

KERN COUNTY COLLEGE OF LAW
CIVIL PROCEDURE

Final Examination
Spring 2023
Prof. L. Peake

Instructions:

There are three (3) questions in this examination.
You will be given three (3) hours to complete the examination.

QUESTION #1

Mo, a Missouri domicile, has a podcast she presents from her home primarily directed to audiences in Arizona, Utah and California. On one of her podcasts, she recommended a dog food made by Bria, a Kansas resident, using ingredients Bria obtained from Bryn, a Texas domicile. Mo then received a complaint from Flor, an Arizona listener, that Flor's dog (named "Dog") had become sick from eating Bria's dog food, necessitating treatment for Dog by Dr. Camille. Mo informed Bria of this complaint, and following assurance from Bria that the dog food was safe, Mo fed Bria's food to Mo's own service dog (named "Sparkles"), who then tragically died.

Flor and Mo have joined together as named representatives in a Kansas Federal Court class action suit against Bria and Bryn on behalf of unnamed individuals whose dogs either became ill requiring medical treatment or died from eating Bria's dog food, Flor having incurred \$80,000 in billings from Dr. Camille, and Mo seeking \$100,000 for the death of Sparkles under a Kansas statute allowing owners to recover for the loss of society and comfort for the wrongful death of their service dog. Flor and Mo's attorney asserts that unnamed class members will exceed one thousand individuals asserting damage claims, with members being anticipated to be joined from multiple states, including Arizona, Utah, California, Kansas and Texas.

Should the Federal Court certify the matter as a class action?
Assume personal jurisdiction diversity subject matter jurisdiction have been established.

.....

QUESTION #2

Assume the facts from Question #1 as well as the following:

Before filing the class action suit in Federal court in Kansas, Flor and Mo's attorney, Mr. Petty, took a recorded statement from Dr. Camille, and the attorney made personal notes of what Dr. Camille said that was of particular interest to attorney Petty. Petty provided Dr. Camille with a copy of the recorded statement.

After suit was filed, because Dr. Camille's comments were so equivocal as to whether defendants' dog food caused the need for treatment to Flor's dog "Dog", Petty did not include Camille identity as a potential witness nor the recorded statement in Petty's FRCP 26 disclosure or in Petty's later expert disclosure or FRCP 16 pretrial conference submittal.

Defendants' attorney, Ms. Camera, learned through a social media posting by Flor of Dr. Camille's treatment of Dog, and served FRCP 34 document production demands upon both Dr. Camille and Attorney Petty for "Any and all statements of any type or nature by or relating to Dr. Camille's involvement in the treatment of Dog." Petty responded with a privilege log that objected to both the recorded statement and personal notes as attorney work product. Dr. Camille did not respond to the production demand. After meet and confer efforts were unsuccessful with both Petty and Dr. Camille, Camera filed a motion to compel the requested documents from both Petty and Dr. Camille.

(1) How should the Court rule on such discovery motion as to Plaintiffs? As to Dr. Camille?

Following the final Pretrial Conference and one week before trial, Attorney Petty interviewed Dr. Camille again, at which time Dr. Camille confirmed that she would, if called as a witness, testify on behalf of Plaintiff Flor that Dog's treatment by Dr. Camille was legally caused to a reasonable medical probability by ingestion of the food from Bria and Bryn. Petty forthwith filed a supplement to his prior FRCP 26(a) disclosure and expert disclosure asserting an intention of calling Dr. Camille as a witness at trial. Attorney Camera has filed an objection to Plaintiffs being allowed to call Dr. Camille as a witness, asserting undue prejudice due to lack of opportunity to depose Dr. Camille and retain a responsive witness.

(2) How should the Court rule on Defendants' objection to Plaintiffs' calling Dr. Camille as a witness at trial?

KCCL
Civil Procedure
Spring 2023

QUESTION #1 OUTLINE FOR SPRING 2023

Should the Federal Court issue certification of the proposed class action of Flor and Mo?

Rule: FRCP 23 provides for certification of actions having both personal and subject matter jurisdiction where a proposed class has sufficient numerosity, commonality, typicality and adequate representation of unnamed members by named members of the proposed class. A class action may also be subject to certification if qualifying under the Class Action Fairness Act.

