

**QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
II OR IN EXAMPLIFY ANSWER SCREEN 6**

Plaintiff Patty is suing her employer, Equity International, for sexual harassment. The alleged harasser, Dennis, was Patty's coworker three years earlier, at which time Patty and Dennis had a consensual sexual relationship. The couple mutually ended the relationship on good terms when Equity promoted Dennis and transferred him out of state. Two years later, Equity transferred Dennis back to Patty's work location.

Shortly after Dennis's return, Patty claims he approached her after work in a bar. She claims she told him that she wanted nothing to do with him, but that he refused to give up, eventually following her to her car, where he attempted to sexually assault her. Dennis tells a very different story, claiming that Patty invited him to join her for a drink - her treat. She then tried to come onto him, and when he refused to reciprocate, she followed him to his car where she tried to force herself on him.

The critical issue for trial is whether Dennis engaged in unwelcomed sexual conduct toward Patty. On this issue, Patty intends to offer two witnesses. The first witness, Wendy, had arrived in the bar just before the events in question and had not yet consumed any alcohol. She was, however, seated on the opposite side of the large room, where her view was partially obstructed and she could not hear anything said between Patty and Dennis. Wendy nevertheless plans to testify that, in her opinion, Patty appeared frightened of Dennis based on the body language and facial expressions Wendy could see. The second witness, Dr. Wilma, is a psychologist who plans to opine that, based on psychological testing, Dennis fits the profile of a sexual harasser.

Equity is objecting to both witnesses, arguing that given her distance from and impaired view of the events in question, Wendy could not realistically have witnessed anything that would enable her to form a legitimate opinion pursuant to MRE 701. Equity bases its argument largely on the testimony of the three women sitting at the table next to Patty and Dennis, who testified to their own observations that, in their opinions, Patty was clearly the aggressor.

Equity also challenges Dr. Wilma's conclusion that Dennis fits the profile of a sexual harasser. According to Equity, this is unreliable expert testimony under MRE 702. Equity's primary argument focuses on Dr. Wilma's concession that such profiling is

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*****
OR IN EXAMPLIFY ANSWER SCREEN 6**

relatively novel and remains a subject of controversy among psychologists and, while testing may indicate a predisposition for sexually harassing conduct, whether it can be used with any degree of certainty to identify an actual harasser is still the subject of ongoing research and disagreement. Moreover, according to Equity, Dr. Wilma's testimony, to the extent it has any probative value at all on the issue of whether Dennis engaged in unwelcomed conduct on this occasion, should not be admitted under MRE 403.

Applying Michigan law, fully discuss:

1. How should the court rule on Equity's MRE 701 objection to Wendy's testimony? Explain your answer.

2. How should the court rule on Equity's MRE 702 and 403 objections to Dr. Wilma? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*****
OR IN EXAMPLIFY ANSWER SCREEN 6**