



Program Title \_\_\_\_\_  
 Date Presented \_\_\_\_\_ Inn Year \_\_\_\_\_  
 Presenting Inn \_\_\_\_\_ Inn Number \_\_\_\_\_  
 Inn City \_\_\_\_\_ Inn State \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Phone \_\_\_\_\_  
 E-mail Address \_\_\_\_\_

Please consider this program for the Program Awards: Yes No This program is being submitted for Achieving Excellence: Yes No  
 (Submit within 60 days of presentation.)

### Program Summary:

Be concise and detailed in summarizing the content, structure, and legal focus of your program. Please attach additional sheets if necessary.

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### Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office. **Please check all that apply and include a copy of any of the existing materials with your program submission:**

Script	Articles	Citations of Law	Legal Documents	Fact Pattern	List of Questions	Handouts
PowerPoint Presentation	CD	DVD	Other Media (Please specify) _____			

### Specific Information Regarding the Program:

Number of participants required for the program \_\_\_\_\_ Has this program been approved for CLE? Yes No  
 Which state's CLE? \_\_\_\_\_ How many hours? \_\_\_\_\_ Pending Approved

### Recommended Physical Setup and Special Equipment:

i.e., DVD and TV, black board with chalk, easel for diagrams, etc.

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### Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on Inn members' response regarding the demonstration.

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## Program Submission Form

### Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

### Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each item took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

**Program Awards:** *Please complete this section **only** if the program is being submitted for consideration in the Program Awards.*

**Describe how your program fits the Program Awards Criteria:**

**Relevance:** How did the program promote or incorporate elements of our mission? *(To Foster Excellence in Professionalism, Ethics, Civility, and Legal Skills)*

\_\_\_\_\_

**Entertaining:** How was the program captivating or fun? \_\_\_\_\_

\_\_\_\_\_

**Creative and Innovative:** How did the program present legal issues in a unique way? \_\_\_\_\_

\_\_\_\_\_

**Educational:** How was the program interesting and challenging to all members? \_\_\_\_\_

\_\_\_\_\_

**Easily Replicated:** Can the program be replicated easily by another Inn?      Yes      No      This program is:      Original      Replicated

### Questions:

Please contact program library staff at (703) 684-3590 or by e-mail at [programlibrary@innsofcourt.org](mailto:programlibrary@innsofcourt.org).

**Please include ALL program materials. The committee will not evaluate incomplete program submissions.**

## **Program Summary Continued:**

Unlike many provisions of the disciplinary rules, which rely on the court or an opposing lawyer for their invocation, the duty of candor depends on self-regulation. American civil justice is so designed that established rules of law will be applied and enforced to insure that justice be rightly done.

After each poll question, each table is encouraged to discuss the correct answer and send in one unified vote. All votes will be represented on the presentation. Thereafter, a discussion of the correct answer will ensue.

To Thine Own Self Be (Ethically) True



**PRESENTATION BY JUDGE HONEYWELL'S PUPILLAGE GROUP**

*Hon. Charlene Honeywell*

*Mark Buell*

*Laura Howard*

*Jaime Austrich*

*Beth Coleman*

*Christine Marlewski*

*Victoria Oguntoye*

*Adam Labonte*

*Lauren Stricker*

## **INSTRUCTIONS**

1. The following questions are poll questions for each table to discuss and come up with a unified answer.
2. Each table should designate one person to answer the question on behalf of the table.
3. That person should text the corresponding code that appears in red next to the answer chosen by the group to (650) 600-9016 to record the vote for that table.
4. The poll should update each group's vote anonymously.
5. Only one vote per table.
6. Please think carefully before sending in your vote, any subsequent votes from the same phone number will not be recognized.

Thank you and enjoy the presentation.

**QUESTIONS**

1. Opposing counsel asks for consent to a reasonable extension of time to file an amended pleading. Who makes the decision?
  - A. You (the lawyer)? (**107589**)
  - B. Your client? (**107590**)
  - C. Your Magic "8" ball? (**107591**)
2. Consider the situation of trial counsel representing an individual defendant. At the end of plaintiff's case, plaintiff's counsel tells the court that he is about to rest his case, but needs a specific witness to authenticate one final document. He says that the witness is in town, can certainly be produced the next day, but is not yet under plaintiff's subpoena and cannot be located at the moment. Plaintiff's counsel requests the court to recess early and resume the next day.

While this exchange is taking place, defense counsel and the defendant know that the very same witness is in the corridor outside the courtroom in response to defendant's subpoena. The defendant whispers to her counsel not to disclose the whereabouts of the witness. If the court denies the request for the recess, defendant will be entitled to a directed verdict.

What should defense counsel do?

- A. Follow the client's direction (**107581**)
- B. Ignore the client's direction and inform the court that the witness is in the hall (**107582**)
- C. Wait to see how that court rules on the recess request and then decide (**107583**)
- D. Have the client go into the hallway and tell the witness to leave (**107584**)

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3. You are a labor law attorney who filed suit against the Plaintiff's former employer for violating the Fair Labor Standards Act. It is critical to the Plaintiff's case that she was an employee rather than an independent contractor. The Plaintiff's deposition testimony and other discovery evidence does not support the "employee" argument under the relevant legal standard. The Defendant moves for summary judgment. What should you do?
  - A. Defend the MSJ by filing a contradictory affidavit that "clarifies" Plaintiff's testimony (**105355**)
  - B. Advise the client to voluntarily dismiss her complaint (**105354**)
  - C. Attempt to settle the case (**105353**)
  - D. Fire the client for her poor performance in deposition (**107560**)
4. As defense counsel you have moved to dismiss the Plaintiff's case on various grounds, including federal preemption. Hours before the hearing on your motion, new counsel for the Plaintiff files an amended complaint. At the motion to dismiss hearing, various concerns are raised about the manner in which the amended pleading was filed. You also assert that the court has the discretion to refuse the late-filed amendment despite the Rules' language permitting one amendment before a responsive pleading is filed. After the trial court rejects the amended pleading and dismisses the original complaint with prejudice, the Plaintiff appeals. What should you do?
  - A. Hire appellate counsel (**105356**)
  - B. You won; of course you zealously defend the appeal! (**105357**)
  - C. Concede error if you arguably misled the court on the facts or law (**105358**)
  - D. Attempt to settle the case (**107561**)
5. You represent plaintiffs in a malpractice action against their former attorney in a wrongful death action. In the underlying case, the parties settled. Plaintiffs hired you because their previous counsel refused an

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earlier settlement offer which was larger than the amount plaintiffs ultimately received.

In addition to the malpractice action, you move on behalf of plaintiffs, pursuant to Fed. R. Civ. P. 60, to reopen the original action. Your request to reopen the case is based on fraud and newly discovered evidence thirteen months later.

Rule 60 provides six reasons for seeking relief from judgment. The grounds you are raising, fraud and newly discovered evidence, must be made within one year of the order from which relief is sought. The rule's catchall provision, "any other reason that justifies relief," does not have such a limitation. Eleventh Circuit case law states that relief that is otherwise time-barred cannot be sought through the catchall provision

How do you address the Eleventh Circuit case law?

- A. Cite to it and attempt to distinguish your case (**105664**)
- B. Cite to out-of-circuit case law that supports your use of the catchall provision (**105665**)
- C. Don't file the motion (**105666**)
- D. Cite only to the rule provisions; do not cite any case law regarding the time limitations (**105667**)

How should you address the releases signed by Plaintiffs in the motion?

- A. Discuss them in the motion and explain why they should be set aside (**105668**)
- B. Since settlements were reached, it is probably apparent to the court that releases were signed so you don't need to mention them (**105669**)
- C. It is unnecessary to mention them because Defendant can raise the issue in its response if it thinks the releases are applicable (**105670**)
- D. What releases? (**108338**)



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6. You are a partner in a law firm and have been hired to represent Mr. Burns in a personal bankruptcy action. You recently learned that you have an aggressive form of cancer and will be out for treatment. You have delegated a matter to an associate to handle and have told the associate and your staff that you will be available via phone on an emergency basis. Because of the shocking nature of the news, you do not have time to inform your client of the situation. While you are out, your associate files the petition for relief and other papers, but when Mr. Burns discovers you are not available to be his attorney, he requests a refund of his retainer and that your firm not continue with his representation. The associate refuses the request of Mr. Burns. What is the ethical violation in this scenario?
- A. Failure to inform her client of the situation (**107592**)
  - B. Delegate her case to her associate (**107593**)
  - C. Making herself available on an emergency basis (**107594**)
  - D. All of the above (**107595**)
  - E. A & C, but not B (**107596**)
7. You are a third year associate at a large firm. You are working with a partner on a large class action matter. You have a team meeting and you are discussing a large-scale ongoing discovery project. A team of 5 attorneys will be working around-the-clock on the project and you are assigned to draft a Motion to Compel. You spend 12 hours on the Motion to Compel, but notice the next month that the bill shows 156 hours billed for the Motion to Compel. You approach the partner and ask about the time. He tells you "this client expects that, and that caliber of motion definitely should have taken 2 days. Next time, be sure to bill for what the motion is worth. And, this client pays the bills in full and won't look, anyway." What should the associate do?
- A. Take the matter to the firm's Ethics committee (**105654**)
  - B. Bill accurately for your time (**105655**)
  - C. Value bill as requested by your partner (**105656**)

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- D. Report the matter to the Bar (**105657**)
  - E. Quit (**105658**)
8. Would the associate be held liable for an ethical violation if he or she chose to value bill in this situation?
- A. Yes (**107597**)
  - B. No (**107598**)
9. When a young attorney, Davis, started work as a managing associate for a transactional firm, he was in for an unpleasant surprise. He discovered that the firm was inflating government recording fees on settlement statements for HUD-1 real estate transactions. When he asked his boss, his boss told him the practice was legal and ethical. Is the young attorney responsible for any ethical violations?
- A. Davis is not responsible because he brought the matter to the attention of his boss, a senior attorney (**107562**)
  - B. Davis should review the ethics rules to determine if the firm is acting ethically and if not report the incident to the Bar (**107563**)
  - C. Davis is required to review the transactions he supervised for accuracy and if the wrong fee was charged he has an obligation to tell clients that their bills were inflated (**107564**)
  - D. B & C (**107565**)
10. An attorney represents Clara in a dissolution of marriage proceeding. Clara was very involved in the case and expressed to her attorney how the marital assets should be distributed. Clara and her husband negotiated a satisfactory settlement agreement with a division of marital assets. However, before the settlement was complete, Clara began exhibiting signs of mental illness. Clara's attorney suggested that she seek professional help. However, Clara took this as evidence that the lawyer was possibly involved in a plot against her and refused to see a psychiatrist. The attorney does not believe that she could allow Clara to sign the settlement

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agreement or divulge Clara's mental status to a third party. What should the Lawyer do?