Application:

Personal and Subject Matter Jurisdiction

The facts provide that both personal and subject matter jurisdiction (through diversity) exist in this instance.

Numerosity under FRCP 23(a)(1)

The facts provide that over one thousand individuals will qualify as class members. Generally, class actions are considered to be appropriate procedurally when joinder of potential plaintiffs is so numerous as to make it impracticable to have each plaintiff named individually.

Here, it would be impracticable to have over one thousand individually named plaintiffs joined in a single complaint.

Thus, it appears that numerosity as a class action element is met in this instance.

Commonality

The commonality requirement under FRCP 23 (a) (2) requires that there be at least one “central” issue of law or fact common to all class members.

There are two named class representatives in this instance, each with separate

damage claims: Mo as a named representative asserts loss of society and comfort wrongful death damages for death of her service dog under a Kansas statute, and Flor for monetary losses under FRCP (b)(3).

Plaintiffs will argue commonality is met where, as here, there is a “central” issue among all named and unnamed class members that they have each suffered a loss from the product liability failure of dog food manufactured and sold by Bria and Bryn. See, *Walmart v Dukes* 564 US 338 (2011) discussion on commonality required for certifications of class actions under FRCP 23.

However, it is anticipated that defendants will argue that the claims of class members are likely significantly divergent and dissimilar in significant aspects from those of the named class representatives: i.e., Mo’s damages are based upon a claim of loss of society and comfort for death of a service dog; Flor’s damages flow from actual damages sustained in payment of billings from Dr. Camille for treatment of Flor’s dog “Dog”.

Conclusion: Applying the stricter standard of commonality expressed by the US Supreme Court in *Walmart v Dukes* and as addressed in *Amchem Products v Winsor* 521 US 591 (1997) (no commonality of damage recovery by proposed class of members for presently incurred harm versus future damage potentially incurred), it is likely that the court would not find commonality sufficient under FRCP 23(b)(3).

Typicality

Named representatives claims (and defenses) must be typical of those of the unnamed class members. Typicality considers the inherent relationship among and between the class members and those of the class representatives.

Here, typicality would appear to be weak as to Mo’s claim for death of her service dog as considered in light of the anticipated claims of unnamed class members.

Conclusion: It appears that typicality is not met in this instance.

Adequate representation

FRCP 23(a)(4) requires that the named representatives must adequately represent the interests of the unnamed class members, including as to prosecution of the suit and upon any settlement.

Here, the significant divergence in the interests of Mo, seeking damages for loss of society and comfort for death of her service animal, and those of Flor, seeking economic losses in the form of doctor's bills, creates the potential for unequal consideration of the claims of the various unnamed class members, with those seeking damages of the type sought by Mo potentially wanting significantly more monetary compensation than those class members seeking reimbursement for doctor's visits.

Conclusion: It would appear that adequate representation would not likely be provided by Flor and Mo as class representative plaintiffs.

Thus, more likely than not, it would appear that the court should not appropriately certify the proposed class action.

Subclass creation

FRCP 23(c)(5) allows the court to create subclasses when appropriate to provide for separate classes with separate named class representatives to provide for commonality, typicality and adequacy of representation.

Here, as an alternative to not certifying the proposed class action, the Court could consider creating two subclasses: one with Mo as the named representative, and a second subclass with Flor as the named representative, with each subclass being subject to differing damage claims and measurements of damage recovery.

Conclusion: It would appear appropriate for the Court to certify the proposed class action in the form of two separate subclasses under FRCP 23(c)(5).

CAFA

The Class Action Fairness Act provides for class actions on major losses with over \$5,000,000 exposure and at least 100 members.

Here, with over 1,000 claimed class members, there is a potential for recovery to exceed \$5,000,000, since \$5,000 damages per member would potentially create damages meeting the threshold requirements of 28 USC 1332(d).

Conclusion: It would appear that the proposed class action, if not subject to certification under FRCP 23, may meet the elements of 28 USC 1332(d).

