

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,  
Jr., Esq.

Petitioners,

-and-

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

[proposed] Intervenor-  
Petitioners.

SUPREME COURT OF NEW JERSEY

Civil Action

DOCKET NO. \_\_\_\_\_

RECEIVED  
2006 AUG 14 PM 12:53  
SUPREME COURT  
CLERK'S OFFICE

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENT MOTION OF  
PETITIONERS AND PROPOSED INTERVENOR-PETITIONER FOR A STAY  
PENDENTE LITE AND FOR EXPEDITED RESOLUTION OF THIS MATTER**

John J. Gibbons, Esq.  
Kevin McNulty, Esq.  
E. Evans Wohlforth, Jr., Esq.  
GIBBONS, DEL DEO, DOLAN, GRIFFINGER &  
VECCHIONE, P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102-5496  
(973) 596-4500

Bennett J. Wasserman, Esq.  
Martin G. Gilbert, Esq.  
Howard Matalon, Esq.  
STRYKER, TAMS & DILL, LLP  
2 Penn Plaza East  
Newark, New Jersey 07105  
(973) 491-9500

Attorneys for Petitioners and  
[proposed] Intervenor-Petitioner

TABLE OF CONTENTS

|  | Page |
|--|------|
| TABLE OF AUTHORITIES .....   | ii   |
| PRELIMINARY STATEMENT .....  | 1    |
| FACTUAL BACKGROUND .....   | 3    |
| I.    Opinion 39 .....   | 3    |
| II.   The Impact of Opinion 39 .....   | 5    |
| A.    Opinion 39 Will Have An Immediate And<br>Drastic Effect On Super Lawyers' Business In<br>New Jersey And Around The Country. .... | 5    |
| B.    The Super Lawyers Production Process Is<br>Placed In Jeopardy By Opinion 39. ....  | 6    |
| C.    Opinion 39 Will Likely Force Super Lawyers<br>To Breach Its Contractual Commitments To<br>Third Parties. ....                    | 8    |
| D.    Opinion 39 Will Cause Cognate Harms To The<br>Individual Attorney Petitioners. ....  | 9    |
| LEGAL DISCUSSION .....   | 10   |
| I.    EACH OF THE APPLICABLE FACTORS REQUIRES THAT A<br>STAY OF THE EFFECT OF OPINION 39 BE GRANTED<br>PENDENTE LITE .....             | 10   |
| A.    Standards For Granting A Stay Pending Review ..  | 10   |
| B.    Irreparable harm .....   | 11   |
| i.    Irreparable harm to First Amendment<br>rights of all movants .....   | 11   |
| ii.   Irreparable Harm to Super<br>Lawyers' Business .....   | 12   |
| iii.  Irreparable harm to the individual<br>attorney movants. ....   | 13   |
| C.    Meritorious Issues And Likelihood Of Success ..  | 14   |
| D.    The Balance of Harms .....   | 14   |
| II.   IN ADDITION, THIS COURT SHOULD GRANT EXPEDITED<br>CONSIDERATION AND RESOLUTION OF THIS MATTER .....                              | 17   |
| CONCLUSION .....   | 18   |

**TABLE OF AUTHORITIES**

**Cases**

Avila v. Retailers & Mfrs. Distrib.,  
355 N.J. Super. 350 (App. Div. 2002); ..... 11

Crowe v. De Gioia,  
90 N.J. 126 (1982) ..... 10, 11

Elrod v. Burns,  
427 U.S. 347, 96 S.Ct. 2673,  
49 L.Ed.2d 547 (1976) ..... 11, 12

Ferraiuolo v. Manno,  
1 N.J. 105 (1948) ..... 13

McNeil v. Legislative Apportionment Comm'n of  
State of New Jersey, 176 N.J. 484 (2003) ..... 10

