



MEMORANDUM

DATE: December 17, 2010

TO: Members of the Board's Regulation, Admissions & Discipline Oversight Committee

FROM: Randall Difuntorum, Director, Professional Competence Programs

SUBJECT: RAD Meeting on January 6, 2011 – Status of the Professional Competence Unit

This memorandum provides an update on the activities of the Professional Competence Unit through October 31, 2010.¹ In addition to this memorandum, provided are the following: (1) Ethics Hotline Activity Statistics, and (2) Professional Competence Budget Summary – Authorized vs. Actuals. Board members with questions may contact Randall Difuntorum at (415) 538-2161 or Lauren McCurdy at (415) 538-2107.

1. ETHICS HOTLINE

As of October 31, 2010, 12,471 member inquiries were received with a completion rate of 92%. This completion rate includes distribution of 519 copies of published ethics opinions and other written materials requested by inquirers and 5,551 referrals to information posted at the Bar's website. (Due to the availability of State Bar Formal Opinions at the Ethics Information area of the website, there is a decreasing need for distribution of this information by mail.) Of the total calls, 1,803 were courtesy follow-up calls to members who placed a call to the Hotline, received a call back from Hotline staff but were not available at that time to take the call from the Hotline staff person. These members received instructions on how to call-in and receive priority handling when they choose to return the Hotline's call at their convenience. However, when no return call is received, the Hotline initiates a courtesy follow-up call.

Six Ethics Hotline paralegals handle the majority of calls received. For the month of October: (1) the average number of total calls handled by one paralegal was 281; the average number of completed calls was 190; and (3) the average number of left messages was 111. In this same period, 3 voluntary satisfaction surveys were received from members after using the Ethics Hotline service. Each survey asks for a rating on several specified categories of service, including: satisfaction with the system for handling the calls; helpfulness of receptionist; helpfulness of paralegal; usefulness of materials sent; whether the inquirer would recommend the Hotline to others; and whether they received the assistance they needed. Two of the three surveys received gave the Hotline top marks in most survey categories and one included additional complimentary

¹ There are 13.5 authorized positions in the Professional Competence Unit and all of these positions are currently filled. These authorized positions include a Program/Court Systems Analyst position that is shared with the Office of General Counsel.

remarks.² One survey expressed dissatisfaction with the demeanor of the staff person who assisted them.³ (Copies of the surveys are available upon request.)

2. COPRAC

Since the last Professional Competence status report submitted for the Board Committee's November 10, 2010 meeting, COPRAC met on November 5th and 6th in Los Angeles. At the November meeting an orientation meeting to orient the incoming COPRAC members was also held, along with a computer training session for all members on the use of the Collaboration software used to assist in the management of the committee work. COPRAC continued post-public comment consideration of Formal Opinion Interim Nos. 06-0004 (Confidentiality and Unsolicited E-mail Correspondence), and 08-0001 (Gifts from Clients) which was approved for circulation for a second public comment period (see below). COPRAC also continued pre-public comment consideration of 09-0001 (attorney suing former firm for retaliatory discharge), 10-0001 (social networking), 10-0002 (communications with attorney's implied consent), and 10-0003 (virtual law practice). The Committee continued its consideration of an ethics alert on the subject of Internet scams that specifically target attorneys and anticipates publishing the alert in late December or early January. In addition the Committee discussed the 2010/2011 annual appointment process, and, initial planning for the 2011 Annual Statewide Ethics Symposium and State Bar Annual Meeting CLE programs.

The following opinion was tentatively approved by COPRAC for final 30-day circulation to RAD for approval prior to publication at the Bar's website. COPRAC considered this opinion following an additional 30-day public comment period and having not received any objections from the Board Committee members, the opinion has been published at the Bar's website:

Formal Opinion No. 2010-179 (formerly Interim Opinion No. 08-0002):

ISSUES: Does an attorney violate the duties of confidentiality and competence he or she owes to a client by using technology to transmit or store confidential client information when the technology may be susceptible to unauthorized access by third parties?

DIGEST: Whether an attorney violates his or her duties of confidentiality and competence when using technology to transmit or store confidential client information will depend on the particular technology being used and the circumstances surrounding such use. Before using a particular technology in the course of representing a client, an

² This Hotline user commented that: "[the Hotline staff person] was very friendly, responsive, and did her best to assist me with my issue. I appreciate her help. I would highly recommend her service to others. Thank you."

³ This Hotline user commented that: "My phone conversation with [the Hotline staff person] was unpleasant, frustrating, and ultimately unhelpful. In all of my previous experiences with calling the hotline, the paralegals have been courteous and as helpful as possible. I understand all the disclosures made for the information provided by those working for the ethics hotline and I had researched my issue on the State Bar website before calling the hot line for clarifying information. I was polite throughout our conversation, and merely wanted to get information (or be directed to information) so that I could make an informed decision. [The Hotline staff person] was condescending and unresponsive to my questions. She mainly resorted to making passive aggressive, argumentative, and sarcastic responses to my concerns. This is unbecoming of an employee of the State Bar of California, especially where attorneys are seeking information and assistance in order to best comply with State Bar rules and other provisions. Thankfully, I later received assistance from someone else in your office who was very friendly and helpful."

attorney must take appropriate steps to evaluate: 1) the level of security attendant to the use of that technology, including whether reasonable precautions may be taken when using the technology to increase the level of security; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; 5) the urgency of the situation; and 6) the client's instructions and circumstances, such as access by others to the client's devices and communications.

The following opinion was approved for circulation for a second public comment period:

Formal Opinion Interim No. 08-0001:

ISSUE: When does an attorney violate rule 4-400 of the California Rules of Professional Conduct by accepting a gift from a client?

DIGEST: An attorney who demonstrates by words or conduct an intent to cause a client to give the attorney a substantial gift violates rule 4-400. Whether a gift is substantial must be determined by examining issues such as the value of the gift from the perspective of both the client and the attorney both financially and otherwise, as well as general standards of fairness.

COPRAC's next meeting is scheduled for January 14, 2011 and will be held in Los Angeles. At this meeting, they will continue work on the following matters: post-public comment consideration of Formal Opinion Interim No. 06--0004 (Confidentiality and Unsolicited E-mail Correspondence); pre-public comment consideration of Formal Opinion Interim Nos. 08-0003 (serving subpoenas on existing clients of a law firm), 09-0001 (attorney suing former firm for retaliatory discharge), 10-0001 (social networking), 10-0002 (communications with attorney's implied consent), and 10-0003 (virtual law practice); an Ethics Alert article concerning Internet scams targeting lawyers, if not published prior to this meeting; the 2010/2011 annual appointment process; and, continued planning for the 2011 Annual Statewide Ethics Symposium and State Bar Annual Meeting CLE programs.

