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July 2026 MEE Questions

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MEE Question 1

In unrelated cases, the federal government charged Buster and Calvin each with two criminal offenses: illegal distribution of methamphetamine (Count 1) and illegal sale of firearms (Count 2). Buster and Calvin each entered into an agreement with the government pursuant to which each would plead guilty to Count 1 and the government would dismiss Count 2.

The same judge conducted separate plea hearings for Buster and Calvin. At each hearing, the judge directly questioned the defendant under oath. The judge asked each defendant whether he was pleading guilty voluntarily, knowingly, and intelligently. Each answered, "Yes." The judge also addressed all the matters that the rules of criminal procedure require a judge to address before accepting a guilty plea. Finally, the judge said to each defendant, "Do you admit that you are guilty of the crime charged in Count 1—illegal drug distribution? If so, tell me what you did and why you are pleading guilty."

In response, Buster stated, "Yes, I admit I'm guilty of drug distribution because I sold two pounds of methamphetamine for $19,000. I'm pleading guilty somewhat to take responsibility but mostly and especially because the prosecutor told me that, if I plead guilty, FBI agents will stop harassing my mother at her job, telling all her coworkers that I'm a criminal and embarrassing her with loud questions just to get to me. The prosecutor also said that only if I plead guilty would he drop his plan to charge my wife with bribery even though he admits that she has done nothing wrong."

Calvin answered by stating, "No, I'm not guilty. I didn't distribute any drugs. I'm pleading guilty only because the prosecutor promised that if I plead guilty, he will dismiss the gun charge, which is more serious and carries a long prison sentence. Also, he promised to ask you to give me only probation, not send me to prison, if I plead guilty to the drug charge. I've read the statements that four so-called friends of mine made to the police, saying that I sold them drugs. If I go to trial, the jurors will probably believe them and find me guilty. I swear I've never sold drugs to anyone, but I can't risk going to prison, and so I plead guilty to that charge."

The judge told each defendant the same thing: "I accept your guilty plea to Count 1 and find you guilty of illegal drug distribution. I dismiss Count 2 based on your plea deal."

Before sentencing, each defendant unsuccessfully asked the federal district court to rule that his guilty plea was invalid. After sentencing, each defendant timely filed a direct appeal of his conviction.

Buster claims on appeal, "First, the appellate court must set aside the guilty plea because the plea was involuntary. Second, assuming the plea was involuntary, the

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appellate court must remand the case with instructions to the district court to enter a judgment of acquittal on Count 1."

Calvin claims on appeal, "The appellate court must set aside the guilty plea and reverse the conviction because the guilty plea resulted from improper governmental coercion or enticement. Alternatively, the appellate court must set aside the guilty plea and reverse the conviction because the judge violated the right not to be convicted by plea when the defendant has expressly denied guilt."

Each defendant properly preserved his claims for appellate review, and no procedural issue prevents the appellate court from addressing the arguments on the merits. The government has not disputed either Buster's or Calvin's factual assertions, made under oath in open court during their plea hearings, regarding their plea negotiations.

1. How should the appellate court decide Buster's two arguments? Explain.

2. How should the appellate court decide Calvin's two arguments? Explain.

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MEE Question 2

Ten years ago, a married couple bought land in State A on which there were two single-family houses, each two stories high. When the couple purchased the land, it was predominantly rural and was zoned for "commercial" use. The municipality's zoning is cumulative.

The couple used one house (House #1) as their residence and the other house (House #2) to operate a catering business. The catering business prepared all food on-site and then delivered the food to customers' locations; it did not serve any food to retail customers on its premises.

One year ago, with an increase in residential development, the local zoning board passed an ordinance that rezoned the district in which the land is located from "commercial" to "residential." A catering business in a single-family house is not a "residential" use. The zoning ordinance contains typical language protecting existing nonconforming uses.

One month ago, the couple signed a contract to sell the land to Betty, who plans to live in House #1 as her primary residence and to use House #2 to operate a retail bakery. Betty would not need to modify House #2 to operate a bakery, and she plans to operate the bakery during hours consistent with those of the couple's catering business. Unlike the catering business, however, the bakery will serve customers food items solely on its premises in House #2.

The sale contract set the closing for 45 days after it was signed and required the couple to have a marketable title subject only to encumbrances of record. At the time that the contract was signed, Betty had no notice of an existing unrecorded covenant on the land restricting all structures on the land to no more than two stories. The contract did not address the risk of loss due to events before closing.

The day before the closing, Betty first learned of the unrecorded covenant. That same day, a fire destroyed House #1. The fire was not the fault of the couple, and House #2 was not damaged.

State A applies the traditional common-law doctrine of equitable conversion with respect to risk of loss.

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1. Would the rezoning of the land from commercial to residential prohibit Betty from operating a bakery in House #2? Explain.

2. Would the unrecorded covenant with the two-story restriction prevent the couple from delivering marketable title to Betty at the closing? Explain.

3. Can Betty rightfully refuse to close because House #1 was destroyed by fire? Explain.

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MEE Question 3

Acoustic Studios Inc. (Acoustic) operates several music recording studios. In January, Acoustic leased space in a warehouse to construct additional studios. By April, the studios were almost complete, and Acoustic had begun to schedule clients in those studios for recordings.

One of the final steps in construction of the studios was the installation of soundproof tiles on the walls and ceilings of the studios to ensure that outside sounds would not interfere with recording. On April 10, Acoustic entered into a valid signed agreement with Soundwave LLC under which Acoustic agreed to pay $40,000 and Soundwave agreed that it would, on or before May 30, deliver and install enough tiles to soundproof the new recording studios. The tiles, which were manufactured exclusively by Soundwave, were particularly suited to Acoustic's needs. The agreement stated that $38,000 of the price was for the soundproof tiles and $2,000 was for their installation.

On April 12, Acoustic's president received a call from the chief executive officer (CEO) of Soundwave. "I hate to ask this," said the CEO, "but because we have a long history with you, I hope you'll be understanding. When we agreed to sell you the soundproof tiles and install them for $40,000, our sales manager forgot to take into account recent significant increases in the cost of raw materials necessary to make those tiles. We're prepared to honor our deal, but it will be a hardship. I'm hoping that you'll agree to raise the deal price to $48,000, which will just barely cover our actual costs on the tiles."

Acoustic's president agreed to this request. She was aware of recent price increases for soundproofing materials, and she judged the request to be a fair cost increase under the circumstances; moreover, she also valued having a good relationship with Soundwave. The Soundwave CEO drove to Acoustic's headquarters later on April 12, and the parties crossed out the existing pricing terms in the written agreement, writing "$48,000 total" in their place; both the CEO and the president signed their initials next to the change.

On May 30, when the tiles had not been delivered by mid-morning, Acoustic's president emailed Soundwave's CEO. The CEO immediately emailed back, "I'm afraid I have bad news. We won't supply you with the tiles after all. A longtime customer desperately needs the tiles, so we plan to supply them to that customer instead. We apologize."

Acoustic's president quickly tried to find an alternative source for soundproof tiles that fit Acoustic's needs, but she was unable to find anything suitable. The lack of soundproofing for the new studios would cause Acoustic to be unable to honor several lucrative contracts with musical artists and thereby cause significant financial loss and reputational harm to Acoustic. Soundwave still has the tiles and has not yet delivered them to the other buyer.

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1. Does Article 2 of the Uniform Commercial Code apply to the transaction between Acoustic and Soundwave? Explain.

2. Assuming that Article 2 of the Uniform Commercial Code applies to the transaction, if Soundwave delivers and installs the tiles (notwithstanding its CEO's statement to the contrary), is Acoustic bound to pay $48,000 instead of $40,000? Explain.

3. Assuming that Article 2 of the Uniform Commercial Code applies to the transaction and Soundwave refuses to supply the tiles to Acoustic, would Acoustic prevail in seeking a court order directing Soundwave to specifically perform its obligations under the agreement to supply the tiles? Explain.

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MEE Question 4

George, an experienced gardener, formed Peculiar Plants LLC (Plants), a limited liability company, for the purpose of operating a business to care for exotic plants on residential properties. Plants was organized in State A, which has enacted the current version of the Revised Uniform Limited Liability Company Act (RULLCA).

George estimated that Plants needed $30,000 to begin its operations. He invited his friend Nikki to invest.

Nikki agreed to invest $30,000 in Plants, telling George that she was excited to manage Plants with him and help the business grow. They agreed that Nikki would become a member of the LLC. They further agreed that the two of them, as members, would manage Plants's business. They also agreed that George would be primarily responsible for day-to-day operations because Nikki did not have time to work for the business daily. The parties recognized George's gardening services for the next two years as a contribution worth $60,000. If Plants made distributions to the members, Nikki would get distributions first, until she received her initial $30,000 investment back. George and Nikki recorded these terms in a signed operating agreement.

During Plants's first year of operations, and without consulting Nikki, George used $12,000 of Plants's money to buy a state-of-the-art water sprayer. This sprayer was very different from and significantly more expensive than sprayers bought by similar businesses. Although George did not tell Nikki, he used the sprayer for three months to water his personal plants in a greenhouse that he maintains at his home.

By the end of its first year of operations, Plants had made a profit of $40,000. Nikki wanted these profits distributed to the members, while George wanted to reinvest them to expand the business.

When Nikki learned of George's purchase and personal use of the sprayer, she became angry and indicated that she was considering her legal rights against George.

1. Is George's approval necessary for Plants to distribute profits? Explain.

2. Assuming that Plants decides to distribute its first year's profits of $40,000 to its members, how much should George and Nikki each receive? Explain.

3. Did George have actual authority to buy the sprayer on behalf of Plants? Explain.

4. Assuming that George bound Plants to the purchase of the sprayer, did he breach any duties to Plants by using the sprayer for his personal use? Explain.

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MEE Question 5

Plaintiff, a citizen of State A, worked for Defendant, a citizen of State B, at a factory operated by Defendant in State A. Plaintiff worked for Defendant for 20 years and then retired on December 31, 2022.

In early 2025, Plaintiff began to notice that he was suffering mild hearing loss. His doctor determined that the hearing loss was untreatable and would progressively worsen. The doctor said that the loss resulted from Plaintiff's having worked without proper ear protection in a noisy factory for many years.

On June 1, 2025, Plaintiff sued Defendant in the federal district court of State A, properly invoking the court's diversity jurisdiction. Plaintiff alleged that Defendant had acted negligently in failing to provide Plaintiff with proper hearing protection in the workplace and in failing to warn Plaintiff of the risk of hearing loss. Plaintiff further alleged that those negligent acts caused Plaintiff's hearing loss, resulting in more than $200,000 in harms to him beginning on February 1, 2025, when Plaintiff first began to notice his hearing problem.

Defendant's answer admitted the basic facts of Plaintiff's employment by Defendant but denied that Plaintiff's hearing loss had been caused by Defendant's actions or that Defendant had behaved negligently. Defendant raised no defenses in its initial answer.

In State A, the statute of limitations for tort claims is two years. In 2021, State A's highest court ruled, in a case involving injuries caused by an allegedly defectively performed surgery, that the limitations period would run from the date of discovery of the injury, rather than the date the injury occurred. Other states have also adopted date-of-discovery rules, although the rules vary and are sometimes limited to particular kinds of injuries.

One year after Plaintiff filed suit and during discovery, Plaintiff admitted that the injury that had caused his hearing loss had occurred more than two years before suit was filed. Defendant then filed a motion to amend its answer to include the affirmative defense that the statute of limitations had run on Plaintiff's tort claim.

Plaintiff objected to the amendment, relying on a provision of State A law that prohibits any party from amending pleadings after discovery has begun. The district court granted Defendant's motion to amend, and Defendant amended its answer.

Defendant moved for summary judgment based on its statute-of-limitations defense and Plaintiff's admission that his injury had occurred more than two years before suit was filed. Defendant argued that State A should follow the traditional date-of-injury approach

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to determining when the tort limitations period begins running. Under that approach, Defendant argued, the undisputed facts showed that the statute of limitations had run because Plaintiff's complaint was filed on June 1, 2025, more than two years after Plaintiff stopped working in Defendant's factory.

Ten days after Defendant's motion for summary judgment was served on Plaintiff, Plaintiff filed a response. Plaintiff argued that summary judgment was inappropriate because, under State A law, the limitations period runs from the date of discovery of an injury (early 2025), which was less than two years before Plaintiff filed suit. Plaintiff's response also asked the court to impose sanctions against Defendant under Federal Rule of Civil Procedure 11, arguing that Defendant's motion for summary judgment was frivolous because State A's rule provides that a torts limitations period begins to run on the date of discovery.

1. Did the district court properly grant Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun? Explain.

2. Should the district court grant Plaintiff's request for sanctions against Defendant under Rule 11 of the Federal Rules of Civil Procedure? Explain.

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MEE Question 6

Derek, who has a general dentistry practice in Small Town, State A, attempted to perform a root canal procedure on a patient. The procedure failed, resulting in the patient's needing a tooth extraction and a tooth implant. The patient sued Derek, alleging malpractice.

The patient's lawyer asked several other Small Town dentists with general dentistry practices to serve as an expert witness on the patient's behalf, but none wanted to testify against a local dentist, and each declined. The patient's lawyer then met with another State A dentist who specializes in root canals and who lives in a similarly sized town 150 miles away. The specialist has no particular knowledge of the practice of dentistry in Small Town. The specialist has agreed to serve as an expert witness and testify that Derek negligently performed the root canal procedure.

The patient suffered the following harms: the loss of her tooth, additional dental bills, three days of lost wages, and physical pain. Because of an earlier trauma, she has also experienced unusually significant and ongoing emotional turmoil because, with an artificial tooth, she no longer feels "whole." These feelings have led the patient to seek psychological counseling at her own expense.

Angry about her experience and hoping to warn other patients about possible harm, the patient posted a message on an online forum. The forum was used by only five or six residents of Small Town, who accessed it only occasionally. On that forum, the patient posted a message that accurately described the details of her root canal procedure and her resulting injuries. She concluded her post by stating that Derek was "a real numbskull." One person responded to the patient's post by thanking her and stating that he had canceled scheduled procedures with Derek as a result of the patient's post. Derek is considering asserting a defamation counterclaim against the patient.

1. What is the standard of care that will be applied to determine whether Derek is liable for malpractice? Explain.

2. Given that no local general dentists will testify against Derek, can the testimony of the out-of-town specialist establish the standard of care? Explain.

3. Assuming that the patient proves the liability elements of her malpractice claim, for which harms can the patient recover damages against Derek? Explain.