Outdoor Sports Corp. v. A. F. of L. Local 23132,  
6 N.J. 217 (1951) ..... 11

Scherman v. Stern,  
93 N.J. Eq. 626 (E. & A. 1922) ..... 11

Vide Ideal Laundry Co. v. Gugliemone,  
107 N.J. Eq. 108 (E. & A. 1930) ..... 13

**Rules**

R. 1:19-8 ..... 1

R. 1:19A-3(c) ..... 3

R. 1:19A-3(d) ..... 1

R. 1:19A-6 ..... 13

R. 2:9-5 ..... 10

**Treatises**

40 New Jersey Practice, Appellate Practice & Procedure,  
§§ 8.9, 19.3 (E. Zunz & E. Chocley) (2d ed. 2005) ..... 11

The above-captioned Petitioners, aggrieved members of the bar, and Proposed Intervenor-Petitioner Key Professional Media, Inc. (d/b/a "Super Lawyers" and "Law & Politics") (herein, "Super Lawyers"),<sup>1</sup> respectfully submit this memorandum of law in support of their motion to stay the effect and enforcement of Opinion 39 of the Committee on Attorney Advertising (the "Committee") pending review by this Court, to permit Super Lawyers' balloting process and production schedule to go forward starting on August 17, 2006, and for expedited briefing and resolution of this matter. The Court is referred to the filed Petition for Review, Motion to Intervene and Motion to Supplement the Record.

#### **PRELIMINARY STATEMENT**

Petitioners and Super Lawyers present this motion for an emergent pendente lite stay of the Committee's Opinion 39, because of the profound and irremediable harm that will result to their First Amendment rights and to their businesses pending this Court's plenary determination. The irreparable injury to all movants' First Amendment rights is presumed as a matter of law, but the business harm is perhaps as serious.

Individual attorneys, who were given no opportunity to comment or participate in the Committee's processes, have been

---

<sup>1</sup> Super Lawyers' motion to intervene was filed on August 8, 2006. Filed herewith is a motion for emergent treatment of Super Lawyers' intervention motion, or, in the alternative, relaxation of the standing requirements of Rules 1:19-8 and 1:19A-3(d) to permit its participation.

placed in ethical jeopardy. Their advertisements using the Super Lawyers designation have either already appeared or have been purchased. (Pa234, 238, 246, 250, 254). They have been forced to suffer the expense and inconvenience of withdrawing references to Super Lawyers from their publicly available materials. (Pa238, 246, 250, 254-55). Their First Amendment rights to advertise and to express their opinions in the Super Lawyers balloting process have been restrained and violated.

From a practical standpoint, Super Lawyers' valuable business may not recover if relief is not quickly forthcoming. Opinion 39 effectively blacklists Super Lawyers from doing business in New Jersey at all. In the next few weeks, steps including the mailing of more than 30,000 ballots must be taken, or Super Lawyers' production schedule will be placed at risk. (Pa282). That disruption jeopardizes Super Lawyers' commitments to advertisers and third-party publishers. (Pa280, 283-84). Commentators have taken notice (Pa295-303), and lawyers around the country have begun to withdraw advertising. (Pa279-80).

This draconian Opinion was imposed without any notice, hearing or opportunity to be heard by the affected parties. (Pa261, 271-72, 284). The Committee considered this matter for 14 months (see Pa288), without giving notice to the bar or to Super Lawyers. (Pa261, 271-72, 284). The Opinion itself makes harsh findings on no apparent record, findings that unfairly

tarnish the attorneys and Super Lawyers and that, once the facts are aired, will be revealed as flatly wrong. A stay pendente lite will work no hardship, but will prevent unfair harm pending review of this flawed Opinion.

#### FACTUAL BACKGROUND

The Court's attention is respectfully directed to the certifications of Charles F. Thell, William C. White and Cindy Larson, submitted herewith (Pa257-87), which set forth the details of Super Lawyer's business, its exhaustive selection process and the harm Super Lawyers is suffering from Opinion 39. Certifications of the individual petitioners appear at Pa233-55.

#### I. OPINION 39

On July 24, 2006, the New Jersey Committee on Attorney Advertising (the "Committee") published its Opinion 39 making it a per se violation of the New Jersey Rules of Professional Conduct for an attorney to refer to her or his designation as a Super Lawyer in an advertisement, to participate in the balloting process that creates the initial candidate pool for the Super Lawyers selection process, or to advertise at all in the Super Lawyers Magazine. (Pal-3) See R. 1:19A-3(c) (engaging in advertising disapproved by advisory opinion of Committee is "per se unethical conduct").