As mentioned in the last Professional Competence status report to RAD for the November 10, 2010 Board Committee meeting, COPRAC conducted four educational programs at the State Bar Annual Meeting held in Monterey. As promised, a summary of the program evaluation forms for these programs is attached to this status report. The average overall rating for these programs is 4 (on a scale of 1-5, 5 being the highest rating). The COPRAC sponsored programs were entitled "Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined," "Ethics Update 2010: Significant Developments in the Law of Lawyering," "Keeping Your Client Trust Account and Collecting Your Fee," and "Electronic Ethics." The foregoing programs were all selected by Annual Meeting staff for videotaping to be offered as online CLE following the Annual Meeting. The Office of Professional Competence also sponsored two additional programs. The first program, entitled "Ethical Paradigms for 2010," was moderated by former RAD co-chair Judy Gilbert; and presented by COPRAC chair Carole Buckner and COPRAC member David Parker. The second program, entitled "Intellectual Property Ethics Jeopardy," was co-sponsored by the San Francisco Bay Area Intellectual Property Chapter of the American Inns of Court and was presented by Neil Smith, former COPRAC member John Steele, Daralyn Durie and Ragesh Tangri.

3. RULES REVISION COMMISSION

As mentioned in the last Professional Competence status report to RAD for the November 10, 2010 Board Committee meeting, the Commission presented a panel at the State Bar Annual Meeting entitled "Proposed New and Amended Rules of Professional Conduct." As promised, a summary of the program evaluation form for this program is attached to this status report. The average overall rating for this program was 4 (on a scale of 1–5, 5 being the highest rating). The panel examined key issues in the proposed new and amended rules, including: confidentiality; fees; conflicts of interest; and law firm associations. The panel was moderated by Judge Michael Marcus (Ret.), the Immediate Former RAC Chair, and the co-panelists were: Harry Sondheim (Commission Chair); Prof. Kevin Mohr (Commission Consultant), and Randall Difuntorum (Commission Staff Counsel)

Given the Board's action to place the Rules Revision Commission into an abeyance status at the time of the Board's final action to adopt the proposed rules for submission to the Supreme Court, there is currently no Commission activity to report under this section. In the event that the Commission is reactivated to address issues referred by the Board, such as questions that might be received from the Supreme Court, we will provide an update on that Commission activity.

4. COMPETENCE PUBLICATIONS

Handbook on Client Trust Accounting for CA Attorneys: A revised 2010 online version of the handbook is anticipated in the coming months.

California Compendium on Professional Responsibility: As of October 31, 2009, 79 copies of the 2009 Compendium updates have been sold. Sales of the 2010 Compendium update began in November, and 422 copies have been sold to date.

CA Rules of Professional Conduct & State Bar (a.k.a Publication No. 250): As of October 31, 2010, 1,469 copies of the 2010 Publication 250 have been sold.

5. COMPETENCE RESOURCES AT CALBAR.CA.GOV

A new one-hour free online MCLE self-study ethics article entitled "A 'Charging Lien' as an Adverse Interest Under Rule 3-300 of the Rules of Professional Conduct" was posted at the website on November 19, 2010, describing the proposed new and amended Rules of Professional Conduct, to date, 153 members have used it to obtain 1 hour of free ethics credit. The online MCLE self-study article on the topic of the Proposed Rules of Professional Conduct has been used by 489 members to obtain 1 hour of free ethics credit.

A new page in the "Ethics Information" area was added listing the new free online MCLE self-study articles on the topic of ethics. The page can be accessed by clicking on the blue MCLE self-study icon in the "Announcements" box at the top right side of the "Ethics Information" page.

Training has been received and work on conversation of documents has begun to make all PDF documents in the Ethics Information area of the website ADA compliant. A number of new ADA compliant PDFs have been posted to replace earlier versions and work continues to be carried out.

cc: Robert A. Hawley

ETHICS HOTLINE ACTIVITY STATISTICS - 2010

Month	Work Days	Incoming Calls	Completed Calls	Left Messages	Percentage of Incoming Calls that are Completed Calls	Percentage of Incoming Calls that are Left Messages	Resources Mailed/ Faxed	Internet Resource Referrals
January	19	1317	1107	210	84%	16%	46	504
February	19	1310	1230	80	94%	6%	49	594
March	22	1438	1301	137	90%	10%	53	649
April	22	1316	1186	130	90%	10%	62	585
May	20	1184	1078	106	91%	9%	40	522
June	22	1320	1222	98	93%	7%	59	589
July	21	1075	993	82	92%	8%	68	527
August	22	1178	1118	60	95%	5%	41	541
September	21	1192	1115	77	94%	6%	52	536
October	20	1141	1063	78	93%	7%	49	504
November								
December								
Cumulative Totals	208	12,471	11,413	1,058	92%	8%	519	5,551

EXPLANATIONS

Incoming Calls: Total member inquiries to the Hotline received during that month.

Completed Calls: Member inquiries received in that month which were handled and resolved by staff during that month.

Left Messages: Member inquiries received that month where staff left an initial message or courtesy follow-up message, but did not reach the member to resolve the inquiry.

Percentage of Incoming Calls that are Completed Calls: Proportion of Incoming Calls that were Completed Calls handled and resolved by the staff.

Percentage of Incoming Calls that are Left Messages: Proportion of Incoming Calls where staff left a message but the member did not return the call.

Key Hotline Activity Averaged by Day and Month (through October 31, 2010)

Daily:	Incoming Calls:	60
	Completed Calls:	55
Monthly:	Incoming Calls:	1,559
	Completed Calls:	1,427

Aggregate Outgoing Calls

Current Month:	1,806
Cumulative to Date:	19,759

This figure accounts for all calls placed by staff, including: Completed Calls, Left Messages and courtesy follow-up messages. Due to "telephone tag" with leave multiple messages prior to completing a call, members, staff may place multiple calls and leave multiple messages prior to completing a call.

