

Self-Assessment Test

January 2009

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Jan. 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. The intent of DR 7-104(A) is to prevent contact between a lawyer and:
 - anyone interested in a matter except his client and opposing counsel*
 - a party the lawyer knows to be represented in the matter by another lawyer*
 - a witness in the matter who has retained his own counsel.*
2. One important principle announced by the Court in *Niesig* was:
 - all provisions of the Code of Professional Responsibility have the force of law*
 - the Code, unlike statutes, does not have the force of law*
 - The Code is simply a guide for the courts.*
3. In her opinion in *Niesig*, Chief Judge Kaye construed the word "party" to mean:
 - all employees of a corporate party*
 - only those employees in the corporate "control group"*
 - those employees whose actions in the matter would bind the corporation.*
4. Under *Spectrum Systems*, Chief Judge Kaye would extend the attorney-client privilege to:
 - all communications between client and lawyer*
 - only those communications primarily of a legal character*
 - all communications between lawyer and client labeled "confidential".*
5. The communication between client and lawyer in *Spectrum* contained:
 - only investigative matter which was not privileged*
 - only legal advice which was confidential and privileged*
 - both non-privileged investigative matter and privileged legal advice.*
6. In *Spectrum*, Chief Judge Kaye extended the attorney-client privilege to a law firm's report:
 - because it was prepared for the client's private and exclusive use*
 - though it did not focus on imminent litigation*
 - because it was primarily investigative.*
7. The advocate-witness rule was intended to prevent lawyers:
 - from unduly influencing witnesses*
 - from withholding relevant testimony*
 - from accepting a matter when the lawyer knows that he ought to be called as witness on a significant issue.*
8. An overriding issue on any motion to disqualify a lawyer at trial is:
 - the interest of the court in avoiding delays*
 - the interest of the lawyer in preserving his fees*
 - the interest of the client in selecting his own counsel.*
9. In *S&S Hotel*, Chief Judge Kaye relied on the fact that:
 - the lawyer involved had no relationship to the matter*
 - the lawyer's testimony was not necessary to the client's case*
 - the lawyer's disqualification should not be charged to the whole firm.*
10. In *Tekni-Plex*, Chief Judge Kaye imposed a 3-part test on motions to disqualify, including:
 - whether the interests of the current client and the former client are materially adverse*
 - whether the moving party is acting in good faith*
 - whether the lawyer who is the object of the motion is indispensable to the client's case.*
11. In *In re Sunrise Securities*, Blank Rome argued:
 - exchanges between lawyers in a firm and in-house ethics counsel come within the attorney-client privilege*
 - all discussions of a matter between lawyers in a firm are entitled to protection under the Code*
 - the courts may not inquire into the contents of communications between lawyers in a firm.*
12. Under *Sunrise*, whether communications between lawyers in a firm and ethics counsel are privileged depends on whether:
 - the communications create a conflict between a duty to itself and duty to the client*

the communications relate to a possible conflict among current clients

the communications relate to a former client.

13. *Bank Brussels* concerned:

an internal investigation by a law firm into issues of malpractice

a request to a firm's ethics counsel for guidance on the firm's fees

a revision in the firm's rules relating to compensation of associates.

14. In *Koen*, the lawyers representing the client were simultaneously:

considering representing another client with interests adverse to the client

consulting with another lawyer in the firm concerning malpractice

discussing among themselves threats of malpractice by the client.

15. With respect to consultations with in-house ethics counsel, the courts in *Sunrise* and *Koen* agreed:

the client must be notified of all such consultations

all such consultations should be in writing for later review by the court

all decisions regarding privilege must be made on a case-by-case basis.

16. The court in *Koen* ordered the production of the law firm's documents because:

they raised questions of fact which needed to be resolved

they demonstrated that the law firm was in a conflict of interest relationship with its client

a client should be permitted access to all documents relating to its matters.

17. In *VersusLaw*, the appellate court instructed the trial court:

to permit disclosure of the disputed documents

to review its finding on the client's malpractice claim

to examine for conflicts the documents exchanged by trial counsel and the firm's "loss prevention attorney".

18. The *Thelen* court recognized that:

consultation between lawyers in a firm and its ethics counsel should be encouraged

a law firm has the burden of proving that its internal consultations are privileged

all conversations by lawyers with in-house ethics counsel about ethics matters should be recorded.

19. When a firm learns or believes that a client may have a claim against it:

the firm should immediately retain independent counsel

the firm should ask in-house ethics counsel for his opinion on the matter

the firm should disclose to the client its conclusions with respect to the ethical issues involved.

20. In *SONICblue*, the court rejected an argument by the Pillsbury firm because the Bankruptcy Code:

imposes a fiduciary duty by debtor's counsel to the debtor, its creditors, and the court

discourages assertion of the attorney-client privilege by debtor's counsel

requires the court to move expeditiously to resolve conflicts.

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