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Relevance

A fact is logically relevant if it is in dispute and if it tends to make another fact more or less likely. A fact is legally relevant if it is more probative than prejudicial.

Hearsay

Hearsay is an out-of-court statement offered for its truth.

1a. Ben's testimony

The issue is whether Ben's testimony should be admitted into evidence.

See above rules. Statements by party opponents are statements made by one of the parties to the litigation that are usually against their interest. Such statements by party opponents are generally classified as non-hearsay and are admissible. Unlike statements against interest the declarant need not be unavailable.

Here, Ben is being called as a witness to testify as to comments that Dan made. The admission by Dan that he killed Victor is about a disputed fact and is therefore logically relevant. Because it is the central issue in the case it is legally relevant. This is an out-of-court statement being offered for its truth and will be analyzed under a hearsay analysis. Dan is the defendant and his statement to Ben that he killed Victor is against his interest. Dan is an available declarant and as such this would not come in as a statement against interest.

As a result, Ben's testimony is admissible.

1b. Anita's testimony about Dan's statement

The issue is whether Anita's testimony regarding Dan's statement that he was with Frank the night of the murder is admissible.

See above rules. Attorney client privilege applies to communications made with clients in anticipation of litigation. This privilege survives the end of an attorney client relationship.

Here, in their initial interview Dan told Anita that he was with Frank the night of the murder. This was after the retainer agreement was entered into so it was clear that both Dan and Anita contemplated a litigation scenario. As a result all communications made in anticipation of this litigation are protected.

Anita has since withdrawn from the representation but her communications with Dan are still protected and she cannot testify as to them.

As a result, Anita testimony regarding Dan's statement should not be admitted.

1c. Anita's testimony regarding the bloody pants

The issue is whether Anita's testimony that she had received the bloody pants from Ben and turned them over to the prosecutor should be admitted.

See above rules. A witness can testify to things within their personal knowledge. Such matters are proper lay testimony.

Here, it seems the bloody pants tend to make a disputed fact (Dan killing Victor) more likely. The bloody pants belonging to Dan is important evidence in the case against Dan for Victor's murder and is thus more probative than prejudicial. Anita personally received the bloody pants and turned them over to the prosecutor. Thus, this is within her proper knowledge and is proper lay testimony.

As a result, Anita can testify regarding the bloody pants and turning them over to the prosecutor.

1d. Anita's testimony that Ben told her that Dan said he killed Victor

The issue is whether Anita's testimony that Ben told her that Dan said he killed Victor is admissible.

See above rules.

Here, the statement from Ben relates to a disputed fact and is therefore logically relevant. It is more probative than prejudicial and is thus legally relevant. However, Anita interviewed Dan as part of her preparation for litigation. Her records of this interview are work product and are privileged and cannot be admitted.

Thus, Anita is not able to testify as to what Ben told her during her visit with him.

2a. Turning bloody pants over to prosecutor

The issue is whether Anita committed any ethical violations in turning the bloody pants over to the prosecutor.

A lawyer in litigation has a duty of fairness. Encompassed within this is the duty to be fair to opposing counsel. If an attorney comes upon evidence that could be essentially damning to their case they should allow the prosecution examination of such evidence.

Here, Ben gave Anita Dan's pants covered in blood. The prosecution is at a huge disadvantage by not having both an awareness of and access to the evidence. Anita was acting in accordance with her duty of fairness to opposing counsel by handing over the pants.

Thus, there is no ethical violation in turning the pants over to the prosecutor.

2b. Turning over email exchange to prosecutor

The issue is whether Anita committed any ethical violations in turning over the email exchange regarding Dan's alibi to the prosecutor.

According to both the CRPC and ABA rules an attorney has a duty of confidentiality. In California the duty of confidentiality is very narrow. A lawyer is only allowed to reveal client confidences if he believes that he is preventing a criminal act that is likely to result in substantial bodily harm or death. The ABA recognizes the same exception but also allows for instances when the attorney is preventing damage to the financial interests of another of which the lawyers services are being used to further. Revealing client confidences is also allowed according to the ABA where a client consents.

Here, Dan sent Anita an email admitting that he lied about his alibi, but denying that he killed Victor. The admission that he lied about his alibi is not a criminal act that would result in substantial bodily harm or death to another. Thus, according to CRPC this information must be kept confidential. Similarly with the ABA rules and financial interests. Because the email admission regarding lying about his alibi was intended to be confidential and does not rise to the level of seriousness required to reveal client confidences for CRPC and ABA, Anita's turning that information was improper.

Thus, Anita likely committed an ethical violation by revealing her client's confidential admission via email.

2c. Withdrawal from representation

The issue is whether Anita committed an ethical violation by withdrawing from representation of Dan.

Both the CRPC and ABA state when a mandatory withdrawal is required. In California withdrawal is required where 1) the attorney has probable cause to believe that their client is using their services to harass or maliciously injure another, 2) where such representation would violate the CRPC, 3) when a mental or physical impairment renders representation unreasonably difficult, and 4) when the lawyer has been discharged by the client. The ABA is the same with regards to Nos. 2-4. The ABA allows for permissive withdrawal when the attorney finds actions by their client to be morally reprehensible.

Here, there is no indication that Anita would be required to withdraw under CRPC or ABA. However, we are told that Anita does not want to represent Dan any longer because she is tired of his lies. She in

essence is saying that she finds his behavior morally repugnant. The ABA would allow her withdrawal here.

As a result, neither the CRPC or ABA require Anita to withdraw but on these facts the ABA would allow for permissive withdrawal.

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END OF EXAM