- A. Allow Clara to sign the Settlement Agreement, because Clara will probably not do any better at trial (**107570**)
- B. Conduct an examination of Clara to determine whether Clara understands the provisions in the Settlement Agreement (**107571**)
- C. Seek the appointment of a Guardian for Clara (**107572**)
- D. Withdraw (**107573**)

# Professionalism Expectations

*“Professionalism is the pursuit and practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, commitment, and civility.”*

- The Florida Bar Standing Committee on Professionalism

## **Preamble:**

As The Florida Bar grows, it becomes more important to articulate the bar’s professionalism expectations and for Florida lawyers to demonstrate these expectations in practice. The guidance provided in these Professionalism Expectations originates both from (1) the ethical duties established by the Florida Supreme Court in the Rules Regulating The Florida Bar and (2) the long-standing customs of fair, civil, and honorable legal practice in Florida. Where a Professionalism Expectation is coextensive with a lawyer’s ethical duty, the expectation is stated as an imperative, cast in the terms of “must” or “must not.” Where a Professionalism Expectation is drawn from a professional custom that is not directly provided for in the Rules Regulating The Florida Bar, the expectation is stated as a recommendation of correct action, cast in terms of “should” or “should not.” To The Florida Bar, lawyer professionalism is:

1. embracing a commitment to serve others;
2. dedicating to properly using knowledge and skills to promote a fair and just result;
3. endeavoring to enhance knowledge, skills, and competence;
4. ensuring that concern for a client’s desired result does not subvert the lawyer’s fairness, honesty, civility, respect, and courtesy during interactions with fellow professionals, clients, opponents, public officials, members of the judiciary, or the public;
5. contributing skill, knowledge, and influence to further the profession's commitment to service and the public good, including efforts to provide all persons, regardless of their means or popularity of their causes, with access to the law and the judicial system;
6. enhancing the legal system’s reputation by educating the public about the profession’s capabilities and limits, specifically about what the legal system can achieve and the appropriate methods of obtaining those results; and
7. accepting responsibility for one's own professional conduct and the conduct of others in the profession, including encouraging other lawyers to meet these civility and Professionalism Expectations and fostering peer regulation to ensure that each lawyer is competent and public-spirited.

To reinforce and communicate its expectations of lawyer professionalism among our members, The Florida Bar adopts the following Professionalism Expectations:

## **1. Commitment to Equal Justice Under the Law and to the Public Good**

A license to practice law is a privilege that gives the lawyer a special position of trust, power, and influence in our society. This privilege requires a lawyer to use that position to promote the public good and to foster the reputation of the legal profession while protecting our system of equal justice under the law.

## **Expectations:**

- 1.1 A lawyer should avoid the appearance of impropriety.
- 1.2 A lawyer should counsel and encourage other lawyers to abide by these Professionalism Expectations.
- 1.3 A lawyer should promote the public’s understanding of the lawyer’s role in the legal profession and protect public confidence in a just and fair legal system founded on the rule of law.
- 1.4 A lawyer should not enter into a lawyer-client relationship when the lawyer cannot provide competent and diligent service to the client throughout the course of the representation.

1.5 A lawyer must not seek clients through the use of misleading or manipulative oral and written representations or advertisements. (*See* R. Regulating Fla. Bar 4-7.13 and 4-7.14). Contingency fee arrangements must be in writing and follow R. Regulating Fla. Bar 4-1.5(f).

1.6 When employed by a new client, a lawyer should discuss fee and cost arrangements at the outset of the representation and promptly confirm those arrangements in writing.

1.7 A lawyer must place a client's best interest ahead of the lawyer's or another party's interests. (*See* R. Regulating Fla. Bar 4-1.7(a)(2)).

1.8 A lawyer must maintain and preserve the confidence and private information of clients. (*See* R. Regulating Fla. Bar 4-1.6).

1.9 In any representation where the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat-sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular, frequent interim basis, and avoid charging unnecessary expenses to the client.

1.10 When a fee dispute arises that cannot be amicably resolved, a lawyer should endeavor to utilize an alternative dispute resolution mechanism such as fee arbitration.

1.11 A lawyer must routinely keep clients informed and attempt to resolve client concerns. (*See* R. Regulating Fla. Bar 4-1.4 ). In the case of irreconcilable disagreements with a client, the lawyer must provide diligent representation until the lawyer-client relationship is formally dissolved in compliance with the law and the client's best interests. (*See* R. Regulating Fla. Bar 4-1.16).

1.12 A lawyer must devote professional time and resources and use civic influence to ensure equal access to our system of justice. (*See* R. Regulating Fla. Bar 4-6.1).

1.13 A lawyer must avoid discriminatory conduct prejudicial to the administration of justice in connection with the practice of law. (*See* R. Regulating Fla. Bar 4-8.4(d)).

## **2. Honest and Effective Communication**

A lawyer's word is his or her bond. Effective communication requires lawyers to be honest, diligent, civil, and respectful in their interactions with others.

### **Expectations:**

2.1 A lawyer should inform every client what the lawyer expects from the client and what the client can expect from the lawyer during the term of the legal representation.

2.2 Candor and civility must be used in all oral and written communications. (*See* R. Regulating Fla. Bar 4-8.4(c)).

2.3 A lawyer must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties or the court. (*See* R. Regulating Fla. Bar 4-8.4(d)).

2.4 A lawyer must timely serve all pleadings to prevent prejudice or delay to the opposing party. (*See* R. Regulating Fla. Bar 4-3.2).

2.5 A lawyer's communications in connection with the practice of law, including communications on social media, must not disparage another's character or competence or be used to inappropriately influence or contact others. (*See* R. Regulating Fla. Bar 4-8.4(d)).

2.6 A lawyer should use formal letters or e-mails for legal correspondence and should not use text messages to correspond with a client or opposing counsel unless mutually agreed.

2.7 In drafting a proposed letter of intent, the memorialization of an oral agreement, or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

2.8 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

2.9 A lawyer should not withhold information from a client to serve the lawyer's own interest or convenience.

2.10 A lawyer must not knowingly misstate, misrepresent, or distort any fact or legal authority to the court or to opposing counsel and must not mislead by inaction or silence. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (*See* R. Regulating Fla. Bar 4-3.3 and 4-8.4).

2.11 A lawyer must not inappropriately communicate with a party represented by a lawyer (*See* R. Regulating Fla. Bar 4-4.2), including not responding “reply all” to e-mails.

2.12 A lawyer should diligently prepare legal forms and documents to avoid future harm or litigation for the client while ensuring compliance with the requirements of the law.

2.13 Social media must not be used to disparage opposing parties, lawyers, judges, and members of the public. (*See* R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

2.14 Social media should not be used to avoid the ethical rules regulating lawyer advertising.

2.15 Social media must not be used to inappropriately contact judges, mediators, jurors, witnesses, or represented parties. (*See* R. Regulating Fla. Bar 4-3.5 and 4-4.2).

2.16 Social media must not be used for the purpose of influencing adjudicative proceedings. (*See* R. Regulating Fla. Bar 4-3.6).

2.17 A lawyer must ensure that the use of electronic devices does not impair the attorney-client privilege or confidentiality. (*See* R. Regulating Fla. Bar 4-1.6).

2.18 A lawyer must diligently respond to calls, correspondences, complaints, and investigations by The Florida Bar. (*See* R. Regulating Fla. Bar 4-8.4(g)).

### **3. Adherence to a Fundamental Sense of Honor, Integrity, and Fair Play**

Courtesy, cooperation, integrity, fair play, and abiding by a sense of honor are paramount for preserving the integrity of the profession and to ensuring fair, efficient, and effective administration of justice for the public.

#### **Expectations:**

3.1 A lawyer must not engage in dilatory or delay tactics. (*See* R. Regulating Fla. Bar 4-3.2).

3.2 A lawyer should not make scheduling decisions that limit opposing counsel's opportunity to prepare or respond.

3.3 A lawyer should not unreasonably oppose an adversary's motion.

3.4 A lawyer must not permit non-lawyer personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters. (*See* R. Regulating Fla. Bar 4-3.5(b) and 4-8.4(a)).

3.5 A lawyer must avoid substantive *ex parte* communications in a pending case with a presiding judge. The lawyer must notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling or clerical matters. (*See* R. Regulating Fla. Bar 4-3.5).

3.6 When submitting a written communication to a court or other tribunal, a lawyer should provide opposing counsel with a copy of the document contemporaneously or sufficiently in advance of any related hearing.

3.7 A lawyer must promptly prepare a proposed order, ensure that the order fairly and adequately represents the court's ruling before submitting the order to the court, and advise the court whether opposing counsel has approved the order. (*See* R. Regulating Fla. Bar 4-3.4(c)).

3.8 A lawyer should only schedule depositions to ascertain relevant facts and not to generate income or harass deponents or opposing counsel.

3.9 A lawyer must not ask a deponent irrelevant personal questions or questions designed to embarrass a deponent. (*See* R. Regulating Fla. Bar 4-4.4(a)).

3.10 A lawyer should not make improper objections in depositions.

3.11 A lawyer must not prevent a deponent from answering questions unless a legal privilege applies. (*See* R. Regulating Fla. Bar 4-3.4(c)).

- 3.12 When scheduling depositions, hearings, and other court proceedings, a lawyer should request an amount of time that permits all parties in the case the opportunity to be fully and fairly heard on the matter.
- 3.13 A lawyer should immediately provide a scheduling notice for a hearing, deposition, or trial to all opposing parties.
- 3.14 A lawyer should notify opposing parties and subpoenaed witnesses of a cancelled or rescheduled hearing, deposition, or trial.
- 3.15 During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify witnesses likely to be called to testify.
- 3.16 During pre-trial disclosure, a lawyer should make a reasonable good-faith effort to identify exhibits to be proffered into evidence.
- 3.17 A lawyer should not mark on or alter exhibits, charts, graphs, or diagrams without opposing counsel's permission or leave of court.
- 3.18 A lawyer must not threaten opposing parties with sanctions, disciplinary complaints, criminal charges, or additional litigation to gain a tactical advantage. (*See* R. Regulating Fla. Bar 4-3.4(g) and (h)).

#### **4. Fair and Efficient Administration of Justice**

The just, speedy, and inexpensive determination of every controversy is necessary to preserve our system of justice.

##### **Expectations:**

- 4.1 A lawyer should be familiar with the court's administrative orders, local rules, and each judge's published standing orders, practices, and procedures.
- 4.2 A lawyer should endeavor to achieve the client's lawful objectives as economically and expeditiously as possible.
- 4.3 A lawyer should counsel the client concerning the benefits of mediation, arbitration, and other alternative methods of resolving disputes.
- 4.4 A lawyer should counsel the client to consider settlement in good faith.
- 4.5 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.
- 4.6 A lawyer must not invoke a rule for the purpose of creating undue delay, or propose frivolous oral or written arguments which do not have an adequate basis in the law nor fact. (*See* R. Regulating Fla. Bar 4-3.1).
- 4.7 A lawyer must not use discovery to harass or improperly burden an adversary or cause the adversary to incur unnecessary expense. (*See* R. Regulating Fla. Bar 4-4.4).
- 4.8 A lawyer should frame reasonable discovery requests tailored to the matter at hand.
- 4.9 A lawyer should assure that responses to proper discovery requests are timely, complete, and consistent with the obvious intent of the request. A lawyer should not avoid disclosure unless a legal privilege prevents disclosure.
- 4.10 A lawyer should not respond to discovery requests in a disorganized, unintelligible, or inappropriate manner, in an attempt to conceal evidence.
- 4.11 A lawyer should stipulate to all facts and principles of law that are not in dispute and should promptly respond to requests for stipulations of fact or law.
- 4.12 After consulting with the client, a lawyer should voluntarily withdraw claims and defenses that are without merit, superfluous, or cumulative.
- 4.13 A lawyer should be fully prepared when appearing in court or at hearings.
- 4.14 A lawyer should not use *voir dire* to extract promises from or to suggest desired verdicts to jurors.
- 4.15 A lawyer should abstain from all acts, comments, and attitudes calculated to curry favor with jurors.
- 4.16 A lawyer should not express bias or personal opinion concerning any matter at issue in opening statements and in arguments to the jury.