Opinion 39 is rife with error. (See accompanying Petition and *infra*.) The Opinion fails even to acknowledge the

possibility that constitutional freedoms of speech and of the press might be implicated. No record exists to support the Committee's devastating findings directed at Super Lawyers. (Pa261, 271-72, 284) The Committee's determination that there is "no empirical or legally sanctioned support for the results" (Pa2) of the Super Lawyers selection process is flatly and demonstrably wrong. The Committee approval of and attempt to distinguish Martindale-Hubbell (and, to some extent, Best Lawyers in America) is wholly unconvincing, factually unsupportable, and constitutionally suspect in that it finds Martindale-Hubbell's rating system acceptable because, in effect, the public would not adequately understand it. (Pa3).

The individual Petitioners and Super Lawyers received no prior notice that any such proposition was being considered by the Committee. (Pa261, 271-72, 284). The Committee's process, which is not public, was set in motion some fourteen months ago by the inquiry of an individual attorney who was seeking, not individual guidance as to his own advertising, but invalidation of the Super Lawyers process. (Pa288-89). The attorneys and Super Lawyers had no opportunity to participate in any manner, nor to present evidence of the painstaking process by which the Super Lawyer designation is developed. (Pa261, 271-72, 284).

## II. THE IMPACT OF OPINION 39

### A. Opinion 39 Will Have An Immediate And Drastic Effect On Super Lawyers' Business In New Jersey And Around The Country.

Super Lawyers derives in excess of [REDACTED] of revenue from New Jersey and in excess of [REDACTED] of revenue nationwide in the last quarter of 2006. (Pa262, 279). This valuable business has been placed at risk of loss by Opinion 39. That loss will come to pass regardless of the outcome of the Court's review of Opinion 39 unless operation of the Opinion is stayed pendente lite.

If Opinion 39 is allowed to stand as issued, Super Lawyers cannot do business in New Jersey. (Pa279). Already, New Jersey attorney and law firm advertisers have withdrawn commitments for advertising with Super Lawyers, removed reference to Super Lawyers from firm websites and other marketing material, and even withheld payment for current advertising. (Pa279). Opinion 39, if not vacated or modified, potentially implies that all such attorney advertising must be withdrawn.

Attorney and law firm advertisers in other states have already begun to react to Opinion 39 because their practice subjects them to the disciplinary authority of New Jersey. (Pa280). Super Lawyers' sales staff has reported that, as a result of Opinion 39, lawyers and law firms in New York, Pennsylvania, Massachusetts, Oregon and Minnesota have



withdrawn, withheld or suspended commitments for advertising; lawyers in Missouri and Tennessee have requested not to be named or included in Super Lawyers; and numerous firms across the country have undertaken to remove mention of Super Lawyers from firm websites and other marketing material. (Pa280).

Non-New Jersey attorneys who have New Jersey partners or clients are frequently larger or national law firms, and thus are particularly valuable advertisers for Super Lawyers. (Pa280). These attorneys, too, are prohibited by Opinion 39 from even participating in the balloting process, and their removal from the Super Lawyers process will harm the integrity of the Super Lawyers listing. (Pa280).

Attorneys who do not respond to Super Lawyers' request for data verification cannot be included in the Super Lawyers list. (Pa270, 280-81). Super Lawyers believes that many attorneys already selected as Super Lawyers will decide not to respond because of Opinion 39. (Pa280-81). This will have the effect of reducing the validity of the Super Lawyers designation, because attorneys already identified for their excellence will be excluded. (Id.).

**B. The Super Lawyers Production Process Is Placed In Jeopardy By Opinion 39.**

To accomplish the collation of all of the data that Super Lawyers collects and the publication of it in the many

jurisdictions in which Super Lawyers appears, Super Lawyers maintains a highly integrated and sophisticated system for creating and publishing Super Lawyers magazines. (Pa266-71, 281-82) (discussing details of Super Lawyers selection process). By year's end, Super Lawyers expects to be published in 30 states, and in 36 states and the District of Columbia in the next year. (Pa277, 281). In publishing Super Lawyers magazines, Super Lawyers also will coordinate with and provide content to 32 city and regional magazines or major newspapers, and a variety of third-party printers and other vendors. (Pa281). As a result, Super Lawyers' production team must conform to an interrelated schedule that allows little or no flexibility. (Pa281). In addition to the complexity imposed by coordination with other publications, Super Lawyers processes for discrete publishing functions also require coordination with other publications as well as internally within Super Lawyers. (Pa281-82).

