

# Self-Assessment Test

August 2009

## New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the August 2009 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. When a lawyer suspects that a client has diminished mental capacity, he is expected to:
  - move immediately for appointment of a guardian
  - to the extent possible, maintain a conventional relationship with the client
  - seek the opinion of a psychiatrist.
2. A lawyer who reasonably believes that a client with diminished mental capacity is at risk of substantial physical or financial harm is permitted to:
  - determine the level of incapacity by ordering cognition tests from therapists
  - consult with persons who have the ability to take action to protect the client
  - consult with another lawyer to confirm his belief.
3. Rule 1.14(c) gives a lawyer the implied authority to reveal confidences of a client with mental incapacity:
  - to all persons affected by the incapacity
  - only to a court or tribunal
  - whenever the lawyer deems it reasonably necessary to protect the client's interests.
4. Lawyers should anticipate an increase in the impact of Rule 1.14 because:
  - our society is aging and more people are exhibiting dementia
  - most pro bono clients are either minors or clients with diminished capacity
  - our economic problems put more mental stress on clients.
5. Under Rule 1.16, a lawyer may withdraw from a representation:
  - only with the client's consent
  - at any time, so long as withdrawal will have no material adverse effect on the client
  - only when the lawyer's physical or mental condition materially impairs his ability to represent the client.
6. Rule 1.16(c)(11) permits a lawyer to withdraw under Rule 1.13(c) or "other law". The reference to "other law" is:
  - to Sarbanes-Oxley.
  - to any regulatory law
  - only to regulatory laws in effect on April 15, 2009.
7. Under the definition in Rule 1.18(a), a "prospective client" is:
  - any potential client, whether a current client or a person seeking representation by a law firm
  - any person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter
  - any client who has retained a lawyer but has not revealed any confidential information to him.
8. According to Roy Simon, prospective clients are either "pending" prospective clients or "past" prospective clients. "Pending" prospective clients are clients:
  - who are negotiating the terms of a retainer agreement
  - waiting to decide whether, or awaiting the lawyer's decision whether, to enter into a lawyer-client relationship
  - conducting a "beauty contest" among law firms.
9. Rule 1.18(e) excludes from the definition of a "prospective client", any person who:
  - suggests that the lawyer help him to commit a crime
  - proposes a claim that is not warranted under existing law
  - has as his purpose the disqualification of the lawyer from handling an adverse claim in a pending matter.
10. Rule 1.18(b) affords the same confidentiality to a lawyer's discussions with a prospective client who never becomes a client as to information from:
  - a current client
  - a former client
  - a stranger
11. Roy Simon believes that Rule 1.18(b) should be construed to include the confidences of anyone who:
  - inadvertently discloses a secret to a lawyer
  - is waiting for a lawyer's decision whether to represent him in a matter
  - reveals the confidences of another person at a party.

12. When discussions by a lawyer and a prospective client do not result in a lawyer-client relationship, the lawyer may not represent another client with adverse interests if:
- the prospective client identifies the adverse client*
  - information obtained from the prospective client will be significantly harmful to the prospective client*
  - information obtained from the prospective client will be detrimental to him.*
13. When a lawyer is disqualified from representing a client adverse to a prospective client, another lawyer in the firm may represent the client, providing:
- both parties give informed consent, confirmed in writing*
  - the firm distributes to both parties a memorandum setting forth the disclosures which caused the disqualification*
  - the other lawyer has not been informed of the disclosures.*
14. A condition to representation of a current client in a matter adverse to a prospective client by a second lawyer after the first lawyer is disqualified is:
- prompt notice to all in the firm that the disqualified lawyer is prohibited from participating in the matter*
  - notice to those lawyers conducting the representation not to discuss the matter with the disqualified lawyer*
  - removal of all files in the matter to one location under the control of the lawyer in charge of the representation.*
15. Another condition under the circumstances in Question 14 is that:
- the disqualified lawyer be prevented from sharing in any fees in the matter*
  - the lawyer assigned by the firm to review conflicts issues determine that the disclosures of the prospective client will not be significantly harmful to it*
  - the firm obtain the written opinion of a reasonable lawyer outside the firm that the firm will be able to provide competent and diligent representation in the matter.*

16. In interviewing a prospective client, a lawyer should:
- limit his inquiries to information reasonably necessary to determine whether to represent the client*
  - pursue inquiries into matters that may help a current client*
  - always maintain a verbatim record of the interview.*
17. The “reasonable lawyer” standard in Rule 1.18(d)(3):
- imposes a duty on the courts to consider the testimony of experts in legal ethics*
  - probably has the same meaning as the phrase “a lawyer reasonably believes” in Rule 1.7(b)(1)*
  - was intended to differentiate the standard in Rule 1.18(d)(3) from the standard in Rule 1.7(b)(1).*
18. “Pay to Play” refers to the payment of reasonable referral fees by a law firm to:
- another law firm*
  - a qualified legal assistance corporation*
  - a medical practitioner.*
19. Opinion 2009-4 puts the Committee on the side of those who:
- disapprove of “Pay to Play”*
  - would like the debate to continue.*
  - support “Pay to Play”.*
20. A referral fee is “usual” under Rule 7.2 if:
- it responds to a special financial need of the referring organization*
  - it is negotiated in good faith*
  - it is a flat and uniform fee.*

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