

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Nov. 2009 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. Rule 3.7(a) prohibits a lawyer from serving as advocate and:
  - witness as to the nature and value of legal services
  - witness as to an uncontested issue.
  - witness on a significant issue of fact.
2. The prohibition against advocate-lawyer testimony applies both before a lawyer accepts a matter and:
  - if it becomes obvious later that the lawyer will need to testify
  - if the testimony will relate to a matter of formality
  - if the court instructs the lawyer to testify.
3. According to Roy Simon, one of the policies behind the advocate-as-witness Rule is:
  - to prevent undue pressure by the client on the lawyer
  - to preserve the integrity of testimony by all witnesses.
  - to avoid confusion by the judge and jury.
4. One exception to Rule 3.7(a) arises when the advocate-lawyer's disqualification:
  - will be prejudicial to his client
  - would work substantial hardship on the client
  - will confuse the trier of facts.
5. Read broadly, Rule 3.7(a) applies:
  - only to trials
  - at any phase of the proceeding, including motion practice
  - to all lawyers who appear as witnesses.
6. In adopting Rule 3.7(a), the Courts rejected a COSAC proposal to apply the Rule only if the advocate-lawyer's testimony was deemed:
  - necessary
  - persuasive
  - determinative.
7. Rule 3.7(b) deals not with testimony by the advocate-lawyer but with testimony by:
  - a lawyer assisting the advocate in the matter
  - a lawyer in the firm who participated in the matter which is the subject of the litigation
  - a lawyer in the advocate's firm.
8. Under the Second Circuit decision in *In Re MetLife*, a law firm can be disqualified by imputation only if the lawyer-witness will give testimony prejudicial to the client and:
  - the testimony is challenged by the client
  - the advocate-lawyer confirms the testimony of the lawyer-witness
  - the integrity of the judicial system will suffer as a result.
9. Under *MetLife*, testimony by a lawyer-witness is "prejudicial" when:
  - it impugns the integrity of the client
  - it puts at issue the competence of the advocate-lawyer
  - it is sufficiently adverse to the facts presented by the client as to raise questions about the independence of the lawyer-witness.
10. A dilemma in applying Rule 3.7(b) is caused by the fact that:
  - the advocate-lawyer may need the testimony of other lawyers in his firm
  - in large firms, the advocate lawyer is not likely to know all the facts
  - in small firms, litigators and transactional lawyers are intertwined.
11. Roy Simon believes that the Courts should have:
  - recognized the impact of 3.7(b) on large law firms
  - distinguished between large and small firms in applying 3.7(b)
  - adopted the same exceptions for 3.7(b) as for 3.7(a).
12. The lack of exceptions to 3.7(b) creates special problems for law firms:
  - in which transactional lawyers are separated from trial lawyers
  - which concentrate on transactional matters
  - which concentrate on criminal matters.

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13. The position taken by the Second Circuit in *MetLife* will act to:
- encourage the trial courts to inquire into discrepancies between the testimony of the advocate-lawyer and another lawyer in the firm
  - discourage use at trial of testimony of a non-advocate-lawyer in the opponent's firm
  - discourage the trial courts from granting motions to disqualify under the advocate-witness Rules.
14. A lawyer in a firm which is disqualified from representing a client, may, with the informed consent of the client:
- participate in the conduct of the trial and question witnesses
  - assist the lawyers in a successor firm in pretrial activities
  - prepare witnesses for trial.
15. Rule 3.8(a) adds to the responsibilities of a prosecutor who learns that charges are not supported by probable cause:
- the duty to release a defendant in custody
  - the duty to investigate the basis for the original charges
  - the duty to drop (not to maintain) the charges.
16. Except under a protective order by the Court, a prosecutor is required to disclose to defendant or defense counsel:
- evidence that tends to negate guilt, mitigate the offense, or reduce the sentence.
  - evidence or information tending to negate guilt, mitigate the offense or reduce the sentence.
  - all his files.
17. COSAC had proposed, but the Courts rejected, additions to Rule 3.8 that would:
- expand a prosecutor's duty to disclose evidence likely to prove that a convicted defendant did not commit the offense or that the conviction was wrongful
  - impose a penalty on a prosecutor who brings or maintains an unsubstantiated charge

establish an independent agency to investigate complaints against prosecutors.

18. A lawyer who represents a client before a non-adjudicative legislative or administrative body is required to disclose:
- only his own name and qualifications
  - that he is appearing in a representative capacity.
  - the name and interest of his client.
19. If the client does not consent to being disclosed, the lawyer must nevertheless affirm:
- I am appearing in a representative capacity and not as a public citizen
  - I am an attorney appearing for a client that does not wish to be disclosed
  - My views are not my own but those of my client.
20. A lawyer is not required to disclose to an agency in a non-adjudicative capacity that he is acting for a client when:
- the information has been published by the agency
  - the information is within the jurisdiction of the agency
  - the information he seeks is available to the public.

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