4.17 A lawyer should not make offers or requests for a stipulation in front of the jury.

4.18 A lawyer should not use the post-hearing submission of proposed orders as an opportunity to argue or reargue a matter's merits.

4.19 A lawyer must not request rescheduling, cancellations, extensions, and postponements without legitimate reasons or solely for the purpose of delay or obtaining unfair advantage. (*See* R. Regulating Fla. Bar 4-4.4).

4.20 A lawyer must not criticize or denigrate opposing parties, witnesses, or the court to clients, media, or members of the public. (*See* R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

## **5. Decorum and Courtesy**

When lawyers display reverence for the law, the judicial system, and the legal profession by acting with respect, decorum, and courtesy, they earn the trust of the public and help to preserve faith in the operation of a fair judicial system.

### **Expectations:**

5.1 A lawyer should abstain from rude, disruptive, and disrespectful behavior. The lawyer should encourage clients and support personnel to do the same.

5.2 A lawyer should be civil and courteous in all situations, both professional and personal, and avoid conduct that is degrading to the legal profession. (*See* R. Regulating Fla. Bar 3-4.3).

5.3 A lawyer must always behave in a courteous and formal manner in hearings, depositions, and trials and should refrain from seeking special consideration from a judge or juror.

5.4 A lawyer should refer to all parties, witnesses, and other counsel by their last names during legal proceedings.

5.5 A lawyer should request permission from the court before approaching the bench or submitting any document.

5.6 A lawyer should state only the legal grounds for an objection unless the court requests further argument or elaboration.

5.7 A lawyer should inform clients and witnesses that approving and disapproving gestures, facial expressions, or audible comments are absolutely prohibited in legal proceedings.

5.8 A lawyer should abstain from conduct that diverts the fact-finder's attention from the relevant facts or causes a fact-finder to make a legally impermissible decision.

5.9 A lawyer should address objections, requests, and observations to the judge.

5.10 A lawyer should attempt to resolve disagreements before requesting a court hearing or filing a motion to compel or for sanctions.

## **6. Respect for the Time and Commitments of Others**

Respecting the time and commitments of others is essential to the efficient and fair resolution of legal matters.

### **Expectations:**

6.1 A lawyer should not impose arbitrary or unreasonable deadlines on others.

6.2 A lawyer should schedule a deposition during a time period sufficient to allow all parties to examine the deponent.

6.3 Unless circumstances compel more expedited scheduling, a lawyer should provide litigants, witnesses, and other affected persons with ample advance notice of hearings, depositions, meetings, and other proceedings, and whenever practical, schedule these events at times convenient for all interested persons.

6.4 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair, and prompt adjudication.

6.5 A lawyer should promptly agree to a proposed time for a hearing, deposition, meeting or other proceeding or make his or her own counter proposal of time.

6.6 A lawyer should promptly call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal.



6.7 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings, and other proceedings.

6.8 A lawyer should promptly notify the court or tribunal when a scheduled court appearance becomes unnecessary.

6.9 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences, and other proceedings.

6.10 A lawyer must respond promptly to inquiries and communications from clients and others. (*See* R. Regulating Fla. Bar 4-1.4.)

## **7. Independence of Judgment**

An enduring value of a lawyer's service is grounded in the lawyer's willingness to exercise independent judgment in practice and while giving the client advice and counsel.

### **Expectations:**

7.1 A lawyer should exercise independent judgment and should not be governed by the client's ulterior motives, ill will, or deceit.

7.2 A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved.

7.3 In advising a client, a lawyer should not understate or overstate achievable results or otherwise create unrealistic expectations.

7.4 A lawyer should not permit a client's ill will toward an adversary, witness, or tribunal to become that of the lawyer.

7.5 A lawyer must counsel a client against using tactics designed: (a) to hinder or improperly delay a legal process; or (b) to embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other person and should withdraw from representation if the client insists on such tactics. (*See* R. Regulating Fla. Bar 4-1.16, 4-3.2, and 4-4.4).

7.6 In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable and customary under the circumstances.

### **History**

The Florida Bar Commission on Lawyer Professionalism promulgated a set of Standards of Professionalism submitted to the Board of Governors in May of 1989. The Board appointed a Special Committee who revised the Standards and amended the title to the "Ideals and Goals of Professionalism." These aspirational guidelines were adopted by the Board of Governors of The Florida Bar on May 16, 1990.

The Florida Supreme Court has added the civility provision in the Oath of Admission to The Florida Bar adopted on September 10, 2011, and implemented SC13-688: Code for Resolving Professionalism Complaints adopted on June 6, 2013.

As a result of this change and a perceived decline in the lack of professionalism in the practice of law, in May 2014, The Florida Bar Standing Committee on Professionalism was requested by Bar leadership to review and develop uniform professionalism guidelines including electronic communications for statewide distribution. The Professionalism Expectations resulted from pairing existing professionalism guides with new technological concepts and this document was approved by the Standing Committee on Professionalism on October 16, 2014, and The Florida Bar Board of Governors on January 30, 2015.

To Thine Own Self Be (Ethically) True



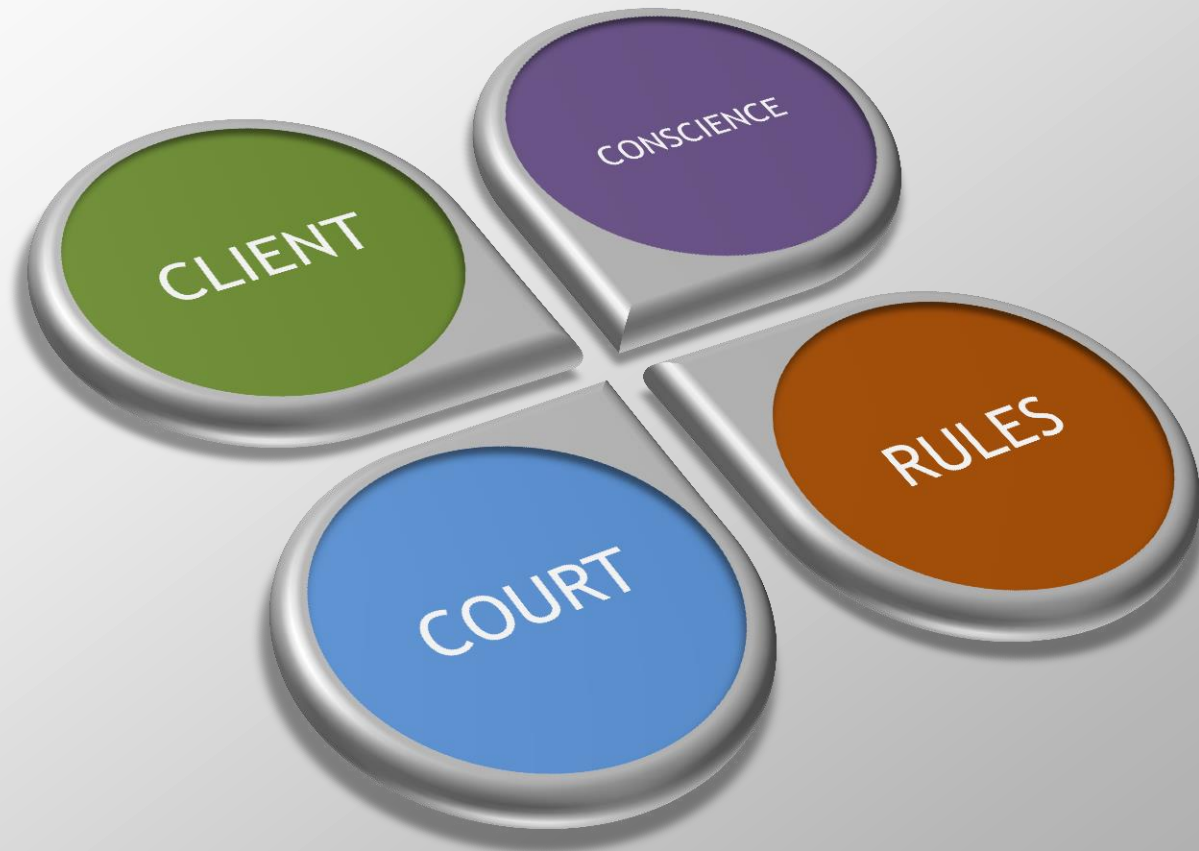
# Instructions

1. The following questions are poll questions for each table to discuss and come up with a unified answer.
2. Each table should designate one person to answer the question on behalf of the table.
3. That person should text the corresponding code that appears in red next to the answer chosen by the group to **(650) 600-9016** to record the vote for that table.
4. The poll should update each group's vote anonymously.
5. Only one vote per table.
6. Please think carefully before sending in your vote, any subsequent votes from the same phone number will not be recognized.

Thank you and enjoy the presentation.



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**QUESTION**

# Question

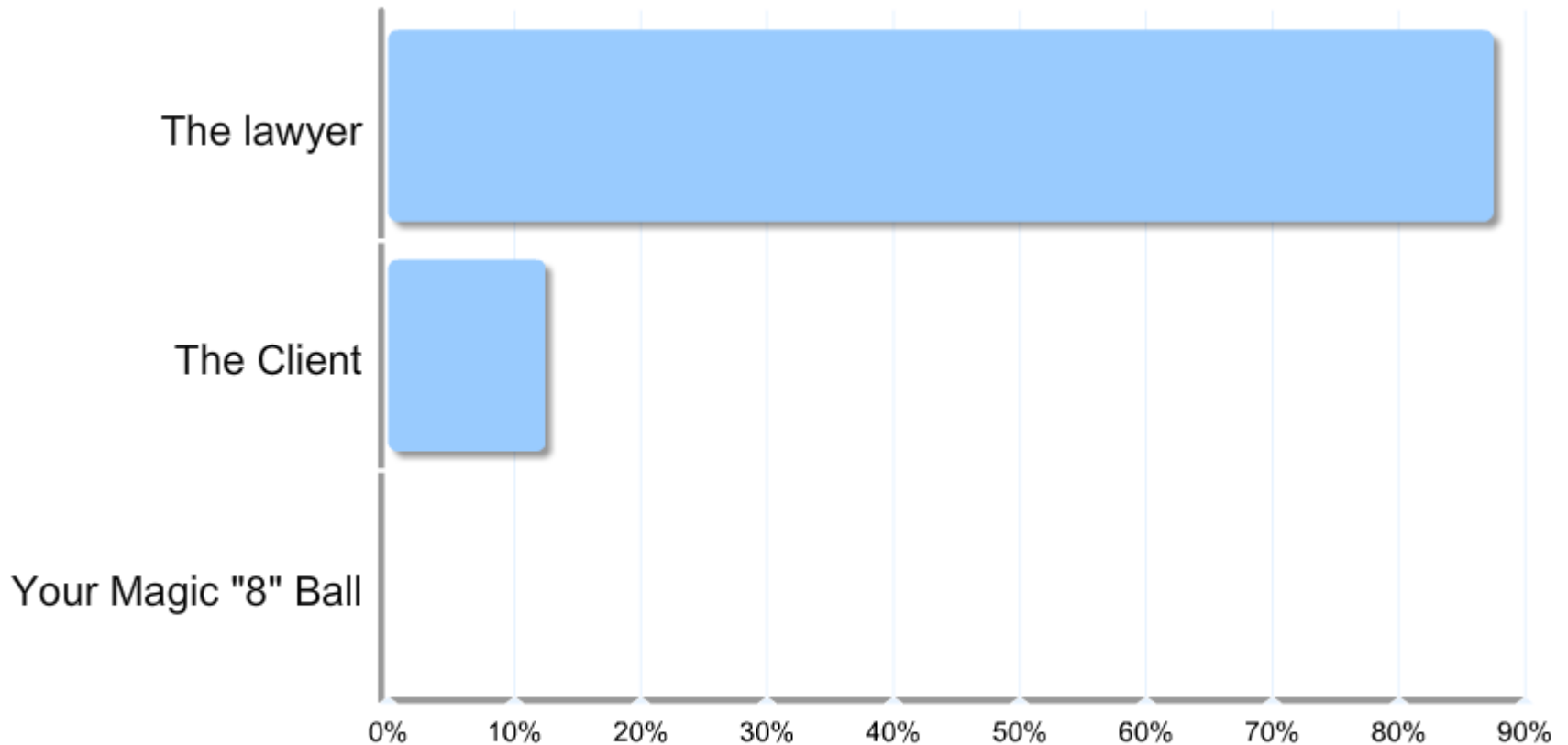
Opposing counsel asks for consent to a reasonable extension of time to file an amended pleading. Who makes the decision?

