

# Gray's Inn



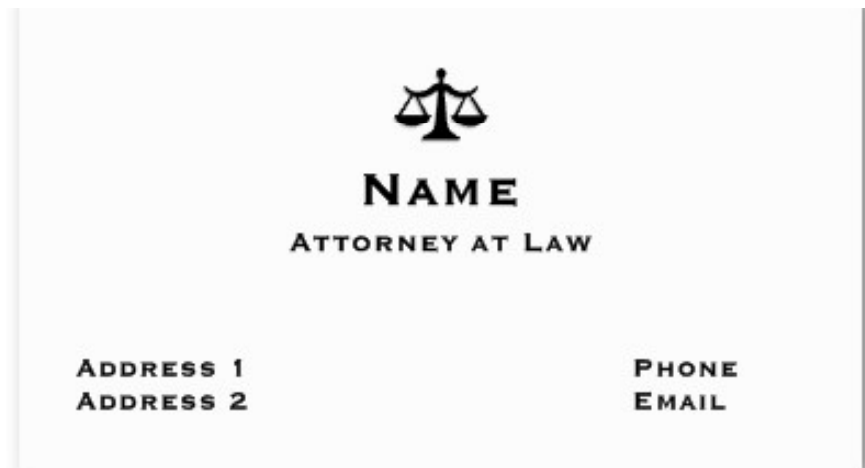
## **“INNOCENT UNTIL PROVEN GUILTY” A Criminal Prosecution**



# Question 1

Has Goodfellow violated any ethical rules by providing his business card in this manner?

- a) Yes
- b) No
- c) Maybe



# Answer I: Part I

**A. Yes, Goodfellow has violated Rule 4-7.4 by flipping his card to Dumb and Dumber when Officer Dunkin was escorting them to her car. Clearly Goodfellow was soliciting Dumb and Dumber for his pecuniary gain. There has never been a prior professional relationship between the three and they are clearly NOT family!**





## Answer 1: Part 2

To avoid the possibility of undue influence, intimidation, or even overreaching, Goodfellow should advertise his business so he can get his firm's name out to the prospective clients. General advertising helps assure that the information flows cleanly as well as freely.

# Answer 1: Part 3

**Florida Rules of Professional Conduct Rule 4-7.4(a) DIRECT CONTACT WITH PROSPECTIVE CLIENTS** provides, in relevant part:

- (a) Solicitation. 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

Was Goodfellow's comment about the "bozo" of a police officer improper?

- a) Yes
- b) No
- c) Maybe



# Answer 2: Part I

## Rule 4-7.2(c)

(C)(1) *Statements About Legal Services.* A lawyer shall not make or permit to be made a false, misleading, or deceptive communication about the lawyer or the lawyer's services. A communication violates this rule if it:

- (A) contains a material misrepresentation of fact or law
- (B) is false or misleading;
- (C) fails to disclose material information necessary to prevent the information supplied from being false or misleading;
- (D) is unsubstantiated in fact;
- (E) is deceptive;
- (F) contains any reference to past successes or results obtained;
- (G) promises results;
- (H) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (I) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
- (J) contains a testimonial.

# Answer 2: Part 2

Goodfellow's conduct violates almost each and every one of the prohibitions contained in Rule 4-7.2(c). Going down the list:

(A) through (E):

Goodfellow's statement would be misleading or false if he never, in fact, had a case against the Officer (thus explaining why he never lost a case against her). This statement is also misleading because it fails to explain what "never lost" means. (Were all of his clients acquitted, or were there good resolutions achieved in those cases? When the attorney was successful in the prior matters, was it because of the Officer's poor work or due to some other factor in the case?)

(F) through (H): Goodfellow's representation directly references past success and results, and implicitly promises similar results to the brothers. This is a direct violation of the rule.

(I) Arguably, Goodfellow also implies that he has uncommon results against the Officer that are better than that of other attorneys.

