



Title of Program \_\_\_\_\_

Date of Program \_\_\_\_\_

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

**Program Summary:**

Indicate the legal focus and be concise and detailed in summarizing the content and setup 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.

Did the program use a written script?  Yes  No

Did the program material include any newspaper, magazine, or web articles?  Yes  No

Did the program material include any copies of citations of law or legal documents?  Yes  No

Did the program material include a fact pattern for the program?  Yes  No

Did the program material include a list of questions for the program?  Yes  No

Did you hand out any materials before or during the program?  Yes  No

Did this program use PowerPoint, CD, DVD or other media during the course of the presentation?  Yes  No

**Please include a copy of any of the above existing materials with your program submission.**

**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? \_\_\_\_\_

# 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 step took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

## Recommended Physical Setup and Special Equipment:

*i.e.*, VCR and TV, black board with chalk, easel for diagrams, etc. When submitting video, please indicate the length of all videos. *i.e.*, 30 or 60 min.

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## Comments:

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

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## Questions:

Please contact Andrew Young at (703) 684-3590 ext 106 or by e-mail at [ayoung@innsofcourt.org](mailto:ayoung@innsofcourt.org).

CRAIG S. BARNHART CHAPTER OF THE AMERICAN INNS OF COURT  
INNER TEMPLE PUPILAGE

FEBRUARY 21, 2012 PRESENTATION  
RAIN MAKING – BUILDING THE PRACTICE YOUR WAY

Overview: Ethical responsibilities of attorneys while marketing with the focus on interaction with potential clients - anywhere from a casual conversation at a cocktail party to referral arrangements with other attorneys to blogging and others. New ways of reaching out to potential clients in the age of technology.

The presentation will consist of an over view of the presentation and two scenes providing factual information for the context of the questions. The opening scene will be from 6:10pm to 6:20 pm and will be followed by six questions relating to the factual presentation (below questions 1 though 6). A second scene will be presented from 6:40 pm to 6:45pm and followed by the remaining questions presented below (questions 7 through 11). The total presentation will be 50 minutes.

**Question 1:**

An attorney can make gifts to a potential client in order to market for their representation:

- A) At anytime;
- B) Never;
- C) Only if it is not money; or
- D) Only if the attorney is successful in prevailing on the case for the client.

**ANSWER: B. This is a violation of Rule 4-7.4(a) which provides “Except as provided in subdivision (b) of this rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain....”**

**Question 2:**

An attorney can make gifts to a current client:

- A) At anytime;
- B) Never;
- C) Only if it is not money;
- D) Only if for a birthday or holiday; or
- E) Only if the gift is a de minimus holiday gift.

**ANSWER: E. The Florida bar hotline advised that gifts to clients are generally not advisable; however, a “de minimus” holiday gift is ok. Super Bowl tickets would not be considered “de minimus” because they are very expensive. The applicable rule is 4-1.8(e): “A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that (1) a lawyer may advance court costs and expenses of**

litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.” *The Florida Bar v. Roberto*, 59 So. 3d 1101 (Fla. 2011).

### Question 3:

True or False, the attorney could give the Super Bowl tickets or any other gift to another attorney in exchange for a referral?

**ANSWER: False.** It is a violation of Rule 4-7.2(c) (14), which provides : “A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these rules, may pay the usual charges of a lawyer referral service or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.”

### Question 4:

May the attorney pay the lawyer referral service \$35 for each new client referred by the service that retains him?

- A) Yes, if it is a not-for-profit service.
- B) Yes, if it is a for profit service.
- C) Both A and B.
- D) Neither A or B.

**ANSWER: A.** The \$35 payment for each client retained probably violates the rules because the transaction does not appear to be a “pre-arranged, fixed-sum participation fee.” An attorney may pay a fee to a referral service but it has to be “usual charge,” and it may NOT be part of the fee or charge that comes from the client; however, it may be a fee from a client if the referral is from a not-for-profit service like those run by local bar associations.