- A. You (the lawyer) (**107589**)
- B. Your client (**107590**)
- C. Your Magic “8” Ball (**107591**)

*SMS your Vote to (650) 600-9016  
(One Vote Per Table)*



# Who makes the decision?



# ANSWER AND ANALYSIS

# Answer and Analysis

- **A. The Lawyer.**
- Restatement § 23. Authority Reserved to a Lawyer
- Thirteenth Judicial Circuit's Standards of Professional Courtesy
- Rule 4-1.2. Objectives and Scope of Representation
- Article: *In lawyer-client relationship, who makes the decisions?*
- Excerpt of Materials: § I. Certain decisions are the defendant's and certain decisions are defense counsel's, *Fundamental Ethical Considerations in Federal Criminal Defense* (2012).

# Who makes the decision?

## Extension of time

### **Restatement (Third) of the Law Governing Lawyers**

#### **§ 23 Authority Reserved to a Lawyer**

As between client and lawyer, a lawyer retains authority that may not be overridden by a contract with or an instruction from the client:

- (1) to refuse to perform, counsel, or assist future or ongoing acts in the representation that the lawyer reasonably believes to be unlawful;
- (2) to make decisions or take actions in the representation that the lawyer reasonably believes to be required by law or an order of a tribunal.

# Who makes the decision?

## Extension of time

### Standards of Professional Courtesy

#### Extensions

8. A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair and prompt consideration and adjudication of the client's claim or defense.
9. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted between counsels as a matter of courtesy unless time is of the essence.
10. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.
11. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough."
12. A lawyer should not seek extensions or continuances or refuse to grant them for the purpose of harassment or prolonging litigation.
13. A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.
14. A lawyer should not request rescheduling, cancellations, extensions, or postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

# Who makes the decision?

## Extension of time

### **Rule 4-1.2. Objectives and Scope of Representation**

**(a) Lawyer to Abide by Client's Decisions.** Subject to subdivisions (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued.

A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

# Who makes the decision?

## Extension of time

### **Rule 4-1.2. Objectives and Scope of Representation**

#### **Allocation of authority between client and lawyer**

Subdivision (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

**QUESTION**





# Question

Consider the situation of trial counsel representing an individual defendant. At the end of plaintiff's case, plaintiff's counsel tells the court that he is about to rest his case, but needs a specific witness to authenticate one final document. He says that the witness is in town, can certainly be produced the next day, but is not yet under plaintiff's subpoena and cannot be located at the moment. Plaintiff's counsel requests the court to recess early and resume the next day.

While this exchange is taking place, defense counsel and the defendant know that the very same witness is in the corridor outside the courtroom in response to defendant's subpoena. The defendant whispers to her counsel not to disclose the whereabouts of the witness. If the court denies the request for the recess, defendant will be entitled to a directed verdict.

# Question

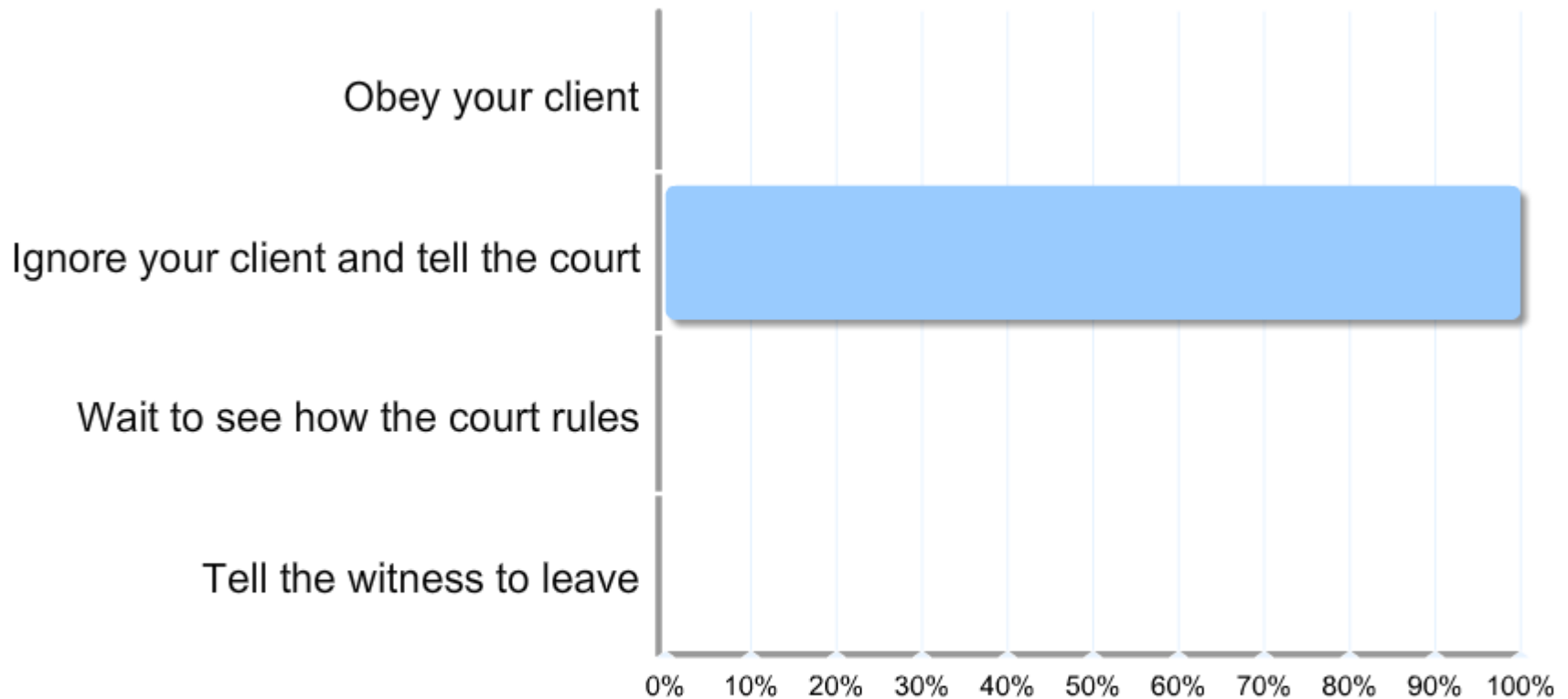
## Witness in the Hallway...

What should defense counsel do?

- A. Follow the client's direction (**107581**)
- B. Ignore the client's direction and inform the court that the witness is in the hall (**107582**)
- C. Wait to see how that court rules on the recess request and then decide (**107583**)
- D. Tell the witness to leave (**107584**)

*SMS your Vote to (650) 600-9016  
(One Vote Per Table)*

## Witness in the Hallway Fact Pattern: What should defense counsel do?



# ANSWER AND ANALYSIS

# Answer and Analysis

- **Answer is B – Ignore the client and tell the court.**
- Edward M. Waller, Jr., *Professionalism: The Client May Come Second*, 27 Stetson L. Rev. 279 (Issue 2) (1997)
- Professionalism Expectations 2.10:
  - A lawyer must not knowingly misstate, misrepresent, or distort any fact or legal authority to the court or to opposing counsel and ***must not mislead by inaction or silence***. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (See R. Regulating Fla. Bar 4-3.3 and 4-8.4).
- Rule 4-3.3. Candor Towards Tribunal.
- Rule 4-3.4. Fairness to Opposing Counsel
- The Fla. Bar Ethics Dept., Candor Toward the Tribunal Informational Packet, available at [www.floridabar.org/TFB/TFBResources.nsf/Attachments/0F161F3B5030FE0485256B29004BEEDD/\\$FILE/candor%20packet.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/0F161F3B5030FE0485256B29004BEEDD/$FILE/candor%20packet.pdf?OpenElement)

**QUESTION**





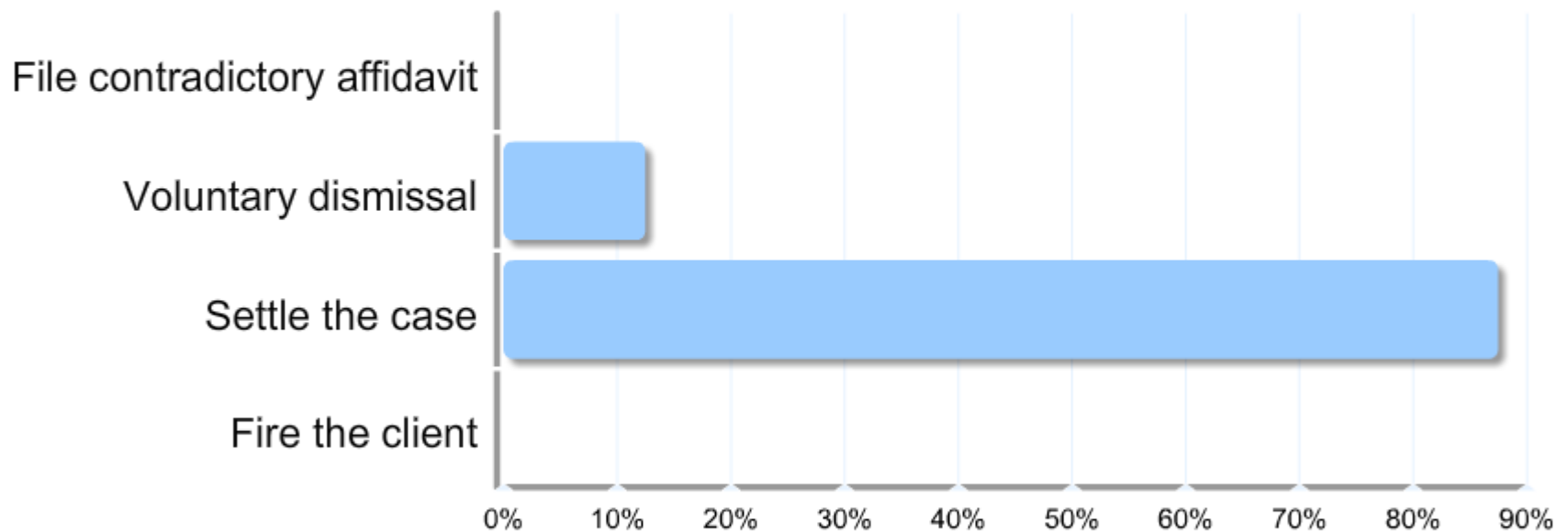
# Question

You are a labor law attorney who filed suit against the Plaintiff's former employer for violating the Fair Labor Standards Act. It is critical to the Plaintiff's case that she was an employee rather than an independent contractor. The Plaintiff's deposition testimony and other discovery evidence does not support the "employee" argument under the relevant legal standard. The Defendant moves for summary judgment. What should you do?