**In sum, this statement is a BIG no-no!**



## Question 3

**Can Goodfellow accept the money?**

- A. Yes**
- B. No**
- C. Maybe**



# Answer 3: Part I

**If the money is stolen:**

**B. No.**

- “Knowingly possessing the *fruits of a crime*, such as stolen money or merchandise, counterfeit goods or phony identification cards, may violate various laws....Statutes differ regarding knowledge and intent, but if a lawyer’s possession of any kind of evidence of a crime helps a client conceal the evidence from law enforcement, impedes law enforcement’s access to it, or alters the quality of the evidence, offenses including obstruction of justice, evidence tampering, aiding and abetting, misprision and conspiracy could be implicated...A lawyer who acquires contraband, fruits or instrumentalities often will run afoul of one or more statutes. Under such circumstances, counsel must turn over the evidence to law enforcement at some point, even if doing so could implicate a client in wrongdoing.”

## Answer 3: Part 2

- Cites to previous slide:
- Evan A. Jenness, *Ethics and Advocacy Dilemmas- Possessing Evidence of a Client's Crime*, 34-DEC Champion 16, 2 (2010) (citing §§812.014(6) and 918.13(1)(a), *Fla. Stat.* (2012) and *Jones v. State*, 691 So.2d 33 (Fla. 4<sup>th</sup> DCA 1997), citing, *State v. Houck*, 374 So.2d 86 (Fla. 4<sup>th</sup> DCA 1979) (the knowing and intentional possession of stolen property falls within theft statute).

# Answer 3: Part 3

**If the money is not stolen:**

**C. Maybe.**

**R. Reg. Fla. Bar 4-1.8(f), “Conflict of Interest: Prohibited and Other Transactions”:**

**“A lawyer shall not accept compensation for representing a client from one other than the client unless:**

- (1) The client consents after consultation;**
- (2) There is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship;**
- (3) and Information relating to the representation of a client is protected as is required by rule 4-1.6**

## Question 4

**Does Goodfellow need to say anything to dispel Mama's belief that his relationship with the Judge and with Officer Dunkin will result in a guaranteed win/release for her sons?**

- A. Yes**
- B. No**





# Answer 4: Part I

**A.** Yes, or else Goodfellow may be subject to disciplinary action.

**R. Reg.Fla.Bar 4-8.2, “Judicial and Legal Officials”, subsection (a):**

**“Impugning Qualifications and Integrity of Judges or Other Officers”. “A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office”.**

## Answer 4: Part 2

**Additionally, the right to free speech under the federal and Florida Constitutions does not preclude disciplining an attorney for speech directed at the judiciary, as the First Amendment does not protect those who make harassing or threatening remarks about the judiciary.**

**An attorney who, after suffering adverse rulings in two cases in which he represented himself, filed various pleadings and made public statements denigrating the courts involved and the administration of justice, was publicly reprimanded. Disciplinary action was also warranted, where.... an attorney implied in pleadings in a child custody case that the judge had appointed a particular guardian ad litem since the attorney was a “political crony”, and that the judge had awarded the other attorney \$1,000 in fees to repay him for a political contribution.” See, 4 Fla. Jur. 2d Attorneys at Law §120 (2012); see also, *Cerf v. State*, 458 So.2d 1071 (Fla. 1984)**

## Question 5

Can Goodfellow represent both brothers?

A. Yes.

B. Yes, as long as he has conflict waivers from each of them.

C. No.

D. Maybe.



# Answer 5: Part I

## **D. Maybe.**

As long as the brothers' interests are not adverse to each other and each of them give their informed consent in writing (waivers), then the answer is Yes. In this case, however, the interests are obviously adverse, so the answer would be No.



# Answer 5: Part 2

**R.Reg.Fla.Bar 4-1.7(a), (b), “Conflict of Interest; Current Clients”,**

- (a) “Representing Adverse Interests”, provides, “Except as provided in subsection (b), a lawyer shall not represent a client if: (1) the representation of 1 client will be directly adverse to another client; or (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by personal interest of the lawyer.”**
- (b) “Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.”**



## Answer 5: Part 3

**Also, R. Reg. Fla. Bar 4-1.8, “Conflict of Interest: Prohibited and Other Transactions”, subsection (g), “Settlement of Claims for Multiple Clients”, provides,**