Because of this interrelationship, a delay in the performing a particular task cannot be resolved by simply moving the publication date. Altering the schedule as to one element would require changing the date for other interlocking elements of the work performed by Super Lawyers. (Pa282). For example, Super Lawyers is scheduled to publish New Jersey Super Lawyers 2007 with New Jersey Monthly magazine in April 2007. To meet

this schedule, Super Lawyers must meet certain milestones.  
(Pa282).

The significant dates scheduled for New Jersey Super Lawyers April 2007 are as follows:

|                                      |                   |
|--------------------------------------|-------------------|
| Mail ballots                         | August 17, 2006   |
| Selection of Super Lawyers finalized | October 31, 2006  |
| Final magazine files to printer      | February 23, 2007 |

(Pa282). Each of the many intermediate steps set forth in the Certification of Cindy Larson, Esq., filed herewith, must be accomplished between the milestone dates set forth above. (Pa 266-71). The scale of these tasks is not small. As an example, in excess of 30,000 ballots must be mailed in New Jersey by August 17. (Pa282). Of course, this schedule is repeated and overlapped many times by the schedules for meeting all of the other Super Lawyers publication deadlines in all of the other jurisdictions in which the magazine appears. (Pa282-83). There is no opportunity to compress this schedule without adversely affecting the quality of the magazine and its revenue. (Pa283).

**C. Opinion 39 Will Likely Force Super Lawyers To Breach Its Contractual Commitments To Third Parties.**

Super Lawyers has contractual commitments to provide its listings and other editorial content to third-party publishers for inclusion in their magazines, including New Jersey Monthly Magazine. (Pa283). Given the disruption to Super Lawyers' production schedule outlined above and given the fact that

attorneys are forbidden by Opinion 39 from participating in the selection process or mentioning their designation as a Super Lawyer, if relief is not granted by this Court it appears likely that Super Lawyers will be compelled to breach its contractual commitments to New Jersey Magazine, because it will be unable to provide the promised content. (Pa283-84). The risk of breach of other third-party commitments is obvious.

**D. Opinion 39 Will Cause Cognate Harms To The Individual Attorney Petitioners.**

The individual attorney petitioners herein have used the Super Lawyers designation in describing their services to the public, have purchased advertising, and have participated in the Super Lawyers survey. (Pa181-82, 234, 238, 246, 250, 256). In addition, they have been forced to incur the inconvenience and expense of changing these practices, to the extent that is even possible. (Pa181-82, 238, 246, 250, 254-55). As a result, they are indisputably aggrieved and affected by Opinion 39. Their First Amendment rights have been subject to prior restraint and irreparably harmed by Opinion 39. (Pa234, 238-39, 242-43, 246-47, 251).

LEGAL DISCUSSION

I. EACH OF THE APPLICABLE FACTORS REQUIRES THAT A STAY OF THE EFFECT OF OPINION 39 BE GRANTED PENDENTE LITE

A. Standards For Granting A Stay Pending Review<sup>2</sup>

The traditional equitable factors for preliminary injunctive relief pending trial, see, e.g., Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), have been adapted to the context of stays pending appeal as follows:

When seeking the equitable relief of a stay pending appeal of a judgment, a movant must demonstrate that: (1) irreparable harm will result from enforcement of the judgment pending appeal; (2) the appeal presents a meritorious issue, and movant has a likelihood of success on the merits; and (3) assessment of the relative hardship to the parties reveals that greater harm would occur if a stay is not granted than if it were.

McNeil v. Legislative Apportionment Comm'n of State of New Jersey, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting); id. (majority opinion, alluding to consideration of the "traditional factors" as well as the "public interest"). Accord

---

<sup>2</sup> The procedure for a motion in this Court to stay judgment in a civil action pending appeal is governed by Rule 2:9-5. In keeping with the spirit of the rule, Super Lawyers first presented its request for a stay to the Committee on Attorney Advertising. (Pa183). The Committee's letter denying the request (and a similar request by the New Jersey State Bar Association, (Pa181-82)) stated that a stay application was not "properly addressed to the Committee," and directed counsel to the review procedures of this Court. (Pa185). No supersedeas bond is required to secure the stay, because there is no money judgment and no property that is the subject of the petitions for review. R. 2:9-5(a).

Avila v. Retailers & Mfrs. Distrib., 355 N.J. Super. 350 (App. Div. 2002); see also 40 New Jersey Practice, Appellate Practice & Procedure, §§ 8.9, 19.3 (E. Zunz & E. Chocley) (2d ed. 2005).

