

Self-Assessment Test

March 2008

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the March 2008 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 proposed New York Rules of Professional Conduct ("Proposed Rules"):
 - convert a number of existing Ethical Considerations ("ECs") into Mandatory Rules
 - retain all ECs in their present form
 - reject the current ECs because they are only aspirational.
2. According to many lawyers and clients, the first duty of a lawyer is:
 - to protect client confidences and secrets
 - to be competent
 - to avoid the appearance of professional impropriety
3. One element in the Proposed Rules' description of "competence" is the lawyer's
 - record of disciplinary complaints
 - record of malpractice actions resulting in judgments against him
 - obligation to complete the preparation reasonably necessary for the representation.
4. The Proposed Rules provide that any instance of incompetence by a lawyer will:
 - result in professional discipline
 - result in professional discipline only if the incompetence was deliberate or reckless
 - subject the lawyer to special CLE courses to prevent additional instances of incompetence under similar circumstances.
5. Proposed Rule 1.2(a) generally confirms the client's right to control:
 - the objectives of the representation
 - the means employed in the representation
 - both the objectives and the means
6. Under Proposed Rule 1.2(a), a criminal defendant:
 - may require his trial counsel to pursue an appeal from his conviction
 - has no right of appeal from a conviction
 - may request, but not insist, that trial counsel pursue his appeal.
7. The intent of the ABA Model Rule encouraging representation of "unpopular" clients is to:
 - enhance the reputation of the Bar
 - prevent criticism of the Bar
 - encourage lawyers to offer pro bono services to unpopular clients and causes.
8. As expressed in Proposed Rule 1.2(c) of the Proposed Rules, a lawyer may limit the scope of a representation on condition that:
 - the client give informed consent to the limitation
 - the limitation not cause the client to secure other counsel during the representation
 - the limitation not deny the client reasonable opportunity to consult the lawyer
9. Among other matters, Proposed Rule 1.4 would require a lawyer to communicate to his client:
 - the rules of law which apply to the representation
 - his written assessment of the chances for a successful outcome
 - the means by which the client's objectives will be accomplished
10. A lawyer dealing with a prospective client in a matrimonial matter is required to:
 - summarize in writing the issues that are likely to arise in the matter
 - provide the client with a statement of his rights and obligations
 - suggest ways to resolve the matter without litigation.
11. A lawyer who has drafted a will for a client:
 - may not retain the original will under any circumstances
 - has an obligation to secure the will in a safe and accessible place until the client's death
 - has no obligation to hold the original will.
12. According to NYSBA Op. 724, a lawyer who holds a client's original will has an implied obligation to:
 - read the obituary columns to be advised of the client's death

- alert the executor and/or beneficiaries at client's death to the existence of the will
- place an ad in a local paper confirming that he holds the client's will.

13. NYSBA Op. 724 advises a lawyer who prepares a will:

- to assume that the client expects the lawyer to keep the original in a safe and secure place
- to discuss with the client who should hold the original will
- to file the original will in his safe deposit box, along with other will originals.

14. In ABCNY Op. 460, the City Bar advised that a retiring lawyer's obligations with respect to an original will in his custody is:

- to make zealous efforts to find all persons interested in the Will
- to make reasonable efforts to find the client and to request instructions for the disposition of the will
- to deposit the will with the Court.

15. A lawyer who holds money belonging to a client he cannot locate is required to:

- place an ad in a local paper containing the name of the client, the amount held, the name of the depository and the circumstances under which the money was deposited
- pay the money to the Lawyer's Fund for Client Protection
- retain the money in his trust account until the client or a successor is found and qualified.

16. According to ABCNY Op. 460, a retiring lawyer in possession of an original will by a client who cannot be located:

- has a continuing obligation to keep the original secure
- may turn the will over to any beneficiary named in the will

- may deliver the original to the executor named in the will.

17. Outweighing the burden on successor lawyers of retaining the original wills of a retiring lawyer are:

- continuity of possession and administration
- ease in tracing possession
- the enjoyment by lawyers of their professional status and the concomitant obligation to the general public.

18. A lawyer who is holding the original will of a client the lawyer suspects of incapacity:

- must continue to hold the will until a guardian is appointed
- may ethically seek judicial guidance as to his actions with respect to the will
- may rely on the advice of a psychiatrist as to the client's capacity.

19. Under the circumstances presented in NYSBA Op. 796, a lawyer for the administrator or executor of an estate:

- has an affirmative obligation to advise creditors of the estate that the estate has assets
- has no ethical obligation to advise a creditor of the estate that the estate has assets
- may limit his notice to creditors with claims in excess of \$500.

20. In deciding whether to disclose to creditors that a decedent's estate has assets, the lawyer for the estate should:

- delay the probate or administrative proceeding as long as possible to enable creditors to appear
- consult with the administrator or executor to determine whether the information is a secret
- consider whether the creditor's claims are likely to be reasonable.

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