Professional Competence Budget Summary

Authorized vs. Actual

Year-to-Date as of October 31, 2010

Budget (Actual)	\$1,715,542
Budget (Authorized)	\$1,978,132
Savings	\$262,590

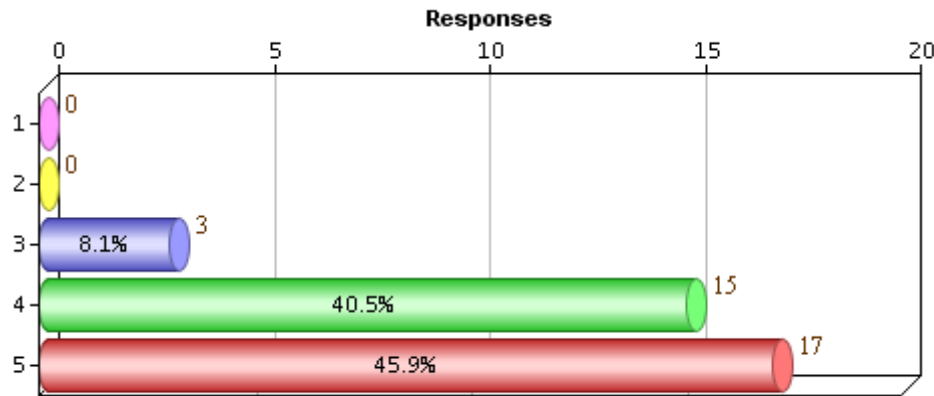
Monthly (January-June) as of October 31, 2010

	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>
Budget (Actual)	\$155,433	\$182,603	\$210,592	\$264,943	\$156,510	\$769
Budget (Authorized)	\$184,616	\$184,616	\$184,616	\$252,649	\$184,616	\$181,616
Savings	\$29,183	\$2,013	-\$25,976	-\$12,294	\$28,106	\$180,847

Monthly (July-December) as of October 31, 2010

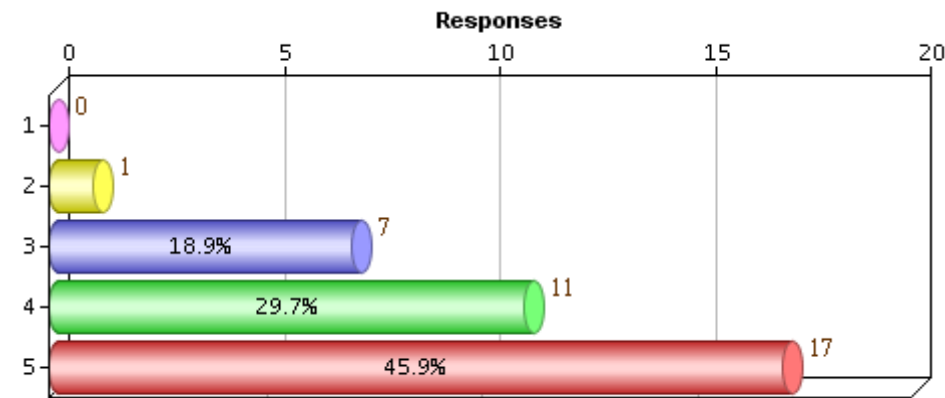
	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>
Budget (Actual)	\$177,404	\$169,271	\$163,630	\$234,387		
Budget (Authorized)	\$184,603	\$184,597	\$184,543	\$251,660		
Savings	\$7,199	\$15,326	\$20,913	\$17,273	\$0	\$0

PANEL #2: Electronic Ethics



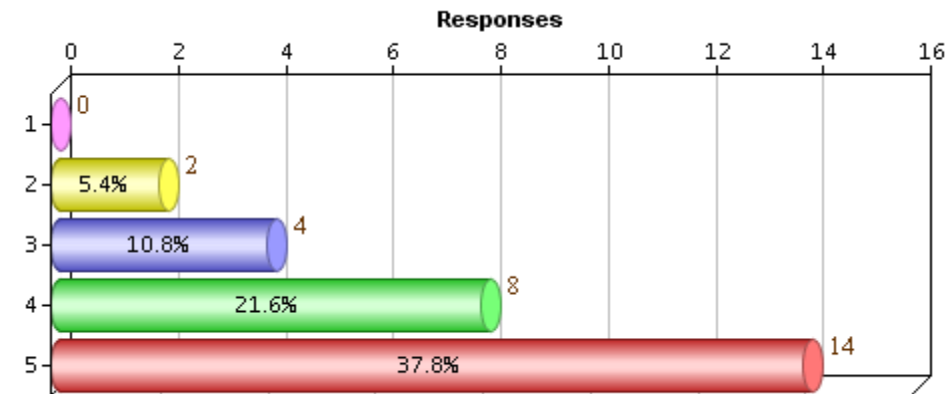
To what extent were your personal objectives satisfied?

- Wanted more on Facebook, Internet stuff
- Made the whole trip here worthwhile
- Overall very helpful course



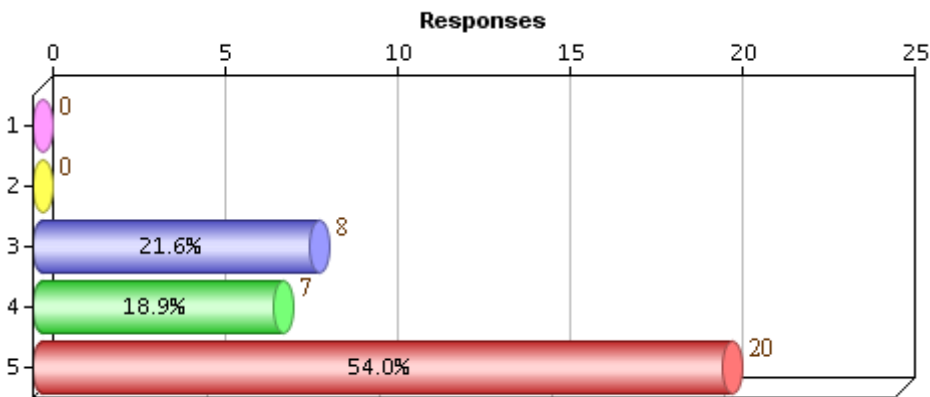
To what extent did the environment contribute to the learning experience?

- Tables would be helpful.
- It would be nice to have tables. I understand why there are only chairs.
- All had good, strong voices. Made it EZ
- Great!



