requiring it to be changed? In the *Super Lawyers* system – as in any other survey-based system, such as political polling or social or market research – the system has to be capable of detecting the deliberate manipulation of the data by the subjects of the research. While every precaution is made to ensure that the system is as "tamper proof" as possible, the final judgment must be made by experienced analysts, looking at data and deciding how to call it.

THE SUPER LAWYERS PROTOCOL

13.   The *Super Lawyers* protocol has five distinct phases, which can be divided into three stages. **Stage A is the definition of the target population and the pool of nominees from which *Super Lawyers* are chosen**. Stage A consists of two distinct phases.

14.   **Phase 1 of Stage A is the collection of nominees from multiple sources**. These sources include the following:

- Websites of law firms;

- Publications and websites of professional associations and journals. This source is particularly important for the inclusion lawyers who may have been missed by the balloting process (from less-know firms, smaller fields of practice, etc.);

- Balloting of lawyers; and

– Interviews with managing partners of law firms.

15.   This procedure of multiple sources exactly mirrors the practices that are followed by survey organizations, in creating a sample for surveying a finite population, that is a population which is heavily stratified (in the case of lawyers, by firm size and practice area) and in which the normal "random" or representative sample would lead to the under-representation of certain subgroups within it.

16.   With regard to the balloting process, which provides a part of the nominee pool, the Attorney General has identified several potential criticisms of the *Super Lawyers* process:

- The appropriateness of allowing any and all lawyers to participate in the process;

- The response rate of the by-mail ballot to all lawyers; and

- Allowing lawyers to nominate colleagues from their own firm.

17.   In relation to the first of these – allowing all lawyers to participate in the balloting process casts the widest possible net of potential lawyers to be evaluated by the *Super Lawyers* research team. Additionally, there are no other

available informant sources – the polling of other sources of information like clients and judges is not practical.

18.   For New Jersey in 2006, *Super Lawyers* received by-mail ballots from 4.8% of lawyers in the state. While this response rate may seem low, it is typical for by-mail surveys to experience similarly low response rates, especially among busy professionals such as lawyers. The *Super Lawyers* ballot process was executed in a systematic, consistent, and unbiased way to ensure that every lawyer was given the same chance to respond and give their input. As a result, the balloting process provides a meaningful assessment of a lawyer's reputation, especially when combined with all of the additional measures built into the *Super Lawyers* protocol. As mentioned earlier, the nominees are drawn from a number of other sources including third-party organizations who conduct similar research to include lawyer subpopulations that might be underrepresented by the balloting process. In the end, 21% of the lawyers in New Jersey in 2006 were considered and researched by the *Super Lawyers* team.

19.   It is clear that the system of balloting lawyers for their nominations could be open to various biases – cronyism, reciprocal nominating, or even blackballing – but the *Super Lawyers* protocol contains many checks and balances,

designed to identify such manipulation and prevent it affecting the outcome. The main safeguard is that the balloting process is transparent to *Super Lawyers* researchers, so it is clear to the analysts who has voted for whom (or who has not voted for whom). Votes are manually examined for voting patterns that display evidence either of cronyism – "you vote for me and I'll vote for you" – or indiscriminate voting – uniformly high or uniformly low scores, and these votes are invalidated from entering the final selection procedure.

20.   The possible bias resulting from lawyers being allowed to nominate members of their own firm is avoided by a number of specific measures:

- Ballots are only considered as valid if they have at least as many out-firm nominations as in-firm nominations. This – together with the maximum number of total votes allowed on each ballot (14) – limits the ability of large firms to unfairly pack the nominee pool with members of their own firm.

- The protocol caps the number of in-firm nominations at a number under ten (10). For example, if one lawyer at a large firm received 100 nominations from within his own firm, over 90% of those ballots would have no impact on that lawyer's score.

– When evaluating nominees (phase 2), the protocol systematically treats in-firm nominations as less "valuable" in its scoring system.

– The final selection takes into consideration the size of firm that nominees belong to and ensures balanced representation of all firm sizes.

21.   **Phase 2 of Stage A is the evaluation process**. This second phase consists of an exhaustive and very systematic screening of the nominee pool by trained researchers. The researchers allocate points to nominees based on a set of 12 different criteria, which include objective measures of professional achievement and the measure of peer recognition provided by the phase one balloting.

22.   In any such procedure – commonly used in all the social sciences – it is essential that evaluators conform to a consistent set of procedures in order to eliminate any element of subjectivity. In fact it is not unusual to have a sample of the subjects of the evaluation evaluated by two different evaluators, and to expect a convergence in the results.

23.   In the case of *Super Lawyers*, consistency and objectivity is achieved by using a set of guidelines for awarding points that are highly detailed and specific; they are also articulated separately for different practice areas, where that is appropriate.   The protocol used compares extremely

favorably – in terms of its scoring system and the specificity of its guidelines – with classificatory and evaluative protocols used in social sciences, such as political science, anthropology, or survey research (e.g. evaluating the relevance of the answers to open-ended questions in terms of their relevance to a specific stimulus).

