


<p><b>PROFEX SZAKNYELVI VIZSGA</b></p> <p>C1 (felsőfok) – angol nyelv Írásbeli Írott szöveg értése</p>		<p><b>vizsgáló sorszáma:</b></p> <p style="text-align: center;"> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p> <p><b>dátum:</b> <b>2008. november 22.</b></p>
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*Elérhető pontszám: 20 pont.*

*Figyelem! A vizsga akkor lehet sikeres, ha a vizsgáló részegységenként legalább 40%-ot teljesít.*

*Végző megoldásként csak a tintával írt változatot fogadjuk el.*

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### *I. Szöveg*

#### **Donald C. Erickson, v. Newmar Corporation**

##### Background


Erickson paid \$75,000 to R.V.'s Unlimited in 1990 for a 1989 motor home made by Newmar and soon noticed major defects. After nine repair attempts failed, he decided the motor home was a lemon and demanded that Newmar take it back and refund the purchase price. Newmar refused and Erickson filed his action against Newmar and R.V.'s Unlimited.

Plaintiff's claim of witness tampering arose at the defendant's depositions of plaintiff's metal expert, Dr. Steven Grimm, and his chassis expert, Gary Bennett. The morning of Sept. 2, 1993, Erickson and Grimm went to the office of defense counsel, Leslie Combs. Before the deposition began, with Erickson present, Combs asked Grimm if he would evaluate a lock which was an important piece of evidence in an unrelated case that Combs was handling. Combs offered to compensate Grimm at the rate of \$100.00 per hour. When Combs asked Erickson if there was a problem with the arrangement, Erickson said that it was not up to him to decide.

After Combs deposed Grimm he escorted him alone to another room in the office suite to view a videotape and photographs of the lock. Later that afternoon, Erickson confronted Combs regarding his offer of employment to Grimm and informed him that during the lunch break he researched whether the offer was proper and discovered it violated the law. Combs and Erickson had a heated argument with Erickson asking Combs to stipulate that he would not tamper with his next expert witness, and when Combs refused, Erickson canceled the afternoon deposition of Bennett.

The next day, Erickson filed a "*Motion for Judgment Against Newmar for Tampering with a Material Witness.*" ("*Tampering Motion*") The same day, Dr. Grimm resigned from his job with Combs. But though Grimm was no longer working for Combs, Erickson fired him because he didn't know if he could trust him. Also, his chassis expert, Bennett, quit because he didn't want to be involved in a case where "*the attorneys [were] bothering the witnesses.*"

On Oct. 27, 1993, the district court denied Erickson's Tampering Motion. Five days later, Erickson went to trial without his expert witnesses. The court conducted a bench trial and thereafter entered judgment in favor of Newmar.

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### Discussion

Since the district court is vested with the power and responsibility of supervising the professional conduct of attorneys appearing before it, the appropriate standard of review is "*abuse of discretion.*"


In determining plaintiff's Tampering Motion, the district court interpreted the motion as an attempt by Erickson "*to disqualify his own expert witness so that an adverse judgment [could] be imposed on defendant as a sanction for causing the loss of the expert.*" In denying the motion, the court relied solely upon cases involving disqualification of a "*switching sides*" expert – an expert who is initially retained by one party, dismissed, and employed by the opposing party in the same or related litigation. In "*switching sides*" cases, courts may grant the original hiring party's motion to disqualify the expert when it is determined that the expert is in possession of confidential information received from the first client.

The present case, however, does not involve an expert who changed sides and used confidential information. Rather, Dr. Grimm was still retained by Erickson at the time Combs made him an offer of employment. Therefore, the district court erred in its analysis.

The present case is about an attorney who offered a monetary inducement to an expert witness prior to the expert giving his testimony.

In the present case, Combs hired plaintiff's expert, Dr. Grimm, to examine a lock for another case. The consultation between Combs and Grimm took place out of the presence of Erickson. By his employment of Grimm, Combs entirely circumvented the discovery rules because Combs achieved unsupervised access to plaintiff's expert. Thus, applying the reasoning in the ABA Op., Combs violated NV.R.173(3) [the duty to obey obligations of the tribunal] by disobeying the discovery obligations of the court.