**B. Irreparable harm**

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547, 565 (1976). Harm is generally considered irreparable if it cannot be redressed adequately by monetary damages. Crowe, 90 N.J. at 133. Pecuniary damages may be inadequate because of the nature of the injury or of the right affected. Outdoor Sports Corp. v. A. F. of L. Local 23132, 6 N.J. 217, 229-30 (1951); Scherman v. Stern, 93 N.J. Eq. 626, 631 (E.& A. 1922). Severe inconvenience imposed by the judgment below may also satisfy this element. Crowe, 90 N.J. at 133.

**i. Irreparable harm to First Amendment rights of all movants.**

Opinion 39 is subject to the most exacting review as a prior restraint and violation of Super Lawyers' and the attorney petitioners' rights to free speech and a free press under the First Amendment to the United States Constitution and analogous provisions of the New Jersey Constitution. Opinion 39 provides that Super Lawyers cannot publish its editorial content or its advertisements consistent with the obligations of the attorneys

(including petitioners herein). Opinion 39 effectively forbids attorneys to place such advertisements. The attorneys are further forbidden to express their opinions as to other attorneys' abilities in the Super Lawyers survey.

For the reasons expressed in the Petition, these prohibitions severely infringe and restrain First Amendment rights. Such infringements constitute irreparable injury per se, as a matter of law. See Elrod, 427 U.S. at 373.

**ii. Irreparable Harm to Super Lawyers' Business.**

The damage to Super Lawyers' business is immediate and profound. Opinion 39 effectively puts Super Lawyers out of business in New Jersey.

Even if Super Lawyers were to ultimately prevail on the merits, its viability remains at stake in the interim. Attorneys are forbidden to cooperate with its survey or purchase its advertisements. (Pa3). Super Lawyers' production schedule and advertising cycle for the coming year have already been disrupted. (Pa279-80, 282-83). Advertisers are already withdrawing advertisements and canceling orders, and attorneys are removing the Super Lawyers designation from their websites and biographies. (Pa238, 246, 250, 254-55, 279-80). Super Lawyers' reputation as a reliable and ethically proper forum for attorney advertising has been and is being tarnished.

In a typical commercial dispute, discrete economic harms to a business might be compensable by money damages. Opinion 39, however, attacks the fundamental nature of Super Lawyers' operations and even the very name under which it does business. It is well settled that ongoing damage to business good will and loss of customers constitutes irreparable harm. Ferraiuolo v. Manno, 1 N.J. 105, 108 (1948) ("Acts destroying a complainant's business, custom, and profits do an irreparable injury") (quoting Vide Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 110 (E. & A. 1930)). Even if damages were theoretically an adequate remedy, movants anticipate that the Committee would take the position that it is immune from suit. See R. 1:19A-6.

**iii. Irreparable harm to the individual  
attorney movants.**

The individual attorney petitioners herein have used the Super Lawyers designation in describing their services to the public, have purchased advertising, and have participated in the Super Lawyers survey. (Pa234, 238, 246, 250, 254). Some have been forced to incur the inconvenience and expense of reversing these practices, to the extent that is even possible. (Pa238, 246, 250, 254-55). Their First Amendment rights have been subject to prior restraint and irreparably harmed by Opinion 39. Their reputations have been unfairly tarnished by the Committee's harsh condemnation.



More generally, the profession has been thrown into uncertainty by the promulgation of an Opinion which declares large numbers of them to be in potential ethical breach without having consulted them or heard their side of the story. The organized bar and the New Jersey Law Journal, for these reasons and others, have called for a stay of the effect of Opinion 39 pending this Court's review of it. (Pa181-82, 303).

Preservation of the status quo pending this Court's review is appropriate in light of the irreparable harm that is occurring and will inevitably continue to occur.

**C. Meritorious Issues And Likelihood Of Success**

Petitioners' compelling case on the merits easily satisfies the likelihood-of-success requirement. To conserve the resources of the Court, we do not separately discuss the legal merits here, but respectfully direct the Court to the accompanying Petition for Review.

**D. The Balance of Harms**

The balance of harms strongly favors the entry of a stay.

