

After a night of drinking at a bar, a man and his friend got into an argument over a sports team. The man became so upset that he punched the friend, breaking the friend's nose. The man was arrested for battery. The friend subsequently filed a civil action against the man for battery. In an attempt to dispose of both the criminal charge and the civil suit, the man offered to settle the civil suit with the friend for \$10,000 if the friend would refuse to testify against the man in his criminal trial for battery. The friend declined and later informed the prosecutor of the man's offer. The prosecutor then filed an additional charge of obstruction of justice against the man.

Is the man's offer admissible at his trial for obstruction of justice?

- A. No, because offers of compromise and statements made during compromise negotiations are inadmissible.
- B. No, because the underlying civil dispute did not involve a government regulatory, investigative, or enforcement agency.
- C. Yes, as a statement against interest.
- D. Yes, because offers of compromise are admissible for the limited purpose of proving efforts to obstruct a criminal prosecution.

Explanation:

Compromise offers & negotiations

(FRE 408)

Applicability	Offers made with intent to compromise (ie, avoid or end) claim Conduct/statements made during compromise negotiations about claim
Prohibited use	Not admissible to: prove/disprove validity or amount of disputed claim <i>or</i> impeach by prior inconsistent statement or contradiction
Exceptions	Conduct/statements admissible for above purposes if: made during negotiations in civil dispute involving government regulatory, investigative, or enforcement agency <i>and</i> offered in subsequent criminal case Admissible for other purpose—eg: proving witness's bias or prejudice negating contention of undue delay proving effort to obstruct criminal investigation or prosecution

FRE = Federal Rule of Evidence.

Public policy encourages the settlement of disputes. As a result, Federal Rule of Evidence 408 generally bars the admission of evidence of **offers of compromise**, or conduct or statements made during **compromise negotiations**, when that evidence is offered to:

prove the validity or amount of a disputed claim *or*
impeach a witness with a prior inconsistent statement.

However, evidence of compromise offers and conduct and statements made during compromise negotiations is **admissible** if offered for **other purposes (Choice A)**. These include proving **witness bias**, negating contentions of **undue delay**, and proving efforts to **obstruct a criminal investigation or prosecution**.

Here, the man attempted to settle his civil suit by offering the friend \$10,000 to refuse to testify against the man in his criminal battery trial. While evidence of compromise offers is generally inadmissible, the man's offer constituted an effort to obstruct a criminal prosecution. Therefore, the offer is admissible for that limited purpose.

(Choice B) Conduct or statements made during compromise negotiations may be used to prove a claim's *validity* or amount, or to *impeach* with a prior inconsistent statement, if (1) made during a civil dispute with a government agency exercising its regulatory, investigative, or enforcement authority and (2) offered in a subsequent criminal case. Here,

the man's offer would be used to prove his effort to *obstruct* a criminal prosecution, so there is no requirement that the civil dispute involved a government agency.

(Choice C) A [statement against interest](#) is a hearsay exception for statements so contrary to an [unavailable declarant's](#) proprietary, pecuniary, or penal interest that a reasonable person in the declarant's position would have said it only if he/she believed it to be true. But here, a hearsay exception is unnecessary since the man's offer qualifies as a *nonhearsay* [statement of a party-opponent](#).

Educational objective:

Evidence of compromise offers is generally inadmissible to prove the amount or validity of a claim or to impeach by prior inconsistent statement. However, such evidence may be admissible for other purposes, such as proving bias, negating contentions of undue delay, or proving efforts to obstruct a criminal investigation or prosecution.

References

Fed. R. Evid. 408 (compromise offers and negotiations).

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