



Program Title Legal Ethics Trivia Night
 Date Presented March 8, 2018 Inn Year 2018
 Presenting Inn C.H. Ferguson - M.E. White Inn of Court Inn Number 280165
 Inn City Tampa Inn State Florida
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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.

Pupilage groups compete in a fun exercise of ethical knowledge on esoteric and recent ethics issues for the state of Florida and beyond.

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? Florida How many hours? 1 Hour ☒ Pending ☐ Approved

Recommended Physical Setup and Special Equipment:

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

Laptop; Projector; Microphones for responses and for the Trivia hosts.

Comments:

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

When scoring in between the ethical Rounds, presenters may add excitement to the trivia night by fueling the competitive nature of the Membership within each pupilage group during the scoring process.

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
The MC of the entire presentation. Opening Remarks and Introduction Slides.	Bencher
Slide presenter and Scorecard Keeper; Manage the Powerpoint.	Master
MC a Round and develop the three questions for your round.	Barrister
MC a Round and develop the three questions for your round.	Associate
Collect the answers for each round and present the toast at the end.	Pupil

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
Power Point Slides and Questions	45 minutes
Scoring in between rounds; comments and feedback	15 minutes

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)*

The program differentiates itself through competition in professionalism and ethics. The competitive nature of attorneys ensures group participation and learning.

Entertaining: How was the program captivating or fun?

Trivia with lawyers competing along with provocative questions makes for a captive audience.

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

Awards for the winner brought out the best in the pupillage groups.

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

See above.

Easily Replicated: Can the program be replicated easily by another Inn? ☒ Yes ☐ No

This program is: ☒ Original ☐ Replicated

Questions:

Please contact Bry'an Azuekwu at (571) 319-4713 or by e-mail at programlibrary@innsofcourt.org.

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

LEGAL ETHICS TRIVIA NIGHT

MARCH 8, 2018



WHAT IS ETHICS?

According to Merriam Webster it is
“Rules of behavior based on ideas about
what is morally good and bad”

LEGAL ETHICAL CONSIDERATIONS ARE DIVIDED INTO SEVERAL SUBJECT AREAS. WHAT ARE THEY?

- Treatment of clients.
- Treatment of the general public.
- Candor to the Court.
- Dealings with opposing counsel/parties.
- Dealings with your own staff.

THE RULES

- There will be 3 rounds with 3 questions per round, and 1 final round with 1 question.
- We'll play a short song after each question to give your table time to wager and answer.
- Your table can wager 1, 3 or 5 points once per round, but you must wager 1, 3, and 5 only once in each round.
- Your table can wager up to 20 points on the final question.
- No penalty for missing questions in rounds 1-3, but you lose your wager if you are wrong in the final round.
- The winning table will be crowned the most ethical Ferguson-White Inn group.

FIRST ROUND CATEGORIES

REFERRALS NOTORIOUS
ETHICS SOCIAL
VIOLATIONS MEDIA

REFERRALS

You have been approached by an investment advisor who is interested in establishing a referral relationship whereby he would pay you a portion of any advisory fees generated in exchange for referring clients to him.

Is this permissible?

ROUND 1, QUESTION 1

YES!

- Permissible if the following 4 conditions are met:
 - (1) the lawyer is satisfied after conducting an independent investigation that the investment or referral is a proper one under all the circumstances;
 - (2) the lawyer makes a full disclosure to the client of all the facts, including the fact of a prospective payment of a fee to him/her by the investment company;
 - (3) the lawyer secures his/her client's consent in writing to such a payment; and
 - (4) the lawyer passes on the benefit to the client or credit the client against fees ordinarily charged by the attorney.
- Sources: Professional Ethics of the Florida Bar, Opinion 02-8 (Jan. 16, 2004); Ethics Opinion 70-13

ROUND 1, QUESTION 1

NOTORIOUS ETHICS VIOLATIONS

In 2016, three Tampa attorneys were permanently disbarred for conduct during the Bubba the Love Sponge defamation case that the Florida Supreme Court described as "among the most shocking, unethical and unprofessional" conduct they had ever witnessed by lawyers. What did they do?

ROUND 1, QUESTION 2

SET UP OPPOSING COUNSEL FOR A DUI

- It was a tawdry, improbable tale with a plot straight out of a Grisham novel. Radio personality Todd "MJ" Schnitt was suing shock jock Bubba the Love Sponge Clem for defamation in what had become a courtroom cage match.
- One night after trial, a young paralegal for the firm representing Clem spotted Schnitt's lawyer at the downtown Maljo's Steakhouse bar with his co-counsel. She called her bosses who through dozens of texts and calls throughout the night evidenced that they put considerable instead put considerable "time, effort and subterfuge" into getting the attorney arrested for DUI.
- The charges were eventually dropped and a thick and damning report was issued describing an "undercover" paralegal and detailing a setup.
- Sources: *The Florida Bar v. Adams*, 198 So.3d 593 (Fla. 2016); <http://www.tampabay.com/news/courts/last-two-lawyers-disbarred-in-diaco-dui-set-up/2290994>

ROUND 1, QUESTION 2

SOCIAL MEDIA

You are hired to represent an individual in a negligence action against a construction contractor and others arising out of an incident in which your client's three year old son was allegedly struck by a vehicle in front of a construction site. During your initial debriefing, you advise your client to "hide" Facebook posts of her drinking alcohol and/or partying with friends before any litigation is filed. Is this permissible?