The harms to the named attorney petitioners and to Super Lawyers' business are related above. Advertisers have been lost and, by the terms of the Opinion, all advertisers will be lost in New Jersey. (Pa279-80). The business good will of Super Lawyers has begun already to evaporate and the hard-won integrity of the selection process will be undermined as lawyers

stop participating. (See Pa280-81). Super Lawyers will begin to fail to meet its contractual commitments. (Pa283-84). All of these harms loom in the coming weeks and months as balloting deadlines are missed and advertising cycles are unfulfilled while this matter is under consideration by the Court.

Any arguable harm from granting a stay is negligible and diffuse. If Opinion 39 is not valid, of course, there is no cognizable interest in its enforcement while this Court is considering a challenge. Even in the unlikely event that it were ultimately upheld in its entirety, the only "harm" in the interim would be a brief continuation of the status quo. Certainly no more harm will accrue while this Court has the matter sub judice than accrued during the fourteen months that the Committee had the attorney complaint under consideration.

This Court may also wish to consider the views of the organized bar, which represents a diverse constituency of attorneys. The Board of Trustees of the New Jersey State Bar Association, while not taking an organizational position as to the validity of Opinion 39, requested that the Committee stay the effect of the opinion. (Pa181-82). The State Bar's letter request cited the economic impact upon lawyers who had purchased advertisements, as well as their uncertainty as to compliance with this unprecedented ruling. (Pa181-82). Super Lawyers

joined in that request (Pa183-84); the Committee summarily rejected it. (Pa185; see n.2, supra).

The New Jersey Law Journal -- itself a critic of Super Lawyers -- recently published an editorial highly critical of Opinion 39. (Pa303). In particular, the Law Journal faulted the Committee's issuance of "sweeping pronouncements" without public comment or Court approval, and its failure even to address First Amendment concerns. Id. The editorial found it unfortunate that Opinion 39 "labeled many attorneys *per se* unethical" and left firms uncertain as to how they should proceed. Id. "Opinion 39 presents enough concerns that the Supreme Court should act promptly to clear the air. In the meantime, Opinion 39 should be stayed." Id.

The Committee's unprecedented and sweeping opinion was rendered without outside comment; without fact finding; without hearing from those most affected; without oversight from this Court; and apparently without consideration of the serious First Amendment and other legal issues at stake. The movants have shown irreparable harm, a great likelihood of success on the merits, and a balance of harms in their favor. The effect and enforcement of Opinion 39 should be stayed pending this Court's consideration of the Petition for Review.

**II. IN ADDITION, THIS COURT SHOULD GRANT EXPEDITED  
CONSIDERATION AND RESOLUTION OF THIS MATTER**

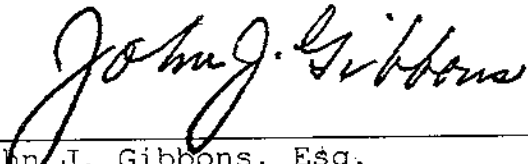
Even if a stay is granted, the movants will continue to suffer harm. An ethical violation still retains its in terrorem effect for so long as the status of Opinion 39 remains unsettled. Any attorney who wishes to participate in the Super Lawyers process is placed in the position of handicapping this Court's likely disposition of the case, at his or her ethical and commercial peril. That situation is intolerable and should not continue for any longer than necessary. For this reason, and for the reasons expressed in favor of a stay, the movants respectfully request that the Court set an accelerated schedule for briefing and disposition.

CONCLUSION

For the reasons set forth above, Petitioners and the Proposed Intervenor, Key Professional Media, Inc., respectfully request that the enforcement and effect of Opinion 39 be stayed pendente lite; that the Court's Order specifically to permit Super Lawyers' balloting process (now scheduled to begin on August 17, 2006) and production schedule to go forward and suspend the prohibition on attorneys' participation; and that this Court set an accelerated schedule for briefing and disposition of this matter.


GIBBONS, DEL DEO, DOLAN, GRIFFINGER &  
VECCHIONE, P.C.

By:

  
\_\_\_\_\_  
John J. Gibbons, Esq.  
Kevin McNulty, Esq.  
E. Evans Wohlforth, Jr., Esq.

STRYKER, TAMS & DILL, LLP

By:

  
\_\_\_\_\_  
Bennett J. Wasserman, Esq.  
Martin G. Gilbert, Esq.  
Howard Matalon, Esq.

Attorneys for Petitioners and  
[proposed] Intervenor-Petitioner

Dated: August 14, 2006