The Rules Regulating the Florida Bar state, “A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer . . . may pay the **usual charges of a lawyer referral service** or other legal service organization. . . .” Rules Regulating Fla. Bar, Rule 4-7.2(c)(14). The comment section of that Rule states, in part, “[L]ikewise, a lawyer may participate in lawyer referral programs and pay the **usual fees charged by such programs**, subject, however, to the limitations imposed by rule 4-7.10.” Rules Regulating Fla. Bar, Rule 4-7.2.

The Rule concerning lawyer referral services states:

- (a) When Lawyers May Accept Referrals. A lawyer shall not accept referrals from a lawyer referral service, and it shall be a violation of

these Rules Regulating The Florida Bar to do so, unless the service: ...  
**(2) receives no fee or charge that constitutes a division or sharing of fees, unless the service is a not-for-profit service approved by The Florida Bar pursuant to chapter 8 of these rules;** Rules Regulating Fla. Bar 4-7.10(a)(2).

### **Question 5:**

In the skit, the attorney could solicit the plastic surgeon for the collection work if:

- A) They were at a party together;
- B) The potential client was currently using legal services, although through a different attorney;
- C) The possible client is a family member;
- D) The potential client first approached the attorney regarding interest in representation; or
- E) C&D

**ANSWER: E. Authority: R. Regulating Fla. Bar 4-7.4(a).**

### **Question 6:**

It is clear the attorney could not hold himself out as an expert if he had no prior experience with entertainment law, under what circumstances can an attorney hold themselves out to the public as an expert in a particular field:

- A) If he or she has taken a class in law school or a CLE class on the subject;
- B) If he or she receives the book award in a law school class on the subject;
- C) If he or she, after making the representation, becomes certified by the Florida Bar, by another state bar with comparable standards, or an organization accredited by the Florida Bar,
- D) Only if he or she is certified at the time of the representation; or
- E) A member of the same firm is board certified at the time of the representation.

**ANSWER: D. Authority: R. Regulating Fla. Bar 4-7.2** (comments, “[N]o lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by The Florida Bar may be described to the public as a “specialist” or as “specializing,” “certified,” “board certified,” being an “expert” or having “expertise in,” or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.”)..

### **Question 7:**

Can an attorney take on representation of a client in an area in which the attorney has not practiced if he or she can achieve the level of competence by reasonable preparation?

A) No. An attorney may only represent clients in matters that the attorney has the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

B) Yes. Its called the “practice” of law because you practice on your clients.

C) Yes, provided that the attorney takes the case pro- bono. An attorney can do anything pro- bono.

D) Yes. An attorney may accept representation where the requisite level of competence can be achieved by reasonable preparation.

**Answer: D Rule 4-1.1 Competence provides: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. The Comment further states, in part, that a lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.**

### **Question 8:**

Can an attorney solicit a client through an internet chat room?

A) Yes. The internet is generally unregulated and if a potential client is looking to hire an attorney based on conversations taking place in a chat room, they deserve what they get.

B) Yes, provided that the communication is not misleading or violates any of the other rules regarding written communications and advertising.

C) Yes. Communications advertising or promoting a lawyer’s services that are posted on search engine screens or elsewhere by the lawyer, or at the lawyer’s behest, with the hope that they will be seen by prospective clients are simply a form of lawyer advertising and are treated as such by the rules.

D) Answers B and C are basically the same with C probably being a little better.

E) No. An attorney’s participation in a chat room in order to solicit employment is prohibited by the general rule regarding solicitation.

**Answer: E Although Rule 4-7.6 Computer- Accessed Communications speaks to an attorney’s internet presence and websites, and states that those mediums are considered advertising and generally regulated as such, Advisory Opinion A-00-1 (Revised) April 13, 2010, addresses chat rooms specifically and, in part, provides:**

The Standing Committee, therefore, finds that an attorney's participation in a chat room in order to solicit professional employment is prohibited by Rule 4-7.4(a)... This opinion should not be interpreted as suggesting that a lawyer cannot respond to specific requests for information about

the lawyer or the lawyer's services in a chat room that were initiated by a prospective client and not at the prompting of the lawyer. A lawyer may also respond to the posting of a general question such as "Does anyone know a lawyer who handles X type of matter?" Only a lawyer's unsolicited offers to provide legal services or information about the lawyer's services are prohibited by Rule 4-7.4(a).