ROUND 1, QUESTION 3

YES!

- A personal injury lawyer may advise a client pre-litigation to change privacy settings on the client's social media pages so that they are not publicly accessible. Provided that there is no violation of the rules (*see* Rule 4-3.4(a)) or substantive law pertaining to the preservation and/or spoliation of evidence, the lawyer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved.
- Rule 4-3.4(a) of the Florida Rules of Professional Conduct states that "[a] lawyer must not: (a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act."
- Sources: *Root v. Balfour Beatty Construction, Inc.*, 132 So.3d 867 (Fla. 2d DCA 2014); Professional Ethics of the Florida Bar, Opinion 14-1 (June 25, 2015), <https://www.floridabar.org/etopinions/etopinion-14-1/>.

ROUND 1, QUESTION 3

SECOND ROUND CATEGORIES

CURRENCIES

PENALTIES

BRANCHING
OUT

CURRENCIES

Bitcoin has exploded, imploded, and exploded again numerous times this year. Some adventurous law firms have ridden the waves by accepting Bitcoin as payment of retainers and hourly services. What ethical constraint has one state put on a lawyer's acceptance of Bitcoin?

ROUND 2, QUESTION 1

IMMEDIATELY CONVERT THE BTC TO USD

- The rationale is that holding digital currency could result in the lawyer charging unreasonable fees. Lawyers should therefore mitigate the risk of volatility and possible unconscionable overpayment for services by taking the following three steps:
 - First, the lawyer should notify the client that the payment will be immediately converted to U.S. dollars.
 - Second, the lawyer should make the conversion through a payment processor.
 - Third the lawyer should credit the client's account at the time of payment.
- The opinion also says that lawyers who accept virtual currency "must be careful to see that this property they accept as payment is not contraband, does not reveal client secrets, and is not used in a money-laundering or tax avoidance scheme; because convertible virtual currencies can be associated with such mischief."
- Sources: <https://supremecourt.nebraska.gov/sites/default/files/ethics-opinions/Lawyer/17-03.pdf>
http://www.abajournal.com/news/article/lawyers_can_accept_payment_in_bitcoin_nebraska_ethics_opinion_says

ROUND 2, QUESTION 1

PENALTIES

Tampa attorneys Marc Yonker and William Winters were infamously accused of pilfering clients from a law firm they worked for before they set out on their own. The previous firm won a jury verdict of \$3 million that was later reduced to \$1.7 million. How long were the attorneys' suspensions from the Florida Bar for the ethical implications of the underlying conduct?

- A. 2 and 3 months respectively
- B. 6 and 9 months respectively
- C. 1 year each
- D. No suspension

ROUND 2, QUESTION 2

A!

- Winters was suspended for 91 days, and Yonker for 60 days, for "professional misconduct." In ordering the suspensions, justices rejected a referee's recommendation in 2011 to find them not guilty of the most serious charges, including commission of a criminal act and conduct involving dishonesty, and find them guilty of only technical violations.
- The Supreme Court wrote: "The Bar argues that Winters and Yonker's 'personal use' of the Mulholland firm's client files constituted acts of criminal theft. ... We agree."
- Source: *The Florida Bar v. Winters*, 104 So.3d 299 (Fla. 2012);
<http://www.tampabay.com/news/courts/florida-supreme-court-suspends-attorneys-winters-yonker/1250117>

ROUND 2, QUESTION 2

BRANCHING OUT

Joe is a trial lawyer, specializing in family law. His friend, Stephanie asks him to represent her in a large trust and estate matter. He has never handled a matter of this kind. What must he do to accept the case?

- A. Tell Stephanie that he has never handled this type of case before.
- B. Co-counsel with an experienced trust and estates lawyer.
- C. Study the relevant law and procedure.
- D. All of the above.

ROUND 2, QUESTION 3

The background of the entire slide is a close-up photograph of a brick wall. The bricks are reddish-brown with some variations in color and texture, and they are laid in a traditional running bond pattern with visible mortar joints.

C!

Under Rule 1.1 Comment [2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. A lawyer can provide adequate representation in a wholly novel field through necessary study.

ROUND 2, QUESTION 3

THIRD ROUND CATEGORIES

SHARING
FEES

CONFLICTS
OF
INTEREST

JOB

SHARING FEES

Some jurisdictions allow nonlawyers to own portions of law firms and share in the fees that are earned. Florida does not. Can you ethically co-counsel and split fees with non-lawyer owned law firms from these jurisdictions?

- A. Yes
- B. No
- C. Probably

ROUND 3, QUESTION 1

PROBABLY!

