

Self-Assessment Test

February 2008

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Feb. 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. A prominent NY lawyer named by Roy Simon served in the cabinet of three different Presidents. He is:
 - George Wickersham*
 - Henry L. Stimson*
 - John W. Davis.*
2. Proposed Rule 1.11(a) applies to lawyers returning to practice after:
 - serving the government in a legal capacity*
 - serving the government in an administrative capacity*
 - serving the government in any capacity.*
3. If a returning lawyer has participated in a matter personally and substantially while in government service, she may not represent a client in the matter after she returns unless:
 - the client consents after full disclosure of the facts*
 - she is not the lawyer in charge of the matter*
 - the appropriate government agency gives its written informed consent.*
4. Proposed Rule 1.11(b) adds a number of conditions to the process by which a returning lawyer is screened by her firm. One of these requires the firm to:
 - notify personnel within the firm that the returning lawyer is prohibited from participating in the representation*
 - instruct the returning lawyer in writing not to discuss the representation with the firm's other lawyers*
 - assign the representation to lawyers in a different practice area or on a different floor from the returning lawyer.*
5. As explained under comment 6A to proposed Rule 1.11(b), the Rule would permit a returning lawyer who is subject to a screen in a matter to receive:
 - any portion of the fees in the matter agreed upon by the other firm members*
 - that portion of the fees in the matter approved by the client*
 - a share of the fees which does not represent a substantial increase in the lawyer's usual compensation.*
6. A lawyer moving from a law firm to government service cannot participate in a matter in which he was involved for the firm "personally and substantially," unless:
 - the firm gives its informed consent in writing*
 - the appropriate government agency gives its informed consent in writing*
 - the client gives its informed consent in writing.*
7. Under proposed Rule 1.11(d), a government lawyer may not negotiate for private employment with:
 - any law firm which appears regularly before her department or agency*
 - any party or lawyer involved in a matter in which she is participating personally and substantially*
 - any party or lawyer involved in a matter before her department or agency in the past five years.*
8. A returning judge, law clerk or arbitrator is prohibited from representing a party in connection with a matter in which he participated personally and substantially unless:
 - the law firm which hires him has never represented the party before*
 - all the parties to the matter give their informed consent in writing*
 - the parties have stipulated to the facts and only issues of law remain.*
9. A law clerk who is participating personally and substantially in a matter may negotiate for employment with a party or its law firm only after he has notified:
 - the Office of Court Administration*
 - the judicial officer or arbitrator who employs him*
 - all the parties in the matter.*
10. The standard of proof adopted by the Court of Appeals in legal malpractice cases is:
 - the "substantial factor" standard*
 - the "but for" standard*
 - the "beyond a reasonable doubt" standard.*
11. The "but for" standard of proof requires a showing by plaintiff that:
 - the lawyer was negligent*
 - the plaintiff would not have suffered any harm or damage except for the lawyer's negligence*

<p><input type="checkbox"/> <i>the lawyer's negligence was one of the causes of plaintiff's harm or damage.</i></p> <p>12. According to the Appellate Division majority in <i>Barnett</i>, the "substantial factor" standard requires a showing by plaintiff that:</p> <p><input type="checkbox"/> <i>the lawyer was negligent</i></p> <p><input type="checkbox"/> <i>the lawyer's negligence was the sole proximate cause of the harm or damage to plaintiff</i></p> <p><input type="checkbox"/> <i>the lawyer's negligence was a contributing cause of plaintiff's harm or damage.</i></p> <p>13. In judging the standard of proof in legal malpractice cases, the California courts have contributed to the bar's confusion by:</p> <p><input type="checkbox"/> <i>consistently adopting the "but for" standard</i></p> <p><input type="checkbox"/> <i>consistently rejecting the "but for" standard</i></p> <p><input type="checkbox"/> <i>alternately applying the "but for" standard and the "substantial factor" standard.</i></p> <p>14. The Restatement (Third) of Torts defines legal malpractice as: "any conduct...."</p> <p><input type="checkbox"/> <i>[which] is a factual cause of harm when the harm would not have occurred absent the conduct."</i></p> <p><input type="checkbox"/> <i>which contributes to the client's harm."</i></p> <p><input type="checkbox"/> <i>which falls below the conduct expected of a competent lawyer under the circumstances."</i></p> <p>15. In assessing whether a conflict of interest exists, the disciplinary rules distinguish between:</p> <p><input type="checkbox"/> <i>pro bono clients and fee-paying clients</i></p> <p><input type="checkbox"/> <i>current clients and former clients</i></p> <p><input type="checkbox"/> <i>criminal clients and civil clients.</i></p> <p>16. A law firm may represent a current client against a former client unless:</p>	<p><input type="checkbox"/> <i>the current client's matter is the same as or substantially similar to the former client's matter</i></p> <p><input type="checkbox"/> <i>the attorney who represented the former client in the matter will represent the current client</i></p> <p><input type="checkbox"/> <i>the fees charged to the current client will substantially exceed the fees normally charged by the firm to clients in similar matters.</i></p> <p>17. The Jones court adopted the following principle: "a legal representation does not end until:</p> <p><input type="checkbox"/> <i>at least two years have passed since the lawyer last billed the client for services."</i></p> <p><input type="checkbox"/> <i>a disinterested lawyer would consider the representation ended."</i></p> <p><input type="checkbox"/> <i>something inconsistent with continuation of the relationship has transpired."</i></p> <p>18. A court is more likely to find that a lawyer/client relationship is continuing when:</p> <p><input type="checkbox"/> <i>the lawyer and the client are personal friends</i></p> <p><input type="checkbox"/> <i>a long-standing relationship involving many matters has existed between them</i></p> <p><input type="checkbox"/> <i>the press has continued to associate the lawyer with the client's matter.</i></p> <p>19. Some courts have deemed the lawyer/client relationship terminated when the client:</p> <p><input type="checkbox"/> <i>has refused to pay the lawyer's bill</i></p> <p><input type="checkbox"/> <i>has retained another lawyer in a matter</i></p> <p><input type="checkbox"/> <i>has questioned the lawyer's strategy in the matter.</i></p> <p>20. The inclination of New York Courts to find that a lawyer/client relationship is continuing is prompted by:</p> <p><input type="checkbox"/> <i>concern for the right to counsel in criminal matters</i></p> <p><input type="checkbox"/> <i>concern for clients who have only a few matters</i></p> <p><input type="checkbox"/> <i>concern for clients with fewer means.</i></p>
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