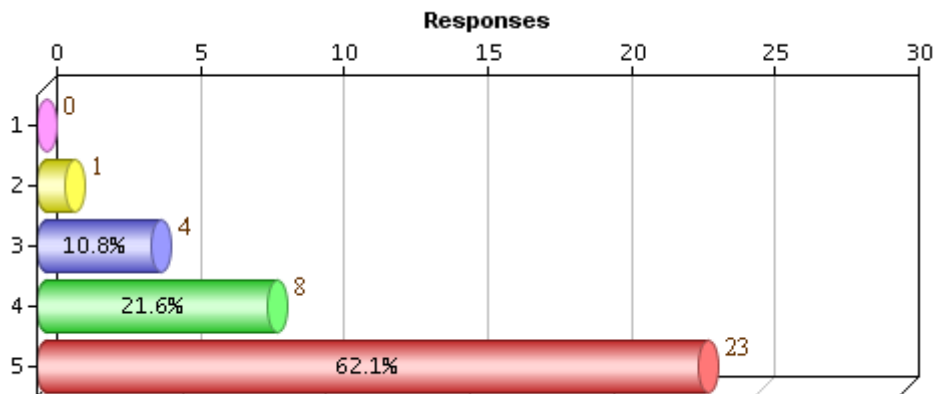
To what extent did the materials contribute to the learning experience?

- Should have PowerPoint throughout – instead of just parts
- Can't tell yet but sounds like it will be a "5"
- I didn't get them although the speakers referred to them repeatedly
- Great that you had the materials on-line and gave memory sticks
- Haven't read them yet
- Miss having handouts supplied with the talk – tough at times to follow without them
- Electronic not yet received



To what extent were the objectives stated in the promotional literature or those stated at the beginning of the program satisfied?

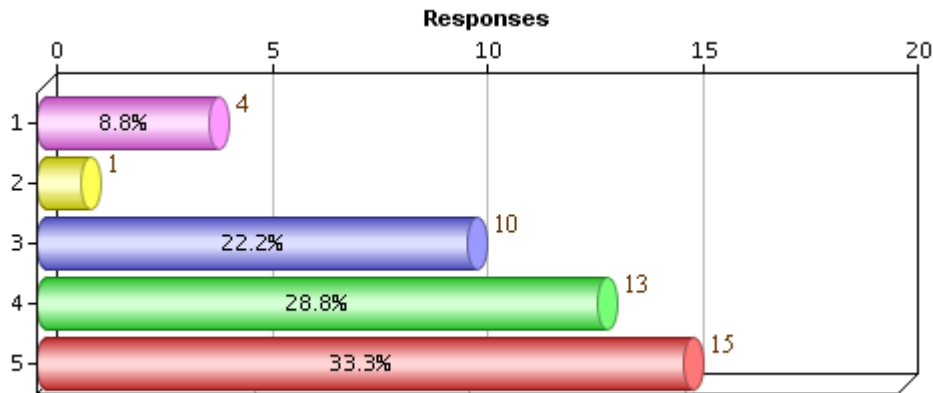
- More of overview of rules/laws rather than "learn"
- Better



To what extent did the program contain significant current intellectual or practical content?

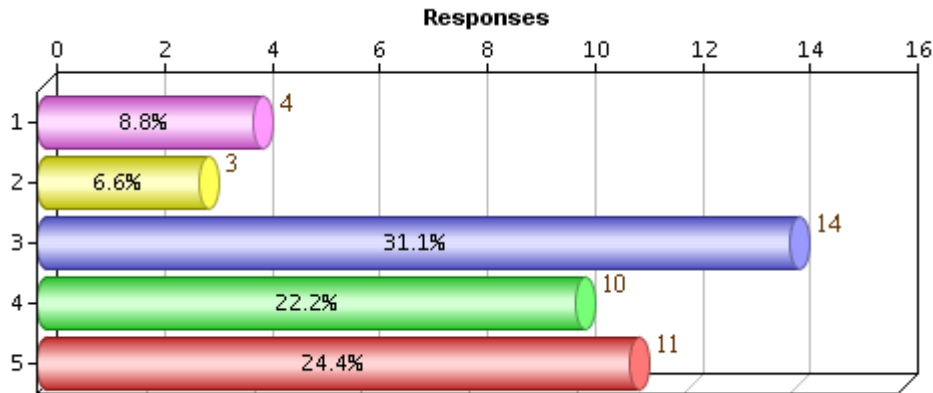
- Excellent presentation!!!
- Much more than I anticipated
- Outstanding!! Very current materials and opinions

PANEL #50: Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined



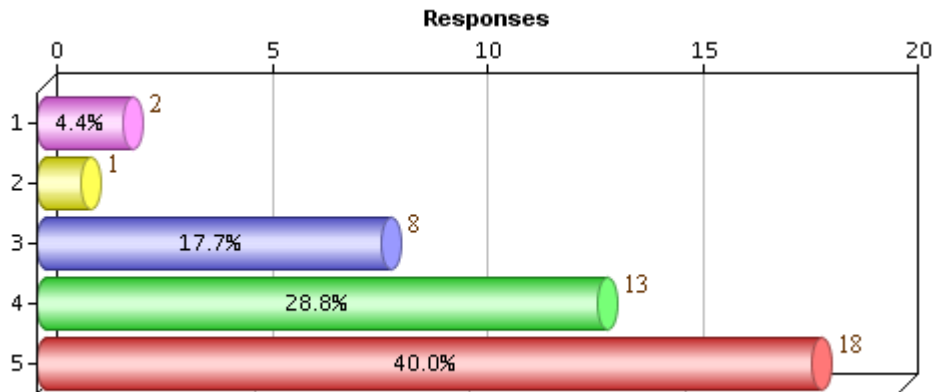
To what extent were your personal objectives satisfied?

- Insufficient opportunity for audience questions and interplay
- All three excellent
- Important but mind-numbingly boring. As a solo practitioner I do not work with other lawyers in a firm and I felt this does not address any of the issues I face day in and out
- All presenters excellent
- Lots of info but no solid answers. They all did a god job – I wish there were some definitive answers
- Probably my fault for not attending criminal emphasis (which was offered but most examples don't apply to my practice)
- I am a criminal lawyer and this program did not cover anything involving criminal law



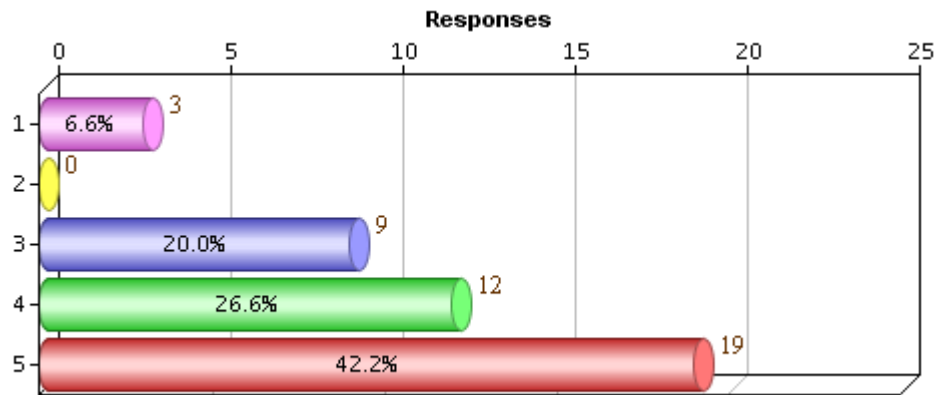
To what extent did the environment contribute to the learning experience?

