

JULY 2009 MICHIGAN BAR EXAMINATION MODEL ANSWERS

ANSWER TO QUESTION NO. 1

1. Dechini's Statement: Normally, Dechini's statement would be substantively admissible against him under MRE 801(d) (2) (A) as the admission of a party-opponent. To be admissible under that rule, the statement must be (1) the party's own statement, and it must be (2) offered against the party. However, because Dechini's inculpatory statements occurred during the course of plea negotiations with the prosecutor, MRE 410(4) precludes the admission of the statement against Dechini. MRE 410(4) states that any statement made during plea discussions with the prosecutor which do not result in a guilty plea or result in a withdrawn guilty plea, are not admissible against the defendant. Note that Dechini's statement can be used in a perjury trial if the statement was made by the defendant under oath, on the record and in the presence of counsel. However, in the context of the murder trial, Dechini's statement is not admissible against him.

2. Testimony of Miguel Morales: Although Miguel is young and a special education student, MRE 601 provides that every person is presumed competent to be a witness unless the court determines, after questioning the witness, that the witness does not have sufficient physical or mental capacity or sense of obligation to testify truthfully. Thus, Miguel's testimony against Dechini, placing his car at the scene of the crime, is presumptively admissible, but he may be subject to challenge before he is allowed to testify. The defense must challenge Miguel's competency in

order to trigger the court's obligation to assess the child's competency.

Moreover, under MRE 604, Miguel's interpreter is subject to the expert qualification rules, and must make an oath or affirmation to make a true translation. The prosecutor is not prohibited from selecting its own expert. MRE 706(d). The court must determine that Carolina's specialized knowledge will assist the jury to understand the evidence and that she is qualified by knowledge, skill, experience, training, or education to interpret for Miguel. MRE 702. Because Miguel does not speak any English, an interpreter is required. Thus, Carolina will be permitted to interpret if the court is satisfied that she is qualified to do so accurately.

3. **Testimony of Judge York:** Whether Judge York's testimony is admissible depends upon whether the judge is presiding over Dechini's trial. Under MRE 605, a judge presiding over a trial may not testify in that trial as a witness, and the defendant need not make an objection in order to preserve the issue on appeal. However, if Judge York is not presiding over Dechini's trial, then there should be no impediment to the admissibility of the testimony, which is relevant to rebut Dechini's alibi defense.