

In a probation revocation proceeding, the government has called the defendant's probation officer to testify. The probation officer will testify that a confidential informant told her that the defendant had violated his probation by associating with known criminals. The defendant objects to the proposed testimony.

Is the probation officer's testimony admissible in the probation revocation proceeding?

- A. No, because the testimony relates hearsay not within any exception.
- B. No, because the confidential informant's statement to the probation officer constitutes an improper lay opinion.
- C. Yes, because the Federal Rules of Evidence do not apply to probation revocation proceedings.
- D. Yes, because the confidential informant's statement is not offered for its truth.

Incorrect

Correct answer C

Collecting Statistics

02 mins, 15 secsTime Spent

2023Version

Explanation:

When Federal Rules of Evidence do NOT* apply

Preliminary-question determinations

Grand jury proceedings

Search / arrest warrant determinations

Preliminary examinations in criminal cases

Extradition or rendition proceedings

Bail & other release hearings

Sentencing hearings

Probation / parole revocation hearings

*Note that evidentiary rules regarding privilege apply to *all* proceedings, including those listed above.

The **Federal Rules of Evidence**—except those relating to privilege—**do not apply** to **probation revocation proceedings**. This means that a court may consider otherwise inadmissible hearsay—eg, the confidential informant's statement that the defendant was associating with known criminals—at those proceedings **(Choice A)**. Therefore, the probation officer's testimony *cannot* be excluded on the basis that it relates hearsay not within any exception.

For the same reason, a court may also consider an otherwise inadmissible **lay opinion** at a probation revocation proceeding. This means that even if the confidential informant's statement constitutes an improper lay opinion (eg, if it was not based on the informant's firsthand perception), it cannot be excluded on that basis **(Choice B)**. Therefore, the probation officer's testimony is admissible in the probation revocation proceeding.

(Choice D) The confidential informant's statement *was* offered for its truth and in support of the government's contention that the defendant violated the conditions of his probation. That makes the statement hearsay, which ordinarily is inadmissible absent an **exclusion or exception**. However, the rules of evidence do not apply to probation revocation proceedings (as seen here).

Educational objective:

The Federal Rules of Evidence—except those relating to privilege—do not apply to probation revocation proceedings.

References

Fed. R. Evid. 1101 (stating the applicability of the federal rules of evidence).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.