4. Does Derek have a defamation claim against the patient? Explain.

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July 2026
MPT-1 Item

Matter of David Dawes

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Matter of David Dawes

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Van Every & Rice LLP
Attorneys at Law
9 Templeton Avenue
Fitzwilliam, Franklin 33726

TO: Examinee
FROM: Simone Rice
DATE: July 28, 2026
RE: Subpoena from US Attorney

I have received a subpoena from the US Attorney as part of a prosecution of an army veteran, David Dawes, to whom I gave advice about six years ago. The government has charged Dawes with knowingly and willfully concealing material information in an application for benefits from the Department of Veterans Affairs (VA). The subpoena requests documents relating to my conversations with him about his eligibility for benefits.

I first met with Dawes on March 11, 2020. He had heard that our firm helps veterans file initial applications without charging a fee. As is my usual practice, I asked permission to record the conversation. The next day, I met again with Dawes, and I informed him that I would not represent him in preparing the application. I documented that conversation in a separate memo to file.

In the present criminal action, Dawes is represented by the Federal Public Defender's office. After I received the subpoena, the attorney representing Dawes called me to talk about the case and to ask about my plans regarding the subpoena.

I plan to contest the subpoena if I have grounds to do so, as the rules of ethics suggest I should do. I need you to write a memorandum analyzing the following:

(1) Do the Franklin Rules of Professional Conduct prevent me from disclosing to the government the documents in my files about my conversations with Dawes?

(2) Based on the information in my possession relating to the crime charged in the indictment, would the crime-fraud exception to the attorney-client privilege apply to the documents in my files?

(3) Based only on the information in the government's possession, can the government successfully compel disclosure of the documents in my files under the crime-fraud exception?

Do not draft a separate statement of facts but be sure to integrate the relevant facts and applicable law into your legal analysis.

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UNITED STATES DISTRICT COURT
for the
District of Franklin

United States of America,
Plaintiff,
v. Case No. 26-CR-1382
David Dawes,
Defendant.

INDICTMENT

The grand jury charges that on or about April 7, 2020, in the District of Franklin, David Dawes did knowingly and willfully conceal and cover up a material fact, namely the existence of an outstanding criminal warrant, when applying for disability compensation benefits from the Department of Veterans Affairs, resulting in the illegal receipt of approximately $260,000 in benefits from July 1, 2020, to May 1, 2026, all in violation of Title 18, United States Code, § 1001.

A TRUE BILL

July 9, 2026

Jean Pearsall Schmidt

Jean Pearsall Schmidt
Foreperson

Amalie Semmes

Amalie Semmes
United States Attorney

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TRANSCRIPT OF INTERVIEW

Between Attorney Simone Rice and Mr. David Dawes

March 11, 2020

Att'y Rice: Mr. Dawes, thank you for coming in today.

David Dawes: No, thank you. I need your help.

Rice: Let's see what we can do. Your intake sheet tells me that you're an army veteran with an honorable discharge.

Dawes: Yes, I am.

Rice: Why are you here today?

Dawes: I want to start getting disability from the VA. My buddies tell me that, with all the problems I have been having, I should be able to get full benefits.

Rice: What kind of problems?

Dawes: I have a lot of pain in my back and hips. I don't sleep well at all and keep waking up. And a therapist told me I have PTSD.

Rice: Okay. I appreciate your letting me know all this. We'll go back over each of those conditions in a minute. But I want to start with your current situation. Your intake form says you don't have any place to sleep and you have no income.

Dawes: That's right.

Rice: How long has this been going on?

Dawes: About two years, ever since I moved here to Franklin.

Rice: Where did you live before?

Dawes: Centerville, in Columbia.

Rice: Did you have the same trouble there?

Dawes: No . . . well, not until I was released from prison.

Rice: Tell me about that.

Dawes: Well, right after I was discharged from the army, I had a job driving a delivery truck. But I had trouble staying awake and settling my nerves. So I started using and then started buying for other people. I got caught and convicted.

Rice: Using what?

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Dawes: Cocaine. I was charged with felony possession with intent to distribute. The judge gave me a five-year sentence. I served one year and got out on probation. Then everything went to hell. I dropped off the grid and started using cocaine again. That's when I lost my apartment and everything.

Rice: Did you finish your probation before that happened?

Dawes: No, it all happened within a couple of months.

Rice: Did you keep in touch with your probation officer?

Dawes: No, like I said, everything went to hell.

Rice: Do you know whether they charged you with violating your probation?

Dawes: I never checked. They must have.

Rice: As far as you know, did they issue a warrant to arrest you for that probation violation?

Dawes: Again, I never checked. I'm pretty sure they did, but I moved here before they caught up with me.

Rice: Have you ever contacted anyone to help you with the warrant?

Dawes: No. I don't want to. I'm not going back to prison.

Rice: Okay. Now, you need to know that the rules of lawyer ethics keep me from telling anyone what you just told me. And I need to advise you that, by not taking care of that probation violation, you're breaking the law.

Dawes: I don't want your help with that. I want you to help me file my application for disability benefits from the VA.

Rice: That's going to be a problem too. The VA won't pay disability benefits to someone who has an outstanding warrant.

Dawes: That's crazy. How am I supposed to live if I can't get disability?

Rice: That's how the VA rules work.

Dawes: But this is a different VA regional office, and it only handles claims from veterans in Franklin. The VA will never find out about a warrant in Columbia.

Rice: When you apply, you'll have to tell them about it.

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Dawes: No, I won't. I got a copy of the application form from a friend, and it doesn't ask anything about your criminal record. As far as the local VA office knows, it'll look like I have a clean record.

Rice: But if they start paying you money and find out about it later, they'll stop your benefits. And then they'll come after you for everything they paid you. And there's a good chance they'll also charge you with a crime.

Dawes: How can they do that? I won't have lied to them. I just didn't tell them.

Rice: I'll have to check, but I'm fairly confident they can prosecute you for not telling them the whole story.

Dawes: So you're telling me that if I apply for benefits, you're going to tell them about my probation and all that.

Rice: Hold on. Let's slow down. I'm not sure I can even help with your application at this point.

Dawes: What? Why not?

Rice: Before we go any further, I'll need to do some research. Give me a day to look into it and make sure of what you need to know. Can you come back tomorrow?

Dawes: Are you going to report me to the police?

Rice: No, I'm not. But I have to figure out what happens if you go ahead and apply without saying anything to the VA. We'll talk tomorrow.

Dawes: Okay. Tomorrow. Look, I really need your help; I can't handle the VA on my own.

Rice: I understand. I'll see you tomorrow.

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Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

FROM: Simone Rice
DATE: March 12, 2020
RE: Second conversation with David Dawes: research, advice, and declining representation

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This memorandum documents my research, decisions, and advice relating to David Dawes's request for help filing for disability compensation. During an initial interview with Dawes yesterday, he said that he may have an outstanding warrant for violating his probation in the State of Columbia. He wanted to apply for VA disability benefits without disclosing that fact to the VA. After we spoke, I told him I would do some research and get back to him.

I called an attorney I know in Columbia and who could readily check on any outstanding warrants against Dawes. He confirmed that a warrant for a probation violation had been issued in August 2016, and that the warrant remains in effect.

Based on that information, I checked my understanding of the VA's rules about paying disability benefits to a veteran with an outstanding criminal warrant. I confirmed that both the VA statute, 38 U.S.C. § 5313B, and its regulation, 38 C.F.R. § 3.665(n), prevent the payment of disability compensation to any veteran who is a "fugitive felon." A "fugitive felon" includes a person who has an outstanding warrant that has been issued against them for a probation violation. I also confirmed that if the VA starts paying benefits to the veteran and later discovers the outstanding warrant, the VA will terminate benefits immediately and will try to recover all the benefits paid to the veteran during the period of the warrant.

I also confirmed that Dawes could be charged with a crime for applying for benefits without disclosing the warrant. Under 18 U.S.C. § 1001, willful falsification, concealment, or cover-up of a material fact when applying for benefits is a felony punishable by up to five years in prison and fines.

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Dawes was right to notice that the application form for disability compensation did not contain any questions about his criminal record. So he would not have to make any misrepresentations about his record. But the criminal statute also applies if the person "knowingly and willfully conceals or covers up" a material fact. Given the rules about "fugitive felons," Dawes's failure to mention his record would be material to his eligibility for VA benefits.

This research led me to consider whether I should decline to represent Dawes if he insisted on not disclosing the warrant. I concluded that I could not represent him if he did that. Franklin Rule of Professional Conduct 1.16 makes clear that "a lawyer shall not represent a client . . . if . . . the . . . prospective client seeks to use or persists in using the lawyer's services to commit or further a crime . . . ." Rule 1.2 states that "[a] lawyer shall not . . . assist a client . . . in conduct that the lawyer knows is criminal . . . ."

After doing this research, I met again with David Dawes. I advised him as follows:

(1) He has an outstanding warrant for a probation violation in Columbia.

(2) He has an ongoing obligation to report to his probation officer in Columbia and to deal with the consequences of not complying with his probation.

(3) He will not be eligible for disability benefits from the VA until the warrant has been voided or otherwise resolved.

(4) If he filed for VA benefits without disclosing the warrant and then received benefits, he would violate a federal criminal statute and be subject to prosecution for a felony.

(5) If the VA granted him benefits and later discovered the warrant, the VA would terminate his benefits and try to recover all the money it had paid him, and could prosecute him for a felony.

(6) If convicted in such a prosecution, Dawes would likely be returned to prison.

Having given Dawes this advice, I asked him whether he would work to take care of the warrant and only then apply for VA benefits. I offered him referrals to lawyers in Columbia who could help him with the warrant, potentially pro bono. Dawes said that he "[did] not want to go that route." After he confirmed this several times, I told him that I would decline to represent him. He thanked me, and the meeting ended.

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Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

FROM: Simone Rice
DATE: July 24, 2026
RE: Conversation with Attorney Andy Rawlins

Today I received a phone call from Andy Rawlins, an acquaintance who practices in the Federal Public Defender's office. He represents David Dawes and asked if I had received a subpoena from the US Attorney's office. I confirmed that I had.

Rawlins told me that Dawes had filed for VA benefits six years ago, about a month after I spoke with him. Within three months, the VA granted Dawes 100% benefits and on July 1, 2020, started paying him full benefits, which increased each year because of cost-of-living adjustments. By the start of this year, Dawes was receiving close to $4,000 a month. The total amount the VA paid him for the five years and ten months came to roughly $260,000.

The VA eventually discovered that Dawes had an outstanding warrant in Columbia and cut off his benefits starting May 1, 2026. Soon after that, the VA began efforts to collect the back-due amount.

About two weeks ago, Dawes was arrested and later indicted under 18 U.S.C. § 1001 for concealing the outstanding warrant to obtain government benefits. The VA has the authority under its enabling statute to collect all the money it paid to Dawes, regardless of whether he is convicted.

According to Rawlins, Dawes insists that he did not know that he was doing anything wrong when he applied for VA benefits. Rawlins said that the statute under which the prosecution has charged Dawes requires them to prove that Dawes "knowingly and willfully" concealed material information. Based on current information, he thinks he can raise a reasonable doubt about whether Dawes knew about the fugitive-felon rules before he applied for benefits.

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Finally, Rawlins stated that, under questioning by federal agents, Dawes told the prosecution that he consulted with me about a month before he filed for VA benefits and that I declined to take his VA benefits case. Based on his review of the information provided by the government in discovery and his conversations with the US Attorney, Rawlins does not believe that the prosecution has any other information about what Dawes and I discussed.

Rawlins did not ask me about the content of my conversations with Dawes, and I did not volunteer anything. He asked what I planned to do about the subpoena, and I told him I would have to think about it. I promised to let him know one way or the other.

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Franklin Rules of Professional Conduct

Rule 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

. . .

(6) to comply with other law or a court order[.]

Comment to Rule 1.6:

. . .

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court. . . . Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law.

Rule 1.9: Duties to Former Clients

. . .

(c) A lawyer who has formerly represented a client in a matter . . . shall not thereafter:

. . .

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

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Rule 1.18: Duties to Prospective Client

. . .

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

. . .

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United States v. Coving
(15th Cir. 2019)

In 2018, the US Attorney for the District of Franklin indicted Joe Coving for kidnapping his minor daughter and transporting her across state lines to Olympia. Coving hired Marvin Jackson as his attorney. During the representation, Coving disclosed the child's location to Jackson, assured him that the child was safe and well cared for, and said that he had taken the child because he had lost a contentious custody battle. Jackson advised Coving that Coving had a legal obligation to disclose the child's location and that the failure to do so would result in felony charges for obstruction of justice. Coving refused to disclose the information and told Jackson not to do so.

Jackson then moved to withdraw from representation on ethical grounds. His motion stated that Franklin Rule of Professional Conduct 1.6 prevented him from disclosing the reasons for his withdrawal. The US Attorney issued a subpoena to Jackson, requiring him to produce documents describing what he knew, including any details about the child's location. Jackson moved to quash the subpoena. The district court interviewed Jackson privately in chambers about his communications with Coving. Based on that interview, the district court determined that the evidentiary privilege for lawyer-client communications did not apply because the communications in question fell within the crime-fraud exception to that privilege. The court ordered Jackson to comply with the subpoena and to identify the child's location. Jackson requested leave to file this appeal, which the district court granted.

On appeal, Jackson does not contest the district court's determination on the attorney-client privilege. Rather, Jackson argues that his ethical obligations prevent him from disclosing information about the child's location. As an initial matter, we note that the District of Franklin has adopted the Franklin Rules of Professional Conduct (which are identical to the ABA Model Rules of Professional Conduct) to govern the conduct of attorneys practicing in that district.

Jackson correctly notes that Rule 1.6(a) prevents an attorney from revealing "information relating to the representation of a client." This rule contains exceptions that, if applicable, permit but do not require an attorney to disclose. If no exception applies, however, the rule prevents disclosure.

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Rule 1.6 permits disclosures that are reasonably necessary to prevent "reasonably certain death or substantial bodily harm." Rule 1.6(b)(1). We agree with Jackson that, given Coving's assertion that his daughter was and is "safe and well cared for," Jackson did not have a reasonable basis to conclude that death or substantial bodily harm is "reasonably certain to occur."

Rule 1.6(b)(2) also allows an attorney to disclose information reasonably necessary to prevent the client from "committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another." Jackson correctly notes and the trial court specifically found that the location of the child does not implicate financial interests or property. For this reason alone, this exception does not permit Jackson to disclose.

Rule 1.6(b)(3) allows an attorney to disclose information reasonably necessary "to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud." Adopted in 2003, this rule creates an exception to the rule that an attorney cannot disclose a client's communication about a past crime. That exception is limited, however, to situations in which disclosure of a past crime would prevent or reduce some kind of ongoing financial injury. It does not apply where all the financial losses have already occurred or where, as here, there is no discernable financial loss at all.

Further, both Rule 1.6(b)(2) and 1.6(b)(3) require a showing that the client "has used the lawyer's services" "in furtherance of" either the future crime or future financial injury. In this case, however, Jackson correctly advised Coving of his legal obligation to disclose the child's location. Even if we assume that Coving's refusal to do so led to financial injury to his ex-wife, Jackson's advice to him did not further either the alleged crime or any financial injury resulting from the alleged crime.

