

Self-Assessment Test

October 2010

New York Professional Responsibility Report

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1. Rule 1.11 distinguishes between:
 - former clients and current clients
 - former government lawyers and current government lawyers
 - law firms with fewer than 25 lawyers and firms with more than 25 lawyers.
2. The definition of "matter" in Rule 1.11(e) differs from the definition in 1.0(l) by excluding:
 - arbitrations
 - contract negotiation
 - agency rulemaking functions.
3. A government lawyer who participates personally and substantially in a matter as a public officer may not thereafter represent a client in the same matter unless:
 - a supervisor in the lawyer's department approves the representation
 - the appropriate government agency gives its informed consent, confirmed in writing
 - in the opinion of a disinterested lawyer, the client will not be adversely affected by the representation.
4. A government lawyer who acquires confidential information about a person may not represent a private client with interests adverse to that person if the information:
 - can be used by the private client to the material disadvantage of that person
 - relates to a military secret
 - relates to a civil investigation by the government.
5. The Chernick litigation involved a claim against Lehman Brothers for investing a client's money:
 - in investments different from those in Lehman's sample portfolio
 - in volatile common stocks
 - in unregistered securities.
6. Before leaving the US Attorney's Office, Attorney Casey was advised that he was prohibited from:
 - discussing with anyone any matter on which he had worked while in the Office
 - working for a law firm on any matter he had worked on at the Office
 - working for any law firm on any matter pending in the Office during his employment.
7. US Attorney Casey relied on the following for guidance on matters he could work on in the law firm he moved to:
 - the written opinions of ethics counselors in the US Attorney's Office
 - a memorandum directed specifically to the Lehman investigation
 - conversations with the US Attorney and other lawyers in the Office.
8. Attorney Kim decided not to issue a firm-wide memorandum about the need to screen against Casey because:
 - most lawyers in the firm were aware of Casey and his work
 - the firm was too small to justify screening
 - most people at the firm had nothing to do with the Lehman matter.
9. Not until almost two months after Casey's arrival did the Kobre & Kim firm issue a memorandum:
 - describing Casey's work history
 - listing by code all matters being handled by the firm which were investigated or prosecuted by the Office of the Eastern District US Attorney
 - describing the general rules for screening a lawyer without referring to a specific matter.
10. As a threshold matter, Judge Yates held that motions to disqualify:
 - cannot be decided by arbitrators selected by the parties
 - must be decided by the courts because they require interpretation of the Rules governing lawyers
 - can be decided by an arbitrator with the express consent of the parties.
11. Judge Yates reasoned that a lawyer who has pursued a claim on behalf of the government:
 - is barred from discussing that same claim with anyone after he leaves the government
 - is barred from pursuing that same claim on behalf of a private client
 - is free to assert that same claim against a private client.
12. Kobre and Kim argued that the firm should not be disqualified because:
 - it had effectively isolated Casey from the matter through screening and notice to its other lawyers

- Casey was not the lawyer in charge of the matter
 - the lawyers in charge of the matter had been instructed not to speak to Casey about the matter.
13. In the *Kassis* case, the Court of Appeals decided that a law firm would be disqualified despite existence of a screen if a lawyer moving from another firm:
- had represented a client of the old firm in the same industry as a client of the new firm
 - has acquired significant and material information about a client of the former firm
 - had a reputation for bias against a client of the new firm.
14. Under *Kassis*, to avoid even the appearance of impropriety, a law firm hiring a lawyer from another law firm must erect a screen around that lawyer to prevent the firm:
- from representing a client with interests adverse to a client of the lawyer's former firm
 - from representing any client of the lawyer's former firm
 - from representing a client when a motion to disqualify can be anticipated.
15. One reason to facilitate the movement of government lawyers to private law firms is:
- to recognize the current economic difficulties facing young lawyers who seek new employment
 - the government has a need to attract qualified lawyers and to maintain high ethical standards
 - government lawyers are closely supervised and often qualify as leaders of the profession.
16. Judge Yates cited as one difference between government lawyers who switch to a private law firm and private lawyers who switch to another firm:
- Rule 1.11(b)(1)(iv) compels law firms that hire government lawyers to give written notice to the government agencies that employed them
 - for one year following employment of a government lawyer, a law firm must keep a record of all matters worked on for the firm by the former government lawyer
- the government agency that employed the lawyer is required to give the new law firm a list of all matters the lawyer worked on for the agency.
17. Judge Yates found "some foundation" supporting petitioners' claim that the Kobre firm had created "the appearance of impropriety." He held:
- without more, the appearance of impropriety did not prevent the other lawyers in the firm, if properly screened, from representing the client
 - as a result, the firm was disqualified from representing the client
 - the "foundation" was equivocal and required additional testimony.
18. On the issue of screening in small firms, Judge Yates determined:
- a per se rule against screening is appropriate for small firms
 - with special care and vigilance, small firms can satisfy the screening requirements of Rule 1.11
 - small firms with fewer than ten lawyers should be excused from screening.
19. Judge Yates disqualified the Kobre firm, among other reasons, because:
- the first notice to its lawyers that Casey was screened and "isolated" was too late and indirect
 - the firm had failed to ensure that all its personnel had received notice
 - Casey was employed by Kobre only four months following his employment by Mayer Brown.
20. Another reason for disqualifying the Kobre firm was:
- its notice to the US Attorney's Office to enable it to verify that the firm was complying with Rule 1,11(b) was not in writing
 - its first notice to its own lawyers about Casey's employment was not in writing
 - it had employed Casey solely because of his knowledge of the Lehman matter.

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