### **Question 9:**

Can the attorney answer any question posted on his Facebook page or blog?

- A) Yes. An attorney can answer any question posted, as the forums of Facebook and blogs are generally unregulated by the Florida Bar.
- B) No, unless the attorney includes a disclaimer in every reply or answer.
- C) Yes, so long as he does not solicit the question by prompting the 3rd party to post the question in an attempt to circumvent lawyer advertising rules.
- D) No. An attorney cannot respond to questions related to the practice of law posted to his Facebook page or blog, because these are considered inappropriate advertising forums for attorneys practicing law in the State of Florida.

**Answer: C. Lawyers are responsible for all content they post on their own pages; however, a lawyer is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or otherwise uses the third party to circumvent the lawyer advertising rules. So long as the information posted is restricted to those who are "followers" of a particular lawyer, that information would be considered to be at the request of a prospective client and would not be subject to the lawyer advertising rules under Rule 4-7.1(h). However, all information provided would remain subject to the general misconduct rule, which prohibits any conduct involving fraud, deceit, dishonesty, or misrepresentation under Rules 4-7.1(i) and 4-8.4(c). See Guidelines for Networking Sites, The Florida Bar, Standing Comm. On Advertising (Jan. 10, 2012).**

### **Question 10:**

Assuming the attorney does not hold himself out to be an expert in entertainment law, can he use Twitter to advertise?

- A) No. Twitter is considered an unprofessional forum for advertisement of legal services and is unbecoming of practitioners of law in the State of Florida.
- B) Twitter can be used for advertisement even if the attorney holds himself out to be an expert in entertainment law.

C) Yes. Twitter can be used to advertise in virtually any manner the attorney chooses, as the Florida Bar considers that new forms of advertising in social media and networking sites brings much needed attention to the legal profession.

D) Yes. However, the lawyer's advertisements on Twitter are regulated by lawyer advertising regulations, pursuant to Rule 4-7.2.

**Answer: D.** Generally, unless a lawyer's postings are solicited by prospective clients (as would be the case if the prospective client were a “follower” of the attorney on Twitter), they are subject to the advertising regulations of the Florida Bar. These regulations include prohibitions against any misleading information, which includes references to past results, promises of results, and testimonials. Also prohibited are statements characterizing the quality of legal services. Additionally, lawyers and law firms should review Rule 4-7.2 in its entirety to ensure compliance with its requirements before advertising in social media forums such as Twitter.

### **Question 11:**

With regard to using a website for advertising, an attorney violates the rules of professional conduct if he or she:

- A) Inserts meta-tags so that when a potential client uses a search engine for the “best” attorney, the website will be among the results;
- B) Uses testimonials;
- C) Fails to disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law; or
- D) Discloses 1 or more bona fide office locations of the lawyer or law firm.

**Answer: C.** *See R. Regulating Fla. Bar 4-7.6(b)(1).* Currently, web sites are considered to be information provided upon request and are therefore exempt from almost all of the advertising rules except as provided by Rule 4-7.6(b) of the Rules of Professional Conduct. *See R. Regulating Fla. Bar 4-7.1(h); 4-7.6(b)(3).* A website may not contain false, misleading or deceptive information. *R. Regulating Fla. Bar 4-8.4(c).* Statements about the quality of the services (generally prohibited when part of an advertisement or unsolicited written communication) seems to be an opinion and not a misrepresentation if presented in an exempt media such as a website. There are pending proposals which would make websites subject to all of the prohibitions of Rule 4-7.2 except filing requirements.