- A. Defend the MSJ by filing a contradictory affidavit that "clarifies" Plaintiff's testimony (**105355**)
- B. Advise the client to voluntarily dismiss her complaint (**105354**)
- C. Attempt to settle the case (**105353**)
- D. Fire the client for her poor performance in deposition (**107560**)

*SMS your Vote to (650) 600-9016  
(One Vote Per Table)*

You are a labor law attorney who filed suit against the Plaintiffs former employer for violating the Fair Labor Standards Act. It is critical to the Plaintiffs case that she was an employee rather than an independent contractor. The Plaintiffs deposition testimony and other discovery evidence does not support the employee argument under the relevant legal standard. The Defendant moves for summary judgment. What should you do?



# ANSWER AND ANALYSIS

# Answer and Analysis

B. Advise the client to voluntarily dismiss her complaint.

The court granted summary judgment to the Defendant, commenting that this was the strongest case showing independent contractor status ever brought before it and accordingly the case was frivolous. The court awarded \$23,000 in attorney's fees against the attorney personally. The court found that although the client may have believed her case had merit and convinced counsel to file suit, the client had no specialized legal knowledge. The attorney, however, should have known after discovery concluded that the evidence did not in any form support the Plaintiff's argument and should have advised the client to dismiss the suit. *Murray v. Playmaker Services, LLC*, 548 F. Supp. 2d 1378 (S.D. Fla. 2008).

**QUESTION**

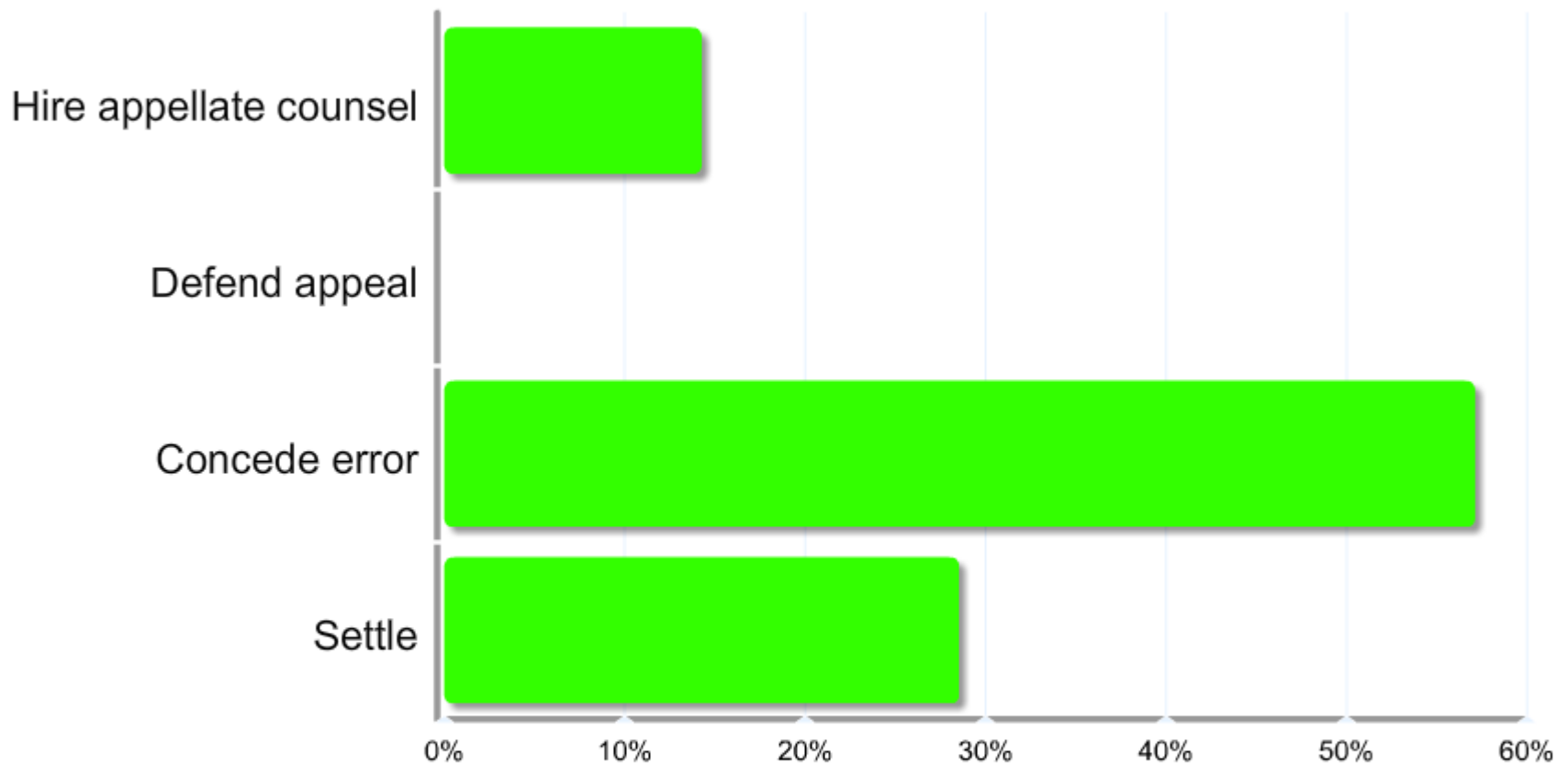
# Question

As defense counsel you have moved to dismiss the Plaintiff's case on various grounds, including federal preemption. Hours before the hearing on your motion, new counsel for the Plaintiff files an amended complaint. At the motion to dismiss hearing, various concerns are raised about the manner in which the amended pleading was filed. You also assert that the court has the discretion to refuse the late-filed amendment despite the Rules' language permitting one amendment before a responsive pleading is filed. After the trial court rejects the amended pleading and dismisses the original complaint with prejudice, the Plaintiff appeals. What should you do?

- A. Hire appellate counsel (**105356**)
- B. You won; of course you zealously defend the appeal! (**105357**)
- C. Concede error if you arguably misled the court on the facts or law (**105358**)
- D. Attempt to settle the case (**107561**)

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(One Vote Per Table)***

## As defense counsel . . . . What should you do?



# ANSWER AND ANALYSIS



# Answer and Analysis

## No clear answer but be careful.

The Fourth DCA reversed and assessed § 57.105 sanctions against the Defendant, holding counsel misled the trial court into believing it had discretion to deny the amendment. The case then went to the Florida Supreme Court, which approved the 4<sup>th</sup> DCA's decision on the amendment issue. The court did not decide the sanctions issue given the record before it. Instead it remanded to the district court for reconsideration. The case is significant, however, for its discussion of counsel's ethical obligations and its holding that an appellee is not shielded, as a matter of law, from sanctions even though it is defending the trial court's order. Such sanctions, while they should be rare, are permissible in an appropriate case. *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 571-72 (Fla.), *as revised on denial of reh'g* (2005).

# Answer and Analysis

## No clear answer but be careful.

*Boca Burger* warned that the appellee cannot “hide behind the ‘presumption of correctness’” of an order if the appellee procured that order by misrepresenting the law or the facts. The court admonished that busy trial court judges and appellate courts have heavy case loads and depend on the attorneys to provide them with accurate information about the issues, the facts, and the law. On appeal, “regardless of trial counsel's conduct . . . appellate counsel (who often is separate from trial counsel) has an independent ethical obligation to present both the facts and the . . . law accurately and forthrightly. This will sometimes require appellate counsel to concede error where, although trial counsel obtained a favorable result, either the facts were not as represented . . . or the law is clearly contrary to the appellee's position and no good-faith basis exists to argue that it should be changed.”

# Answer and Analysis

No clear answer but be careful.

- The Supreme Court rejected the argument that it would be unprofessional for an appellee to “throw in the towel” just because there is a chance of reversal, observing “[t]his argument overlooks counsel's professional responsibilities as officers of the court.” In those rare cases in which “the trial court, whether because of its own misconceptions or counsel's misrepresentations, may incorrectly assume the relevant facts or apply the wrong law . . . appellate counsel has a duty to recognize and apprise the appellate court of that fact.”

# Answer and Analysis

No clear answer but be careful.

- The court continued that “allowing sanctions against appellees or their counsel for defending indefensible orders requires the quintessentially *professional* act of admitting defeat when there is no chance of victory, or when victory will have been obtained at the price of integrity and truth. ‘While counsel does have an obligation to be faithful to [his] [client's] lawful objectives, that obligation cannot be used to justify unprofessional conduct by elevating the perceived duty to zealously represent over all other duties. . . .’” Justice Lewis wrote a lengthy dissent arguing the case was not as simple and clean as the majority suggested and that the court’s decision sets a dangerous precedent.

**QUESTION**

# Question

- You represent plaintiffs in a malpractice action against their former attorney in a wrongful death action. In the underlying case, the parties settled. Plaintiffs hired you because their previous counsel refused an earlier settlement offer which was larger than the amount plaintiffs ultimately received.
- In addition to the malpractice action, you move on behalf of plaintiffs, pursuant to Fed. R. Civ. P. 60, to reopen the original action based on fraud and newly discovered evidence thirteen months later.
- Rule 60 provides six reasons for seeking relief from judgment. The grounds you are raising, fraud and newly discovered evidence, must be made within one year of the order from which relief is sought. The rule's catchall provision, "any other reason that justifies relief," does not have such a limitation. Eleventh Circuit case law states that relief that is otherwise time-barred cannot be sought through the catchall provision.

# *Based on Previous Fact Pattern*

How do you address the Eleventh Circuit case law?

