

Self-Assessment Test

May 2008

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the May 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. DR 5-101-a was adopted by the judges of the four Appellate Divisions:
 - after consultation with the NYSBA
 - after a 90-day public comment period
 - on their own initiative.
2. DR 5-101-a was intended to provide guidance to lawyers in:
 - the general requirements for pro-bono service
 - short-term, one-time pro-bono services
 - pro-bono services involving teams of lawyers from several firms.
3. The relationship between a pro-bono lawyer and a person who seeks short-term, one-time consultation is that of:
 - advisee and advisor
 - friend and confidante
 - lawyer and client.
4. ABA MR 6.5 imposes the conflicts rules in a short-term non-continuing pro-bono client relationship when:
 - the lawyer knows the relationship involves a conflict
 - there is in fact a conflict
 - the facts would suggest a conflict to a reasonable lawyer.
5. Comment 4 to MR 6.5 makes clear that disqualification of a lawyer in a short-term non-continuing pro-bono program:
 - precludes his firm from representing a client with interests adverse to the pro-bono client
 - is not imputed to other lawyers in the pro-bono program
 - requires the lawyer to complete a CLE program on conflicts.
6. New York's DR 5-101-a enables a lawyer to represent a client in a short-term non-continuing pro-bono program unless:
 - the lawyer fails to bring with her a complete list of her firm's current clients
 - the lawyer has been disqualified in a prior program
 - the lawyer knows of a conflict with the pro-bono client at the start of the program.
7. DR 5-101-a(E) modifies DR 5-101-a by:
 - enabling the court to overrule the pro-bono lawyer's decision on the existence of a conflict
 - requiring the pro-bono lawyer to consult with the program's director to determine whether a conflict exists
 - requiring the pro-bono lawyer to reject the representation if there is the slightest suggestion of a potential conflict.
8. Roy Simon is concerned that DR 5-101-a(E) will:
 - affect all short-term non-continuing pro-bono programs
 - increase the lawyer's burdens in conflicts checking
 - prevent a law firm from continuing to represent a current client in a conflict with the client in a short-term non-continuing pro-bono program
9. A client who participates in a short-term non-continuing pro-bono program is required to:
 - demonstrate that he is both indigent and unemployed
 - consent to the limitations of the representation
 - understand that the confidentiality rules do not apply to the representation.
10. The Conflicts Rules apply to a short-term non-continuing pro-bono representation as soon as:
 - the pro-bono lawyer learns of a conflict during the representation
 - the pro-bono lawyer learns of a conflict after the representation is concluded
 - another lawyer in the firm discloses a conflict with the pro-bono client.
11. A secondary or accommodation client is a client:
 - towards whom the attorney has no obligation or duty
 - who is represented without charge or fee
 - who understands that the lawyer has a primary duty of confidentiality to another client.

12. *Allegeart* stands for this principle:

- a lawyer owes a duty of confidentiality to all clients, secondary or primary
- a lawyer does not owe a client the duty of confidentiality if the client is aware that its information may be shared with a primary client of the lawyer
- The confidences of a secondary client may be shared, but its secrets may not.

13. *Kempner*, *Rite Aid*, and *Rochigiani* are all cases in which:

- the courts refused to disqualify the attorney for a primary client
- rejected a distinction between "primary" and "secondary" clients
- disqualified the attorneys for secondary clients.

14. One important element in the *Marco* case was:

- Marco* was the primary client in the subrogation action
- Marco* provided the theory and the funds for the action
- Marco* was only the nominal plaintiff in the subrogation action.

15. The Restatement would not disqualify a lawyer in a dispute between two clients if:

- the party seeking disqualification is an accommodation client.
- the party seeking disqualification is the primary client
- the lawyer certifies to the court that there is no basis for disqualification.

16. Some courts have used *Allegeart* to:

- disqualify a lawyer in any matter involving the adverse interests of two clients

- reject disqualification of a lawyer who represents one of two clients in a dispute between them if the lawyer previously represented them both jointly
- refuse to intercede in any dispute between two clients of a lawyer.

17. The courts are inclined to find that a client is a secondary client when:

- it has a primary lawyer of its own
- the other client is likely to prevail in a dispute between them
- the other client became a client first.

18. The *Glueck* court distinguished between:

- pro-bono representation and contingent-fee representation
- traditional representation and non-traditional representation
- transactional representation and representation in litigation

19. The *Glueck* court disqualified the *Phillips* law firm because:

- it had previously represented *Glueck* in another matter
- one of its lawyers had previously opposed *Glueck* in a matter
- it represented a trade association of which the client opposed to *Glueck* was an active member.

20. Some courts apply the "vicarious client" doctrine only if the lawyer has:

- represented the client in a prior litigation
- acquired or been exposed to the secrets or confidences of the client
- advised the client in his (its) official capacity as representative of an agency, association or other entity.

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