However, Rule 1.6 does permit disclosure of otherwise confidential information "to comply with other law or a court order." Rule 1.6(b)(6). The district court considered and rejected Jackson's contention that the attorney-client privilege prevented disclosure, but found that the crime-fraud exception applied. Jackson does not contest this evidentiary ruling on appeal. Nonetheless, in this appeal, Jackson argues that his ethical obligations supersede the rules of evidence and prevent him from complying with the subpoena.

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Jackson's argument is misplaced. Rule 1.6(a) prevents disclosure unless one of its exceptions applies. The district court's ruling on the evidentiary privilege resulted in a court order approving the subpoena. The district court's order that Jackson comply with the subpoena and disclose the child's location satisfies the exception in Rule 1.6(b)(6), which permits disclosure "to comply with other law or a court order." We conclude that when directed by a court order and after the court has properly assessed the evidentiary privilege for attorney-client communications, an attorney must disclose otherwise confidential information to the court.

Affirmed.

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In re Grand Jury Proceedings
(15th Cir. 2023)

An unnamed corporation under investigation for immigration crimes appeals from an order of the US District Court for the District of Franklin requiring its former attorney to answer questions before the grand jury. The district court found that the communications furthered the corporation's immigration crimes and thus fell within the crime-fraud exception to the attorney-client privilege. We affirm.

The grand jury is investigating whether the corporation and its president violated federal immigration laws by willfully employing several individuals whom they knew to lack the necessary visas or work permits. The government served a subpoena to testify on the former attorney. Both the corporation and the former attorney moved to quash the subpoena. In reply, the government submitted material that the district court reviewed in chambers. The district court summarized the material provided by the government as follows:

> The corporation consulted counsel about the employment status of the identified employees shortly after the president learned that the employees likely lacked the necessary immigration approvals and that their continued employment was illegal. The corporation continued to employ these individuals. In the correspondence submitted by the attorney to the immigration service about legalizing these individuals' employment status, the corporation did not disclose that the employees had been working in the corporation's offices for more than a year.

The district court made no finding about whether counsel knew of the illegality of the continuing employment relationship, and the government has not alleged that counsel participated in the ongoing conspiracy. The district court ruled that the crime-fraud exception to the attorney-client evidentiary privilege applied and required the attorney to disclose the substance of the communications with the corporation. The corporation appealed.

Generally, attorneys have a duty not to disclose the confidences of their clients. Consistent with this duty, the evidentiary privilege for attorney-client communications protects confidential communications made between attorney and client for the purpose of obtaining or providing legal assistance. The attorney-client privilege encourages full and frank communication between attorneys and their clients. This privilege applies both during the attorney-client relationship and after that relationship has ended. And to be clear: in

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this case, we do not address a lawyer's ethical obligation to maintain client confidentiality, a question that would be resolved under the Rules of Professional Conduct.

The protection of the attorney-client evidentiary privilege does not extend to communication that furthers continuing illegal conduct, whether present or future. We agree that society has an interest in protecting confidences between client and attorney to enable the client to get thorough, reliable legal advice. But no such interest exists when the client consults the attorney to further the commission of a crime or fraud. The crime-fraud exception ensures that the attorney-client evidentiary privilege does not protect communications made in furtherance of a crime or a fraud.

In this circuit, use of privileged material under the crime-fraud exception requires a three-step judicial process: (1) presentation of the factual basis for a reasonable belief that the exception may apply, (2) *in camera* evaluation of the material by the court, and (3) affording the party opposed to disclosure the opportunity to contest the disclosure. The government must provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme.

The corporation claims that the material provided by the government fell short of the required showing. It argues that the government must do more than show that its president met with counsel and then later committed some allegedly criminal or fraudulent act. We agree that if all the government had shown was that some communication occurred between lawyer and client and that, later, the client committed a criminal act, that showing would be insufficient to establish the requisite reasonable belief that the communication furthered the crime. Here, however, the government established through nonconfidential sources that the corporation and its president consulted with counsel about the immigration status of the identified employees at a time when they knew that these employees lacked appropriate documentation.

The corporation claims that the exception does not apply because the crime had not been fully completed at the time of the consultation with the attorney and was not complete until the later application to legalize the employees' status. But the crime-fraud exception does not require a completed crime or fraud; it requires only that the client have consulted the attorney in furtherance of one. If the client consults an attorney about a plan to commit

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a criminal act but does not commit the crime until after the relationship with the attorney ends, the crime-fraud exception still applies. The client need not have completed the act at the time the client consulted with the attorney. The government needs to prove only that a reasonable basis exists to believe that the attorney's services were used by the client in furtherance of an ongoing crime or fraud or a planned future crime.

The corporation argues further that its communications with the attorney could not have been "in furtherance of" criminal activity because the attorney took no affirmative steps to participate in the crime. But the crime-fraud exception does not require that the attorney participate, even unwittingly, in the client's criminal activity. A communication can be "in furtherance of" criminal conduct even if the attorney does nothing after the communications at issue.

The phrase "in furtherance of" covers the situation where the lawyer gives advice to the client, even if the client later disregards the lawyer's advice. *See, e.g., United States v. Jones*, 28 F.3d 788 (15th Cir. 2014) (the crime-fraud exception applied even when the attorney told the client that her proposed actions would amount to insider trading and the client disregarded the lawyer's advice and proceeded with the action).

Finally, the corporation argues that the government did not allege and the trial court did not find that the attorney committed a crime. Because of this, the corporation claims that the crime-fraud exception does not apply. But application of the exception does not depend on whether the attorney committed or even intended to commit a crime. Indeed, the exception would apply even if the attorney knew of the client's actions or intentions, advised the client not to pursue them, and withdrew from representation because of the client's actions or plans. The fact that the client consulted the attorney in furtherance of criminal or fraudulent activities would be sufficient to meet the required showing to apply the crime-fraud exception to the evidentiary privilege.

For all the foregoing reasons, we affirm the district court's denial of the corporation's motion to quash.

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July 2026
MPT-2 Item

Estates of Nguyen

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Estates of Nguyen

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Littleton & Wallace LLC
Attorneys at Law
42 First Street
Utopia Springs, Franklin 33402

MEMORANDUM

To: Examinee
From: LaVonda Wallace
Date: July 28, 2026
Re: Estates of Linh and John Nguyen

Linh Ha Nguyen and John Khanh Nguyen recently died. Tragically, they were in a car accident a month ago. They are survived by their adult children, Brandon Nguyen and Melissa Nguyen-Stevenson. Linh and John both had relatively simple wills. The wills were probated in the appropriate court in the State of Franklin and were determined to be valid, and Melissa was appointed executor in accordance with her parents' wishes. Melissa retained our firm to represent her in the administration of her parents' estates. She is seeking advice on the distribution of her parents' assets.

Please draft a memorandum to me that explains the correct distribution of the Nguyens' assets under the controlling documents and relevant Franklin law. In your memorandum, please discuss the following topics:

(1) As a preliminary matter, I believe that the Uniform Simultaneous Death Act of 1993 (USDA 1993), which has been adopted in Franklin, may apply. Clearly explain the applicability or inapplicability of this statute to the Nguyens' deaths.

(2) Regardless of your conclusion on the statute's applicability, explain the correct distribution of the following assets under the USDA 1993:

(a) John's interest and Linh's interest in the home located at 432 Fairview Drive;

(b) the proceeds of Linh's and John's life insurance policies; and

(c) any other assets under the applicable provisions of John's will and Linh's will.

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Last Will and Testament of Linh Ha Nguyen (excerpt)

I, Linh Ha Nguyen, a resident of St. John's County, Franklin, do hereby declare this to be my last will and testament, hereby revoking all prior wills and codicils.

. . .

2.1 I give all of my property, including real property, tangible personal property, and intangible personal property, to my husband, John Khanh Nguyen, if he survives me. If we die simultaneously, or if we die within three days of each other, I give my property in equal shares to my son Brandon Nguyen and my daughter Melissa Nguyen-Stevenson. Otherwise, I give my property in equal shares to my son Brandon Nguyen, my daughter Melissa Nguyen-Stevenson, and Franklin Animal Rescue Inc.

. . .

3.1 I appoint my daughter Melissa Nguyen-Stevenson to be the executor of my estate.

Last Will and Testament of John Khanh Nguyen (excerpt)

I, John Khanh Nguyen, a resident of St. John's County, Franklin, do hereby declare this to be my last will and testament, hereby revoking all prior wills and codicils.

. . .

2.1 I give all of my property, including real property, tangible personal property, and intangible personal property, to my wife, Linh Ha Nguyen, if she survives me. If she does not survive me, I give my property in three equal shares to my son Brandon Nguyen, my daughter Melissa Nguyen-Stevenson, and the University of Franklin Medical Center.

. . .

3.1 I appoint my daughter Melissa Nguyen-Stevenson to be the executor of my estate.

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Certified Death Certificate of Linh Ha Nguyen (excerpt)

Name of Decedent: Linh Ha Nguyen

Sex: Female **Age:** 63 **Date of Birth:** August 23, 1962
Birthplace: Ha Tien, Kien Giang Province, Vietnam
Residence: 432 Fairview Drive, Utopia Springs, St. John's County, Franklin

Place of Death: Intersection of Reiter Rd. and Third Street, City of Whitney, Franklin
Date and Time of Death: March 18, 2026, 10:23 p.m.
Cause of Death: Trauma due to automobile accident;
pronounced dead at scene by EMT
Name of Person Certifying Death: Cynthia Nance, M.D.
Title of Person Certifying Death: Attending Physician
License Number: A24795-9983
Was Medical Examiner Contacted? Yes.

Certified Death Certificate of John Khanh Nguyen (excerpt)

Name of Decedent: John Khanh Nguyen

Sex: Male **Age:** 64 **Date of Birth:** October 2, 1961
Birthplace: West Morriston, St. John's County, Franklin
Residence: 432 Fairview Drive, Utopia Springs, St. John's County, Franklin

Place of Death: St. John's County Medical Center
Date and Time of Death: March 20, 2026, 10:03 p.m.
Cause of Death: Multiple organ failure due to injuries from automobile accident
Name of Person Certifying Death: Cynthia Nance, M.D.
Title of Person Certifying Death: Attending Physician
License Number: A24795-9983
Was Medical Examiner Contacted? Yes.

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Deed to 432 Fairview Drive, Utopia Springs, Franklin

General Warranty Deed

Made the 14th day of May, 2009

BETWEEN

Laura Drake Williams (Grantor)

And

Linh Ha Nguyen and John Khanh Nguyen, a married couple (Grantees)

WITNESSETH

That the Grantor, in consideration of THREE HUNDRED FIFTY THOUSAND DOLLARS paid by the Grantees to the Grantor, the receipt whereof is hereby acknowledged, does hereby grant and convey to the Grantees, as joint tenants with right of survivorship and not as tenants in common:

[Legal description of the 432 Fairview Drive property]

. . .

The grantor shall and will Generally Warrant the property hereby conveyed.

In witness whereof, the Grantor has caused this Deed to be executed as of the day and the year written above,

Laura Drake Williams

State of Franklin
County of St. John's

On this, the 14th day of May, 2009, before me, a Notary Public, the undersigned officer, personally appeared Laura Drake Williams, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and notarial seal.

Jane Mirren
Notary Public
My commission expires 2/28/2028

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Franklin Mutual Life Insurance Policy (excerpt)

Insured: Linh Ha Nguyen

Death Benefit: $500,000

Beneficiary Designation: My husband, John Khanh Nguyen, if he survives me. If he does not survive me, I designate my children, Brandon Nguyen and Melissa Nguyen-Stevenson, as beneficiaries in equal shares.

Columbia Insurance Company Life Insurance Policy (excerpt)

Insured: John Khanh Nguyen

Death Benefit: $600,000

Beneficiary Designation: My wife, Linh Ha Nguyen, if she survives me. If my wife and I die simultaneously, or if we die within three days of each other, I designate my estate to be the beneficiary of this policy. Otherwise, I designate my children, Brandon Nguyen and Melissa Nguyen-Stevenson, as beneficiaries in equal shares.

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Excerpt from Walker's Treatise on Trusts and Estates

§ 9 Simultaneous Death. The Uniform Simultaneous Death Act (USDA) is a model law designed to address inheritance issues that arise when two or more individuals die simultaneously or in close succession to each other. Simultaneous or close succession deaths often complicate the distribution of estates, especially when determining the order of inheritance.

Historical Background. The USDA was first promulgated in 1940 by the Uniform Law Commission to provide a standardized approach for states to resolve inheritance questions in cases of simultaneous death. The original act was widely adopted across the United States. In 1993, the Act was revised to incorporate a 120-hour (five-day) survival requirement, aiming to simplify estate administration and prevent assets from passing through multiple estates in quick succession.

Policy Provisions. The core provision of the USDA 1993 stipulates that if an individual does not survive another by at least 120 hours, the individual is deemed to have predeceased the other for purposes of asset distribution. This rule applies unless a will, trust, or other governing instrument explicitly states otherwise. The Act covers various scenarios, including intestate succession, wills, joint tenancies, and life insurance policies. By implementing the USDA, states aim to reduce legal disputes between beneficiaries and prevent the need of multiple probate proceedings associated with simultaneous deaths or close succession deaths, ensuring a more straightforward and efficient distribution of assets.

Practical Effect. The USDA often arises when spouses die within 120 hours of each other and each spouse has designated the other as the primary beneficiary in their wills. In this situation, if the spouses die within 120 hours of each other, the law treats each spouse as if that spouse had predeceased the other. As a result, and regardless of the order of deaths, neither spouse's assets pass to the other spouse or the other spouse's estate, if the bequest to the other spouse was subject to a survivorship contingency. Rather, the assets go to each spouse's secondary (or contingent) beneficiary or beneficiaries in each of the spouses' wills.

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Excerpts from Franklin Probate Code
Uniform Simultaneous Death Act (1993)

§ 1 Definitions. In this Act,

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, ...

§ 2 Requirement of Survival by 120 Hours Under Probate Code. Except as provided in Section 6, if the title to property, the devolution of property, [or] the right to elect an interest in property depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other individual. . . .

§ 3 Requirement of Survival by 120 Hours Under Governing Instrument. Except as provided in Section 6, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

§ 4 Co-Owners with Right of Survivorship: Requirement of Survival by 120 Hours. Except as provided in Section 6, if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours . . . .

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§ 5 Evidence of Death or Status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

. . .

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. . . .

§ 6 Exceptions. Survival by 120 hours is not required if

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period; but survival of the event or the specified period must be established by clear and convincing evidence;

. . .

§ 8 Uniformity of Application and Construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

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In re Estates of Skow
Franklin Court of Appeal (2007)

David and Mary Skow, a married couple, died in 2004 within minutes of each other. David and Mary were married on June 3, 1995. Each had children from a prior marriage. David had two children: Max Skow and Janet Dyre. Mary had three children: Nancy Bard, William Bard, and Cindy Bard. We will refer to these groups as "David's children" and "Mary's children" respectively.