- A. Cite to it and attempt to distinguish your case  
(**105664**)
- B. Cite to out-of-circuit case law that supports your use  
of the catchall provision (**105665**)
- C. Don't file the motion (**105666**)
- D. Cite only to the rule provisions; do not cite any case  
law regarding the time limitations (**105667**)

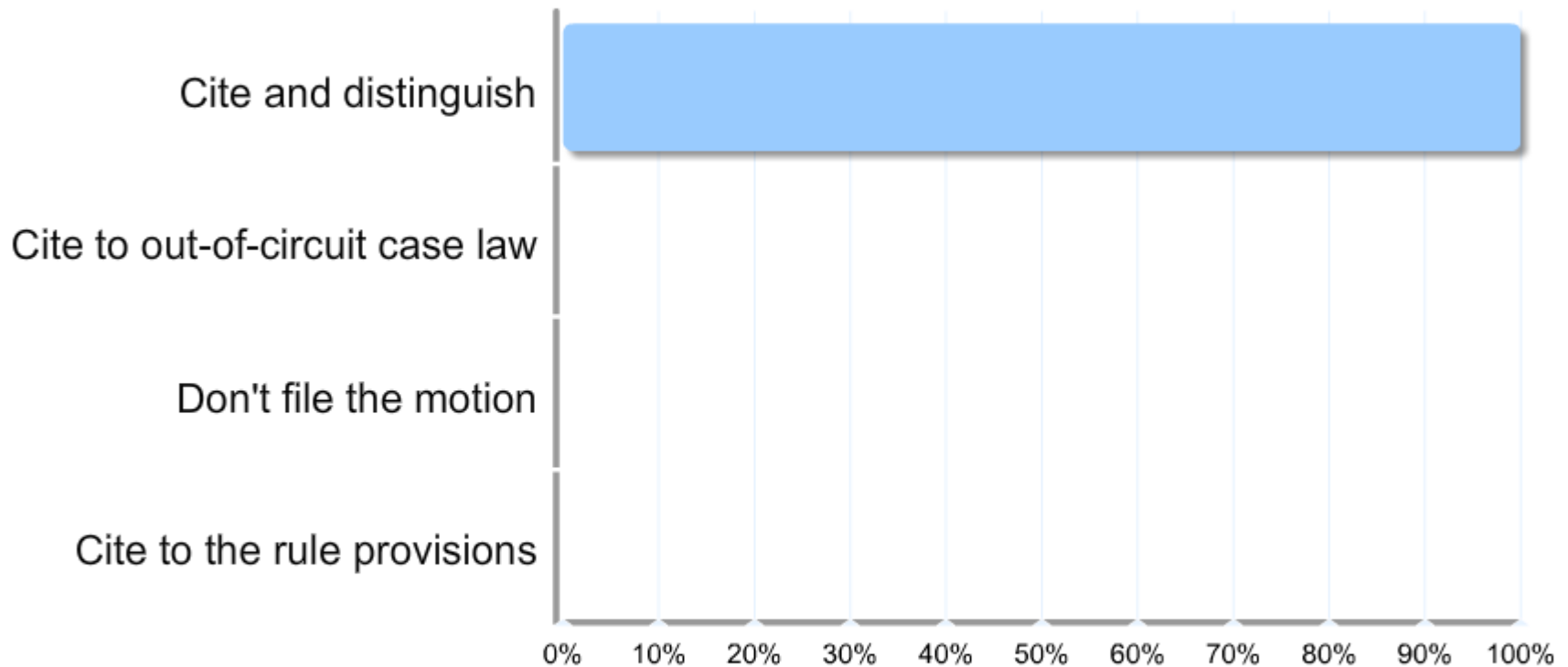
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(One Vote Per Table)***



*"Hey, don't blame me. I don't make the laws  
—I just circumvent them."*



# How do you address the Eleventh Circuit case law?



# ANSWER AND ANALYSIS

# Answer and Analysis

- A or C.
- The court noted that basic legal research would have shown the state of the law and that the motion “either lacked candor or counsel failed to make a reasonable inquiry regarding the state of the law in the Eleventh Circuit.” Bautista v. Star Cruises, 696 F. Supp. 2d 1274, 1279 (S.D. Fla. 2010). The court added, “[N]ot only did Plaintiffs' counsel not cite controlling law, counsel cited and relied on law from other circuits to support its Rule 60(b)(6) motion, thus implying that no controlling law existed in the Eleventh Circuit. This failure to disclose controlling law combined with reliance on other circuits' law not only violates Rule 11, it also violates Rule 4–3.3 of the Rules Regulating The Florida Bar. Counsel's behavior would appear to be an attempt to mislead the Court as to the applicable law, in violation of the letter and the spirit of Rule 4–3.3.” Id.

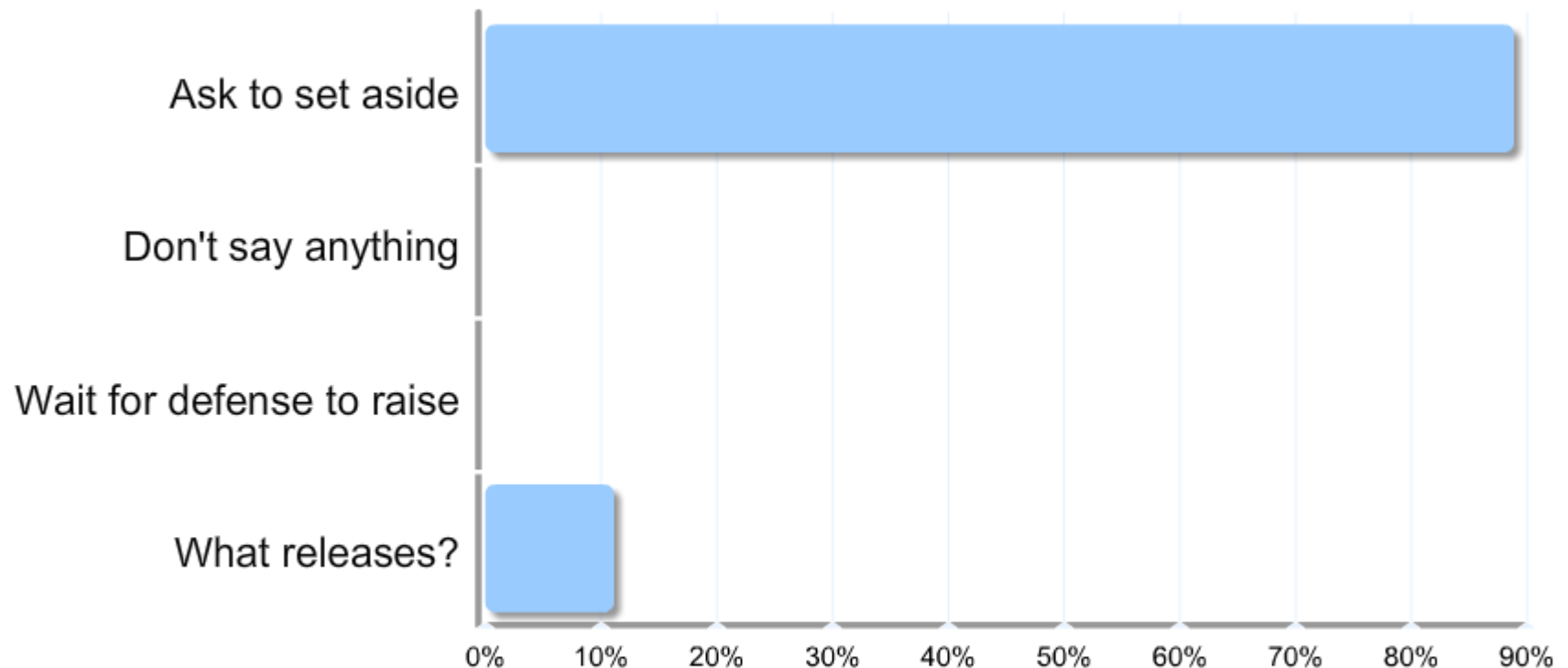
# *Based on Previous Fact Pattern*

How should you address the releases signed by Plaintiffs in the motion?

- A. Discuss them in the motion and explain why they should be set aside (**105668**)
- B. Since settlements were reached, it is probably apparent to the court that releases were signed so you don't need to mention them (**105669**)
- C. It is unnecessary to mention them because Defendant can raise the issue in its response if it thinks the releases are applicable (**1055670**)
- D. What releases? (**108338**)

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(One Vote Per Table)***

# How should you address the releases signed by Plaintiffs in the motion?



# ANSWER AND ANALYSIS

# Answer and Analysis

- A.
- As counsel represented the plaintiffs in the malpractice action, the court concluded that counsel was “more than aware” of the releases. Bautista v. Star Cruises, 696 F. Supp. 2d 1274, 1280 (S.D. Fla. 2010). Additionally, Plaintiffs did not acknowledge the releases until they were brought to the court’s attention by the defendants in a motion for sanctions. And it wasn’t until filing a reply brief that Plaintiffs requested the releases be set aside. In addition to running afoul of the “basic rule of advocacy” that a party may not raise a new argument in a reply, the court found that “Plaintiffs' counsel's continuing lack of candor and continuing indifference to obvious known facts regarding the existence of the settlements and releases clearly supports imposition of sanctions under Rule 11.” Id.

# Answer and Analysis

- The court found that duty of candor is important for the following reasons:
  - “[A]n attorney is an officer of the court, an institution whose purpose is to seek the truth in order to do justice.”
  - “[P]roviding clients with an attorney's ‘independent professional judgment’ so as to not create unreasonable client expectations, which when dashed can undermine confidence in the justice system.”
  - “[H]elps promote judicial efficiency and avoid crowding the court's docket with frivolous actions.”

Bautista v. Star Cruises, 696 F. Supp. 2d 1274, 1281 (S.D. Fla. 2010).



# Answer and Analysis

- The court imposed the following sanctions against Plaintiffs' counsel:
  - Public reprimand by publication in the Federal Supplement, Second.
  - Referral to the Southern District of Florida's grievance committee and to the Florida Bar.
  - A hearing on monetary sanctions against counsel for reasonable fees incurred in response to the motion.

Bautista v. Star Cruises, 696 F. Supp. 2d 1274, 1281 (S.D. Fla. 2010).

# Answer and Analysis

- After this sanctions order, Plaintiffs and their counsel moved for reconsideration. The court held that the burden for reconsideration had not been met, but, based on counsels' representations and remorse, the court did not impose monetary sanctions. Bautista v. Star Cruises, No. 1:03-cv-21642-PAS, Dkt. 244 (S.D. Fla. May 14, 2010).

**QUESTION**



#studioC

byutv

# Question

You are a partner in a law firm and have been hired to represent Mr. Burns in a personal bankruptcy action. You recently learned that you have cancer and will be out for treatment. You delegate the matter to an associate and tell the associate and your staff that you will be available via phone for emergencies. Because of the shocking nature of the news, you do not have time to inform your client. While you are out, your associate files the petition for relief and other papers, but when Mr. Burns discovers you are unable to represent him, he requests a refund of his retainer and a termination of the representation. The associate refuses Mr. Burns's requests.

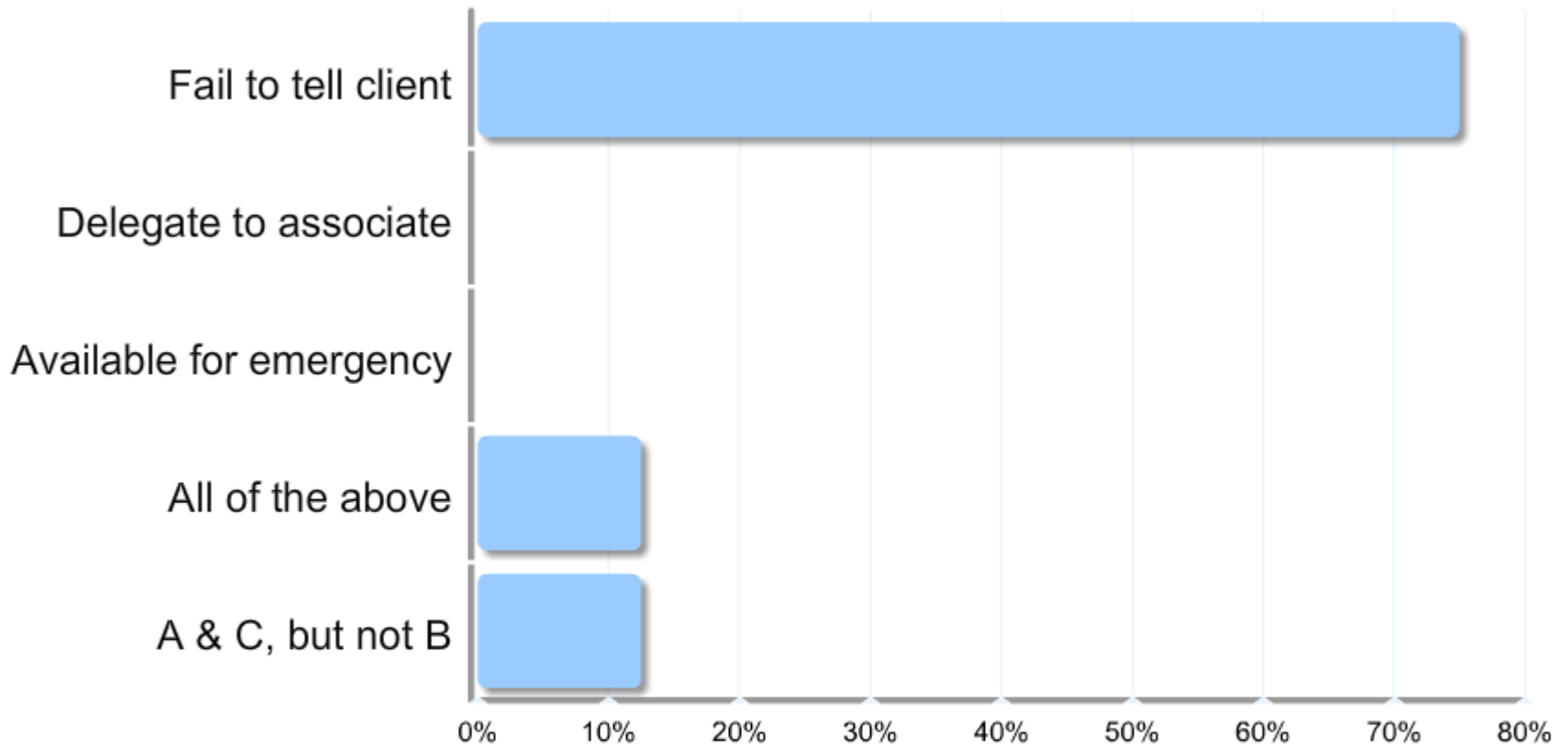
# Question

What is the ethical violation in this scenario?

