

QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

University Hospital Corporation, a large national hospital chain, operates hospitals throughout the United States, including one in Lansing, Michigan. Recently, the Lansing hospital was having financial troubles, particularly in the Emergency Department. UHC sent a temporary manager, Mike Smith, to oversee the Lansing hospital's Emergency Department. Smith was a long-serving UHC manager from Tennessee who was near the end of his career. After several months, Smith was not able to fix the problems in Lansing. As a result, Gene Johns, a UHC executive specializing in Emergency Department operations, was moved to Lansing as the new manager and immediately began to review the department's operations. Johns ultimately determined that Smith was incompetent as a manager and recommended his employment be terminated, which UHC eventually did.

Smith filed suit in a Michigan circuit court against both UHC and Johns alleging age discrimination under state law. UHC, a Delaware corporation with its principal place of business in Chicago, Illinois, filed a Notice of Removal to the U.S. District Court in Michigan on the basis that complete diversity existed between the parties, and that the amount in controversy exceeded \$75,000. After issuing an order to show cause why the case should not be remanded to state court, and hearing the parties' arguments, the court remanded the matter to state court.

Once back in state court, discovery ensued. In his deposition, Johns testified that he was concerned that Smith was "slowing down" and that Smith's age was a concern in that regard, but that he recommended the termination because Smith was a poor manager. Neither party requested a copy of the deposition. Eventually Johns and UHC filed a joint motion for summary disposition, arguing that there was no genuine issue of material fact that Smith was terminated for poor performance, not because of his age. Attached to the motion was an affidavit signed by Johns wherein he averred that Smith's age was never something he considered in any manner. In his response, Smith argued that Johns testified in his deposition that age was a concern because Smith was "slowing down," and though he did not yet have the deposition filed with the court, he would do so the next day. The trial court granted defendants' motion. The next day Smith filed a copy of Johns' deposition, and filed a motion for reconsideration, arguing that the testimony created a question of material fact. That motion was also denied.

(1) Assuming the amount in controversy exceeded \$75,000, did the district court err in remanding the case back to state court? (2) Focusing on procedure only, did the circuit court properly grant defendants' motion for summary disposition? (3) Did the trial court correctly deny the motion for reconsideration? Explain your answers.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****