

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the May 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. The consent of the client in a matter:
 - enables his attorney to act as witness in the matter
 - is a factor to be considered by the court on a motion to disqualify his lawyer-as-witness
 - will not normally be considered by the court on a motion to disqualify his lawyer-as-witness.
2. One of the issues confronting the court on a motion to disqualify a lawyer-as-witness is:
 - is the motion made only to harass the other side?
 - will disqualification result in substantial hardship on the client?
 - is the lawyer the only person with knowledge of essential evidence?
3. Rule 3.7(b) precludes a lawyer from representing a client in a matter if another lawyer in his firm:
 - has recently transferred to his firm from another firm which represents the other side
 - possesses knowledge of facts harmful to the client's case
 - is likely to be called as witness on a significant issue other than on behalf of the client.
4. The *Murray* case establishes that in cases of imputation under Rule 3.7(b), disqualification will be ordered only when the moving party proves by clear and convincing evidence that:
 - the witness is likely to testify falsely
 - the witness has no independent knowledge of the facts
 - the witness will provide testimony prejudicial to the client and the testimony results in harm to the judicial system.
5. In *Uribe*, the court denied a motion to disqualify, in part because the motion was brought:
 - after some of defendant's witnesses had testified
 - before the attorney's testimony was shown to be needed
 - before the defendant *Uribe* had designated *Weintraub* as its counsel.
6. The motion decided by the court in *Decker* began as an application to:
 - disqualify a lawyer-as-witness
 - strike the testimony of a lawyer-witness on the grounds of fraud
 - admit a lawyer in another jurisdiction *pro hac vice*.
7. In *Decker*, Judge Scheindlin adopted the four-prong test in *Murray*. One of these is:
 - the testimony of an advocate-witness may confuse the jury by blurring the line between argument and evidence
 - an advocate-witness has an advantage over other witnesses and opposing counsel because he is more skilled in planning his testimony
 - unless the advocate-witness has unique knowledge of the facts, the client should prove his case through other evidence.
8. Judge Scheindlin disqualified Lawyer *Lowy* in part because:
 - Lowy's* presence in the matter was not necessary
 - Lowy* did not qualify for admission *pro hac vice*
 - Lowy's* involvement in the matter would pose a significant risk of trial taint.
9. In *Interpharm*, Magistrate Judge *Pitman* refused to disqualify lawyer *Wurst* in part because:
 - Wurst* was not involved in the underlying facts
 - the matter was still in its pre-trial stage and a decision to disqualify was premature
 - other lawyers in *Wurst's* firm knew more of the underlying facts than *Wurst*.
10. In *Catalanatto*, Judge *Mayer* relied for his authority on:
 - Rule 3.7 of the Rules of Professional Conduct
 - an Ethics Opinion of the NYSBA
 - ECs & DRs in the NY Code of Professional Responsibility.
11. Roy *Simon* recommends that the CLE rules be amended to provide:
 - that all judges complete the same number of CLE ethics credits as lawyers
 - that judges take a written examination on the Rules of Professional Conduct once every two years
 - that judges attend an annual one-day review of the Rules of Professional Conduct.

12. Lawyers are using social networks increasingly:

- to encourage respect for the law
- as marketing tools
- to teach the law to the public.

13. The term "cloud computing" may be defined as:

- committing a law firm's resources to new computer programs
- encouraging use of e-mail for contact among the law firm's offices
- outsourcing by a law firm of its network computer services.

14. Use of "cloud computing" by law firms was encouraged by:

- recognition by law firms that their business was law, not computing
- development of world-wide services by such firms as Google and Amazon
- new developments in computer technology.

15. One of the benefits of cloud computing is:

- substantial savings in personnel and equipment to the law firm
- increased control over client data and information
- encouragement of business with other nations.

16. One of the concerns for a law firm inherent in the use of cloud computing is:

- difficulty of communication in another language
- lack of knowledge by the provider of American law and practice
- protection of a client's confidential information.

17. Under NYSBA Opinion 782 (2004), a law firm's duty to protect a client's confidences is

- absolute
- tempered by considerations of reasonableness
- relative to the importance of the confidence to the client.

18. One step a law firm can take to increase its controls over client confidences when using a cloud computer provider is:

- to study and understand the contract between it and the provider
- to insist on the installation of twin facilities in its home office
- to alert the provider to confidences requiring special care and security.

19. The Comments to the NY Rules and the ABA Model Rules would require that:

- law firms maintain computer servers and computer services and programs, including e-mail, in house
- law firms exercise reasonable care to prevent disclosure of client confidences
- law firms are strictly liable for the unauthorized disclosure of a client's confidences.

20. In a recent report, the City Bar advised law firms using offshore cloud providers to:

- designate a partner trained in computer technology to act as supervisor of the provider
- ensure that the provider have reasonable access to the firm's supervising lawyers
- require all its lawyers to report in writing any violations by the provider of its agreement with the firm.

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