- A. Failure to inform her client of the situation (**107592**)
- B. Delegate her case to her associate (**107593**)
- C. Making herself available on an emergency basis (**107594**)
- D. All of the above (**107595**)
- E. A & C, but not B (**107596**)

***SMS your Vote to (650) 600-9016  
(One Vote Per Table)***

# What is the ethical violation in this scenario?



# ANSWER AND ANALYSIS



# Answer and Analysis

- Answer and Analysis: E. (And those that answered B are close). It was a violation of Nowacki's supervisory rules to completely delegate her caseload to her new associate without being available to supervise him. Had she had the associate work on her files, AND informed her client, AND been available to supervise, she would not have been found in violation of Rule 4-5.1(b). However, the complete lack of availability, her failure to inform her client, and then her associate's violation of the Rules of Professional Conduct by refusing to permit Mr. Burns to terminate the representation led her to be in violation of Rule 4-5.1(b). Her cancer was not a mitigating factor.
- Case: *The Florida Bar v. Nowacki*, 697 So. 2d 828 (Fla. 1997)

# Answer and Analysis

## **Rule 4-5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers**

- (a) Duties Concerning Adherence to Rules of Professional Conduct. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers therein conform to the Rules of Professional Conduct.
- (b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
- (1) the lawyer orders the specific conduct or, with knowledge thereof, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**QUESTION**



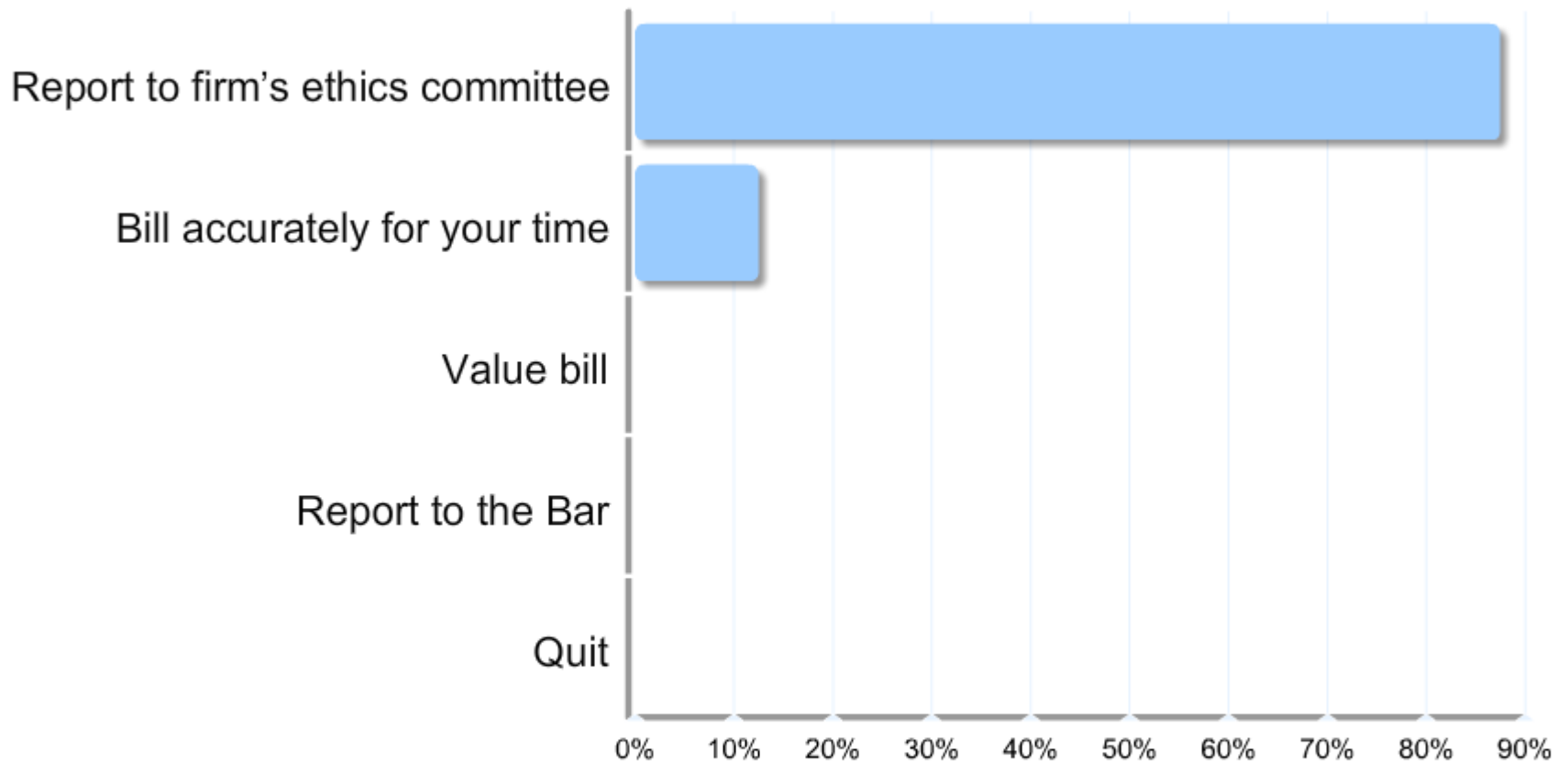
# Question

You are a third year associate at a large firm. You are working with a partner on a large class action matter. A team of 5 attorneys will be working around-the-clock on the project and you are assigned to draft a Motion to Compel. You spend 12 hours on the Motion to Compel, but notice that the bill shows 24 hours billed for the Motion to Compel. You approach the partner and ask about the time. He tells you “this client expects that, and that caliber of motion definitely should have taken 2 days. Next time, be sure to bill for what the motion is worth. And, this client pays the bills in full and won’t look, anyway.” What should the associate do?

- A. Take the matter to the firm’s Ethics committee (**105654**)
- B. Bill accurately for your time (**105655**)
- C. Value bill as requested by your partner (**105656**)
- D. Report the matter to the Bar (**105657**)
- E. Quit (**105658**)

***SMS your Vote to (650) 600-9016  
(One Vote Per Table)***

## What should the associate do?



# ANSWER AND ANALYSIS

# Answer and Analysis

**B definitely, then A or even E.**

## **Rule 4-5.2. Responsibilities of a subordinate lawyer**

(a) Rules of Professional Conduct Apply. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) Reliance on Supervisor's Opinion. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.



**QUESTION**

# Question

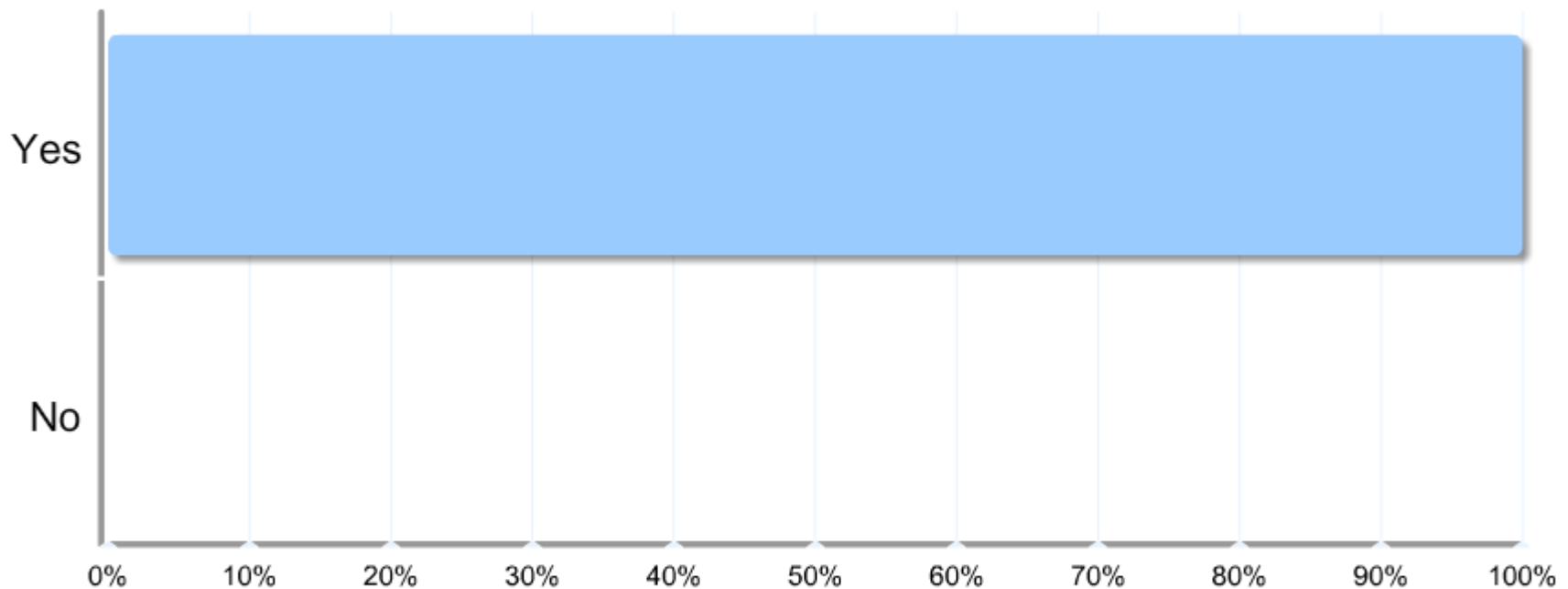
Would the associate be held liable for an ethical violation if he or she chose to value bill in this situation?

A. Yes (**107597**)

B. No (**107598**)

*SMS your Vote to (650) 600-9016  
(One Vote Per Table)*

Would the associate be held liable for an ethical violation if he or she chose to value bill in this situation?



