

Self-Assessment Test

January 2011

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Jan. 2011 issue of NYPRR and answering the following questions. The answers are contained within the newsletter. Return this form, together with your payment of \$15 by check or money order. For both true-false questions and multiple-choice questions, mark the correct box with an "x". You must score 80 (16 out of 20 correct) to receive a certificate.

1. The first rendition of the NY Rules of Professional Conduct was drafted by:
 - the Justices of the four Appellate Divisions
 - the NYSBA Committee on Standards of Attorney Conduct ("COSAC")
 - a committee of lawyers and judges appointed by the Chief Judge.
2. The Rules announced by the Appellate Divisions confirmed adoption:
 - of the Rules and Comments submitted by COSAC
 - of Rules "different" from the Rules recommended by COSAC
 - of Rules with accompanying Comments.
3. The reason that further changes in its Comments were introduced by the NYSBA in November 2010 is:
 - there were disparities between the Comments and the Rules
 - the Appellate Divisions had amended many of the Rules
 - the Appellate Divisions had requested the changes.
4. The change in Comment 4A to Rule 1.6 was intended to confirm that "confidential information" means:
 - any information received by a lawyer which has relevance to the representation
 - only information received before the representation begins
 - only information received during the representation.
5. The change in Comment 4A part two to Rule 6 establishes that information is not "generally known" simply because:
 - it is available after investigation and research
 - it is in the public domain or in a public file
 - it has been published in a national newspaper.
6. Comment 6B to Rule 1.6 recognizes that the exception to disclosure of confidentiality in cases of certain death or substantial bodily harm is not satisfied:
 - though the lawyer acts in good faith
 - if there is a remote possibility or small statistical likelihood that a particular unit of a mass-distributed product will cause the harm
7. Comment 4 to Rule 1.10 deals with the obligation of a law firm to erect a screen around:
 - if the lawyer suspects that a mass-produced product may contain a hidden defect.
 - all associates employed by the firm
 - partners in the firm
 - paralegals and newly-admitted lawyers who have had personal participation in a matter.
8. Comment 6 to Rule 1.11 requires a law firm which hires a government lawyer to decline a representation when:
 - there is a risk, however slight, that an appearance of impropriety will occur
 - the particular circumstances create an appearance of impropriety
 - the lawyer has occupied an executive position at his or her agency,
9. Comment 7B to Rule 1.11 eliminates the requirement that a firm screening a former government lawyer:
 - give notice to his former agency when the need to screen becomes apparent
 - include in its notice to the agency a description of the screening procedures employed
 - include in its notice to the agency the circumstance of the dispute or litigation requiring screening.
10. Comment 8 to Rule 4.2 substitutes for the word "person" the word:
 - client
 - party
 - litigant
11. Comments 3 and 5 to Rule 8.5 deal with screens for:
 - lawyers who move to a new firm
 - lawyers who practice in more than one jurisdiction
 - lawyers who join a firm after leaving the practice for two or more years.

12. Under *Pacific*, a false statement will not be attributed to a company lawyer or accountant:
- unless he is the sole author of the statement*
 - if he serves solely as a secondary actor and not as a disseminator of the statement*
 - unless he is the principal lawyer or accountant for the company.*
13. The Wagoner rule says that a trustee in bankruptcy has no standing to sue:
- third parties in pari delicto with corporate insiders*
 - lawyers advising a corporate officer on company policy*
 - accountants who act only as scribes.*
14. An exception to the Wagoner rule occurs when a corporate officer:
- acts entirely in his own interest*
 - concludes a non-compete agreement with a competitor*
 - colludes with the company's banker.*
15. The 2nd Circuit in *Kirschner*:
- applied New York law as expressed in a number of cases*
 - concluded that it needed guidance from the Court of Appeals*
 - attempted to interpret New York law.*
16. Judge Newman cited the following in support of the 2nd Circuit's decision to resort to certification:
- disagreement among the judges hearing the appeal*
 - every case involving the interpretation of state law should be certified to the state's highest court*
 - clarity in New York law was made imperative by the frequency of cases of insider misconduct in the corporate world.*

17. Speaking of the "in pari delicto" doctrine, Judge Read said:
- the doctrine requires assessment of comparative fault*
 - the doctrine should not be weakened by exceptions*
 - the doctrine enables civil courts to avoid detailed evidence of conspiratorial crimes.*
18. The Adverse Interest exception to the Wagoner rule applies when a corporate agent:
- fails to perform an assignment correctly*
 - abandons his principal's interest and acts in his own interest or the interest of others*
 - disobeys the instructions of his employer.*
19. Judge Read rejected the doctrine of comparative fault because:
- it adds to the courts' burdens the duty to assess the relative contributions of wrongdoers*
 - it would impact the public policy of deterrence of misdeeds*
 - it would be impossible to apply.*
20. The 2nd Circuit responded to the answers of the Court of Appeals by:
- certifying additional questions to the Court*
 - adopting the decision of the District Court and dismissing the trustee's appeal*
 - criticizing the Court for ignoring some of its questions.*

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