Disputes arose over the distribution of the estates between David's children and Mary's children. The Albion County Probate Court resolved the disputed issues in favor of David's children. Mary's children appeal. We affirm.

David and Mary died from carbon monoxide poisoning apparently caused by a leak in the furnace exhaust in their home. A neighbor found them unconscious and unresponsive. The neighbor called 911, and the Skows were taken to Carrigan Hospital. Attempts to revive them were unsuccessful. According to their certified death certificates, David died at 9:32 p.m. on November 4, 2004, and Mary died at 9:36 p.m. on November 4, 2004.

David and Mary both had wills. David's will left his property to "my wife Mary, if she survives me, and, if she does not survive me, then in equal shares to my children, Max Skow and Janet Dyre." Mary's will left her property to "my husband David, if he survives me, and if he does not survive me, then in equal shares to my children and stepchildren, Nancy Bard, William Bard, Cindy Bard, Max Skow, and Janet Dyre." Thus, the wills differed in that David's listed only his children as contingent beneficiaries while Mary's listed both her children and David's children as contingent beneficiaries.

Mary's children argue that David's property should go to Mary's estate because Mary survived David by four minutes. If this were to be the case, then David's property would be distributed between all five of David's and Mary's children. David's children argue that from a legal perspective, David and Mary died simultaneously and that under the terms of the Uniform Simultaneous Death Act (1993) ("USDA 1993"), David's property would go to David's children.

The Franklin legislature enacted a statute adopting the USDA 1993 in 1995. The Uniform Law Commission enacted the first version of the Uniform Simultaneous Death

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Act in 1940. Prior to the 20th century, it was rare for people who were married or close family relations to die simultaneously. With the invention of the automobile and air travel, simultaneous deaths became increasingly common. The Uniform Simultaneous Death Act was enacted to help the legal system solve problems that arise when people who should inherit from each other die simultaneously.

The 1940 version of the Uniform Simultaneous Death Act focused on whether the people at issue literally died simultaneously, leading to often detailed testimony about, for example, which of two people killed in an automobile accident died first. The USDA 1993 that is the current law in Franklin changes the focus from literal simultaneous death to whether the people at issue died within 120 hours (or five days) of each other. Put another way, the USDA 1993 effectively expands the concept of simultaneous death from people who die exactly at the same time to people who die within 120 hours of each other. The USDA 1993 version avoids some of the practical difficulties that arose from the 1940 version while remaining true to the likely intent of the drafters of survivorship provisions—if a document requires survivorship, it is likely that the drafter had in mind that the person survive an event (typically, but not always, the death of another person) by more than 120 hours.

Our first task is to determine whether the USDA 1993 applies by its terms to the Skows' deaths. Sections 2 through 4 of the USDA 1993 address simultaneous death by requiring proof by clear and convincing evidence that the person survived the event by 120 hours. In other words, the USDA 1993 presumes that the person *did not* survive the event by 120 hours and requires this presumption to be rebutted by proof of survival with clear and convincing evidence. Section 5(2) provides that a certified or authenticated copy of a death certificate provides "prima facie evidence of the fact, place, date, and time of death and the identity of the decedent."

In this case, the record includes the certified death certificates of both David and Mary Skow. These certificates indicate that Mary died four minutes after David. There is no other evidence in the record on the times of their deaths. Thus the Skows died within 120 hours of each other under the terms of the USDA 1993 for two independent reasons. First, the USDA 1993 creates a presumption that one person did not survive the other

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by 120 hours. Second, the certified death certificates provide prima facie evidence of the times of their deaths that is not rebutted on this record.

In this case, we are interpreting the provisions of the Skows' wills. David named Mary as the primary beneficiary of his will but required Mary to survive him to take under the will. Similarly, Mary named David as the primary beneficiary of her will but required David to survive her to take.

The USDA 1993 covers this exact situation. Section 1(2) of the USDA 1993 includes wills within the definition of "governing instrument." Section 3 provides that "Except as provided in Section 6, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event." None of the exceptions in Section 6 apply here.

Because there is no evidence that Mary survived David by 120 hours, Mary is deemed to have predeceased David for the purpose of interpreting David's will. As a result, Mary failed to meet the survivorship requirement in David's will. David's property would therefore go to the contingent beneficiaries in his will: his children Max Skow and Janet Dyre. Similarly, because there is no evidence that David survived Mary by 120 hours, David is deemed to have predeceased Mary for the purpose of interpreting Mary's will. David failed to meet the survivorship requirement, and Mary's property would go to the contingent beneficiaries of her will: her "children and stepchildren, Nancy Bard, William Bard, Cindy Bard, Max Skow, and Janet Dyre."

Mary's children argue that because Mary literally survived David (although by only four minutes), she should be deemed to have survived David for the purpose of David's will. This argument fails because of the provisions of the USDA 1993. The court below correctly applied the USDA 1993 and reached the correct legal result.

AFFIRMED.

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July 2026

New York State
Bar Examination

Sample Essay Answers

JULY 2026 NEW YORK STATE BAR EXAMINATION

SAMPLE ESSAY ANSWERS

The following are sample candidate answers that received scores superior to the average scale score awarded for the relevant essay. They have been reprinted without change, except for minor editing. These essays should not be viewed as "model" answers, and they do not, in all respects, accurately reflect New York State law and/or its application to the facts. These answers are intended to demonstrate the general length and quality of responses that earned above average scores on the indicated administration of the bar examination. These answers are not intended to be used as a means of learning the law tested on the examination, and their use for such a purpose is strongly discouraged.

ANSWER TO MEE 1

1. The issue is how the appellate court should decide Buster's two arguments on appeal.

A. The issue is whether Buster's guilty plea was involuntary.

To be valid, a guilty plea must be made knowingly, intelligently, and voluntarily. Before accepting a guilty plea, the judge address these matters with the defendant to ensure that the plea satisfies this requirement. A guilty plea is made involuntarily if it is compelled by threat. While prosecutors are permitted to make certain promises to the defendant in exchange for the defendant's guilty plea (e.g., dropping a second charge against the defendant), any such promises must be documented in the plea agreement.

Here, Buster responded that he is pleading guilty partially to take responsibility, but mostly to prevent the FBI agents from embarrassing his mother at work and to prevent the prosecutor to drop his plan to charge his wife with bribery even though she is innocent. While the FBI agents acted inappropriately by approaching Buster's mother at work and telling her coworkers that Buster was a criminal, this does not amount to an involuntary plea because there was no threat involved. Moreover, there is no indication that the prosecutor was involved in the actions of the FBI agents.

Buster also stated that he was pleading guilty to prevent the prosecutor to drop his plan to charge his wife with bribery, even though she was innocent. The threat to prosecute Buster's wife likely amounts to an improper threat, especially given the wife's innocence, because Buster likely felt that he had no choice but to plea guilty in order to spare his wife from the wrongful prosecution. Thus, even though Buster admitted that he sold two pounds of methamphetamine, the fact that the prosecutor threatened to prosecute this innocent wife likely renders the guilty plea involuntary.

B. Assuming the plea was involuntary, the issue is whether the proper remedy is to remand the case with instructions to the district court to enter a judgment of acquittal on Count 1.

If an accepted guilty plea was invalid (i.e., it was not made knowingly, intelligently, or voluntarily), the proper remedy is to reverse the conviction and permit the defendant to withdraw the guilty plea. The defendant is not entitled to a judgment of acquittal as to the charge. A judgment of acquittal is appropriate if the prosecution cannot meet its burden of establishing the elements of the charged crime by a preponderance of the evidence. However, the fact that a defendant entered into an invalid plea agreement does not mean that the prosecution as failed to meet such burden.

Here, assuming that Buster's guilty plea was involuntary and thus invalid, Buster is not entitled to a judgment of acquittal. Rather, the judge should permit Buster to withdraw his guilty plea. If Buster withdraws such plea, the guilty plea cannot then be used against Buster to prove his guilt.

Accordingly, the court should deny Buster's request to remand the case with instructions to the district court to enter a judgment of acquittal.

2. The issue is how the appellate court should decide Calvin's two arguments on appeal.

A. The issue is whether the appellate court should reverse the conviction because the guilty plea resulted from improper governmental coercion or enticement.

An involuntary guilty may also arise from improper governmental coercion or enticement. However, as discussed above, a guilty plea is not per se involuntarily merely because the prosecution makes promises to the defendant in exchange for the guilty plea. Rather, a guilty plea is involuntary only if it was the produced under threat by the prosecution.

Here, the prosecution promised to dismiss the gun charge in exchange for the guilty plea for the distribution charge, which, as Calvin noted, carries is more serious and carries a long prison sentence. The prosecution was permitted to do so. Moreover, since the promise was included in the plea agreement, this provides no basis for Calvin to argue that his plea was the subject of improper governmental coercion or enticement.

Calvin also stated that he was pleading guilty because the jurors will probably believe his friends' statements and that he couldn't afford to go to prison. A guilty plea is not involuntary simply because the defendant believes that the verdict will not be in their favor. When deciding whether the plea guilty, defendants routinely make calculations and strategic choices based on their perceived chances at trial. Therefore, the fact that Calvin pleaded guilty because of the statements of his friends does not suggest improper governmental coercion or enticement.

Finally, Calvin alleges, and the government did not dispute, that the prosecution promised to ask to spare Calvin a prison sentence, instead asking the judge to sentence him only to probation. This arguably could constitute improper governmental coercion by impermissibly suggesting that the prosecutor had some influence over the judge's sentence. However, this likely does not give rise to a claim that the guilty plea was involuntary because the prosecutor simply promised Calvin that he would ask the judge, not that he was guaranteeing any particular result.

Therefore, the court should deny Calvin's request to reverse the conviction because the guilty plea resulted from improper governmental coercion or enticement.

B. The issue is whether the appellate court should reverse the conviction because the judge violated the right not to be convicted by plea when the defendant has expressly denied guilt.

While a judge may only accept a guilty plea that is made knowingly, intelligently, and voluntarily, there is no per se rule that automatically renders a guilty plea invalid because the defendant expressly denies guilt. A defendant may plea guilty for any number of reasons, even if he or she ultimately believes that he or she innocence. Instead, the safeguard against such wrongful guilty pleas is the requirement that the judge making a finding of some factual basis for the guilty plea. While the judge need not make a finding that the defendant is definitively guilty, the judge has a duty to ensure that there is some evidentiary support before accepting the guilty plea.

Here, the judge addressed all the matters that the rules of criminal procedure require a judge to address before accepting plea. Presumably, this included making a finding that there was some factual basis for the Calvin's guilty plea on the distribution charge. Accordingly, the court should not reverse the conviction on these grounds.

ANSWER TO MEE 1

1. Buster's arguments

A. Whether the appellate court must set aside Buster's guilty plea because it was involuntary

For a plea deal to be upheld, it must be entered into knowingly and voluntarily. Voluntariness means that it is not the product of improper threats, coercion, or promises. A prosecutor threatening to bring more severe charges that may validly be brought to induce a plea does not render a guilty plea involuntary; nor does a promise to drop certain charges in exchange for a guilty plea on others. Further, making factual assertions about the consequences of one's actions does not amount to an improper threat. However, threats made to bring unsubstantiated charges against a defendant's family member will render a plea deal the product of unlawful coercion. A plea deal that is not voluntarily entered must be set aside by the court.

Here, Buster entered into a guilty plea in which he pled guilty to one count of illegal distribution of methamphetamine, while the government dismissed one count of illegal sale of firearms. Since the judge confirmed that Buster did so knowingly through their questioning, the remaining issue is whether Buster did so voluntarily. The facts before us indicate that Buster pled guilty to the methamphetamine charge after the prosecutor made several statements to him. The prosecutor indicated that accepting this deal would lead to the FBI ceasing its harassment of his mother and embarrassment of him with their questions at her workplace, and also that in exchange for this plea the prosecutor would not go forward with charges against Buster's wife that the prosecutor admitted were not substantiated by her having done anything wrong.

The statement about the FBI agents was not improper. This was not a threat to have the FBI begin an unsubstantiated investigation against Buster. Rather, it was a factual assertion that the FBI would no longer have reason to conduct its investigation--one that was embarrassing Buster and bothering those in his life--once the matter was settled. Such a factual statement does not render a plea involuntary. However, the statement about Buster's wife amounted to an unlawful threat. The prosecutor admitted that Buster's wife had done nothing wrong. Therefore, there was no lawful basis to bring charges against her. The prosecutor's plan to do so was therefore an act of unlawful leverage--a threat against a family member, rather than a factual assertion of consequences. Even though the prosecutor offered to drop this charge, rather than threaten to bring it if Buster did not cooperate, the consequence was the same: Buster's wife was in peril of unsubstantiated charges if he did not cooperate.

So, because it was the product of unlawful threats against Buster's wife, the plea deal was entered involuntarily and the court must set it aside.

B. Whether, assuming Buster's guilty plea was involuntary, the appellate court must remand the case to the district court with instructions to enter a judgment of acquittal on Count 1

A plea deal is a deal to waive one's right to trial and be convicted of a crime based on agreement. When a plea deal is set aside, the case returns to the state it existed in before the deal: the defendant has been charged with a crime and is presumed innocent. However, just because the defendant is presumed innocent does not mean that setting aside a plea deal results in a declaration of the defendant's innocence. Rather, the defendant reverts to having the option to go to trial or enter a plea deal.

Here, assuming Buster's guilty plea was involuntary, the court would have to set it aside, as discussed above. However, under the applicable law, the court should not remand it to the district court with instructions to enter a judgment of acquittal. Rather, the court should remand it to the district court for a trial. And if, prior to the trial, Buster wishes to enter into a new, voluntary and knowing plea deal, he may do so.

2. Calvin's arguments

A. Whether the appellate court must set aside the guilty plea and reverse the conviction because the plea resulted from improper governmental coercion or enticement

As discussed above, for a plea deal to be upheld, it must be entered into knowingly and voluntarily. Voluntariness requires that the deal not be the product of improper threats, coercion, or promises. A prosecutor threatening to bring more severe charges that may validly be brought to induce a plea does not render a guilty plea involuntary; nor does a promise to drop certain charges in exchange for a guilty plea on others. Further, making factual assertions or showing the defendant the weight of the evidence against them does not amount to an improper threat. Moreover, offering to make a favorable sentencing recommendation that is supported by the charges is not treated by courts as an improper promise or as coercive. A plea deal that is not voluntarily entered must be set aside by the court.