CIV PRO -KCL-QUESTION #2 OUTLINE FOR SPRING 2023

How should court rule on Defendants' motion to compel Plaintiffs' document production of recorded statement and attorney's notes?

Rule: FRCP 34 allows a party to demand production of relevant documents not protected from discovery from another party to the pending suit, including documents obtained or prepared in anticipation of litigation. *Hickman v Taylor* 329 US 495 (1947).

Analysis:

Defendants have demanded that Plaintiffs, through their attorney and in response to an FRCP 34 demand for production of documents, produce any statements of any type or nature relating to Dr. Camille's treatment of one of the Plaintiff's dogs. The statements potentially subject to production are (1) a recorded statement obtained pre litigation by Plaintiffs' attorney (Petty) and (2) Petty's notes prepared contemporaneously during the taking of the recorded statement.

Both (1) and (2) constitute attorney work product: i.e., efforts made by the attorney in preparation of the representation of his/her client's interests in pending or anticipated litigation. *Hickman*, supra.

However, discoverability of the two forms of work product here are subject to different standards of treatment. The recorded statement of Dr. Camille is non derivative work product: that is, information that does not reflect the thoughts, theories, impressions or analysis of the attorney. Non derivative discovery is potentially subject to disclosure (including FRCP 34 document production) upon a showing of undue prejudice by the party seeking such discovery, such as due to lack of recollection of a witness, unavailability of a witness, change in a relevant scene or physical item that has been preserved photographically. FRCP 26(b)(3).

Here, the recorded statement of Dr. Camille is POTENTIALLY subject to discovery IF defense attorney Camera can establish an inability to obtain her own recorded statement from Dr. Camille, or that Dr. Camille needs the recorded statement obtained by Attorney Petty to refresh Dr. Camille's recollection.

Conclusion: Absent a showing of good cause due to undue prejudice for production

of the recorded statement, defense Attorney Camera's motion to compel production of Dr. Camille's recorded statement should be denied as calling for protected work product.

As to Attorney Petty's personal notes of information of particular interest to Attorney Petty: such notes constitute derivative work product, and are not subject to production.

Conclusion: The Court should appropriately deny the defendants' motion to compel Plaintiffs to produce of Dr. Camille's recorded statement and Attorney Petty's personal notes of such statement.

Should the Court compel Dr. Camille to produce his copy of the recorded statement demanded by Defendants' FRCP 34 request and motion?

Analysis: Dr. Camille, as a non party, is not subject to an FRCP 34 demand, which is limited to use as to other parties in a pending suit. Rather, obtainment of documents from Dr. Camille must necessarily be done through use of an FRCP 45 subpoena of documents.

Conclusion: The Court should appropriately deny Defendants' motion to compel FRCP 34 compliance as to Dr. Camille given Dr. Camille's status as a non party.

(2) Should the Court sustain Defendants' objection to Plaintiffs' stated intention to call Dr. Camille as a witness at trial?

Rule: FRCP 26(a)(1) requires parties to state the identity of all witnesses that party intends to call as a witness in support of that party's case, including expert witnesses. FRCP 26(a)(2)(A). If a party discovers a new witness or decides to call a witness after its FRCP 26 disclosure, under FRCP 26(e) such party can serve a supplemental disclosure. Use of initially non disclosed witnesses, including expert witnesses, is subject to exclusion at trial by the Court upon objection by another party claiming undue prejudice where a late disclosure has been proffered. FRCP 16(f), 37(b).

Analysis: Here, Plaintiffs seek to call Dr. Camille as a trial witness after the FRCP 26 disclosure and scheduling have taken place, and the FRCP 16(c) final pretrial conference has occurred. Objections by Defendants' attorney of undue prejudice (lack of ability to now depose Dr. Camille; lack of opportunity to obtain a rebuttal expert) appear to be well taken.

Conclusion: The Court should appropriately, it would appear, sustain Defendants' objection and not allow Plaintiffs to call Dr. Camille as an expert at trial.

KCCL FINAL EXAMINATION QUESTION #3 OUTLINE FOR SPRING 2023

Should the Court have allowed a jury trial following Long's jury waiver?