More importantly, Combs' actions had a prejudicial effect on Erickson's ability to present his case. Erickson believed he could no longer use Grimm to testify at trial to the alleged defects in the walls of his motor home as planned because he did not know what had transpired during the Combs/Grimm meeting. It took him more than three months to locate Grimm and there were no other qualified experts in Nevada. And Bennett, the other expert present during the Combs/Erickson argument, now refused to testify at trial because the "*attorneys [were] bothering the witnesses.*" Thus, two months before trial, Erickson lost two critical experts he was unable to replace, and had no metals or chassis expert at trial.

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Therefore, Combs' misconduct was prejudicial to the administration of justice because it severely impeded Erickson's ability to present his case to the court. [NV.R.203(4) the prohibition against conduct which is prejudicial to the administration of justice].

Combs' behavior is particularly disturbing because Combs took advantage of the fact that Erickson was acting pro se. In layman's terms, Erickson labeled the employment offer to Dr. Grimm "a bribe". This may not be a fair characterization. However, attorneys must use their common sense to avoid conduct which could appear to be an improper attempt to influence a witness who is about to testify. We will never know Combs' actual motivation in making an offer of employment to Grimm. Regardless of motive, at a minimum, the offer put Grimm in the position of having divided loyalties. Quite simply, this court chooses to abide by the ageless wisdom that a person cannot serve two masters.

In sum, the district court abused its discretion by failing to address the claim of unethical conduct in the form of witness tampering. The court erred by incorrectly analyzing the issue as a case of a "switching sides" expert.

*Forrás: Internet, [www.lectlaw.com/files/exp17.htm](http://www.lectlaw.com/files/exp17.htm)*

*Letöltés ideje: 2008.09.11.*

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### *1. Szöveg - Feladatlap*

*I. Keresse meg a szövegben az alábbi szavak és kifejezések maximum 3 szóból álló megfelelőjét!  
Az elsőt példaként megoldottuk.*

*Elérhető pontszám: 6 pont*

<i>0/ claimed</i>	<i>demanded</i>
1/ reimburse	
2/ claimant	
3/ something that gives proof	
4/ broke the rule	
5/ application to a court	
6/ gave up (his post)	

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*II. Válassza ki és karikázza be az egyedüli helyes állítás betűjelét! Az elsőt példaként megoldottuk.*

*Elérhető pontszám: 4 pont*

0. A) *Erickson appeared before court with his expert witness.*  
**B) *The court's decision was favorable for Newmar.***  
C) *Newmar did not appear at the trial.*  
D) *Erickson's expert witness refused to testify before court.*
  
1. A) The district court denied Erickson's Tampering Motion on the basis of "abuse of discretion".  
B) The "switching sides" cases could be applied to Erickson's case.  
C) The court was wrong in applying the precedent cases to the current case.  
D) The court was right in its decision that Erickson's aim with the Tampering Motion was to shift the responsibility of losing his expert witness on the defendant.
  
2. A) Erickson hired the expert witness to testify against Newmar and R.V.'s Unlimited.  
B) The expert witness who had testified against Newmar and R.V.'s Unlimited withdrew his allegation.  
C) Erickson's expert witness used confidential information to help the opposing party.  
D) The court should have made a decision considering the fact that the attorney offered financial inducement to Dr. Grimm before he gave his testimony.
  
3. A) The defense counsel evaded the discovery rules when he negotiated unsupervised with Erickson's expert.  
B) Combs intended to employ Erickson's two expert witnesses.  
C) Combs offered monetary inducement to Erickson if he dropped the case.  
D) Erickson refused to use Grimm to testify at the trial due to the fact that Grimm had resigned.
  
4. A) The defense counsel committed bribery.  
B) Erickson's ability to present his case to the court was severely impeded due to Combs' misconduct.  
C) The procedure revealed that Combs' attempt to influence the expert witness who was about to testify was on purpose.  
D) Finally the case was settled in favour of Erickson.

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## 2. Szöveg

### **European Transparency Initiative**

#### **A framework for relations with interest representatives (Register and Code of Conduct)**

**A/** On 21 March 2007, the Commission adopted the Communication “Follow-up to the Green Paper ‘European Transparency Initiative’”, which included the decision to establish a framework for its relations with interest representatives. It was decided to:

- create and launch a new voluntary Register for interest representatives in spring 2008;
- draft a Code of Conduct. Respect for the Code will be a requirement for entry in the Register and will be monitored by the Commission;
- establish a monitoring and enforcement mechanism for the Code and the Register;
- increase transparency through reinforced application of the Commission’s consultation standards based, in particular, on a standard website for internet consultations.