**“A lawyer who represents 2 or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.”**

## Question 6

**Does Goodfellow need a written representation agreement?**

- A. Yes**
- B. No**
- C. Maybe**



# Answer 6: Part I

## C. Maybe.

**R. Reg. Fla. Bar 4-1.5(e), “Fees and Costs for Legal Services”, “Duty to Communicate Basis or Rate of Fee or Costs to Client”, provides:**

**“When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client preferably in writing, before or within a reasonable time after commencing representation. A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee.”**



## **Answer 6: Part 2**

**As you can see, it depends....**

**Is this Goodfellow's first time representing the brothers? If it is, then the answer is Yes. If not, then probably the answer is No.**

**Is the money a non-refundable retainer fee? If it is, then the answer is Yes. If not, then probably No.**

## Question 7

**Did Goodfellow need consent from his clients to allow the associate to attend the hearing?**

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**A. Yes**

**B. No**







## Answer 7: Part I

Yes, the Rules Regulating The Florida Bar, Rules of Professional Conduct, provide the answer. In this case, Goodfellow had an obligation to communicate all relevant information to his clients. He was required to advise the brothers that his associate might be assisting in the brothers representation and would be attending the hearing. Exigent circumstances may exist that may require the lawyer to act without prior consultation. However, Goodfellow's haircut appointment would most likely not constitute exigent circumstances that would warrant use of the associate without prior consultation or consent.

# Answer 7: Part 2

**RULE 4-1.4 COMMUNICATION** (a) **Informing Client of Status of Representation.** A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;... (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) **Duty to Explain Matters to Client.** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

According to the comment of the rules, subdivision (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation.

# Answer 7: Part 3

Additionally, Rule 4-5.1 outlines the supervisory responsibilities and duties that Goodfellow has over Newbie Associate.

## **Rule 4-5.1. Responsibilities of a Partner or Supervisory Lawyer**

- (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 8

**Can Goodfellow proceed in light of the veiled threat from Big Boss?**

- A. Yes**
- B. No**





## Answer 8: Part I

Yes, Goodfellow can proceed in light of the threat from Big Boss so long as he can provide competent representation that does not interfere with his professional judgment and loyalty to the client.

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The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.



## Answer 8: Part 2

**Florida Bar Rule 4-1.7**, conflict of interest, is responsive to this question. According to subsection (a)(2), a lawyer shall not represent a client if there is a substantial risk that the representation of 1 or more clients would be materially limited by the lawyer's responsibilities to a third person or by a personal interest of the lawyer. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client and (2) the representation is not prohibited by law.

## Answer 8: Part 3

Additionally, Goodfellow is paid by Mama/ Big Boss. Rule 4-1.8 governs this payment arrangement: **(f) Compensation by Third Party.** A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by rule 4-1.6 (confidentiality of information). In order to continue to represent the brothers Goodfellow must adhere to these standards, even in light of being retained by Mama.

## Question 9

**Does Goodfellow have an obligation to tell the brothers he has been threatened?**

**A. Yes**

**B. No**



## Answer 9

Yes, Goodfellow has an obligation to tell the brothers he has been threatened.

Florida Bar Rule 4-1.4 outlines the lawyer-client relationship (communication) and is responsive to this question as well. Goodfellow has an obligation to keep the brothers reasonably informed about the status of the matter and he shall consult with the brothers about any relevant limitation on his conduct.

# Question 10

**Question: Should Princess use her prosecutorial discretion to dismiss the charges?**

A. Yes

B. No

C. Whether Princess prosecutes or dismisses the charges, she has not violated any rule.



# Answer 10: Part I

## **A.YES**

In light of victim Gabe's admission that he "does not remember" and cannot properly identify the alleged perpetrators, Princess should use her prosecutorial discretion to consider dismissing the charges.





# Answer 10: Part 2

Rule of Professional Conduct 4-3.8 on SPECIAL RESPONSIBILITIES OF A PROSECUTOR states that a prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause and...
- (c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing



# Answer 10: Part 3

## Rule of Professional Conduct 4-8.4 on MISCONDUCT

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states that a lawyer shall not:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.