

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Sept. 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 the *Marinis* case, a paralegal claimed compensation based upon:
 - overtime services
 - a portion of a fee earned by her lawyer-employer
 - research leading to a successful outcome.
2. The *Marinis* case is noteworthy because:
 - the court applied § 491 of the Judiciary Law
 - the court recognized a possible inconsistency between § 491 and Rule 5.4(a)(3)
 - neither the court nor either party alluded to the ethical issues involved in fee splitting.
3. The Court denied defendants' motion for summary judgment in part because:
 - the Statute of Frauds does not bar a claim on an oral agreement which can be performed in one year
 - plaintiff was entitled to pursue her claim of emotional distress
 - the affidavits submitted by the defendants' other employees were equivocal and unconvincing.
4. Judiciary Law § 491 defines as a misdemeanor:
 - a lawyer's payment to anyone of a portion of his fees
 - the receipt by anyone of a portion of a lawyer's fees
 - an agreement between lawyers to divide compensation received.
5. COSAC recognized the need for and recommended:
 - an appropriate amendment of § 491 to permit limited fee-sharing
 - repeal of § 491
 - inclusion in § 491 of a reference to Rule 5.4(a)(3).
6. Before the 1999 amendment, DR 3-102(A)(3) limited profit-sharing by a lawyer's employees to:
 - end-of-year bonuses
 - written compensation plans
 - retirement plans
7. A law firm's retirement plan must comply with:
 - the Statute of Frauds
 - ERISA
 - the Rule Against Perpetuities
8. Ethics Opinion 733 asked the following question with respect to the 1999 amendment to DR 3-102(A)(3): Does the amendment —
 - permit a law firm to adopt a compensation plan for its employees?
 - allow a lawyer to share the fee from a particular matter with an employee who refers the matter?
 - require a law firm to divide its profits among all employees?
9. Ethics Opinion 733 recognized that any plan permitting a nonlawyer to share in the fees from matters referred by him would conflict with:
 - Judiciary Law § 491
 - the universal belief that all fee-splitting between lawyer and nonlawyer is improper
 - the professional standards expected of lawyers.
10. Comment [1B] to New York Rule 5.4(a)(3) would limit employee compensation plans to:
 - a fixed percent of fees collected from matters referred by all employees together
 - the total profitability of the firm or of a department within the firm
 - the merit and performance of each employee relative to all others.
11. Any compensation plan which enables an individual employee to negotiate directly with the employer is more likely to result in:
 - disparities in compensation
 - fee splitting
 - inequities.

12. According to Roy Simon, DR 3-102(A)(3) created an ambiguity because:

- the term "profit-sharing arrangement" is not defined anywhere in the Code
- retirement plans and compensation plans should not be coupled in one provision
- all profit-sharing arrangements must be approved by ERISA.

13. In Roy Simon's view, a profit-sharing bonus or salary must be based on:

- the net profits of a lawyer or a law firm from all matters
- fees from a selected matter or matters
- negotiation between a lawyer and her employee.

14. Unlike the majority of States, New York adheres to:

- the Revised Uniform Partnership Act of 1994
- the Uniform Partnership Act of 1914
- the RUPA of 1997.

15. RUPA considers a partnership as:

- a group of separate individuals
- an entity distinct from its partners
- an organization of individuals with different interests.

16. NY Rule 1.13(a) is deceptive in defining a lawyer for a general partnership as:

- the lawyer for an organization and not for its constituents
- the lawyer for each of the general partners
- the lawyer for the partnership and for the individual partners.

17. Gold & Rosenblatt moved to disqualify Robinson Brog based on:

- the firm's continuing representation of a former client of Gold who had sued Gold for malpractice
- Robinson's concurrent representation of Winhall II and Steven's
- the likelihood that in its representation of Winhall II, Robinson would acquire information damaging to Gold.

18. The Dembitzer case stands for the following principle... a lawyer who represents a partnership owes a duty to each general partner:

- not to represent another client with interests adverse to the interests of the general partner
- to withdraw from representing the partnership in a dispute between it and the general partner
- not to represent a general partner in a dispute with another general partner.

19. "Differing interests" are defined in Rule 1.0(f) as:

- the differing interests of two clients of a lawyer
- any interest of a lawyer adversely affecting his judgment or loyalty to a client
- the differing interests of the parties to a matter.

20. According to Roy Simon, the lesson to be learned from Steven's Distributors is this... when you represent a general partnership:

- you have no duty to any of the general partners
- you should enter in your data base, the name of each general partner and his or her interest and role in the partnership
- you have an obligation to treat each general partner equally.

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