Rule: A party may request a jury on legal issues if made within 14 days of the last pleading being served. Any waiver of jury thereafter made is subject to consent of all parties to the pending suit. FRCP 38(a), (d). A party may move the Court to request jury unless previously intentionally waived. FRCP 39.

Analysis: Here, MA's Rounds is stated to have intentionally (as opposed to inadvertently) waived jury. Further, Long's request for jury may have been timely, but Long may argue that his waiver of jury should not create an opportunity for an intentionally waiving party to request a jury trial since an impleader action historically sounds in equity, not law, and never entitled Long to a jury trial.

MA's Rounds would argue that its complaint in impleader against Long sounds in law, not equity, as it seeks monetary damages for indemnification against Long as its essence; and further argue that FRCP 38(d) is the deciding consideration here, as no jury waiver may be had absent consent of all parties and, here, MA's Rounds has not provided consent.

Conclusion: The Court correctly allowed trial by jury as not all parties consented to the desired waiver by third party defendant Long.

Should the Court have limited Plaintiffs to three peremptory challenges and "Defense" to three peremptory challenges?

Rule: FRCP 47(b) and 28 USC 1870 provide that each party is to be given three peremptory challenges, but that the court may consider several plaintiffs or defendants to be consider a single "side" or party so as to require that multiple parties "share" three peremptory challenges.

Here, the Court has made two separate determinations in allocation of peremptories: one set to two jointly represented plaintiffs, and one set to four defendants...one of such defendants (Long) being a third party defendant.

As to the Plaintiffs, the allocation of three peremptories to be shared by the two plaintiffs would appear to be well within the court's discretion. As to the Defendants, the allocation of three peremptories would appear to be an

abuse of discretion. While the four “defense side” defendants share joint interests in defeating plaintiffs’ claims, they are absolutely adverse with respect to allocation of fault as between the defendants (Mike, Augie and MA’s Rounds) and the impleaded third party defendant (Long).

Conclusion: It would appear that the court’s allocation of three peremptory challenges jointly to the two plaintiffs is not an abuse of discretion by the court. However, allocation of three peremptory challenges jointly to the four “defense side” parties would arguably appear to be an abuse of discretion (albeit problematically considered to be a prejudicial abuse of discretion, particularly in light of the subsequent defense verdict by the jury).lllllllllllllllllllll

Should the Court grant Plaintiffs’ motion for new trial?

Rule: A motion for new trial is properly granted by the Court under FRCP 59, inter alia, when prejudicial juror misconduct has occurred.

Here, there are three instances of arguable juror misconduct:

First, Juror Number One (“One”) falsely failed to disclose membership in the NRA. Plaintiffs will argue, given the rendering of a defense verdict by the jury, that had such membership been disclosed, a challenge for cause would have been made by Plaintiffs, and arguably successfully given the factual nature of the suit (manufacture of bullets and injuries from discharge of a weapon). Plaintiffs would further argue that had such membership been revealed that they would have exercised one of their peremptories to exclude One.

Defendants would be expected to argue that such failure of disclosure by One was likely an inadvertent failure of recollection; and, in any event, not prejudicial.

Second, Juror Number Two (“Two”) failed to disclose a prior felony conviction for weapons possession (with no indication that it has been expunged). 28 USC 1865 and FRCP 47 prohibit felons from serving on juries in Federal court. However, if a felon’s civil rights have been restored, a (former) felon may serve on a jury. Here, where there is no indication that the felony has been expunged, Plaintiffs will successfully argue that Two should necessarily have been excluded for cause. As to Two, juror misconduct clearly occurred.

Third, Juror Number Three (“Three”) engaged in research on the Internet during the course of the trial on causes of weapon misfiring. Such independent research,

Plaintiffs will argue, constituted prejudicial juror misconduct entitling Plaintiffs to a new trial. Defendants will likely argue that, absent knowing what specific information was seen by Three, that it cannot be established that Three's conduct was prejudicial or affected Three's deliberations or vote for a defense verdict.