- Individual chairs (which are always mostly empty) should be moved to the back of the room and tabled seating (which is popular) moved to the front
- Room very cold. No coffee. Very little Q & A
- Tables should have been in front
- Cold and not enough tables
- Annoying to have to take bus out to Hyatt for class
- Room dimly lit. Caused me to squint
- Too cold to sit for 1.5 hours



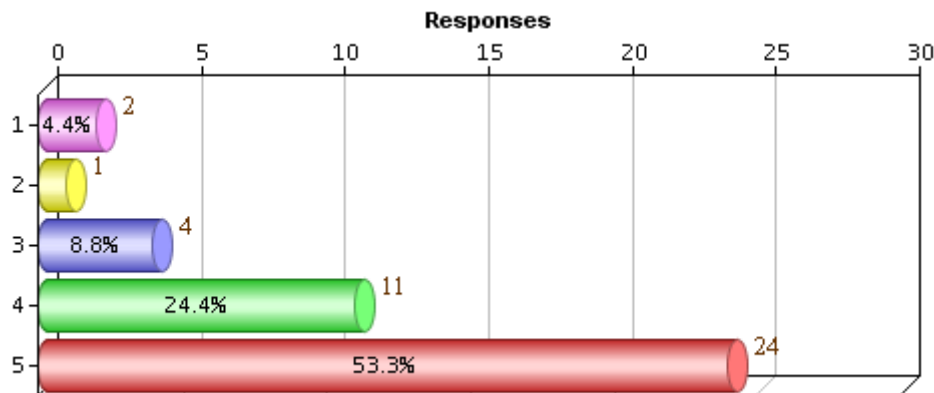
To what extent did the materials contribute to the learning experience?

- It would have been helpful to know which materials you were referring (flash drive or handout) when you say "It is found in the materials"
- Needed more references to section rules
- Nice to have handouts
- The thumb drive does not work on my laptop computer. Only got hand-out with my hypotheticals
- Appreciate handouts of powerpoint to supplement flash drive
- Didn't use – too small. Used overhead
- Haven't seen them yet
- Good materials and handout



To what extent were the objectives stated in the promotional literature or those stated at the beginning of the program satisfied?

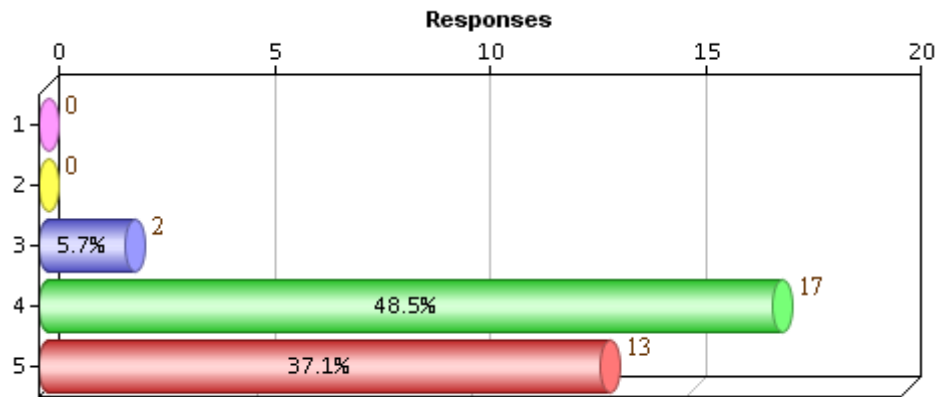
- Course description should have disclosed how narrow the approach was. It was really geared towards transactional lawyers dealing with the purchase of corporate assets. Well presented but not what I expected.
- I don't know
- Not one thing about criminal law. Should have alerted us that all the hypotheses would be civil



To what extent did the program contain significant current intellectual or practical content?

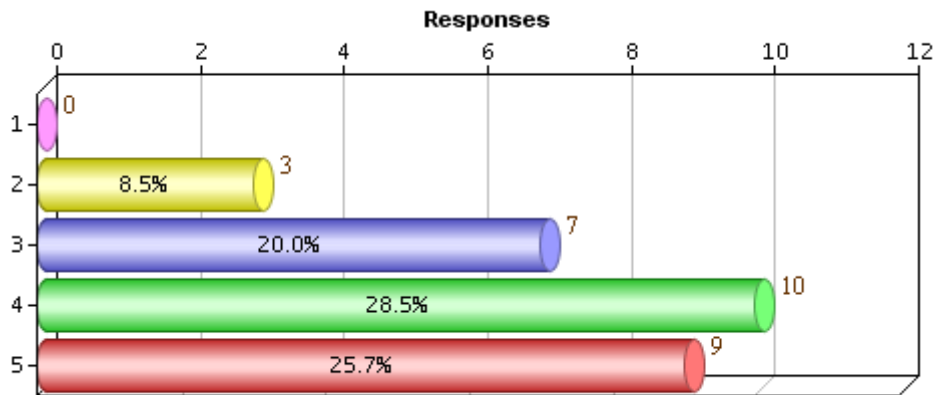
- Program focus more applicable to large transactional firms – less for smaller firms dealing with family law or estates
- Excellent program in that it did not repeat materials on flash drive. Hypotheticals were excellent teaching tool referencing flash drive materials and stimulating thinking
- Total waste of time

PANEL #61: Keeping Your Client Trust Account and Collecting Your Fee



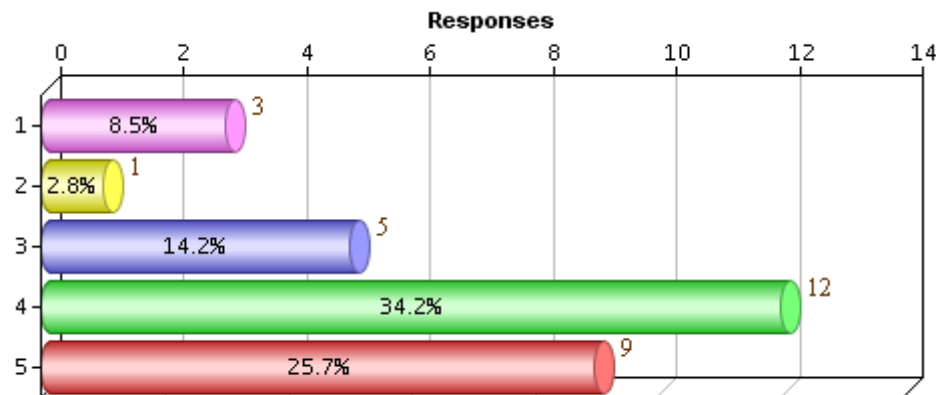
To what extent were your personal objectives satisfied?

