

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Rita's claim that her supervisor, Jack, sexually harassed her is going to trial next month. Rita works in an administrative job for Global 1 Auto Supplier where Jack is the top-performing sales manager. Unfortunately for Rita, although the acts of harassment were ongoing over an eight-month period and included crude requests for sexual favors and brushing against Rita's body, they all happened in Jack's office, behind closed doors with no witnesses. Jack's alleged conduct ceased once Rita told Global 1 she planned to file a lawsuit. Jack denies all of the alleged conduct. Rita fears that the trial will be a credibility contest that Jack will win in light of his history of successful performance in management positions.

Rita wishes to supplement her own testimony in this "he said-she said" case with the testimony of three witnesses. The first is her co-worker Helen, who frequently socializes with Rita. After informing Global 1 of her intent to sue, Rita told Helen exactly what Jack said. Rita's tone when sharing the information was matter of fact and she spoke in the past tense. Rita also had one conversation with Helen that pre-dated her announcement that she was going to sue. On that occasion, Rita came to Helen in tears and exclaimed, "That jerk just grabbed me!" Rita held out her arm, which bore horizontal red marks. When Helen asked what had occurred and who the "jerk" was, Rita walked away in a daze. Only after Rita filed suit did she tell Helen that Jack had been the one who grabbed her.

Rita also wishes to call Ralph, who used to work for Global 1 in Human Resources. Ralph did not know Rita or Jack and has no experience related to harassment claims. All of his HR experience was limited to benefits administration. Rita wants Ralph to offer his opinion that, based on rumors he heard about other employees during his employment it was likely Jack had harassed Rita.

The final witness Rita would like to call is a therapist, Fern. Rita treated with Fern several years earlier after Rita divorced her husband. Shortly after filing her sexual harassment lawsuit, Rita called Fern. Rita told Fern she would not undergo therapy again as she had not found it helpful in the past; she just wanted to tell Fern what had occurred because she knew Fern was excellent at taking notes. Rita described for Fern in minute detail Jack's alleged sexual conduct, then asked Fern for her notes. Since Rita was adamant about not entering therapy, Fern did not retain a copy of her notes or create a file on Rita's visit. Rita would like Fern to testify at trial to authenticate the notes Fern took during that one meeting with Rita.

Analyze the admissibility of the evidence Rita wishes to present through the three witnesses, explaining the issues and probable outcomes.

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