Plaintiffs will further argue that, as three jurors of the eight jurors engaged in misconduct; and as verdicts in Federal trials must be unanimous [FRCP 48(b)], that only five qualified jurors voted for the verdict rendered; and that since six jurors must vote for the verdict [FRCP 48(b)], that a new trial must be granted to plaintiffs.

Conclusion: More probably than not, the Court will find prejudicial juror misconduct occurred [Williamson vs. U.S. 512 US 594 (1994)] and award Plaintiffs a new trial on that ground.

1)

Question 1: Should the Federal Court Certify the matter as a class action?

ISSUE GOOD

Rule: In order to certify a class action four elements has to be met (1) Numerosity (2) Commonality, (3) Typicality and (4) Fair and Adequate Representation; OR SUBJECT TO CERTIFICATION UNDER "CAFA",

A) Numerosity: A class size of lawsuit that individual Joinder to the lawsuit would make the lawsuit impracticable.

Here, Mo and Flor are the two class representative seeking to represent all members that have been affected by the dog food that Bria sold, with ingredients from Bryn. Mo and Flor, ~~is~~ ARE attempting to represent unnamed individual that have been affected by the dog food. On Advice by Mo and Flor's Attorney, there would be at least over 1000 individuals that can be included in the lawsuit.

C: Numerosity is met.

B) Commonality: Question of facts or law common to all individual members. ^{THE} Class representative ^{MUST} ~~is~~ (is common) to all individual members of the lawsuit.

HAVE ISSUES

Here, Mo and Flor are the two class representative ^{ADD} that is representing all unnamed individuals affected by Bria's dog food. Flor is ^{one} the classed representative in this case and her dog became sick from eating Bria's dog food. Flor's Dog was treated by Dr. Camille. However, Mo's dog sparkles ate Bria's dog food and died. ^{THUS} The two claims are different. Mo's claim would fall under the the Kansas statute for allowing " owners to recover for the loss of society and comfort for the wrongful death of their service dog. Flor's claim would be for negligence or a product liability issues.

Furthermore, the unnamed individual class are all from multiple states. ^{NEEDS DISCUSSION OF P's POSITION AND D'S POSITION - IDEALLY IN SEPARATE PARAGRAPHS}

C: More likely than not commonality is not met in this lawsuit.

R:Subclass: Separating the two Class Representative into different categories so that each class representative would represent a subclass of the Class action lawsuit.

A:

1) Flor's dog became sick after eating Bria's dog food. A separate subclass should be created in this categories for dogs who got sick.

MAY, BY THE COURT, ALLOW TO

2 Mo's dog died from eating Bria's dog food. A separate subclass should be created to address this issue and have Mo as the class representative.

MAY BE COULD USE FORENT + SOME DISCUSSION (CONCLUSION) OKAY

C) Typicality: The class action lawsuit is typical of a all individual members. Class Representative lawsuit is typical of all members of the lawsuit.

Here, Flor's dog was poisoned and taken to the hospital. Whereas, Mo's dog was killed by eating Bria's dog food. Furthermore. Flor's Dog was treated by Dr. Camille with an expense of \$80,000. Here, typicality may not be met since the class action lawsuit is attempting to represent all unnamed individual harmed by Bria's dog food. The unnamed individual members can all suffer different degree of harm and all of the owners may own different types of pets.

C: More likely than not Typicality is not met.

D: Fair and Adequate Representation: Class action Lawsuit will fairly and adequately resolved the claims for all individual members.

Here, there are thousands of individuals that Mo and Flor's attorney is attempting to represent in this class action lawsuit. The facts does not show the firm that MO and Flor hired. In order to meet the fair and adequate representation, Mo and Flor would have to be represented by a large firm that is familiar with handling a large class action lawsuit. They would have to provide notice of the lawsuit for all members as well. Also, Mo and Flor have different claims and causes of action. THIS SUBISSUE NEEDS A SEPARATE CONCLUSION

C: More likely than not this Class Action would not be certify.

R: Class Action Fairness Act ;(Requires there to be at least over 100 plaintiffs, At least one plaintiff is different from the defendant, Aggregate amount over \$5million dollars.