- Excellent program the best of the conference
- All excellent presenters. Thank you!



To what extent did the environment contribute to the learning experience?

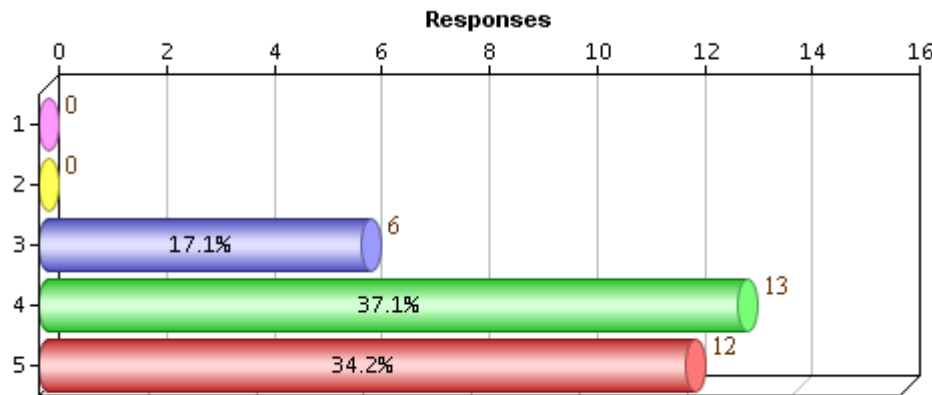
- No tables!
- Very difficult to take notes without table and cold
- No table
- No tables/desks, this course required a lot of note taking
- The AV was horrible. Hard to hear.



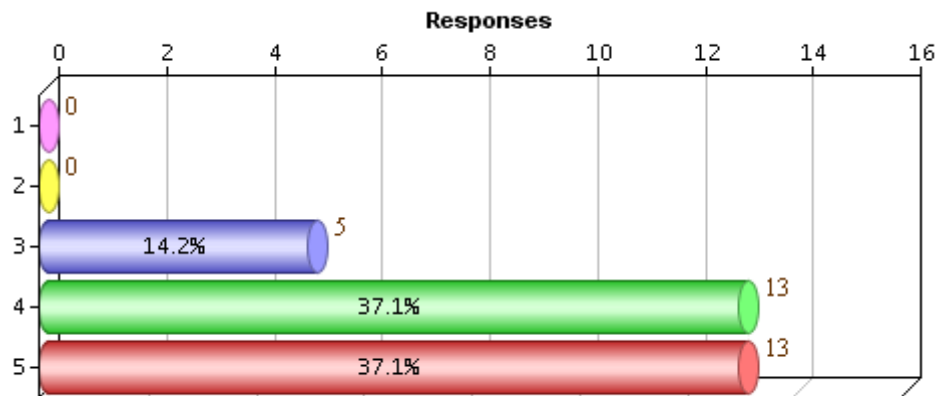
To what extent did the materials contribute to the learning experience?

- Need handouts at seminar
- Not distributed
- More examples, more questions from audience would be meaningful and weed out misunderstanding
- No materials.

To what extent were the objectives stated in the promotional literature or those stated at the beginning of the program satisfied?

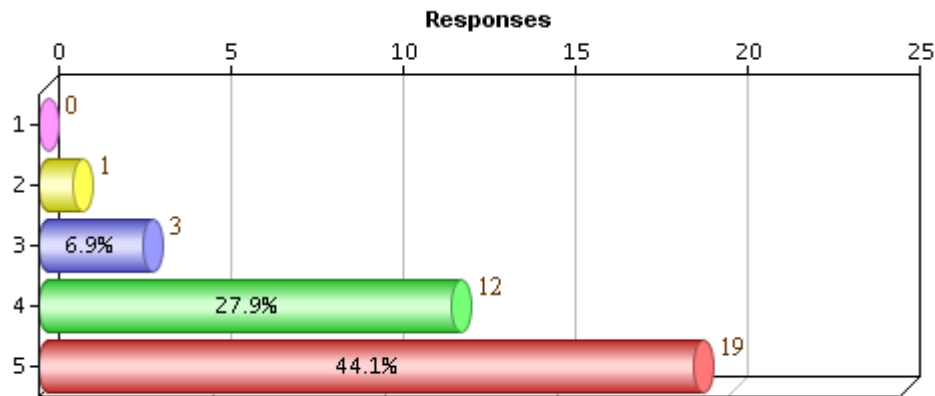


To what extent did the program contain significant current intellectual or practical content?



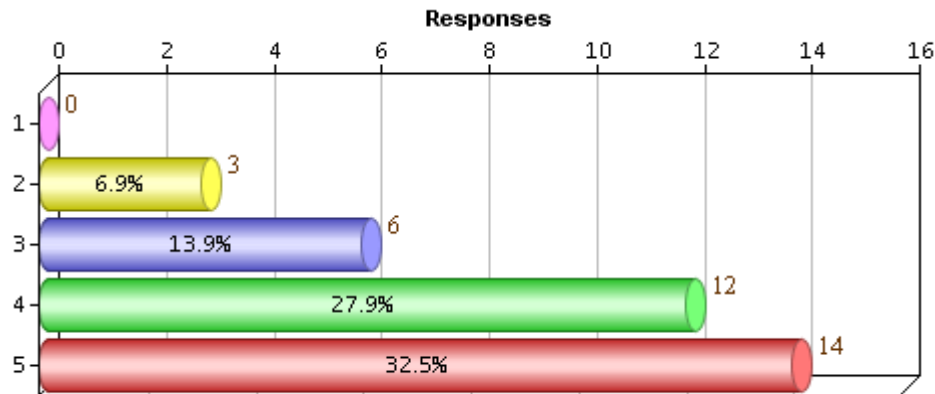
- Learned in doing a few things wrong
- My only complaint is that these presenters repeated themselves after—could have shortened the presentation
- Good program. Lots of practical advice.
- The reminder to have a paper trail was made too often – move on to bank records and what is the most useful – electronic transfer is more the case

