

Self-Assessment Test

June 2008

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the June 2008 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. Spoliation involves the intentional destruction of evidence when litigation is:
 - pending
 - possible
 - pending, threatened or probable.
2. Illinois has extended the spoliation doctrine to cases involving:
 - destruction of tax records
 - destruction of bank records
 - destruction of a patient's X-Rays by a hospital.
3. One basis for the spoliation doctrine is that the destruction of evidence:
 - encourages fraud and deceit
 - violates the public mores
 - increases the cost to the other side of reconstructing the evidence.
4. In the *Cedars-Sinai* case, the California Supreme Court held that negligent spoliation of evidence did not give rise to a remedy in:
 - tort law
 - contract law
 - property law.
5. One reason given by the Court of Appeals in *MetLife Auto* for refusing to recognize spoliation as an independent cause of action was:
 - new causes of action should not be encouraged
 - the legislature had not defined the elements of the action
 - the difficulty of assessing the damages to the other party.
6. In *Ortega*, the Court of Appeals refused to permit an independent cause of action for spoliation against a third party because the action would:
 - invite unacceptable speculation
 - encourage unnecessary litigation
 - cause confusion among lawyers.
7. One of the sanctions cited by Roy Simon and imposed by NY courts against a party guilty of spoliation is:
 - monetary damages
 - referral to the criminal authorities
 - preclusion of testimony.
8. One of the elements of spoliation considered by Magistrate Judge Pollack in *JetBlue* was:
 - JetBlue's* state of mind in destroying the evidence
 - whether the employee destroying the evidence was authorized to destroy it
 - whether the evidence was protected under the attorney-client privilege.
9. The court in *Castillo* rejected defendant's claim of spoliation by plaintiff because:
 - there was no proof plaintiff had destroyed the evidence to frustrate discovery
 - the destruction was not willful
 - the evidence destroyed was immaterial to the claims of either party.
10. In *IDT Corp.*, Judge Kahn extended the doctrine of spoliation to include:
 - concealment of evidence
 - electronic evidence
 - distortion of evidence.
11. Roy Simon predicts that:
 - spoliation of evidence will be recognized as an independent tort
 - lawyers will continue to ask sanctions for spoliation
 - spoliation will not be applied to cases involving destruction of electronic evidence.
12. Jeremy Feinberg describes one incident of lawyer civility in which:
 - a lawyer agreed to adjournment of a deposition
 - a lawyer supplied his adversary with a yoga mat to lie on
 - a lawyer agreed to travel to a distant city to conduct a deposition.

13. In *Laddcapp Value*, the claimant/lawyer applied to the court for:
- sanctions
 - an order of contempt
 - appointment of a special referee to supervise depositions.
14. In *Principe*, the actions complained of can best be characterized as:
- verbal abuse and harassment of a female lawyer
 - disrespect of the court
 - disrespect for judicial process.
15. In *Schiff*, a lawyer's abusive conduct during a deposition was referred to:
- a referee to assess damages
 - the Departmental Disciplinary Committee
 - the managing partner of the lawyer's firm.
16. The case of *GMAC Bank v. HTFC Corp.* involved abusive deposition conduct by:
- an HTFC principal
 - one of the attorneys
 - a third-party witness.
17. In *GMAC*, the court also imposed sanctions on one of the attorneys because:
- he had joined in the abusive conduct
 - he was unable to control his client
 - his conduct had adversely reflected on his fitness as a lawyer.

18. The attorney who was sanctioned in *GMAC* has:
- acknowledged his conduct and paid his fine
 - asked for reconsideration of the sanctions against him
 - withdrawn from the matter.
19. Jeremy Feinberg advises lawyers in depositions to make all statements on the record because:
- the record will tell the court exactly what happened and what was said
 - a witness will be less apt to use abusive or offensive language
 - the client will be less apt to interfere with the lawyer's management of the deposition.
20. Jeremy Feinberg also advises lawyers in depositions to warn their clients that abusive or offensive conduct:
- enlarges the issues and inflates the legal bills
 - discourages settlements and resolution of differences
 - prejudices the court against them.

Only experienced lawyers may earn CLE credits by reading NYPRR and completing the monthly self-assessment test. Newly admitted lawyers may not earn CLE credits in this way.

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