Here, the first element of over 100 plaintiffs can be met since the facts show that there are thousand of unnamed individuals that have been affected by Bria's dog food. The issue would be to have them join the lawsuit. The second element is at least one plaintiff is different from the defendant. Here, Mo lives in Missouri and Bria lives in Kansas, therefore this element is met. The third element is over \$5 million dollars in aggregate claim. The facts show that Flor went to Dr. Camille and incurred expense of \$80,000 to treat her dog. Mo on the other hand is seeking \$100,000 for the loss of her dog. These two aggregate amount only adds up to \$180,000 far below the required necessity of \$5 million dollars. The opposing argument could be once the unnamed individuals join then we would pass over \$5million. However, this argument is flawed since, it is assuming that they suffered an amount equal to the difference.

NEEDS OWN
PARAGRAPH

THIS NEEDS SEPARATE CONCLUSION
UNLESS YOU ANSWER

C: More likely than not, the court would not certify this class action. AS A "CFA" CLASS ACTION

DUAL CONCLUSION:

2)

1A. How should the Court rule on defendant's motion to compel Plaintiffs' recorded statement of Dr. Camille and attorney personal notes?

PRODUCTION OF

FROM ATTY PETTY? (DR. CAMILLE IS A SEPARATE ISSUE)

Discovery is a court-mandated process whereby parties to a lawsuit are able to view and inspect relevant and non-privileged information or documents pertinent to the case. Parties to a lawsuit have a right to request production of, or demand production of, documents and information that is relevant, non-privileged, and pertinent to the issues in the case from parties in the lawsuit. A motion to compel requires a party to submit documents or information to the opposing party for inspection or to provide copies of that information.

RELEVANCE HERE? 2

Attorney-client communications are absolutely privileged and includes any work done by the attorney or by an agent directed by the attorney; however, work product, under the work product doctrine, has qualified protection. Work product can be derivative or non-derivative. Derivative work product includes any of an attorney's theories, impressions, thoughts, or ideas pertaining to a case made in anticipation of trial or litigation. Derivative work product is only subject to discovery if the seeking party establishes that the information is crucially needed, and that obtaining that information would cause undue hardship; i.e., if the seeking party establishes good cause for the discoveree to turn over the information.

Non-derivative work product includes any evidential information, such as witness statements. This information is subject to discovery.

POTENTIALLY

Here, Plaintiff's attorney, Mr. Petty took a recorded statement from Dr. Camille and made personal notes of what Dr. Camille said that was of particular interest. The recorded statement would fall under non-derivative work product, as it includes evidential information that does not contain Mr. Petty's theories, impressions, or thoughts regarding the case. GOOD

The personal notes taken by Mr. Petty, however, may be considered derivative work product. The facts do not indicate what specifically Mr. Petty discussed in his personal notes — just that he noted statements "of particular interest" made by Dr. Camille. If Mr. Petty's personal notes were just, for example, direct quotes from Dr. Camille's statement, then his notes would likely be considered non-derivative work product; Mr. Petty would have needed to therefore overturn his personal notes to Ms. Camera as part of her FRCP(34) motion. OKAY,

In the event Mr. Petty's personal notes included any impressions, theories, or strategies regarding the case, such as how he would utilize Dr. Camille's testimony at trial, or what additional evidence he would likely require after hearing Dr. Camille's testimony, for example, his personal notes would more likely than not be considered derivative work product. In the event Mr. Petty's personal notes are found to be derivative work product, he is not compelled to turn them over unless Ms. Camera establishes that she has good cause for obtaining them from Mr. Petty. Ms. Camera would have to prove undue hardship. *Yes*

Here, it is ~~largely~~ unlikely that the Court would compel Mr. Petty to overturn his personal notes regarding Dr. Camille's statement. In the event the personal notes were simply quotations of Dr. Camille's statements, that work product would not meet the threshold requiring inability to retrieve the information without undue hardship — especially since the recorded statement itself is non-derivative work product and will be turned over via an order to compel by the Court. Even if Mr. Petty's personal notes contained his own personal thoughts, impressions, or strategies of the case, the Court would likely not compel him to turn those over, as they are clearly derivative and go toward trial strategy.