PANEL #88: Ethics Update 2010: Significant Developments in the Law of Lawyering



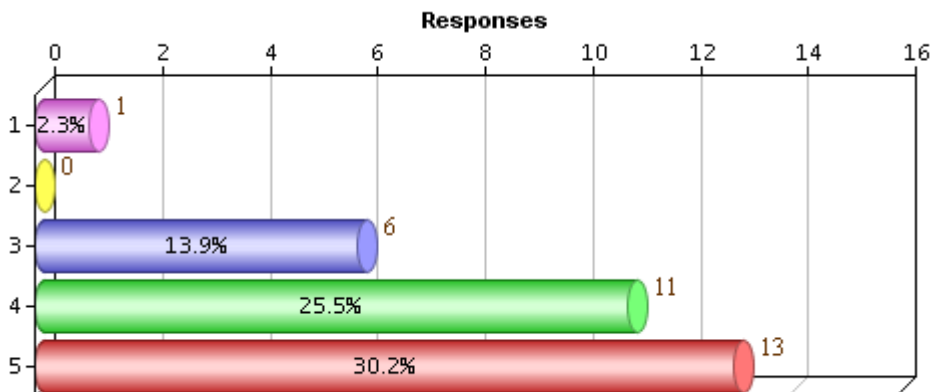
To what extent were your personal objectives satisfied?

- Poor use of powerpoint slides
- Excellent
- Excellent. Thank you.
- Most dealt with firms.
- Very well done program – great update very thorough. Thank you.



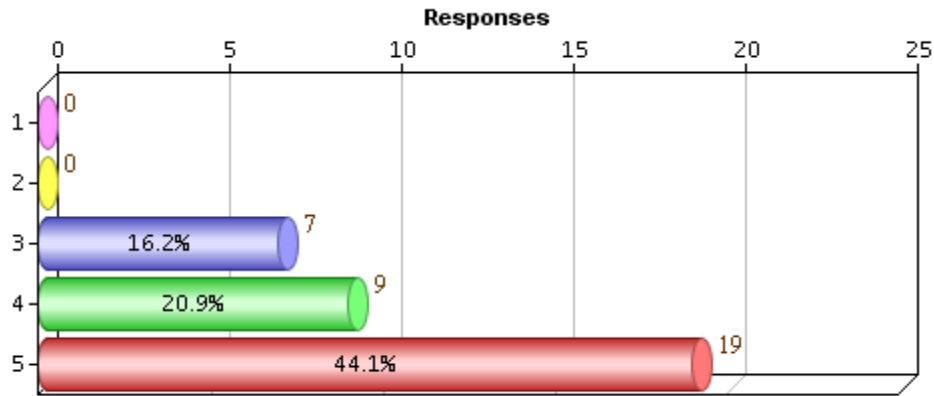
To what extent did the environment contribute to the learning experience?

- Freezing
- Bus logistics to Hyatt are poor. 120 attorneys waiting in line is absurd.
- Too cold.
- Too cold – should have tables all the way to front
- Do not put rows of chairs without tables at front of the room – creates too much distance



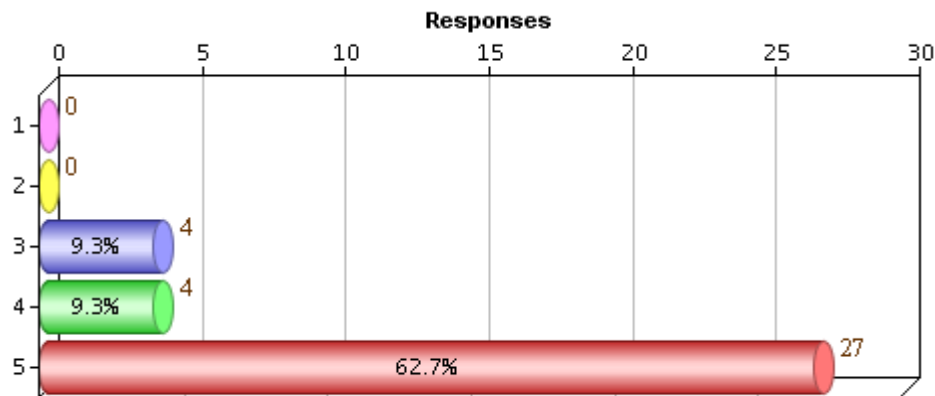
To what extent did the materials contribute to the learning experience?

- No written materials
- If materials only electronic (which is great), better to have space with electrical outlets for computers or else notice attendees that no plugs available
- Thorough, extensive case summaries
- Unknown yet
- What materials



To what extent were the objectives stated in the promotional literature or those stated at the beginning of the program satisfied?

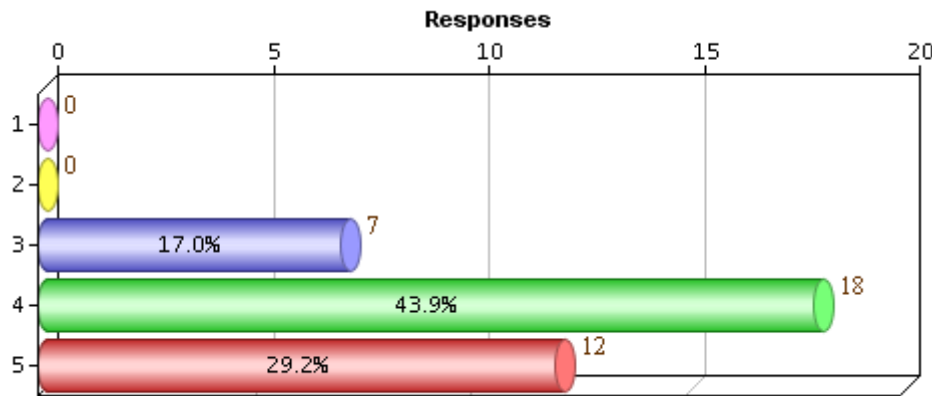
- Excellent
- There appear others in the panel as majority of cases dealt with firms with most small firms or solo practioners



To what extent did the program contain significant current intellectual or practical content?