Here, Calvin, like Buster, entered into a guilty plea in which he pled guilty to one count of illegal distribution of methamphetamine, while the government dismissed one count of illegal sale of firearms. Similarly, Calvin did so after the prosecutor made certain statements to Calvin. The prosecutor told Calvin that if he pled guilty to the methamphetamine charge, the prosecutor would dismiss the more serious firearms charge. The prosecutor also promised to recommend a sentence of only probation, rather than prison. Finally, Calvin entered this deal so after seeing the statements of four witnesses against him.

None of this conduct amounts to improper governmental coercion or enticement. The prosecution's promise to dismiss the more severe charge in exchange for a plea on the less severe charge, though meaningfully changing the decision about whether to plea or go to trial, is entirely lawful. Similarly, the prosecution's offer of a more favorable sentencing recommendation is not prohibited, especially given that it might logically follow the reduction in charge severity. And showing Calvin the totality of evidence against him should he go to trial was not coercive; rather, it gave him full information with which to decide whether to plea.

So, Calvin's plea was not involuntary and should not be set aside on that basis.

B. Whether the appellate court must set aside the guilty plea and reverse the conviction because the judge violated the right not to be convicted by plea when the defendant has expressly denied guilt

A defendant has multiple options about how to plead. They may plead not guilty, contesting guilt, and go to trial. They may plead nolo contendere--neither admitting or denying guilt, but still accepting a conviction. They may also plead guilty, waiving their right to trial and accepting a conviction. A guilty plea is typically accompanied by an admission of guilt. But that is not always required. An Alford plea allows a defendant to plead guilty while at the same time denying guilt. Such a plea need not be accepted by the judge and may only be accepted if there is a sufficient factual basis to support a conviction.

Here, Calvin pled guilty to the methamphetamine charge, but expressly denied guilt. Therefore, a court could only accept his guilty plea if sufficient facts supported it. The facts here indicate that four separate witnesses would testify that Calvin sold them drugs. This constituted a sufficient factual basis to support his methamphetamine distribution conviction. Calvin recognized this, which is why he pled guilty. Therefore, the judge was permitted to accept his plea. The court need not set it aside on appeal.

ANSWER TO MEE 2

1. The issue is whether the rezoning of the land from commercial to residential prohibit Betty from operating a bakery in House #2

Generally, after a zoning regulation changes, there is typical language protecting existing nonconforming uses. This is the case here in State A. In these cases, a nonconforming use is "grandfathered" in, and may continue to be used by the party who is grandfathered in, as long as the nature and extent of the use does not substantially deviate from what it was when it was grandfathered in. In a cumulative zoning area, typically you are allowed to have a residential property in a commercially zoned area, but not the other way around. Additionally, generally, a prior nonconforming use is not allowed to be transformed into a new nonconforming use. Here, the catering business that the couple engaged in in House #2 was a prior nonconforming use that was grandfathered in, and importantly, they did not serve any food to retail customers on its premises, although it was still considered a non "residential" use. With the transfer to Betty, she plans to operate a retail bakery in House #2, and would operate it during hours consistent with the catering business, but would serve customers food items solely on it's premises. Assuming this is a jurisdiction that allows nonconforming uses to be bought and sold, as some jurisdictions do not allow this, this new nonconforming use by Betty is likely prohibited. This is because going from a non residential use that does not substantially affect the rights, enjoyment, traffic, or the like of the neighborhood is substantially different then operating a business where people come and go and purchase goods at the house. This is an expansion of the nonconforming use that was grandfathered in, and is likely to be found invalid. If however, the intrusion upon the neighborhood and the burden is deemed to be minor, then it may not be prohibited. However, it is likely that Betty would have to apply for a variance in order to operate the bakery as she intends in House #2.

2. The issue is whether the unrecorded covenant with the two-story restriction prevent the couple from delivering marketable title to Betty at the closing

Generally, you a grantor of an estate must deliver marketable title to the buyer at the time of closing, the extent of which is determined by the type of deed. Here, the sales contract was signed and required the couple to have marketable title subjection only to encumbrances of record. Additionally, after closing, the sales contract merges into the deed, but these events all occurred before the closing, so the doctrine of merger does not apply. Here, the contract provision that marketable title subject only to encumbrances of record would likely prevent the sellers from conveying marketable title at the time of closing. Here, the covenant was

unrecorded, and the sellers contracted that the title was marketable subject only to encumbrances of record. Encumbrances may be mortgages, liens, easements, other claims of title, or covenants. Here, the land was subject to a covenant, and it was unrecorded and

unknown at the time of contract. Additionally, since this land was predominantly rural, with only two homes two stories high, this would not be the case where an implied reciprocal equitable servitude would apply because there is no common scheme or evidence of such one being apparent from inquiry, record, or actual notice. It would not be equitable if a seller could have an unrecorded covenant, enter into a sales contract stating that it was subject only to encumbrances of record, and then do something like record the covenant the day before closing and force the buyer to close. Here, the buyer signed the contract agreeing only to the encumbrances of record, and the buyer had no notice. Additionally, for the burden for a covenant to run, the purchaser needs to have notice at the time of closing. But here, the buyer would have actual notice of the covenant at the day of closing, but the issue is that under the sales contract, the buyer nevertheless could not convey marketable title to the buyer because the buyer only contracted to buy the house subject to encumbrances of record.

3. The issue is whether Betty can rightfully refuse to close because House #1 was destroyed by fire

Under the doctrine of equitable conversion, after the sales contract has been agreed to, and before closing, the seller retains legal title to the property, but the buyer gains equitable title to the property. Under this doctrine, absent an explicit risk of loss provision, and absent fault on the part of the sellers, the risk of loss is on the buyer. Here, the contract did not address the risk of loss at all. Additionally, the fire was not the fault of the couple (sellers). Therefore, the doctrine of equitable conversion applies, and Betty bore the risk of loss at the time between the contract and closing. Therefore, House #1 being destroyed by fire is not a basis that Betty can rely upon to refuse to close on the property.

ANSWER TO MEE 2

I - The issue is whether the rezoning of land from commercial to residential prohibit Betty from operating a Bakery in House #2.

Generally, a prior non-conforming use of a land in an area that is rezoned to restrict that use, is "grand-fathered" in and permitted. However, this only applies to prior non-conforming uses, not future ones.

Here, we are told the zoning ordinance contains the typical language grandfathering in prior non- conforming uses. We are also told that at the time the ordinance rezoning the land from commercial to residential was enacted, there was a prior non-conforming use of the couple's catering service. However, Betty now wants to create a new non-conforming use on the property, a bakery, which is substantially more burdensome on the residential zoning use because, unlike the prior catering business it would service customers on the premises. Therefore, Betty's use of House 2 is clearly non-residential, and would not be grandfathered in because it is 1) a new substantially different than the use of the house as a catering service due to increased foot traffic in the area and the fact that it is a different service.

In conclusion, Betty would be prohibited from using House 2 as a bakery.

II - The issue is whether the unrecorded covenant with the two-story restriction prevent the couple from delivering marketable title to Betty at the closing.

Marketable title is implied in every contract for the sale of real property. Title is marketable if it is free from a reasonable risk of litigation. An undisclosed covenant could cloud title because it could subject the property to litigation between the servient and dominant estate holders. However, at closing the contract of sale "merges" into the deed, and all provisions not in the deed are extinguished.

Here, we are told the sale contract between Betty and the couple expressly provided for language guaranteeing the delivery of marketable title. However, at the time the contract was executed, the couple failed to disclose a covenant on the land restricting the land to no more than two stories. Since this is an undisclosed covenant, it clouds title because the holder of the covenant may sue to enforce it. However, once the closing occurs and the deed to the house is delivered, and Betty would no longer be able to sue on the sale contract, but could only sue based on the covenants of warranty implied in the deed, such as the covenant against encumbrances.
Therefore, the unrecorded covenant would prevent the couple from delivering marketable title at closing.

III - The issue is whether Betty can rightfully refuse to close because House #1 was destroyed by fire.

Under the doctrine of equitable conversion, once a real estate land sales contract is completed, but before the deed is transferred, equitable title to the property is deemed to vest in the buyer, although legal title remains with the seller who still has the deed. The ramification of this is that the risk of loss is transferred to the buyer, who has equitable title, immediately when they execute the sales contract, and that if anything happens to the house they incur the loss, and that the destruction of the house will not provide a proper basis to refuse to execute the contract. However, if the seller is carrying casualty insurance at the time of the destruction, the seller will be required to apply the insurance proceeds to the price of the house.

Here, we are told that Betty signed a contract to buy the house, but that the day before closing, the house 1 was destroyed by no fault of either party. Therefore, the day Betty signed the contract she had equitable title to the house, and began to bear the risk of loss. The fact that House 1 was completely destroyed will not therefore provide Betty a proper basis to rescind the contract, because she bore the risk of loss. However, to the extent the couple had casualty insurance, they will have to credit the insurance proceeds to the sales price.

Therefore, Betty cannot rightfully refuse to close.

ANSWER TO MEE 3

I. Governing law - Uniform Commercial Code

The issue is whether Article 2 of the UCC applies to the transaction between Acoustic and Soundwave.

The UCC applies to contracts for the sale of goods, which are defined as things which are movable at the time of identification to the contract. Common law applies to all other contracts, such as those for services or the sale of real property. When a contract involves both goods and services, it is a hybrid contract, and the governing law will be determined by the predominant purpose test, assessing the "predominant purpose" of the transaction. The test considers the language of the contract, the nature of the seller's business, and the price allocation between goods vs. services. If the rendering of services if merely incidental to the sale of goods, the UCC will apply.

Here, the contract between Acoustic and Soundwave included both the sale goods and the rendering of services, so it is a hybrid contract. Based on the language of the contract, Soundwave was to deliver and install tiles to soundproof the new recording studios, in which the operation of them was Acoustic's business. However, the tiles were also manufactured exclusively by Soundwave and specifically suited to Acoustic's needs. Importantly, the price for the tiles was $38,000 and the price for installation was only $2,000, so is strongly suggests that the predominant purpose of the transaction was for the tiles. Thus, because installation was merely incidental to the sale of the tiles, which are goods, the UCC applies.

Article 2 of the UCC applies to the transaction between Acoustic and Soundwave.

II. Modification

The issue is whether Acoustic is bound to pay $48,000 or $40,000 to Soundwave if it delivers and installs the tiles.

Modification of a contract under the UCC requires no new consideration to be enforceable. This is contrary to the common law which requires consideration for a modification to be valid.
Instead, the UCC modification need only need the requirements of good faith and fair dealing given the commercially reasonable circumstances. The UCC is understanding that modifications are often required in light of commercial fluctuations.

Here, the original contract fro April 10 between Soundwave and Acoustic was for $40,000; on April 12, Soundwave's CEO attempted to modify that agreement by increasing the contract price to $48,000 to which Acoustic's president accepted. As

previously discussed, the contract is governed by the UCC which does not require consideration for the modification to be enforced. Moreover, it is likely that the standard of good faith and fair dealing is satisfied by the modification as the CEO stated he hoped for understanding given their long relationship and the fact that there were significant price increases on the cost of raw materials to make the tiles.
The price increase of $8,000 would "just barely cover our actual costs" and Acoustic was aware of these commercially reasonable circumstances when it judged the request to be fair and accepted. The fact that the modification was in writing and signed by both parties further indicates that the modification was made in good faith ad agreed to by both parties, and should therefore be enforced.

If Soundwave delivers and installs the tiles, Acoustic is bound the pay $48,000 because the modification of the UCC contract was made in accordance good faith and fair dealing.

III. Specific performance

In a breach contract action, a buyer's remedies from a seller depend on whether the goods have been delivered. When the buyer has not received the goods and the date for performance has passed, the buyer can cancel the contract, cover by purchasing substitute goods and suing the seller for the difference, or sue for specific performance. Specific performance is considered an extreme remedy and will only be awarded when money damages are insufficient and equitable remedies are the only appropriate way to compensate. When goods are unique or specially made, specific performance may be appropriate if there is no other reasonable use for the goods in the seller's ordinary business.

Here, Soundwave would be in breach of the contract by failing to delver the tiles as required by the contract. Acoustic, not having received the goods, has made an attempt to mitigate damages and cover by trying to an alternative source for tiles. Because Acoustic was unable to do so and consequently suffered significant financial loss and reputational harm because of Soundwave's breach, it is likely that specific performance may be appropriate. Additionally, because the tiles are particularly suited for Acoustic and Soundwave still has the tiles, a legal remedy may be insufficient, and a court can require Soundwave to deliver the tiles.

If Soundwave refuses to supply the tiles to Acoustic, a court may direct Soundwave to specifically perform because the tiles are specifically for Acoustic's needs, and despite Acoustic's attempt to cover in good faith, it suffered significant losses which legal (money) damages may not adequately compensate.

ANSWER TO MEE 3

Transaction governing law: Article 2 of the Uniform Commercial Code applies to the transaction between Acoustic and Soundwave. The issue is whether the contract is for services or for the sale of goods.

Contract law has two bodies of governing law: common law and Article 2 of the Uniform Commercial Code. Article 2 governs contracts for the sale of goods. Goods are movable, tangible items identifiable at the time that the contract is entered into. Common law governs all other contracts. When a contract is for both the sale of goods and for services, governed by common law, the primary purpose should be identified. If it is predominantly service, common law should govern. If it is predominantly for the sale of goods, Article 2 should govern. If the primary purpose cannot be identified, common law should govern the service part and Article 2 the sales part.

Here, Acoustic and Soundwave entered into an agreement where Acoustic would pay $40,000 for Soundwave to deliver and install enough titles to soundproof the new recording studios. The tiles were exclusively manufactured by Soundwave. $38,000 of the price was for the soundproof tiles and $2,000 was for their installation. Since this is primarily a contract for the sale of goods, soundproof tiles which are tangible and moveable, Article 2 should govern. The services part of the contract is only $2,000 of the $40,000 purchase price and it seems that the important part of the contract is the tiles which are manufactured only by Soundwave and are particularly suited for Acoustic's needs. Therefore it is predominantly for the sale of goods and Article 2 should govern.

Is Acoustic bound to pay $48,000: Yes, Acoustic is bound to pay $48,000 if Soundwave delivers and installs the tiles if Article 2 governs. The issue is whether the contract modification was made in good faith and following proper procedure.

Article 2 does not require consideration, a bargained-for exchange of legal value, for the parties to an existing contract to modify their agreement. Instead, the parties must agree to modify the contract in good faith. If it is done in good faith, the modification is valid. Whether or not the original contract was required to be in a signed writing under the Statute of Frauds, a modified contract may fall under the Statute of Frauds and need to be in writing to be valid. For sales contracts, the Statute of Frauds applies and requires a writing signed by the party to be charged when it is for $500 or more.