More likely than not, the Court will grant Ms. Camera's motion to compel for the recorded statement, but not for the personal notes on the recorded statement.

Discovery Violation Sanctions — *NOT WITHIN CALL OF QUESTION*

In the event the Court finds Mr. Petty violated the motion to compel, it is possible the Court may sanction him for violating discovery rules. Sanctions may include: attorney's fees or punitive damages against the non-disclosing party; granting a default judgment or dismissing the action disfavoring the non-disclosing party; resolving the matter against the non-disclosing party; allowing the jury to make an adverse inference against the non-disclosing party at trial; precluding the non-disclosing party from producing evidence on the relevant issue at trial; or striking the pleading.

Here, the Court may sanction Mr. Petty for his failure to comply with the motion to compel. Although Mr. Petty responded to responded to the initial FRCP(34) motion with a privilege log for both the recorded statement and the personal notes, it is possible that the Court will find his failure to turn over the recorded statement was egregious, requiring sanctions.

It is likely the Court may impose sanctions on Mr. Petty for his failure to comply with the FRCP(34).

1B. How should the Court rule on defendant's motion to compel Dr. Camille's recorded statement?

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Discovery is a court-mandated process whereby parties to a lawsuit are able to view and inspect relevant and non-privileged information or documents pertinent to the case. Parties to a lawsuit have a right to request production of, or demand production of, documents and information that is relevant, non-privileged, and pertinent to the issues in the case from parties in the lawsuit. A motion to compel requires a party to submit documents or information to the opposing party for inspection or to provide copies of that information. In order to be subject to discovery, such as interrogatories, demands for production of documents, requests for admissions, interrogatories, or physical or mental examinations, one must be a party to the lawsuit. In the event a party is requesting an individual or entity undergo a deposition and/or bring documents to the deposition, the non-party individual must be subpoenaed. One cannot be served with discovery if they are not party to a lawsuit.

Here, Dr. Camille is not party to the lawsuit and was therefore not required to respond to Ms. Camera's initial FRCP34 motion. The correct course of action, as Dr. Camille was not a party to the lawsuit, was to subpoena Dr. Camille for the recorded statement.

As such, Dr. Camille did not violate any rules of discovery with her non-answer of Ms. Camera's request for production. She had no duty or requirement to respond.

6000
Because Dr. Camille was not legally required to respond to the discovery request, she cannot be served with a motion to compel and therefore be sanctioned by the Court for failure to comply with the motion or an order to compel.

If Dr. Camille was properly subpoenaed for the recorded statement and she failed to provide the statement to Ms. Camera, Ms. Camera could ask the Court to hold Dr. Camille in contempt of court and force her to produce the document. However, because she was not subpoenaed, Ms. Camera cannot request the court make such a finding.

More likely than not, the Court will deny Ms. Camera's motion to compel Dr. Camille to compel the document, as Dr. Camille was not a party to the action.

2. How should the Court rule on defendant's objection to Plaintiffs' calling Dr. Camille as a witness at trial?

A party must file an expert disclosure 90 days before trial or as soon as the party reasonably knows he will be calling the expert as a witness at trial. The party must provide reasoning as to why the witness must be called and why it would unduly prejudice the party if he was not able to call the witness at trial. Discovery rules require both parties to supplement all previous discovery responses once new information that is discoverable (i.e., not privileged) becomes available to that party.

Here, Mr. Petty will argue that he was only able to interview Dr. Camille a week before trial and he forthwith filed the supplement to inform the Court and the defense of his intention to call Dr. Camille as an expert witness at trial. He will argue that Dr. Camille's testimony is a crucial aspect to establishing causation in his case and it would be unduly prejudicial to preclude Dr. Camille from testifying as to the reasonable degree of medical probability that the dog food from Bria and Bryn resulted in the requisite treatment. However, as Ms. Camera will argue the defense will face undue prejudice due to lack of opportunity to depose Dr. Camille and retain a responsive witness, it is possible the Court will either disallow Dr. Camille's testimony or sanction Mr. Petty for a potential discovery violation.