24.   Detailed and meticulous records of these evaluations (including the date of the evaluation and the identity of the analyst who completed them) are kept in a computer database, and can be readily accessed by supervisors at any level of specificity or aggregation. Inconsistencies or other potential issues are automatically red-flagged by the system, and generate additional checking and verification procedures.

25.   As noted earlier, at the conclusion of these first two phases, which represent the definition stage of the *Super Lawyers* process, a nominee pool representing about 20% of the state's attorneys have been researched (In New Jersey in 2006, 21% of the state's lawyers were researched). A portion of this pool – those who have accumulated insufficient points in these two phases – is eliminated from further consideration in the current year. Importantly, those eliminated at this stage

remain in the *Super Lawyers* database and will be systematically re-evaluated on all the same criteria – objective and peer recognition – in subsequent years. This insures that the procedure does not create a permanent bias against younger lawyers or "late starters."

26.   **Stage B is peer evaluation by practice area**. This is a second stage of collection of opinions from other lawyers, whose purpose is to provide the data on the basis of which the final selection of the *Super Lawyers* will be made. The key feature of this stage is that *Super Lawyers* candidates are to be evaluated in relation to their specific practice area; as such, the appropriate procedure to adopt is an evaluation by "expert" panels. Expert panels are used widely in fields to answer complex questions – the evaluation of new product ideas by "expert" consumers or the determination by experienced sportswriters whether a baseball player's career performance merits entry to the Baseball Hall of Fame. The advantage that an expert panel has over a more generalized survey is that – consisting of the top practitioners in their specific area of knowledge or practice – they uniquely have the specialized knowledge to be able to evaluate the candidates thoroughly. In fact, the expert panel is the standard way of selecting the winners of honors and awards in most fields of humanities and

sciences. The criticism sometimes leveled at them is that they are too narrowly drawn; *Super Lawyers* avoids this by drawing on a much larger field of experts.

27.   *Super Lawyers* creates its expert "blue ribbon" panels by selecting the practitioners in each area of practice who receive the highest point values (from Stage A), to evaluate all the other candidates in the same practice area. In all, *Super Lawyers* designates up to 60 distinct practice areas; in some of the larger practice areas, more than one panel may be recruited. Numerically, the panel membership represents anywhere from 10-20% of the top practitioners in each practice area.

28.   At the end of this stage, about 80% of the *Super Lawyers* candidates remaining from the previous stage have been evaluated by at least one of the blue ribbon panels. (In New Jersey in 2006, 77% received at least one blue ribbon panel evaluation and over 2005 and 2006, 82% received at least one blue ribbon panel evaluation).

29.   **Stage C is the final selection and validation**. The operating principle for selecting the final nominees is very simple and explicit; a number of lawyers, equal to no more than 5% of the active resident bar, are picked from the nominee pool based on their weighted cumulative scores – from the balloting, the research evaluation and the valid blue ribbon panel votes.

As the cumulative score is based on different types of considerations – objective achievements and the opinions of peers, it is possible that a high cumulative score could disguise a lack of balance between the different criteria, which would make that candidate an unsuitable *Super Lawyers* nominee. In order to avoid this possibility, each step of the *Super Lawyers* evaluation is weighted (a common practice in social science models) such that no single factor or group of similar factors is solely responsible for a lawyer's nomination. The data is also extensively manually reviewed and cross-checked before final selection based on the following criteria:

- Length of time admitted,

- age,

- status in firm (associate vs. partner),

- whether still active (based on age, admit date, court dockets), and

- negative peer review.

30.   The final selection is refined by two further criteria – practice area and firm size. In accordance with the overall objective of the process, of providing a systematic source of informed recommendation for all consumers of legal services, the final set of *Super Lawyers* nominees is divided into practice area and firm size (4 tiers), and the top-scoring

lawyers selected from all of these categories. Separating nominees by firm size is an additional check to ensure that the balloting process does not bias the final results towards larger firms.

31.   The final phase of the procedure is a validation procedure, normal in all model-building processes, designed to test the output of the model – in the case of *Super Lawyers*, that the final list represents a set of attorneys, who would be potential options for clients who consider a lawyer's reputation to be a key consideration in their choice of counsel. As this of course could not be directly measured, the procedure consists of a web-based search for any negative records, such as public disciplinary or criminal proceedings. Finally, each of the nominees is required to verify the information about themselves, and to sign a declaration that they have never been subject any such proceedings.

30.   We certify that the foregoing statements are true. We are aware that if any of the foregoing statements are willfully false, we subject to punishment.

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Max Blackston
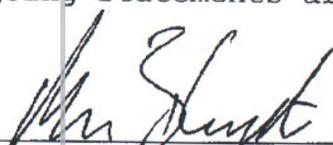
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Britt Power

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Nick Gourevitch

DATED: December 17, 2006