

A lawyer was called to testify before a grand jury that was investigating a hit-and-run accident. A security guard at the lawyer's office had testified earlier that on the date of the accident he had seen a person leave the lawyer's office at around 7 p.m., get into a car, and strike a pedestrian while driving out of the parking lot without stopping afterward. The lawyer was asked to disclose the identity of the person who left his office around 7 p.m. on the date of the accident. The lawyer stated that the person was a client but refused to disclose the client's identity, citing the attorney-client privilege.

Can the lawyer be compelled to disclose the client's identity to the grand jury?

- A. No, because the identity of a lawyer's client is protected by the attorney-client privilege. (10%)
- B. No, because the lawyer's testimony would undermine the client's privilege against self-incrimination. (1%)
- C. Yes, because the identity of a lawyer's client is not privileged when disclosure would not reveal a confidential attorney-client communication. (74%)
- D. Yes, because the rules of evidence do not apply at a grand jury proceeding. (13%)

Incorrect

Correct answer C

74% Answered correctly

01 min, 13 secs Time Spent

2023 Version

Explanation:

Attorney-client privileged communications

(FRE 502)

Privileged	Any communication between attorney & client: made to obtain or provide legal assistance for client <i>and</i> intended to be & kept confidential
Not privileged	Purely factual information Client's identity (generally) Existence of attorney-client relationship Client's legal fees & other incidentals Attorney's fee records Business advice or opinions

FRE = Federal Rule of Evidence.

The **attorney-client privilege** protects communications between an attorney and client that are (1) made for the purpose of obtaining or providing legal assistance for the client and (2) intended to be and kept confidential. But this privilege **does not protect** the **client's identity** unless disclosure of that identity would also reveal a confidential attorney-client communication. For instance, a client's identity is protected when revealing it would also reveal the confidential purpose for which the client sought legal representation.

Here, citing the attorney-client privilege, the lawyer refused to disclose the identity of the client who left his office around 7 p.m. on the date of the accident. But disclosure of the client's identity would not reveal a confidential attorney-client communication **(Choice A)**. Therefore, the client's identity is *not* protected by the attorney-client privilege, and the lawyer can be compelled to disclose it to the grand jury.

(Choice B) The [privilege against self-incrimination](#) protects an individual from being compelled by the government to provide self-incriminating evidence that is testimonial in nature. This privilege is not implicated here because the lawyer—not the client—has been called to testify at the grand jury proceeding.

(Choice D) The rules of privilege apply in *all* stages of a legal proceeding, including grand jury proceedings.

Educational objective:

The attorney-client privilege does not protect the identity of a client unless disclosure of that identity would also reveal a confidential attorney-client communication.

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