

Self-Assessment Test

March 2010

New York Professional Responsibility Report

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1. Section 470 of the Judiciary Law prevents a New Jersey lawyer admitted in New York from practicing in New York unless she:
 - complies with New York's CLE requirements*
 - pays her biennial registration fee*
 - maintains an office within the state.*
2. Ms. Schoenefeld (Plaintiff) directed her complaint at:
 - the Chief Judge of the Court of Appeals*
 - the Office of Court Administration*
 - various NY State agencies and their individual officials.*
3. Plaintiff argued that Section 470 violates her constitutional rights by:
 - requiring her to maintain a full time office in New York*
 - preventing her from advertising her services in New York*
 - preventing her from representing New York residents with claims in New Jersey.*
4. Before considering the merits of Plaintiff's constitutional claims, Judge Kahn found that the facts alleged by her:
 - were insufficient to entitle her to injunctive relief*
 - stated a claim which constituted a litigable subject matter and was ripe*
 - were directed against Defendants who were performing their duties under the law.*
5. Section 1983 extends the privileges and immunities clause of Article IV of the Constitution:
 - to citizens of other countries*
 - by imposing personal liability on every person who violates the Article*
 - to illegal immigrants in the United States.*
6. Judge Kahn held Plaintiff was entitled to pursue her "privileges and immunities" claim against:
 - only the State and the Defendant agencies*
 - the individual Defendants, but not the Defendant agencies*
 - the Defendant agencies, but not the individual Defendants.*
7. State statutes limiting the practice of law to qualified lawyers are:
 - subject to strict scrutiny by the federal courts*
 - generally endorsed by the federal courts*
 - often declared unconstitutional by the federal courts.*
8. Judge Kahn found that Defendants had failed to show:
 - a substantial relationship between state objectives and the differential treatment of resident and nonresident lawyers*
 - that nonresident lawyers would be less available for supervision and discipline*
 - that nonresident lawyers would deprive New York lawyers of income from New York clients.*
9. The federal courts have found that the requirement that nonresident lawyers maintain an office within the state:
 - can have a rational basis*
 - always imposes an unconstitutional barrier upon nonresident lawyers*
 - is entitled to heightened scrutiny by the courts.*
10. Judge Kahn denied Plaintiff's claims under the Commerce Clause on account of New York's interest in:
 - ensuring that the nonresident lawyers are familiar with New York law*
 - reserving income from sales and services to New York residents*
 - strengthening the resident New York bar.*
11. When an investor buys a "factored" security, the price is:
 - fixed at the beginning of the transaction*
 - adjusted between a "placeholder" factor and the real value of the security*
 - fixed through arbitration between seller and buyer.*
12. Raymond Aronson was retained by the Eiseman firm as an expert witness on:
 - SEC rules and regulations*
 - stock industry practice in prime brokerage and clearing transactions*
 - the taxing of stock transactions.*

13. The agreement between Aronson and Bear Stearns on his departure provided:

- a permanent covenant by Aronson not to testify as witness against Bear Stearns
- a provision enabling Aronson to provide services to others relating to the general application of rules or business conventions
- a covenant by Aronson not to support or provide assistance to any claimant against Bear Stearns.

14. In lieu of discovery, Justice Schlesinger ordered the Defendant to:

- submit a proffer of Aronson's testimony for review by her in camera
- produce Aronson for questioning by her in chambers
- submit Aronson's affidavit describing his testimony for review by Plaintiff and the Court.

15. The federal rules differ from New York's rules by requiring expert witnesses to:

- submit detailed reports, including a summary of, and the basis for, their conclusions
- submit a report of their qualifications before trial
- submit an affidavit stating that their testimony will not reveal the confidences of any party.

16. Judge Schlesinger narrowed the issues by finding that Aronson:

- was prevented from testifying against Bear Stearns
- could testify as expert witness but not reveal the confidences of Bear Stearns
- could act only as advisor to Defendant.

17. Lawyer Sinaiko of Kramer Levin argued that the test was not whether Aronson would disclose confidences of his former employer, but whether:

- Aronson, as an attorney, was violating the Rules of Professional Conduct by using information from a former employer
- Aronson would reveal practices and procedures unique to Bear Stearns
- Aronson had an animus against his former employer.

18. After Judge Schlesinger had rejected this argument by Sinaiko, he argued that Aronson's testimony:

- would present the appearance of impropriety
- would constitute impropriety
- would compel him (Sinaiko) to notify the disciplinary authorities.

19. Under Rule 1.6(a) of the Rules, confidential information does not ordinarily include either a lawyer's legal knowledge or legal research or:

- information confirming the lawyer's prior knowledge
- information generally known to employees of the client
- information generally known in the local community or in the relevant trade, field or profession.

20. Roy Simon recommends that lawyers not deem the decision by Justice Schlesinger as:

- a license to hire a former lawyer of the adversary as an expert witness against the adversary
- confirmation that the expert testimony of a former lawyer of the adversary will not generally be considered improper
- assurance that a court will not inquire into or find the appearance of impropriety in a former lawyer's expert testimony.

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