# ANSWER AND ANALYSIS

# Answer and Analysis

- A. Rule 4-1.5 of the Rules of Professional Conduct indicate that an attorney “shall not...charge...an illegal, prohibited, or clearly excessive fee or cost...A fee or cost is clearly excessive when...(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client...as to either entitlement to, or amount of, the fee.”
- Since it is a violation of Rule 4-1.5 to charge the client an excessive fee, and an associate is bound by the Rules regardless of the direction of his supervisor, he must charge the correct amount. It would also be a good idea to report the matter to your ethics committee as the entire firm could have issues should the practice continue.
- And, if your supervisor has this practice, you most likely do not want to be learning from him.

# Answer and Analysis

## **Rule 4-5.2. Responsibilities of a subordinate lawyer**

(a) Rules of Professional Conduct Apply. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) Reliance on Supervisor's Opinion. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

**QUESTION**

# Question

When a young attorney, Davis, started work as a managing associate for a transactional firm, he was in for an unpleasant surprise. He discovered that the firm was inflating government recording fees on settlement statements for HUD-1 real estate transactions. When he asked his boss, his boss told him the practice was legal and ethical. Is the young attorney responsible for any ethical violations?

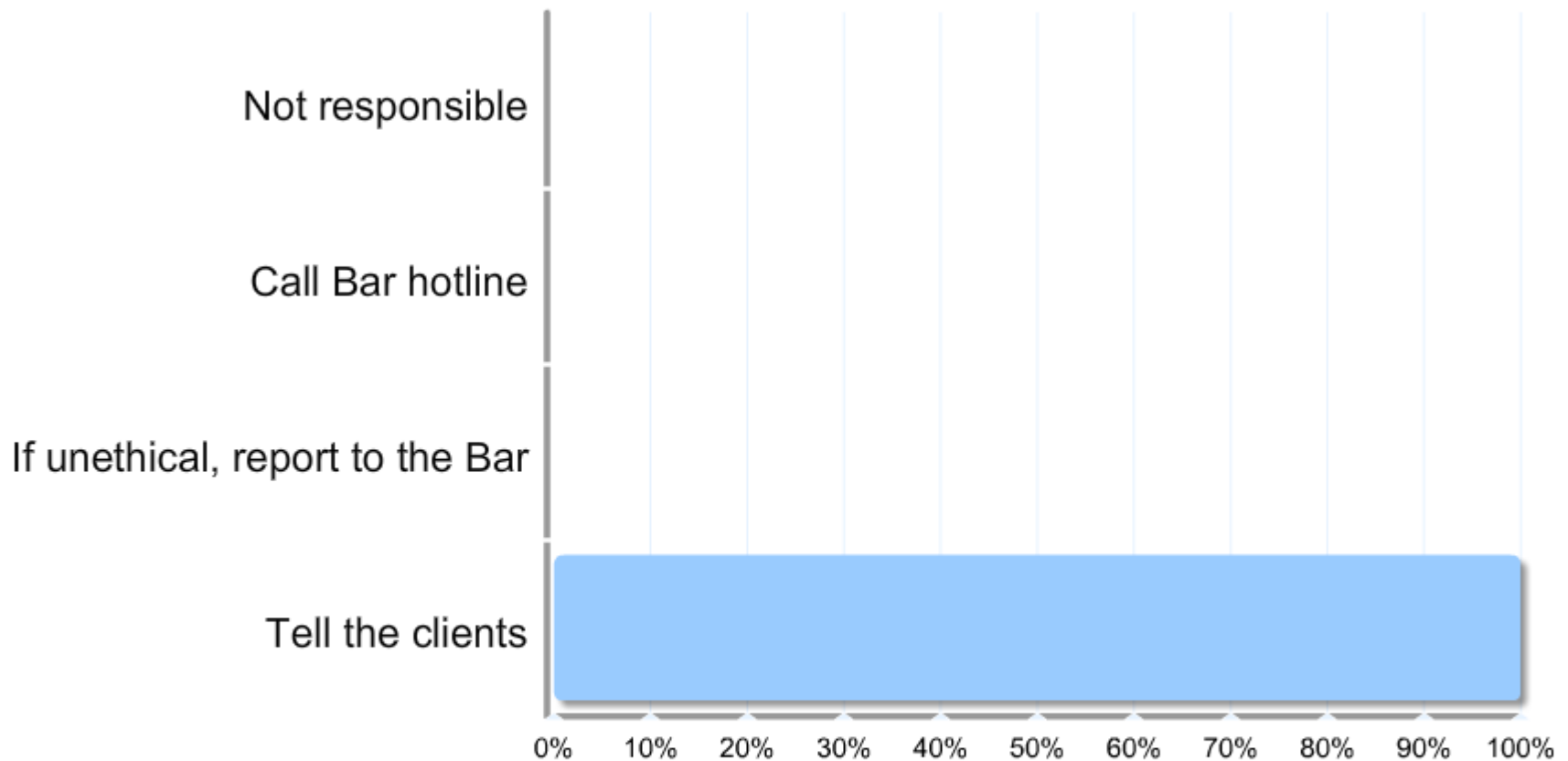
- A. Davis is not responsible because he brought the matter to the attention of his boss, a senior attorney (107562)
- B. Davis should review the ethics rules to determine if the firm is acting ethically and ensure compliance with ethics rules (107563)
- C. Davis is required to review the transactions he supervised for accuracy and if the wrong fee was charged he has an obligation to tell clients that their bills were inflated (107564)
- D. B & C (107565)

***SMS your Vote to (650) 600-9016  
(One Vote Per Table)***





## Is the young attorney responsible for any ethical violations?



# ANSWER AND ANALYSIS

# Answer and Analysis

In an agreement with the South Carolina Office of Disciplinary Counsel that resulted in a reprimand by the court, the young attorney in this fact scenario had to acknowledge that it was his duty to tell clients that their bills were inflated and to assure that HUD-1 forms were accurate in closings he supervised. He also acknowledged an ethical duty to assure that other lawyers in his office complied with state ethics rules. *In the Matter of John B. Bowden*, No. 25978 (May 9, 2005).

- **See Rule 4-5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyers**

**QUESTION**

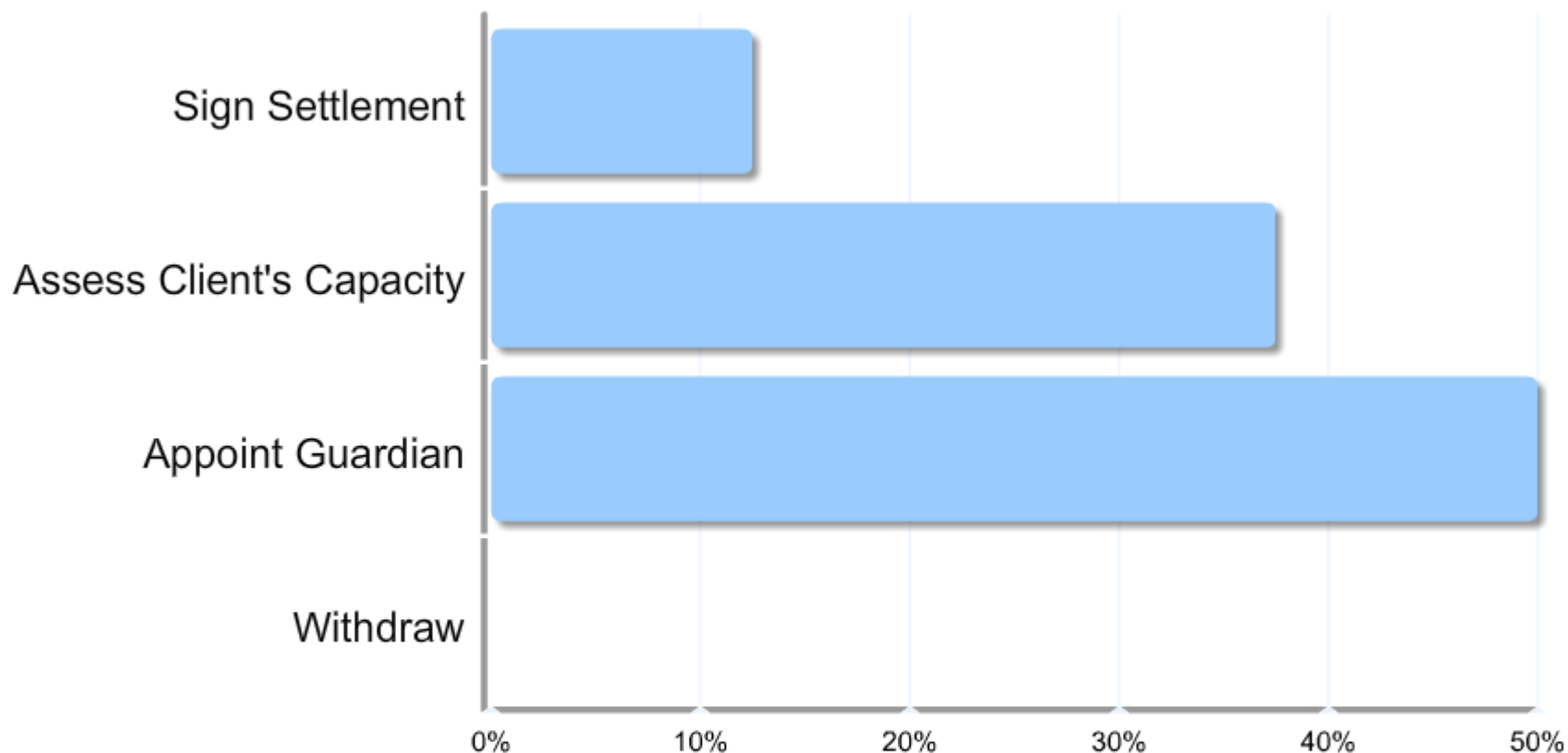
# Question

An attorney represents Clara in a dissolution of marriage. Clara was very involved in the case and expressed to her attorney how the marital assets should be distributed. Clara and her husband negotiated a satisfactory settlement agreement with a division of marital assets. However, before the settlement was complete, Clara began exhibiting signs of mental illness. Clara's attorney suggested she seek professional help, but Clara took this as evidence the lawyer was involved in a plot against her and refused to see a psychiatrist. The attorney does not believe she should allow Clara to sign the settlement agreement, nor can she divulge Clara's mental status to a third party. What should the Lawyer do?

- A. Allow Clara to sign the Settlement Agreement, because Clara will probably not do any better at trial (**107570**)
- B. Conduct an examination of Clara to determine whether Clara understands the provisions in the Settlement Agreement (**107571**)
- C. Seek the appointment of a Guardian for Clara (**107572**)
- D. Withdraw (**107573**)

***SMS your Vote to (650) 600-9016  
(One Vote Per Table)***

# What should the Lawyer do?



# ANSWER AND ANALYSIS



# Answer and Analysis

If the attorney believes that Clara cannot adequately act in her own interest, and that a guardian may be necessary to safeguard Clara's interests, the attorney may seek appointment of a legal guardian for Clara, even over Clara's objection if absolutely necessary. The inquiring attorney is in the best position to decide the proper course of action. In proceeding, the attorney should be careful to respect the rights of her client, to act in the client's best interests, and to avoid overreaching. Florida Bar Opinion 85-4, October 1985.

## **RULE 4-1.14 CLIENT UNDER A DISABILITY**

# Honorable Charlene Honeywell's Pupillage

- Mark Buell
- Laura Howard
- Jaime Austrich
- Beth Coleman
- Christine Marlewski
- Victoria Oguntoye
- Adam Labonte
- Lauren Stricker