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At issue here is whether any of Anita's actions as Dan's lawyer were professional conduct violations, and at trial the evidence offered can be admitted or not.

Admissible evidence is any information that help show that the issue in cause is more or less probable, as long as it is not prohibited by law. In CA courts, any evidence that is relevant to the issue will be admissible, unless anything to deem it inadmissible exists, such as; it was obtained in violation of Federal or Constitutional rights (preemption) or its probable value is outweighed by undue prejudice, it is a waste of time for the jury, confusing or collateral, privileged or if it is considered a hearsay. Although in Federal Civil Procedure there are both exemptions and exceptions to the hearsay rules, under CA Civil Procedure rules ("**CACP**") they are all categorized as exemptions, and the rules are very close to each other. Also for criminal cases, the CA Proposition 8 further emphasizes any relevant evidence is admissible in a criminal case in CA.

a- Ben told Anita that Dan confessed to Ben on having killed Victor. This is a hearsay, a statement offered for its truth of the matter that was communicated outside of the court. When a party confesses to another, it is considered a party admission, and it is admissible in court as non-hearsay under CACP. However, Ben should be available at the hearing himself, and offer it himself so he can be cross-examined and if basis are there be impeached.

b- Anita testifying against Dan, her former client is not admissible, as it is protected speech under attorney-client privilege which survives the termination of such relationship. An attorney is not the party holding the right, and therefore without the client's consent cannot share such information that was provided to her in confidence. The only limitation to that is if the information seek from the attorney was soliciting information for a prospective crime, or in furtherance of a crime that involves deadly or seriously harmful results, where the attorney is under the obligation to try to convince the client to change his mind, and otherwise can report to the necessary units to prevent such crime.

c- Anita visited Dan's apartment and without Dan's knowledge talked to Ben. An attorney should keep her client informed on all prospective defense plans, as well as the work product she is trying to gather to defend her client. Here, it is not clear if Ben has consented access to Dan's pants, just because they live together might not create such

presumption. And the pants were handed to Anita without Dan's consent or permission. It is also not clear without tests to know the source of the blood on the pants, and if the probable value is outweighed by undue prejudice.

d- Anita's testimony if offered in court that "Ben said, Dan said" is a hearsay within a hearsay where each layer of hearsay must fall into an exemption to be admissible. With reference to (a) above, Ben's hearsay can be admissible under Party Admission - statement against interest, however, Anita offering what Ben said is just hearsay.

Anita may withdraw from being Dan's attorney, and since Frank hired a new attorney, should send over all documents and information she has so far gathered to the new attorney, and refrain from any further involvement with the case and Dan. Both ABA Model Professional Responsibility Rules ("ABA Rules"), and California Professional Responsibility Rules ("CA Rules") require that an attorney refrain from representing a client if there is substantial risk that the representation will be substantially limited due to attorney's personal interests, or duties towards (i) other clients; (ii) former clients; or (iii) third parties. Under ABA Rules, an attorney may still choose to represent a client under such circumstances if she believes that (i) the representation will not be impacted and impaired despite the conflict of interest; (ii) it is not prohibited by law; (iii) she will not have to testify against one client of hers to another in the same proceeding; and (iv) received a informed consent in writing. CA Rules are the same except that it requires, informed written consent, which means that both the disclaimer of conflict and the consent be in written format. CA Rules also require an attorney to provide the client with a written disclaimer, if there is no such substantial risk, however, the attorney has personal, professional, legal, financial or business relationship with some people and witnesses related to the client's matter. This should represent that not only Anita should keep privileged information safe but also refrain from taking any cases that might substantially limit her competent representation as an attorney with prior knowledge and information pertaining to the case. Any email exchange, any information provided to her with the confidence that it'd be kept private should be kept private by Anita.

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