Discovery Violation Sanctions

In the event the Court finds Mr. Petty violated the discovery rules surrounding expert witness designation and disclosure, it is possible the Court may sanction him. Sanctions may include: attorney's fees or punitive damages against the non-disclosing party; granting a default judgment or dismissing the action disfavoring the non-disclosing party; resolving the matter against the non-disclosing party; allowing the jury to make an adverse inference against the non-disclosing party at trial; precluding the non-disclosing party from producing evidence on the relevant issue at trial; or striking the pleading.

It is possible the Court will preclude Mr. Petty from bringing Dr. Camille as an expert witness due to undue prejudice to the defense, even though her testimony is relevant to a key issue. It is also more likely than not that the Court may impose punitive damages on Mr. Petty for failure to timely designate Dr. Camille as an expert witness. While the facts do not state when Mr. Petty's first interview with Dr. Camille was, it can be ascertained that it was not this close to the trial, as the were still engaged in discovery. It is possible the Court will find Mr. Petty's failure to disclose his expert designation until a week before trial as an egregious violation of the discovery rules and sanction him for waiting until one week before trial to disclose his intent to call Dr. Camille.

More likely than not, the Court will sustain Defendant's objection and sanction Mr. Petty for violation of the discovery rules. BY DISALLOWING DR. CAMILLE'S TESTIMONY BY PLAINTIFF

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3)

1) Should the court have allowed a jury trial following Long's waiver of jury?

7th Amendment right to jury trial

Any party in a civil action can demand a jury trial in a claim over twenty dollars. A jury trial must be provided when demanded, otherwise the parties don't have a right to a jury trial. A party may withdraw their right to a jury trial, but they need the consent of all parties.

Here, neither party initially demanded a jury trial, however, Long filed a timely request for Jury. Although Long tried to withdraw his demand, the jury trial must proceed because MA's rounds is a party to the claim, and MA's rounds did not consent to not having a jury trial.

GOOD

The court would be correct to allow a jury trial to proceed, even after Long's waiver.

2) Should the court have limited the two plaintiff's and four defendants to three peremptory challenges per side as the court determined such sided to be present?

Peremptory challenges

Each party in a civil case is allowed three peremptory challenges, which must not be based on race or gender. In cases with multiple plaintiffs and defendants, a court can combine the plaintiffs' peremptory challenges if the claims do not conflict. The court can combine the defense's peremptory challenges if their defenses are sufficiently similar.

Here, Raquel and Clarissa's claims do not conflict because they were both harmed in the same instance, and therefore it would be proper to combine the plaintiff's peremptory challenges. Conversely, Ma's rounds, Augie, Mike, and Long should may have sufficiently similar claims of defense because they were all involved in manufacturing the same ammo.

RIGHT

The judge would be correct to limit the plaintiff's peremptory challenges, and the defenses' peremptory challenges.

3) Should the court grant Plaintiff's motion for a new trial?

Juror misconduct

Juror misconduct includes using extraneous evidence, outside information or influences, lying in the voir dire process, and not being qualified to begin with (18 or older, not a felon, and no felony charges pending).

Here, Juror #1 falsified his response in voir dire about being an NRA member, which the plaintiffs can argue this juror was biased, and the result would have been different if they knew of the NRA membership, and a potential bias. Juror # 2 was unqualified due to being a felon, and for lying in the voir dire process. Plaintiffs can argue bias with juror #2 as well because the juror has a history of committing a firearm related offense. Juror # 3 violated their duty to refrain from doing independent research.

There was significant juror misconduct.

Motion for a new trial

A court may grant a motion for a new trial in circumstances where there was jury misconduct.

Here, there was significant juror misconduct by three jurors. The misconduct of one juror would have been sufficient cause for a new trial. There needs to be at least six jurors with the same unanimous verdict. Here, they started off with eight jurors, and three of them committed juror misconduct. Plaintiffs' will successfully argue they were prejudiced by the jurors' misconduct, and the result would have been different had the jurors been properly selected based on truthful answers, and free of the pains of juror misconduct in this case.

This court will grant a motion for a new trial in circumstances because there was jury misconduct, and the result would have been different without such misconduct.

END OF EXAM