

HYPOTHESIS 4

Company A had a contract with Company B. Company B decided to cancel the contract. Company A then issued invoices for work already done. Company B refused to pay so Company A sued. Sometime later, the Vice-President of Company A called the attorneys for Company B. The employee indicated that he no longer worked at Company A and wanted to talk about the facts of the case.

Defendant's counsel scheduled a phone call with the former VP for the following day and arranged for a court reporter to transcribe the call. Although Defendant's counsel informed the former VP that an "assistant" would be "writing stuff down" in lieu of counsel "taking notes," Defendant's counsel did not explicitly inform him that a court reporter would be transcribing the conversation. During the call, which lasted approximately eighty-one (81) minutes, the former VP made various unsworn statements that, if true, demonstrate spoliation of evidence and other improper behavior.

What RPC may apply?