Here, Acoustic and Soundwave had originally agreed that the total contract price would be $40,000. Two days after the original valid agreement was made, the CEO of Soundwave called Acoustic's president and asked if Acoustic would agree to raise the deal price to $48,000. The CEO said that the reason that there was a price increase request was due to the fact that Soundwave's sales manager forgot to take into account the recent significant increase in the cost of raw materials that were needed to make the

tiles. The CEO highlighted that he hated to ask for the increase and did it because the parties have a long history. Additionally, the CEO pointed out that they were prepared to honor the original deal even though it would be a hardship. Acoustic agreed to the modification since the president was aware of recent price increases for soundproofing materials, thought it was a fair increase, and valued having a good relationship with Soundwave. This modification lacked consideration because Soundwave already had a pre-existing duty to deliver and install the tiles so it did not give anything of legal value for the modification. However the modification seemed to be in good faith since Soundwave was prepared to honor the original price, made the call within two days of the original agreement after realizing their mistake, and both Acoustic and Soundwave were aware of the increase of raw material prices and wanted to maintain a good relationship. Therefore, no consideration was needed since it was made in good faith. This modification falls under the Statute of Frauds since it was for more than $499, but the parties crossed out $40,000 on the original contract and wrote $48,000 and both signed their initials next to the change, which is a valid signed writing under the statute of frauds. Therefore, Acoustic is bound to pay $48,000 if Soundwave delivers and installs the tiles.

Specific performance: Yes, Acoustic would prevail in seeking specific performance if Soundwave refuses to supply the tiles and Article 2 applies. The issue is whether the soundproofing tiles are a unique item where money damages would be inadequate.

When one party breaches the contract, the other party may be entitled to damages. Typically, damages are limited to monetary damages such as expectation, consequential, or incidental damages. However, in cases where money damages are inadequate, a party may be entitled to specific performance that requires the other party to perform the contract terms. This is typically reserved only for unique goods and land sale contracts.

Here, on the day that the tiles were meant to be delivered, Soundwave told Acoustic that they will not be able to supply the tiles after all since another longtime customer desperately needs them. Acoustic tried to find an alternative source for the tiles but was unable to do so. This is reasonable since Soundwave exclusively manufactures the tiles and the are particularly suited for Acoustic's needs. If Acoustic cannot get the tiles, they will have severe financial loss from their contracts they cannot honor and reputational harm. Soundwave still has the tiles and has not delivered them to the other customer yet. Soundwave should be required to deliver the tiles since they are unique since they exclusively manufacture them and Acoustic tried and failed to find the tiles elsewhere. Here, monetary damages are inadequate. The court will probably not force Soundwave to install the tiles since this would account to involuntary servitude and the installation is not personal. However, Acoustic would prevail in seeking specific performance if Soundwave refuses to supply the tiles.

ANSWER TO MEE 4

George's Approval is Necessary for Plants to Distribute Profits

George's approval is necessary for Plants to distribute its profits.

The LLC is presumed to be member-managed unless the operating agreement specifies otherwise. In a member-managed LLC, the default rule is that all members have an equal share in management and voting rights unless otherwise agreed to. While members have personal property rights in their profit share from the LLC, the decision on whether to actually distribute or reinvest those profits is a business management decision which requires approval according to the LLC's management procedures. Absent an agreement otherwise, majority approval of all members will be required for business decisions in the ordinary course of business, such as profit distributions.

Here, George and Nikki are members in an LLC organized under the current RULLCA. Under their operating agreement, George and Nikki have agreed to manage Plant's business together as members while George will be primarily responsible for day-to-day operations. Because the distribution of profits is an ordinary course business decision that does not fall within the daily operations of the business (profits are not typically distributed daily in general or based on the fact pattern about Plants specifically), George and Nikki must approve this business decision pursuant to their shared management rights according to the default rule or a more specific agreement. Because there is no more specific rule on voting procedures or shares, George and Nikki are presumed to have equal voting rights and thus both of them will be required to form a majority (since each is only 50% of the LLC alone) to approve ordinary business decisions, other than those day-to-day operations which George may conduct without voting or other approval. If default rule were for George and Nikki to share in management equal to their relative contributions to the business, George's approval would still be necessary because George's contributions are worth 2/3 of the business (valued at $60,000) and Nikki's are worth 1/3 of the business (valued at $30,000) and thus Nikki could still not form a majority on her own.

Because distribution of profits is a business decision that falls outside of George's actual authority to conduct daily operations and George would be necessary to form a majority in either a 1 member: 1 vote regime or a voting regime proportional to capital contributions, George's approval is necessary for Plants to distribute profits.

George/Nikki Share

If Plants decides to distribute profits, Nikki will receive $35,000 and George will receive $5,000.

The default rule is that members in an LLC, like general partners, are entitled to an equal share of the profits of the business unless otherwise agreed upon. Other valid contractual agreements are generally given full effect.

Here, while the default rule would be to split the distribution of the profits equally, George and Nikki have validly agreed in their operating agreement to distribute all profits to Nikki up to $30,000 in order for her to recover the value of her initial capital contribution and then to distribute to the rest of the members any profits beyond $30,000 thereafter according to the applicable profit sharing rule. Because alternative profit sharing agreements are typically given full effect, George and Nikki's agreement to pay Nikki the first $30,000 is valid and she will receive that $30,000 before any further profits are split. Thereafter according to the default rule, George and Nikki will split profits equally, entitling each to $5,000 of the remaining $10,000 of the distribution after Nikki has been paid back. This would leave Nikki with $35,000 total and George with $5,000 total. If the default agreement were to split profits based proportionally on members' contributions, then George would receive 2/3 of the remaining $10,000 after Nikki's preferenced $30,000 distribution and Nikki would receive 1/3 of that remaining $10,000 ($6,667 and $33,333 respectively) based on the valuation of their contributions to the LLC.

George Lacked Actual Authority to Purchase the Water Sprayer

George did not have actual authority to purchase the water sprayer because it was beyond the ordinary course of business and outside of the day-to-day operations of the business.

Actual authority exists when the members of an LLC, pursuant to their voting procedure, authorize a member to take a particular course of action and that member acts within the scope of that expressly granted authority or as reasonably necessary pursuant to that expressly granted authority. For ordinary course of business decisions, the members must agree by simple majority as a default rule. For extraordinary acts, there must be unanimous consent of the members.

Here, the purchase of the water sprayer was neither within the course of ordinary business nor within the day-to-day operations of the business. George had actual authority to run the day-to- day operations of the business under the operating agreement. However, purchasing this water sprayer is not day-to-day because it is a capital expenditure that is not commonplace for this business. Further, the sprayer is very different from the kind other businesses use and significantly more expensive than what other businesses use. Additionally, the $12,000 price tag is significant in the context of Plants' profits and the value of members' capital contributions to the LLC. For those reasons, George lacked actual authority because the water sprayer, as a one-off, very expensive capital expenditure, is not a day-to-day operation. Further, because it is outside the ordinary course of business for those same reasons (being a very significant and

unusual purchase for a business of their type and size), he would have needed unanimous consent from the LLC to purchase it regardless.

Because the purchase falls outside the scope of the day-to-day operations authority actually granted to him and no unanimous authorization has been made for the extraordinary purchase, George lacked actual authority to purchase the $12,000 water-sprayer.

George Breached a Duty to Plants by Using the Sprayer for Personal Use

Assuming Plants was bound to the purchase of the sprayer, George violated his duty of loyalty in using it for personal purposes.

Members and partners have no personal property interest in the property of the partnership or business. Business property is property titled in the name of the business and is presumptively any property purchased with business funds, listed on business balance sheets, and used for business purposes. The duty of loyalty prevents partners and members from gaining any improper financial benefit from business property in which they have no personal interest and they must account for their personal use of any business property through fair rental or purchase value, reimbursing the business for their personal use.

Here, the property is presumptively business property based on its purchase using business funds. George has no rights personally to use business property and his duty of loyalty states that any unaccounted for financial gain he derives from his personal use of business property must be accounted for an reimbursed to the business. Because George has used the sprayer for three months at his home greenhouse, a purely personal use to his benefit, and has not accounted to the business for this rental or taking, George has gained an unaccounted for and improper benefit from the business property in violation of his duty of loyalty.

ANSWER TO MEE 4

I. George's Approval

At issue is whether George's approval is needed for the distribution of profits.

Under the RULLCA, in a member-managed LLC, the default is that each member gets one vote on business affairs. The default can be modified by specifying otherwise in the operating agreement. For ordinary business matters, a majority vote is needed. For matters outside the scope of ordinary business matters, a unanimous vote is needed. Thus, in the event of a deadlock, the status quo remains. There is no obligation for an LLC to distribute profits. Rather, that is a business decision that must be voted upon.

Here, State A has adopted the RULLCA and there is no provision in the operating agreement that would grant either George or Nikki superior voting power, so by default, each gets one vote on business matters. Distributing a profit, would be a business matter that the members of the LLC have to vote upon. It does not matter whether this is an ordinary business matter or outside the scope of ordinary business matters because Nikki will not be able to obtain even a majority vote if George votes against it.

Therefore, George's approval is necessary for Plants to distribute profits.

II. Distribution of Profits

At issue is how much each George and Nikki should receive if Plants decides to distribute first year profits.

Under the RULLCA, the default is that profits are split equally amongst all members. However, this default provision can be modified by the operating agreement, in which case the operating agreement should govern the distribution of profits.

Here, the operating agreement states that Nikki will receive distributions first until her $30,000 investment is paid back. This supersedes the default rule, so Nikki should receive $30,000 of the $40,000. The operating agreement is silent as to how to proceed once Nikki's contribution is paid back. Thus, the default rule of equal profit sharing should apply. Therefore, the remaining
$10,000 should be split equally amongst the two of them, and all future profits should also be split equally.

Therefore, Nikki should receive $35,000 and George should receive $5,000.

III. Actual Authority

At issue is whether George had actual authority to purchase the sprayer on behalf of Plants.

Members of an LLC are agents of the LLC. They have actual authority when they are either explicitly authorized to do something or it is implicit in the nature of their job. A member of an LLC who is impliedly authorized to carry on the day-to-day operations can enter into contracts that are within the realm of normal business activities. However, large purchases, changes in the business, and other big financial decisions must be voted on by the members of the LLC. Expenditures within the scope of business require a majority vote, but those outside of it require a unanimous vote.

Here, George had actual authority to conduct the day-to-day operations of Plants, which was granted to him by the Operating Agreement. Implied in this job description is the ability to enter into contracts that are mundane to the operation of the business, such as ordering more pencils or restocking regular fertilizer. However, George entered into a contract that represents more than a quarter of the LLC's profits for the year, which is a significant financial undertaking for the company. Additionally, the contract was very different from and significantly more expense than the typical sprayers bought by similar business. Thus, this is not a run-of-the-mill day-to-day contract that George has been impliedly authorized to enter into. Rather, George needed approval by the LLC to enter into this contract. George did not obtain even a majority vote on this purchase because he did not inform Nikki of it.

Therefore, George lacked actual authority to purchase the sprayer on behalf of Plants.

IV. Breach of Duty

At issue is whether George breached any duties to Plants by using the sprayer for his personal use.

Members of a member-managed LLC owe the LLC fiduciary duties. Specifically, they owe the duty of loyalty and the duty of care. The duty of loyalty entails the duty to not act in a manner that is self-interested or abuses the LLC's funds or assets for personal gain. The duty of care entails the duty to act as a reasonable member would in like circumstances. Members of an LLC are not permitted to use LLC property for personal use without permission from the LLC. LLC property is that which is bought in the name of the LLC with the LLC's funds.

Here, George was a member of Plants, so he owed the LLC fiduciary duties. George acted in a manner that was self-interested because he used the LLC's funds to make a purchase that he used for three months for personal plant watering. This was LLC

property because it was purchased in the name of LLC with Plants' money, and George did not obtain the permission of Plants prior to using it for such personal purposes. Thus, George violated the duty of loyalty that he owed to Plants. Additionally, George did not act as a reasonably prudent member of an LLC would because he used a significant portion of the LLC's assets in a way that does not further the goals of the LLC. Thus, George also violated the duty of care that he owed to the LLC.

Therefore, George violated both the duty of loyalty and the duty of care.

ANSWER TO MEE 5

1. Whether the district court properly granted Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun.

(a) Choice of Law.

In an action before a federal court based on diversity jurisdiction, the court applies federal procedural rules and state substantive law of the state in which the federal district is located.

Here, Plaintiff sued Defendant in State A, properly invoking the court's diversity jurisdiction, which means that the federal court should apply federal law for procedural matters and state law for substantive matters. Procedural rules are those rules that govern the process by which a case moves and do not abridge or enlarge substantive rights. Substantive rules are those that impact substantive rights. Where it is unclear whether a rule is substantive or procedural, courts evaluate the twin aims of Erie and other policy goals.

Here, plaintiff objected to the amendment relying on a provision of State A law that prohibits any party from amending the pleadings after discovery has begun. Here, the amendment process is arguably procedural because it is process-based, despite the fact that it may sometimes impact the applicability of a substantive right, like a statute of limitations defense; therefore, the court properly applied the federal rules of federal procedure for the rule on amendments.

(b) Assuming the Federal Rules of Civil Procedure Govern Amendment of Defendant's Answer, whether the Amendment should have been granted.

Under the federal rules of civil procedure, amendments are permitted once as a matter of course within 21 days of service of the pleading or if a responsive pleading is required, 21 days after the responsive pleading or pre-answer motion is filed, whichever is earlier. The federal rules of civil procedure also permit amendments after this 21 day period has expired, including after discovery has begun, and in certain circumstances, later at trial.

Regarding an amendment to the pleadings that occur after the 21 day period expires but before trial, it can occur by written consent of the opposing party or by leave of court. Where a party seeks leave of court for an amendment to a pleading, the court freely grants the leave to amend unless doing so would unduly prejudice the opposing party. In evaluating whether an amendment would result in undue prejudice to an opposing party, the court examines factors such as unnecessary delay, whether the party seeking the amendment has a colorable claim or defense with respect to the amendment, and more.

Although as a general matter, a defendant waives any affirmative defenses that he does not raise in his answer or pre-answer motion, amendments under this standard are granted liberally, provided that the amendment would not result in undue prejudice to the opposing party.

Here, defendant raised no defenses in its initial answer, which generally means that the defendant waives all affirmative defenses. However, because amendments are granted liberally absent undue prejudice to the opposing party, we must examine whether an amendment to the defendant's answer would result in undue prejudice to the defendant. A key consideration in that analysis is whether the defendant's affirmative defense that is the subject of his amendment is a colorable one.

Here, one year after plaintiff filed suit and during discovery, Plaintiff admitted that the injury that had caused his hearing loss had occurred more than two years before the suit was filed. In state A, the statute of limitations for tort claims is two years, interpreted by State A's highest court to run from the date of the discovery of the injury, not from the date that the injury occurred. The date of discovery rule for statute of limitations was decided by State A's highest court in a case involving injuries from a defectively performed surgery, which is different from the workplace injury in this case; because the date of discovery rules for statute of limitations are sometimes limited to particular types of injuries, it is unclear whether the date of discovery rule applies to the instant case, and the applicability of the date of discovery rule impacts whether defendant has a colorable affirmative statute of limitations defense, and in turn whether plaintiff would suffer undue prejudice from the amendment.

