

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Feb. 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. In *Kovel*, the defendant argued that he could assert the attorney-client privilege because:
  - he was an accountant
  - he was an employee of the law firm when the client communicated with him
  - his employer, a lawyer, had instructed him to assert it.
2. In his opinion in *Kovel*, Judge Friendly found that an accountant may not assert the attorney-client privilege unless he:
  - is engaged by a lawyer to help the lawyer understand a client's tax problem
  - computes and files a client's tax return
  - writes a memo to the members of a law firm on a general tax issue.
3. The court in *Calvin Klein* refused to extend the attorney-client privilege to communications by a client to a public relations firm because:
  - the firm was simply performing the functions of any consultant hired by the client
  - communications with public relations firms are never privileged
  - communications by a client to a public relations firm are not reliable.
4. The court in *Copper Market* was persuaded by Sumitomo's argument that:
  - RLM was involved in the relevant communications as an independent PR firm
  - The relevant communications were the property of RLM, not the client
  - RLM was the functional equivalent of an in-house public relations department.
5. In *Twentieth Century Fox*, the Court extended the attorney-client privilege to communications with:
  - a news reporter
  - a psychiatrist
  - independent film contractors.
6. One of the issues facing the court in *In Re Grand Jury* was:
  - are communications with a PR agent always privileged?
  - are private communications between a PR agent and the client privileged though the lawyer is not present?
  - are private communications between a PR agent and the client privileged only if they concern giving or obtaining legal advice?
7. The court in *In Re Grand Jury* extended the attorney-client privilege to communications with PR agents which have as their object:
  - to help sell the benefits of a new client product
  - to reply to adverse press treatment of the client
  - to influence public opinion in order to advance the client's legal position.
8. In *In Re Currency Conversion*, the Court said the attorney-client privilege:
  - should be extended to all third party consultants retained by a lawyer in behalf of a client
  - should be strictly confined within the narrowest possible limits
  - should be extended only to members of a profession which requires licensing.
9. The "functional equivalent" doctrine would extend the attorney-client privilege to communications between a lawyer and:
  - consultants who act as "de facto" employees
  - only consultants who become employees in connection with a particular matter
  - consultants who will act as witnesses in the trial of a matter.
10. In *Asia Pulp & Paper*, the court refused to apply the "functional equivalent" doctrine because:
  - the consultant was a financial advisor and financial advisers may not claim the privilege
  - since many firms in financial crisis hire financial advisers, the courts should act with caution
  - financial advisers have a duty to the public as well as to the client.

11. The court's determination in *Adelphia* turned on the following issue:
- did the documents for which privilege was sought contain any legal advice or were they prepared in the ordinary course of business?*
  - was Mr. Pacchia the "functional equivalent" of a Lucent employee?*
  - were the documents involved marked "confidential"?*
12. In *Sieger v. Zak*, a state court judge extended the attorney-client privilege to a business consultant because:
- the consultant had a significant relationship with the client and its involvement in the subject transaction*
  - the consultant had initiated the subject transaction*
  - the consultant had agreed to submit his recommendations to the Board of Directors.*
13. The court in *Payton Lane* applied the "functional equivalent" theory to:
- a contractor on a construction site*
  - a commercial architect*
  - a claims collector*
14. In *Mt. McKinley Insurance*, the court held against Corning's claim of privilege because:
- insurance brokers are independent agents and not employees*
  - Corning had failed to meet the five tests cited by the court for treating third parties as employees*
  - the case involved thousands of asbestos injury claims.*
15. An out-of-state lawyer is:
- a lawyer admitted in New York and in another jurisdiction*
  - a lawyer not admitted to practice in New York but admitted in another jurisdiction*
  - a New York lawyer assigned to work in an out-of-state office by a law firm headquartered in New York.*

16. Whether an out-of-state lawyer is permitted to practice in New York is:
- a question of law governed by the Judiciary Law*
  - covered in Rule 5.5 of the Rules of Professional Conduct*
  - subject to decision by the Appellate Division on application by the lawyer.*
17. An out-of-state lawyer is not guilty of the unlawful practice of law if he:
- makes phone calls to a client in New York to inform him of the status of legal proceedings*
  - attends and participates in a real estate closing in Manhattan*
  - tries a case in Bronx Supreme without pro hac vice admission.*
18. In *Spivak v. Sachs*, a California lawyer engaged in the unlawful practice of law when he:
- wrote a memo on California law for a lawyer admitted in New York*
  - attended a series of CLE programs at a hotel in New York*
  - actively assisted a friend in a New York divorce action.*
19. Out-of-state lawyers do not engage in the unlawful practice of law when they:
- perform "incidental and innocuous" legal services in New York for their out-of-state clients*
  - advise the defendant in a criminal matter in New York*
  - open an office for the practice of law in Brooklyn.*
20. The State Bar has twice recommended to the judges of the Appellate Divisions that:
- they retain the present provisions of the Judiciary Law on the unlawful practice of law*
  - they adopt the approach to out-of-state lawyers contained in Model Rule 5.5*
  - they take the lead to a new approach on the multi-state practice of law.*

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