

FEBRUARY 2009 MICHIGAN BAR EXAMINATION MODEL ANSWERS**ANSWER TO QUESTION NO. 1**

The testimony of Gladys Gage is admissible. Under MRE 406, evidence of a person's habit is admissible to prove that a person's conduct on a particular occasion was in conformity with their habit. Under this evidentiary rule, evidence of the habit need not be corroborated. *Id.* Thus, Gladys can testify that Dwayne has a habit of leaving Wally's Wintergreen chewing gum wrappers on the floor.

The testimony of Carolyn Clark is also admissible. Under MRE 901(a), evidence must be authenticated or identified as a condition precedent to its admissibility. In order to properly authenticate or identify the author of the note left at the crime scene, Carolyn's non-expert opinion regarding the handwriting must be based on familiarity that was not acquired for the purposes of the litigation. MRE 901(b) (2). Here, Carolyn's familiarity with Dennis Dwayne's handwriting was premised upon her relationship with him as his administrative assistant, and was not acquired for the purposes of the criminal trial.

The letter itself is admissible as a party admission under MRE 801(d) (2) (A). The statement is allegedly Dwayne's statement, and it is being offered against him. While the rule contains an exception for statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or motor vehicle civil infraction, those exceptions are not implicated here.

While the letter is admissible as a party admission, the

defense attorney can seek the admission of the entire letter under MRE 106. Under this rule, otherwise known as the "rule of completeness," if a portion of a writing or recording is introduced by a party, then the adverse party can seek to have introduced any other parts of the writing or recording "which ought in fairness to be considered contemporaneously." In this case, admission of the second portion of the statement is favorable to Dwayne because it makes it less likely that Dwayne was the culprit because it indicates that motive for the crime was to obtain beer, while Dennis Dwayne maintains that religious beliefs preclude him from consuming alcohol.

Lastly, the testimony of Dr. Hubert Hubris is not admissible. Under MRE 610, evidence regarding a witness' beliefs on matters of religion is not admissible to show that the witness' credibility is impaired. Thus, Hubris will not be able to opine that Dwayne's credibility is suspect because of his unorthodox religious beliefs.