If it does apply to this case, then the two year statute of limitations has not run since there was at most 6 months from early 2025 when Plaintiff discovered the injury to June 1, 2025, when plaintiff filed suit; coupled with plaintiff's admission, that would make it such that the defendant's affirmative defense that the statute of limitations had run would not be colorable, and any delay for Defendant to assert non-colorable defense would be undue prejudice to the plaintiff. But if it does not apply to this case, then the two year statute of limitations has run since more than two years have passed from the date of injury and June 1, 2025, when Plaintiff filed suit; in that case, coupled with plaintiff's admission, defendant would have a colorable defense, and therefore any prejudice to plaintiff from a delay would not be undue. Therefore, if the defendant has a colorable defense, the district court properly granted the amendment, despite the general rule that a defendant waives any affirmative defenses not asserted in their answer.

2. The issue is whether the district court should grant Plaintiff's request for sanctions against Defendant under Rule 11 of the Federal Rules of Civil Procedure.

Under Federal Rule of Civil Procedure 11, an attorney certifies that (1) regarding facts asserted, that the attorney has a reasonable basis to believe the accuracy of all facts asserted, or has a reasonable basis to believe that they will discover all facts asserted to be accurate through the discovery process if facts are not readily verifiable; and (2) regarding the legal arguments asserted, that the attorney has a reasonable basis to believe that the law applies or could reasonably apply, in cases where the law is uncertain or subject to reasonable dispute, or can make a good faith argument that a particular authority or law relied on should apply to the circumstances at hand. This certification, once filed in a case, applies to all representations made to the court both through document filings and appearances before the court.

Here, Defendant has a colorable legal argument that the date of discovery rule does not apply to this case because, although the highest state court determined that it did apply, it did so in a case where that was factually very distinct from this case; the facts in the case where the ruling was made involved a defectively performed surgery, whereas this case involves a workplace injury, although both injuries are latent. Further in support of the fact that the defendant had a reasonable basis on which to make his argument is the fact that in other states that have adopted the date of discovery rule, they have done so on an injury-specific basis; thus, defendant had a reasonable argument that this case is distinct and that the ruling of the state court is injury-dependent. Therefore, because Defendant had a colorable argument, Defendant's motion for summary judgment was not frivilous, and Plaintiff's rule 11 motion for sanctions should be denied.

Notwithstanding the failure of Plaintiff's Rule 11 motion for substantive reasons, there is a certain procedure that litigants must follow before filing a Rule 11 motion for sanctions with the court. Where a party identifies a violation by an opposing party, they must draft a motion requesting that the court impose sanctions on the party in violation of Rule 11, and serve a draft of that motion on the violating party. The party serving the draft motion on the party alleged to have violated Rule 11 must provide the violating party with an opportunity to correct their violation and they must give them this opportunity for 21 days. This 21-day period functions as a safe harbor. After this 21-day period, beginning with notice via draft motion, has passed, if the party who violated Rule 11 has not remediated their violation, the party who drafted the motion may then serve the motion on the court. Because this 21-day period functions as a safe harbor, if the violating party has already remediated their violation, then the moving party may not serve its motion on the court. And in no case should sanctions be imposed on a party who successfully remediates their Rule 11 violation within the 21 day safe harbor.

Here, plaintiff filed a response to the defendant's motion for summary judgment with the court 10 days after its filing, both in opposition to the defendant's motion for summary judgment and requesting that the court impose sanctions on the defendant on the ground that the defendant's motion for summary judgment was frivilous. Because the plaintiff did not first draft the motion and serve it on the defendant and provide the defendant with a

21 day period to remediate an alleged violation, if there were a Rule 11 violation, which there is not, the court still should not grant the plaintiff's motion for sanctions because the defendant has not had the benefit of the 21-day safe harbor and Plaintiff did not follow the proper procedure for filing a motion for sanctions with the court.

ANSWER TO MEE 5

I. WHETHER THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION TO AMEND ITS ANSWER DESPITE THE FACT THAT STATE A LAW FORBIDS AMENDMENTS ONCE DISCOVERY HAS BEGUN?

Yes, the district court properly granted Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun.

A. Whether federal or state law applies?

As a threshold matter, a critical sub-issue here is whether federal law or state law governs rules related to the timing of motions to amend answers. Where a federal court is sitting in diversity, as the court here is, the so-called *Erie* doctrine applies. Generally, this doctrine instructs that a federal court sitting in diversity must apply federal procedural law but state substantive law.

With respect to the former (e.g., federal procedural law), a rule articulated in the Federal Rules of Civil Procedure ("FRCP") that is consistent with the Rules Enabling Act is essentially presumptively constitutional because the Supreme Court has never ruled otherwise. Accordingly, if a particular provision of the FRCP is relevant to an action, a federal court sitting in diversity will apply it. This is true even where state procedural law conflicts with federal procedural law.

B. Whether Defendant properly moved to amend its answer?

Under the FRCP, a party may amend its answer before the close of discovery, so long as done with leave of court. On its face, therefore, this rule of the FRCP clearly conflicts with the State A state procedural law that prohibits any party from amending pleadings after discovery has begun.

Accordingly, because the aforementioned provision of the FRCP is clearly relevant to this action, and because the federal court here is sitting in diversity (and thus, the *Erie* doctrine applies), the federal court will apply that rule despite State A law's prohibition.

Further, here, Defendant filed a motion to the federal court to amend its answer; that is, Defendant sought leave of court, as contemplated by the relevant provision of the FRCP, to so amend its answer. Moreover, although Defendant raised no defenses in its initial answer, and thereby necessarily waived the defenses of personal jurisdiction, process, service of process, and venue, if Defendant's allegation is accurate that Plaintiff failed to meet the applicable statute of limitations, that would mean the federal court does not have subject matter jurisdiction over the action (e.g., it was untimely and thus moot).

Therefore, it can also be said that it was appropriate for Defendant to seek to amend its answer on these grounds.

Accordingly, Defendant's motion to amend its answer was consistent and proper under the FRCP, and thus it was up to the federal court hearing the action to decide whether to grant or deny leave to amend to Defendant. Here, the federal court decided to so grant leave. Therefore, the district court properly granted Defendant's motion to amend its answer despite the fact that State A law forbids amendments once discovery has begun.

II. WHETHER THE DISTRICT COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR SANCTIONS AGAINST DEFENDANT UNDER RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE?

No, the district court should *not* grant Plaintiff's request for sanctions against Defendant under Rule 11 of the FRCP.

A. Whether federal or state law applies?

As a threshold matter, a critical sub-issue here is whether federal law or state law governs rules related to the triggering (or tolling) of statute of limitations. Where a federal court is sitting in diversity, as the court here is, the so-called *Erie* doctrine applies. Generally, this doctrine instructs that a federal court sitting in diversity must apply federal procedural law but state substantive law.

As noted above, in I.A, with respect to the former (e.g., federal procedural law), a rule articulated in the FRCP that is consistent with the Rules Enabling Act is essentially presumptively constitutional because the Supreme Court has never ruled otherwise. Accordingly, if a particular provision of the FRCP is relevant to an action, a federal court sitting in diversity will apply it. However, with respect to the latter (e.g., state substantive law), a federal court sitting in diversity must defer to state law on issues such as statutes of limitations and tolling rules, the prima facie elements of a cause of action, as well as choice of law rules. Naturally, most relevant here is statutes of limitations and tolling rules.

Accordingly, here, the federal district court of State A, will apply State's A statute of limitations for tort claims, which is two years. However, an open question remains with respect to whether the federal district court of State A will apply the date-of-injury or date-of-discovery approach.
That issue is addressed below.

B. Whether Plaintiff properly invoked Rule 11 of the FRCP on these facts?

Moving to the primary issue in this question, Rule 11 of the FRCP prohibits and contemplates sanctions against parties who advocate frivolously, harassingly, or by wasting time or expense, among other things. However, because Rule 11 of the FRCP does not reach the merits of an action and, instead, focuses on the alleged poor conduct of parties (or their attorneys, or both) involved in an action, application of Rule 11 of the FRCP is subject to a so-called "safe-harbor provision." This provision permits a party who has allegedly breached the rule, upon notice from the non-breaching party, 21 days to retract the allegedly violative papers or statements. Only after that time, if a party fails to comply and cure their allegedly improper behavior, may the other party move for sanctions via appropriate motion to the court.

Despite the sanctions contemplated by Rule 11 of the FRCP, the FRCP also permits arguments grounded in law or fact that argue, in good faith, for an extension, reversal, or modification of existing law. The key is "good faith"; thus, in other words, Rule 11 of the FRCP essentially exists to police argumentation made without good faith in federal court.

Accordingly, at-issue here is the question of whether, in State A, the statute of limitations for tort claims begins to run from the date the injury is (i) suffered or (ii) discovered. Here, in State A, this issue appears to be fact-dependent and is likely one that is open to arguments on both sides, so long as such arguments are made in good faith and grounded in the applicable law (if any) and relevant facts of the case (as appropriate).

To that point, in 2021, State A's highest court ruled that in a case involving injuries caused by an allegedly defectively performed surgery, the limitations period would run from the date of discovery of the injury, rather than the date the injury occurred. However, and on the other hand, other states have adopted different rules that "are sometimes limited to particular kinds of injuries."

Because the answer to this question is necessarily substantive, and not procedural (as discussed above in II.A.), the federal court here must look to State A statutory law and caselaw for its disposition. However, here, no facts clearly indicate whether State A's legislature or a state court in State A--including State A's highest court--has ever addressed the issue of whether liability arising out of irreversible hearing loss caused by an employee working without proper ear protection in a noisy factory for 20 years should attach (i) at the moment the injury is suffered or (ii) at the moment the injury is discovered. It should be noted that the facts of the aforementioned State A case concerning an allegedly defectively performed surgery are clearly distinguishable from Plaintiff's circumstances.

Accordingly, with apparently no applicable law on the issue in State A, it follows that both Plaintiff and Defendant would motion the federal court to consider an articulation of the statute of limitations approach for tort claims that is better calibrated to their argumentation. Thus, it is not surprising that Defendant has argued to the federal court

that a State A court would apply the traditional date-of-injury (rather than date-of-discovery) approach.

Critically, there is no indication that Defendant, in moving for summary judgment on this theory of law, has done so without good faith. Indeed, these facts indicate a prototypical "extension, reversal, or modification" line of argumentation common in federal court. Such argumentation by Defendant is clearly appropriate here because, as noted, the facts in this action are clearly distinguishable from the only time State A's highest court has apparently addressed a similar issue.

Further, because, as discussed above in Part I.B, if Defendant's allegations are accurate that the statute of limitations has passed and that, therefore, the action should not be heard (e.g., it was untimely and thus moot), summary judgment is an appropriate procedural mechanism by which to move for such a finding.

Finally, a more basic issue with respect to Plaintiff's request for sanctions against Defendant under Rule 11 of the FRCP is there are no facts indicating Plaintiff satisfied the safe-harbor provision of Rule 11 of the FRCP by putting Defendant on notice about its allegedly improper conduct and, thereafter, giving Defendant at least 21 days to cure their allegedly improper conduct, before making a motion to the court accordingly. This alone constitutes persuasive grounds Defendant could raise to defeat Plaintiff's motion, but coupled with the substantive considerations raised above, it is clearly fatal.

Accordingly, the district court should *not* grant Plaintiff's request for sanctions against Defendant under Rule 11 of the FRCP.

ANSWER TO MEE 6

The Applicable Standard of Care to Determine Whether Derek is Liable for Malpractice is a National Standard

At issue is the relevant standard of care to determine whether Derek is liable for malpractice. Traditionally, skilled professionals such as physicians and dentists where judged on a local standard of care, as the United States was spread far and there was not widespread practices adopted by everyone across the country. However, since the 20th century, that old rule has been replaced and physicians and dentists are judged on a national standard, based on how a reasonable dentist in the country would have performed. This is because there are many opportunities to learn across the country and this would lead to different standards of care across the country.

Here, Derek is a dentist performing a highly skillful task. The procedure failed, resulting in injuries to the plaintiff. The standard of care should be a national standard, even though Derek operates a general dentistry practice in a small town. Dentistry is a high regulated field that requires a postgraduate degree, including attending many of the same med school classes that future physicians attend, who are also judged on a national level. Therefore, the standard of care to apply is a national standard about what a reasonable doctor in the country would have done.

The Testimony of the Out-of-Town Specialist Can Establish the Standard of Care

At issue is whether the testimony of the out-of-town specialist can establish the standard of care for dentistry. Since dentistry is judged at a national level, the expert witness does not need to be form the same location as the dentist who may have committed malpractice. To be admitted as an expert witness, the witness must have the relevant skills, experience, training, background and education to provide advice on the case at hand, the expert must use their skills, experience, training, background and education to assess the case at hand, and they must be able to assist the fact finder (the jury) in understanding the issue.

Here, the out-of-town specialist will be able to assist the jury in determining the standard of care, since the specialist is also a dentist in the same state who specialized in root canals. Just like Derek, the specialist went to dental school and has the education to understand what is required for a successful root canal. The specialist also has the experience, since they specialize in root canals, to determine what the standard of care looks like for a root canal. The specialist lives in a town of a similar size to State A, and is knowledgeable about the standard of care that a reasonable dentist in the state would provide. It is also incredibly likely that the specialist will use their skills, background, education and training in order to provide their opinion on the case at hand. Therefore, the testimony of the out of town specialist can establish the standard of care

If the Patient Can Prove the Liability Elements of the Malpractice Claim, Derek is Liable for all Harm Caused by His Malpractice

At issue is what harms the patient could recover from Derek if the patient is successful in proving the liability elements. Medical malpractice is a form of negligence. All negligence lawsuits require duty, breach, causation and damages. A defendant is responsible for all foreseeable harm caused by their actions, and they may also be liable for harms that were unforeseeable under the eggshell plaintiff doctrine. The eggshell plaintiff doctrine allows a plaintiff to recover from a harm that they suffered due to a predisposition to harm, even if the average person would not have suffered such a harm. The defendant is responsible for how they find the plaintiff.

Here, due to the poor root canal the patient lost her tooth, paid additional dental bills, lost three days of wages from work, and physical pain. Additionally, because of an earlier trauma, she has experienced unusually significant and ongoing emotional turmoil because she no longer feels whole with an artificial tooth. It is not relevant that a normal patient would not have experienced. Derek is liable for all of these claims because the plaintiff is an eggshell plaintiff.

Derek's Defamation Claim Against the Plaintiff is Likely to Fail Because Truth is an Absolute Defense to Defamation

At issue is whether Derek has a valid defamation claim against the patient. A party is liable for defamation when they orally or write a statement about a person, that is made to others who can understand it, that lowers the respect or esteem of the party. However, a complete defense to defamation is truthfulness. If the statement made is true, then the plaintiff cannot recover for defamation.