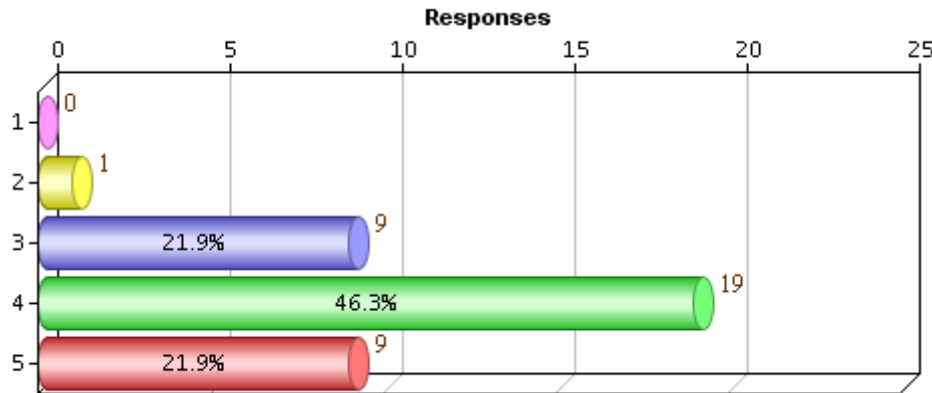
- Very good presentations
- Excellent
- Very informative re Recent Developments
- Where info was applicable between firms and solo practioners

PANEL #41: The Proposed New and Amended Rules of Professional Conduct



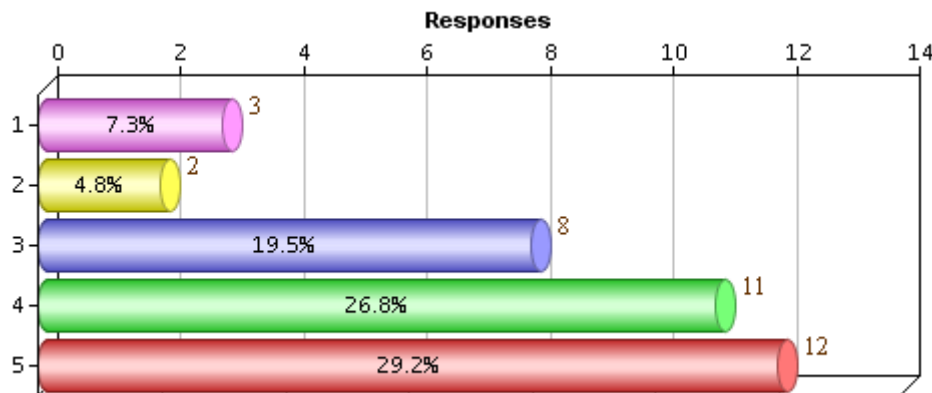
To what extent were your personal objectives satisfied?

- More discussion re Client Trust Accounts
- Suggest: Integrate some factual hypotheticals and real world examples
- The program was helpful especially the fact that the new rules aren't a total change from what is already known in CA something that could be helpful would be some hypotheticals that point to any significant changes between the old and new rules – overall well done informative and helpful
- Excellent panel!
- All presentations excellent
- Panel was knowledgeable



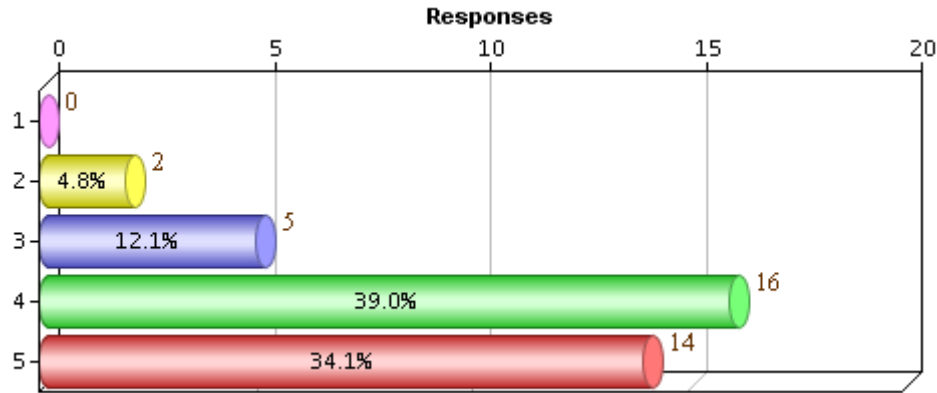
To what extent did the environment contribute to the learning experience?

- Good audio and visuals. Cold however. Air conditioning – too strong
- Room sort of cold
- Too cold in room
- Room to cold
- A little chilly, I was wearing a sweater
- Did not start on time!! Unacceptable given that, they obviously had little to say



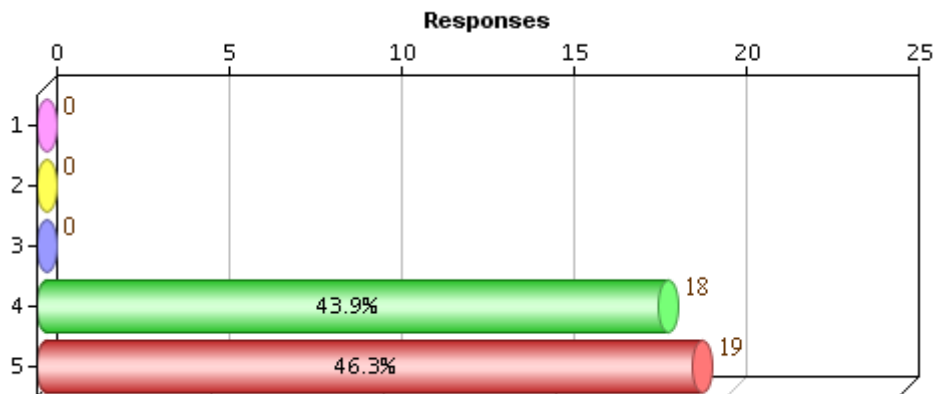
To what extent did the materials contribute to the learning experience?

- No
- Miss written materials, reference to internet not ok
- Need name tags and bios
- I do want the written materials – even if they were sold in the back of the room
- Too much on some slides – very bottom of screen hard to read
- Thanks for the free MCLE
- Would have like additional articles
- This is such an important topic. A course handout should have been provided instead of online
- Should have given all slides beforehand. Good presentation otherwise



To what extent were the objectives stated in the promotional literature or those stated at the beginning of the program satisfied?

- NO COMMENTS



To what extent did the program contain significant current intellectual or practical content?

- Important to know, but work in progress
- I work for law and motion dept. in trial court. Wish you gave courts more clarity on ethical walls.
- Very clear explanations by all panelists. Good explanation of reasons behind the rules
- Downplayed prosecutor concerns re proposed rule 4.2 too much
- Good discussion of new rules re real time electronic communications