- A recent proposed ethics opinion found that Florida Bar members may divide legal fees with an out-of-state lawyer whose firm includes non-lawyer ownership where:
 - the out-of-state lawyer is providing only services that the out-of-state lawyer is authorized by law to provide;
 - nonlawyer ownership of the out-of-state firm is permitted in the jurisdiction where that law firm is located;
 - the out-of-state firm is in compliance with that jurisdiction's requirements; and
 - the division of fees complies with Florida Bar rules on fee division.
- Non-lawyer ownership of law firms is currently permitted in Washington, D.C. and the State of Washington in the U.S., the Canadian provinces Ontario, British Columbia and Quebec, the countries of England, Wales, Scotland, Germany, the Netherlands, Brussels, and New Zealand.
- The opinion does not address a Florida Bar member becoming a partner, shareholder, employee, or other formal arrangement with a law firm with nonlawyer ownership.
- Other jurisdictions that have addressed the issue have reached similar conclusions. *See*, ABA Formal Opinion 464 (2013); New York City Bar Formal Ethics Opinion 2015-8 (2015); and Philadelphia Bar Association Ethics Opinion 2010-7 (2010).
- Source: <https://www.floridabar.org/etopinions/opinion-17-01/>

ROUND 3, QUESTION 1

CONFLICTS OF INTEREST

Melinda is a sole practitioner in the western rural area of Manatee County. She is defending Robert in an assault case against a police officer. Melinda also represents several local businesses, including a popular bar and brewery. This morning, the owner of the bar and brewery called Melinda and asked her to sue Robert to collect a past due balance. Would it be proper under the Rules of Professional Conduct for Melinda to represent the bar and brewery in the collection matter?

- A. No. It is presumed that a lawyer will obtain confidential information while representing a client.
- B. Yes, if both Robert and the bar and brewery give informed consent, confirmed in writing.
- C. No, there is direct adversity.
- D. Yes, the two matters are substantially different.

ROUND 3, QUESTION 2

The background of the entire slide is a close-up photograph of a brick wall. The bricks are reddish-brown with some variations in color and texture, and they are set in a light-colored mortar. The lighting is slightly uneven, giving the wall a three-dimensional appearance.

B!

There is a conflict of interest if a lawyer who represents one client opposes that client in a different matter, even if the two matters are not related. The conflict can be resolved only if the all of the conditions of consent are met. The final condition is informed consent of both clients. The rule applies even if the matters are completely unrelated. The determination of direct adversity does not exclude the possibility of consent.

Source: Rule 4-1.7(a) and (b).

ROUND 3, QUESTION 2

JOBS

An attorney wishes to engage in the practice of law and real estate at the same time. Must she practice at offices that are functionally and geographically separate?

ROUND 3, QUESTION 3

NOPE!

- It was once the position that the two professions must be conducted from offices that are functionally and geographically separate. This conclusion was based on DR 2-102(E), which prohibited the dual practice presented in this question, and opinion 73-18 [since withdrawn] . However, the Committee now recognizes the deletion of the old DR 2-102(E) from the new Disciplinary Rule 2-102 as promulgated by the Florida Supreme Court in its decision of July 26, 1979, amending the Code of Professional Responsibility.
- In view of the above revision of DR 2-102, the proposed conduct appears to be no longer prohibited. We caution the attorney, however, that the 'feeder' aspect of this association may lead to direct solicitation not protected by the *Bates* decision or the recent changes in the Code related to advertising.
- Sources: Professional Ethics of the Florida Bar, Opinion 79-3; CPR: DR 2-102(E), DR 2-102; *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)

ROUND 3, QUESTION 3



FINAL ROUND

FINAL QUESTION!

Put these momentous Legal Ethics events in order from earliest to most recent:

- A. Past results may be referred to in advertising if objectively verifiable.
- B. Lawyers may solicit clients via text messages.
- C. The Judicial Ethics Advisory Committee recommended judges to disqualify themselves if they have friended lawyers on Facebook involved in the case.
- D. A Miami-Dade Circuit Court refuses to disqualify herself because of friending lawyers on Facebook.

FINAL ANSWER!

- 2009 – The Judicial Ethics Advisory Committee recommended judges to disqualify themselves if they have friended lawyers on Facebook involved in the case. Opinion 2009-20 (Date of issue: November 17, 2009).
- 2013 – Past Results referred to in an advertisement if objectively reasonable.
In re: Amendments to the Rules Regulating The Florida Bar - Subchapter 4-7, Lawyer Advertising Rules, 38 Fla. L. Weekly S47 (Fla. Jan. 31, 2013).
- 2015 – Lawyers may solicit clients via text messages. July 24, 2015 unanimous vote of the Bar Board of Governors.
- 2017 – A Miami-Dade Circuit Court judge refuses to disqualify herself because of friending lawyers on Facebook. June 9, 2017 Order in *Law Offices of Herssein and Herssein, PA, et al v. USAA*.

**CONGRATS TO THE
WINNERS!**

YOU ARE VERY ETHICAL!