This Communication:

- provides further clarifications about these measures and reports on the progress made toward their implementation;
- presents the Code of Conduct established following a public consultation.


**B/** In implementing the Communication “Follow-up to the Green Paper ‘European Transparency Initiative’”, the Commission has had numerous contacts with stakeholders and has organized an open, public consultation on the draft Code of Conduct. The feedback received has highlighted a desire, broadly shared by all categories of actors, for a number of further clarifications, regarding in particular the definition of the activities and entities falling under the scope of the Register, as well as the monitoring and enforcement mechanism.

This Communication provides information on those aspects of the framework.

**C/** The Register, with its web interface and database, will offer, in spring 2008, user-friendly access both to interest representatives for their online registration and subsequent updates and to the public at large, for the consultation of its content.

It has emerged from the feedback that more information is needed on the activities and operators included in the definitions of “interest representation” and “interest representative”.

“Interest representation” activities for which registration is expected are defined as “activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”.

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This definition does not include:

- activities concerning legal and other professional advice, in so far as they relate to the exercise of the fundamental right to a fair trial of a client, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein;
- activities of the social partners as actors in the social dialogue (trade unions, employers associations). However, when these actors engage in activities falling outside the role conferred on them by the Treaties, they are expected to register in order to guarantee a level playing field between all the interests represented;
- activities in response to the Commission’s direct request, such as ad hoc or regular requests for factual information, data or expertise, invitations to public hearings, or participation in consultative committees or in any similar forum.

**D/** The Commission recognises that the mission of most organisations engaged in interest representation is wider than the activities for which registration is expected. They engage in activities such as the production of studies, statistics and other information and documentation as well as the provision of training and capacity building for members or clients which fall outside the scope of this definition, if they are not related to activities of interest representation.

**E/** The Commission encourages European networks, federations, associations or platforms to produce, as a dimension of their self-regulation, common, transparent guidelines for their members identifying the activities falling under this definition.


**F/** Only entities engaged in interest representation activities as described above and not individual persons are expected to register.

With the exception of local, regional, national and international public authorities, any entity, irrespective of its legal status, is expected to register if it is engaged in activities meeting the definition above.

This applies to social partners (employers organisations and trade unions) engaged in interest representation activities falling outside the specific framework of the social dialogue. It also applies to associations of public authorities with a private legal status, or any mixed (private/public) structure of which public authorities are part, if they are carrying out activities falling under the definition presented above.

*Forrás: Internet, <http://ec.europa.eu/transparency>*

*Letöltés ideje: 2008.09.11.*

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## 2. Szöveg – Feladatlap

*I. Egészítse ki az alábbi mondatokat a szöveg alapján, üres szöveghelyenként maximum két szóval!  
Az elsőt példaként megoldottuk.*

*Elérhető pontszám: 5 pont*

*0/ The Commission initiated a **Registration** on voluntary basis for interest representatives.*

1/ The Commission involved \_\_\_\_\_ in the process of drafting the Code of Conduct.


2/ A \_\_\_\_\_ was carried out prior to the creation of the Code of Conduct.

3/ The aim of “Interest representation” activities to be registered is to have an effect on the \_\_\_\_\_ in policy and decision making.

4/ European networks are expected to create \_\_\_\_\_ in order to enable self-regulation.

5/ Registration applies to \_\_\_\_\_ whose activities meet the definition of interest representation.



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*II. Párosítsa a szöveg betűkkel jelölt bekezdéseit az alábbi, számokkal jelölt bekezdésösszegzőkkel. Egy bekezdésösszegzőt nem kell felhasználnia. Az elsőt példaként megoldottuk.*

*Elérhető pontszám: 5 pont*

*0. The problem of activities not included in the “Interest representation” activities*

1. Giving help for members to find the activities that need registration
2. The decision made by the European Commission
3. Detailed description of stakeholders’ participation in drafting the Transparency Initiative
4. Interest representatives expected to register
5. The Communication on the Code of Conduct and the Register
6. More activities than defined in the activities of interest representation

<u><b>A</b></u>	
<u><b>B</b></u>	
<u><b>C</b></u>	
<u><b>D</b></u>	<i>0</i>
<u><b>E</b></u>	
<u><b>F</b></u>	