

Self-Assessment Test

April 2007

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the April 2007 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. At common law, champerty was defined as:
 - bribery of a judge
 - payment by a lawyer or a non-party of the costs of litigation
 - influencing a juror in a criminal matter.
2. Champerty and maintenance were considered crimes because:
 - they encouraged and lengthened litigation
 - they created public resentment of lawyers
 - they were adopted by the English from Roman Law.
3. Prior to the 2007 amendment of DR 5-103(B) a NY lawyer was prohibited from advancing court costs and expenses unless the client was:
 - an infant
 - incompetent
 - indigent.
4. Under DR 5-103(B) as amended, a lawyer may advance the costs of litigation:
 - only if the client is indigent and the representation is pro bono
 - to any client
 - to any client if the representation is pro bono (i.e., expenses not reimbursed).
5. Prior to the amendment of DR 5-103(B), a lawyer could advance costs and expenses of litigation to non-indigent clients provided:
 - the advances were limited to \$500
 - the client remained ultimately liable
 - the retainer agreement enabled the client to repay advances in installments.
6. Before the amendment, personal injury clients were reluctant to retain a lawyer because they believed:
 - they would have to pay all the expenses of litigation at the outset
 - the lawyer would receive an inordinate fee
 - they would be asked to pay the expenses of litigation even if they lost.
7. Before the amendment, one effect of DR 5-103(B) was to encourage contingent fee lawyers:
 - to advertise their services
 - to insist on pay-expenses-as-you-go retainer agreements
 - to pursue other matters than contingent litigation.
8. The requirement in DR 2-101(P) that a lawyer's ad promising to waive a fee if there is no recovery comply with Judiciary Law § 488(3) means that the ad may not say:
 - that his ability to advance costs and expenses is unique or extraordinary
 - that his practice is limited to contingent fee cases
 - that his services have resulted in large verdicts.
9. DR 5-103(B)(3) means a contingent fee lawyer may collect his cost and expenses:
 - only to the extent that, when added to the contingent fee, the total is less than the maximum fee allowable
 - in full, whether or not, when added to the contingent fee, the total is more than the maximum fee allowable
 - only if the client has agreed in writing in advance to pay all costs and expenses of the action.
10. Roy Simon concludes that under the new advertising rules and the new rules on advancing costs, the competitive advantage will go to:
 - the individual personal injury practitioner
 - businesses that specialize in lending funds to plaintiffs in personal injury actions
 - big firms specializing in personal injury litigation.
11. The action taken by Sidley in 1999 against 32 partners constituted:
 - a demotion
 - a demotion and an adverse personnel action as defined in the ADEA
 - a realignment of partnership responsibilities.

12. The federal agency which protects employees against discrimination on account of age is:

- the Interstate Commerce Commission*
- the Equal Opportunity Employment Commission*
- the National Labor Relations Board.*

13. The ADEA defines a covered employer as a person engaged in an industry affecting commerce who has:

- twenty or more employees*
- twenty or more employees in his principal office*
- twenty or more full-time employees.*

14. Under the ADEA, a covered employee is protected against age discrimination after:

- he has been employed by the employer for more than 15 years*
- he becomes disabled*
- he reaches the age of 40.*

15. In response to the subpoena issued by the EEOC, Sidley argued:

- EEOC was entitled to documents only on the issue of coverage*
- EEOC has no jurisdiction over law firms*
- Professional partnerships are not engaged in an industry affecting commerce.*

16. Whether an equity partner in a law firm can be considered an employee of the firm is important on the issue of:

- hours of work*
- distribution of profits*
- mandatory retirement policies.*

17. Under DR 1-102(A)(6), a final determination that a law firm has discriminated against its employees on the basis of age:

- is a conclusive determination of professional misconduct in a disciplinary proceeding*
- constitutes prima facie evidence of misconduct in a disciplinary proceeding*
- is not the basis for discipline of a lawyer for professional misconduct.*

18. After comparing a law partnership to a corporation, Judge Posner cited the following as the most "partneresque" feature of the partnership:

- participation by partners in committees of the firm*
- pro-rata distribution of profits*
- unlimited personal liability for the debts of the partnership.*

19. In the Clackamas case, the Supreme Court instructed the Court of Appeals to use the following in determining whether a corporate shareholder/director was an employee:

- whether she was the CEO of the company*
- whether she participated actively in meetings of the Board*
- a common-law six-factor control test.*

20. Judge Posner's decision directed Sidley:

- to comply with the EEOC subpoena in full*
- to deliver only those documents relating to coverage*
- to deliver a list of all equity partners and their dates of birth.*

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