

Self-Assessment Test

June 2010

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the June 2010 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. Rule 6.4, before it was amended, required a lawyer who participates actively in a law reform organization ("LRO") to disclose to his client:
 - any discussion before the organization that might affect the client
 - any decision of the organization that might adversely affect the client
 - the text of any resolution of the organization directed to a legislative body.
2. Roy Simon calls the impact of Rule 6.4 before amendment the "big chill," because it discouraged lawyers from:
 - participating in bar association committees
 - commenting publicly on legislation proposed by an LRO in which they participated
 - serving as officers and directors of LROs.
3. Rule 6.4 as amended on May 4, directs a lawyer who participates in an LRO to:
 - protect the interests of his clients
 - reveal the names of his clients to the organization
 - be mindful of his obligations to his clients under other Rules.
4. When a lawyer knows that the interests of a client may be materially benefitted by an LRO decision in which he actively participates, he must disclose:
 - the name of the client to the LRO
 - his knowledge to the LRO, but he need not disclose the client's name
 - to the client and the LRO what the benefit to the client will be.
5. COSAC recommended that the New York Courts adopt the ABA's Model Rule 6.4, but substitute for the word "benefitted" the word(s):
 - helped
 - affected
 - benefitted or harmed.
6. One of the problems inherent in requiring lawyers to disclose to clients LRO decisions which are materially adverse to their interests, is that lawyers will:
 - recuse themselves from participating in the decisions
 - avoid controversial issues
 - tend to compromise on major issues.
7. Roy Simon surmises that some of the members of the House of Delegates abstained from voting on a report on global warming because:
 - the report might be construed as adverse to the interests of their clients
 - they did not agree with the report
 - the report was excessively one-sided.
8. Rule 1.7 forces a lawyer to decide whether a reasonable lawyer would find a significant risk that:
 - his representation of a client will create a conflict with an existing client
 - his judgment on behalf of the client will be adversely affected by his own financial or business interests
 - his participation in the activities of an LRO will impair his judgment as a lawyer.
9. A lawyer cannot continue to represent a client if there is a significant risk that his participation in an LRO will involve him in a personal conflict with the client, unless
 - the client gives his informed consent
 - the client gives his informed consent, confirmed in writing
 - the lawyer writes a letter to the client describing the conflict, and the client fails to object.
10. In Pacific Investment, the Second Circuit applied the definition of "secondary actors" to:
 - lawyers and accountants
 - banks
 - lawyers, accountants, banks and other persons who are not employees of the issuer.

11. Pacific claimed that the firm of Mayer, Brown had facilitated fraudulent transactions among Refco, an associated firm, and third parties to:
- conceal Refco's uncollectible debt*
 - mislead Refco's banks*
 - protect Refco's officers.*
12. Section 10(b) of the Exchange act makes unlawful in the purchase or sale of any security:
- any deceptive device or contrivance contravening the Rules of the SEC*
 - any document which is false or contains a misrepresentation of fact*
 - the dissemination of any document to more than 600 investors.*
13. Rule 10b-5 of the SEC makes it unlawful in connection with the purchase or sale of a security:
- to offer or exact a price which is unreasonable or excessive*
 - to impose any conditions which violate a Rule of the SEC*
 - to employ any device, scheme or artifice to defraud.*
14. Judge Cabranes named the following as one of two cardinal issues affecting a secondary actor:
- is he liable for statements drafted by him but not attributed to him at the moment of dissemination?*
 - is he always liable for statements of which he is the sole draftsman?*
 - does his intent to create a false statement have any bearing on his liability?*
15. In Central Bank, the Supreme Court held that one essential element for imposing liability on a secondary actor is:
- truth*
 - relevancy*
 - reliance*

16. In Wright, the Second Circuit announced that in actions by third parties against secondary actors, the secondary actors are liable;
- only if their statements can be attributed to them at the time the statements are disseminated*
 - when the third party can prove conclusively that the statements were made by them*
 - when their statements are disseminated to the public.*
17. Judge Cabranes rejected the recommendation of the SEC that the Court apply a creator standard. The creator standard would impose liability on secondary actors whenever they:
- were involved in the creation or dissemination of misleading statements*
 - "created" a false statement that investors relied on*
 - were solely responsible for the creation and dissemination of misleading statements.*
18. Judge Cabranes also rejected "scheme liability" and "control person liability," the latter because:
- control persons are not secondary actors*
 - control persons are the officers and directors of the issuer*
 - a claim for "control person" liability must be predicated on a primary violation of securities law.*
19. In his concurring opinion, Judge Parker recommended that Pacific be used by the Courts to serve as:
- the final word on liability by secondary parties*
 - an opportunity to clarify the law in this area*
 - a tutorial on securities law.*
20. The amendment of Senators Specter and Reed would:
- preserve the decisions in Central Bank, etc.*
 - negate the decisions in Central Bank, etc.*
 - cause the Courts to review the decisions in Central Bank, Stoneridge, Wright, and Pacific.*

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