Here, the patient made a written statement on an online forum. Although it was only used by five or six people who check it occasionally, they can still understand the statement. Additionally, the statement lowered the respect and esteem of Derek in the community. After another patient saw the patient's post they cancelled their upcoming appointment with Derek due to the post. However, the patient's statement accurately described the details of her root canal procedure and her resulting injuries. Because the statement accurately described the details, the patient will be able to assert truth and use it as an absolute defense to defamation. Although she added that Derek was a "real numbskull" that alone is not enough to rise to the level of defamation alone. Therefore, Derek's defamation claim against the patient will fail because the patient can assert truth as an absolute defense.

ANSWER TO MEE 6

Standard of Care

The issue is what standard of care is applied to Derek to determine if he is liable for malpractice.

The standard of care is generally to act as a reasonably prudent person would in the same set of circumstances. When one has specialized knowledge, that knowledge it taken into the standard. For medical professionals, the standard of care is to act as a average professional in good standing would in the same set of circumstances.

Here, Derek has specialized knowledge and skill as a professional dentist. He is being sued for malpractice in performing a root canal on the patient. Therefore in this action, Derek, as professional, will be held to a higher standard of care, which will be to act as an average general dentist in good standing would.

Testimony to Establish Standard of Care

The issue is whether the testimony of State A dentist is sufficient to establish the standard of care.

For medical professionals, the standard of care is to act as a average professional in good standing would in the same set of circumstances. Some jurisdictions apply the locality rule, requiring a average professional in good standing in the same or same type of community. In general though, and under the traditional rule, professionals are held to a national average when determining the standard of care.

Here, plaintiff is attempting to have State A dentist from a town 150 miles away to serve as an expert witness to establish the standard of care for a root canal. This passes under both tests. Under the traditional rule, as a national standard is use to establish the standard of care, a dentist from anywhere in the country in good standing can be used to establish the standard of care. As State A dentist is from the same country, he may testify to the standard. Under the locality rule, the dentist may also testify. Despite the distance both communities are within the same state, and are the same size. Therefore, he would understand the standard of care of a dentist in a small town in State A in good standing would act.

Therefore, the State A dentist is sufficient to establish the standard of care.

Damage Recovery

The issue is what damages can patient recover if successful against Derek.

One can recover damages from negligence that are a direct result of Defendant's negligence. This include property damages, pain and suffering, lost wages, etc. Under the eggshell plaintiff rule, courts meet plaintiffs where they are and do not need limit damages due to their special sensitivities. One cannot traditionally recover on emotional damages alone, as they are difficult to calculate.

Here, plaintiff suffered from a negligently performed root canal procedure. She can recover actual damages from the loss tooth, bills for additional dental care, lost wages and pain suffered as they were all direct results of the negligent procedure. Additionally, under eggshell plaintiff theory, despite her unknown trauma and unique emotional turmoil of not feeling whole from an artificial tooth, she may recover the costs of psychological counseling as a result of the procedure. It is unlikely she will recover for the emotional trauma alone.

Therefore plaintiff can recover for the loss tooth: bills for additional dental care, lost wages, pain suffered, and psychological counseling costs as a direct cause of Derek's negligence.

Defamation

The issue is whether Derek has a defamation case against plaintiff.

Under the First amendment, one has Freedom of Speech. One type of speech outside the scope of the First Amendment is defamation. Defamation is when makes a false statement published to a third party that harms an individual or their reputation. For a private individual in a private matter, a plaintiff must show actual injuries. Matters of pure opinion are not actionable, as they are protected speech under the first amendment.

Here, patient posted an online message to a forum about the Plaintiff. This counts as published, even though the number is small for a local forum, as at least one person received the message. As a result of this statement communicated to a third party, Derek suffered damages as he lost business after the person cancelled an appointment with him, harming his business. Despite meeting these factors, Derek is unlikely to succeed. The patient did not make any false statements, as the post accurately described the details of her procedure and the results. Additionally, calling someone a "Numbskull" is a matter of opinion and perception of Derek, not a matter of fact, and this opinion falls under the protection of the First Amendment.

Therefore it is unlikely Derek would succeed in a defamation action against Plaintiff.

ANSWER TO MPT 1

To: Simone Rice
From: Examinee
Date: July 28, 2026
Re: Matter of David Dawes: US Attorney Subpoena Memorandum

MEMORANDUM

Dear Ms. Rice,

The memorandum below will analyze the following regarding the David Dawes ("Dawes") subpoena: (1) whether the Franklin Rules of Professional Conduct prevent the disclosure of the documents in your files regarding your conversation with Dawes, (2) whether the crime fraud exception to the attorney-client privilege apply to the documents in your files, and (3) whether the government successfully compel disclosure of the documents in your files under the crime- fraud exception based on the information in the government's possession.

I. Applicability of the Franklin Rules of Professional Conduct

First issue to address is whether the Franklin Rules of Professional Conduct prevent the disclosure of the documents in your file regarding your conversation with Dawes. Under Rule 1.18 and 1.9, a lawyer owes a prospective and a former client the duty to not use or reveal information the lawyer has learned relating the either representation for a past client or information regarding a potential representation for a prospective client. Dawes in this case was a prospective client as he sought legal advice regarding an application to VA benefits but ultimately, did not proceed with the representation due to the issues regarding the outstanding warrant. A prospective client receives the same duty of confidentiality as a former client. Therefore, the Franklin Rules of Professional Conduct apply to your consultation with Dawes as a perspective client.

Under Rule 1.6, a lawyer should not reveal information relating to a representation of a client unless there is consent, disclosure is necessary in order to carry out the representation, or an exception applies that would permit disclosure. Exception (1) and (2) to Rule 1.6 (b), do not apply to Dawes as they are regarding the prevention of serious bodily harm or prevention of crime or fraud. Both of these exceptions require reasonable certainty. United States v. Coving. Here, Dawes has already committed the potential fraud and there is not a potential of future fraud that would result in a substantial financial or physical injury. Therefore, these exceptions do not apply.

Moreover, under the Rule 1.6 (b)(3) exception, the lawyer may reveal information relating to the representation of client in order to prevent, mitigate, or rectify substantial injury to financial interests that has resulted of reasonably certain to result from the client's fraud of which the client has used the lawyer's service in furtherance of. This exception does not apply where all of the financial losses have already occurred. United States v. Coving. Here, the financial losses to the VA have already occurred. Dawes received 100% benefits from the VA for five years and ten months which totaled about $260,000. He stopped receiving those benefits in May 1, 2026 when the VA discovered the fraud and cut off benefits. Due to the fact that the VA have already cut off benefits, there is not an on-going or potential fraud of financial interests from the VA. Therefore, this exception does not apply.

Under the Rule 1.6(b)(6) exception, a lawyer may reveal information relating to a representation of a client in order to comply with the law or court order. In United States v. Coving, the court found that ethical obligation do not supersede the rules of evidence and that a district court order requiring a lawyer to comply with the subpoena satisfies the exception in Rule 1.6(b)(6) and the attorney must disclose otherwise confidential information to the court. Here, you have received a subpoena from the US Attorney requesting documents regarding you conversation with Dawes about his eligibility for VA benefits. These documents would typically be covered under the attorney-client privilege and protected under the Franklin Rules of Professional conduct from disclosure unless the exception applies. The exception in order to comply with the law or court order might apply as this is a subpoena but it is from the US Attorney rather than a direct order from the court.

However, there is a requirement that the court must first properly asses the evidentiary privilege for the attorney-client communication and then direct a court order that the attorney must disclose the confidential information to the court. United States v. Coving.

Given that the Rule 1.6(b)(6) exception could apply regarding your confidential documents regarding your communication with Dawes, it is recommended to assert the attorney -client privilege and have the court asses the evidentiary privilege for the documents. Once the court assesses the privilege, and they direct a court order for disclosure, then you will have to disclose the information.

II. Applicability of the Crime-Fraud Exception to Attorney Client Privilege

The next issue is to address is whether the Crime-Fraud Exception applies to the attorney client privilege to the documents in your files and are requested under the subpoena. There is an evidentiary privilege for attorney-client communications that protects confidential communications between the attorney and client for the purpose of obtaining legal assistance.

In re Grand Jury Proceedings. The attorney-client privilege applies during the attorney client relationship and after the relationship has terminated. In re Grand Jury Proceedings. Here, Dawes sought your legal assistance in obtaining VA benefits so, the documents and communication between you and Dawes are covered under this privilege.
However, the Crime-Fraud exception to this privilege, removes this protection for attorney- client communication that are made in furtherance of a crime or fraud. The crime-fraud exception still applies even if the client did not complete the act during the representation or at the time the client consulted the attorney as long as the client consulted the attorney in furtherance of a crime. In re Grand Jury Proceedings. In furtherance of a crime covers the situation where the lawyer gives advice to the client, even if the client later disregards the lawyer's advice. United States v. Jones. Here, Dawes originally contact you regarding a VA benefit application however, during your initial interview with Dawes you learned of the potential outstanding warrant due to his possession of cocaine and his failure to finish probation. You advised Dawes in the meeting and following memorandum that not taking care of the probation violation and applying to VA benefits without disclosing would mean he was breaking the law.
Dawes further advised you that he planned to go through with his plan of applying for VA benefits without disclosing or dealing with his probation violation. Moreover, you warned Dawes that if the VA found out about the warrant that they would seek a repayment of the benefits conferred and he would be violating a federal criminal statute. Although, you promptly declined representation when Dawes refused to deal with the warrant issue, the documents and information would still qualify as "in furtherance of" under the crime-fraud exception as Dawes disregarded your advice and knew of the fraud issue when he applied for VA benefits and did not disclose the warrant.

Therefore, it is likely that the Crime-Fraud Exception applies to your documents regarding you representation of Dawes in your files due to Dawes disregarding your advice but still moving forward with the application and failure to address his outstanding warrant. However, there is still a judicial proceeding, stated below, that is required to determine whether it applies.

III. Crime-Fraud Exception to Compel Disclosure

The next issue to address is whether the government successfully compel disclosure of the documents in your files under the crime-fraud exception based on the information in the government's possession. The use of material protected by privilege under the crime-fraud exception requires a three step judicial process: (1) presentation of the factual basis for a reasonable belief the exception may apply, (2) in camera evaluation of the material by the court, and (3) affording the party opposed to disclosure the opportunity to contest the disclosure. In re Grand Jury Proceedings. Here, there has not been the three step judicial process required for the government to use the documents of your conversations and files and the process will be required in order to evaluate whether the exception applies.

Moreover, the government must provide sufficient information to support the reasonable belief that the client intended the consultation with the attorney to further on ongoing or planned criminal or fraudulent scheme. It is not sufficient information if the government can only show that some communication occurred between lawyer and client and then sometime later, the client committed a crime. In re Grand Jury Proceedings. Here, the prosecution has no further information regarding your communication with Dawes other than he consulted with you a month prior to applying for VA benefits and that you declined to take his benefits case. He then applied for VA benefits. Moreover, the government doesn't believe that Dawes had knowledge of the fugitive-felon rule when applying for benefits. As stated in In re Grand Jury proceedings, this level of information that the US Attorney has which is that communication occurred between you, as a lawyer, and Dawes and that sometime later Dawes committed a crime is not sufficient information. Therefore, the US attorney likely does not have enough non-confidential information to satisfy the sufficient information needed to support the reasonable belief that Dawes intended the consultation with you to further his fraudulent scheme.

The best course of action would be to move to quash the subpoena and require the court to make a determination regarding the applicability of the attorney-client privilege to the documents that are subject to the subpoena and to further go through the three-step judicial process to determine whether the crime-fraud exception applies.

Sincerely,
Examinee

ANSWER TO MPT 1

To: Simone Rice
From: Examinee
Date: July 28, 2026
Re: Subpoena from US Attorney

This memorandum serves to address the following three questions:

1. Do the Franklin Rules of Professional Conduct prevent Attorney Rice from disclosing to the government the documents in his files about his conversations with Mr. Dawes?

2. Based on the information in Attorney Rice's possession relating to the crime charged in the indictment, would the crime-fraud exception to the attorney-client privilege apply to the documents in his file? and

3. Based only on the information in the government's possession, can the government successfully compel disclosure of the documents in my files under the crime-fraud exception?

Each question will be answered in turn.

Question 1: At present, no exception to Rule 1.6 applies to Attorney Rice. For that reason, he is currently prevented from disclosing information regarding his representation of Mr. Dawes.

Under Franklin Rule 1.6 of Professional Conduct, "[a] lawyer shall not reveal information relating to the representation of a client unless [...] the disclosure is permitted by paragraph (b)." Paragraph (b) provides that attorneys may reveal information related to the representation of a client when necessary "(1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services; [...] (6) to comply with other law or a court order." Rule 1.6(b)1 and 1.6(b)2 do not apply to this case as any harm that has been committed by Mr. Dawes has been done in the past and we are not concerned here with the prevention of death, bodily harm, or commission of a future crime or fraud. Rule 1.6(b)3, however, deals with rectifying substantial injuries resulting from past crimes and Rule 1.6(b)6 deals with compliance with existing court

orders, two relevant issues here. For that reason, we will be primarily concerned with 1.6(b)3 and 1.6(b)6.

Furthermore, it should be noted that disclosures of confidential information apply to former clients in a similar fashion as they would to current clients. Rule 1.9. And any information obtained from prospective clients should be treated similarly, even when no client-lawyer relationship is formed. Rule 1.18. This means that, despite the fact that Mr. Dawes is a former propsective client, disclosures made from him to Attorney Rice should be treated as they would be if he were a current client and a full attorney-client relationship had formed.

Question 1a: Under Franklin Rule 1.6(b)(3), is Attorney Rice is prevented from disclosing to the government documents in his files about his conversation with Mr. Dawes?

Under Rule 1.6(b)3, as a general rule, attorneys may be permitted to disclose information relating to the representation of their client in "situations in which disclosure of a past crime would prevent or reduce some kind of ongoing financial injury. It does not apply where all the financial losses have already occurred or where [...] there is no discernable financial loss." *United States v. Coving*. In this case, there is no risk of ongoing financial injury to the third-party (the government) because the government has become aware of the fact that Mr. Dawes had an outstanding warrant at the time of his arrest and, therefore, is no longer entitled to benefits. The government may argue that it will face an ongoing financial risk if Mr. Dawes is not adjudged to hav had the requisite mental state to have violated the statutory obligation to disclose his arrest warrant and the government continues to be deprived of its duly owed $260,000 as a result. This argument, however, will fail, as the government's financial losses have "already occurred" *Id.* since it has already dispensed the money to Mr. Dawes.

Furthermore, Rule 1.6(b)(3) requires a showing that the client "has used the lawyer's advice in furtherance of either the future crime or future financial injury." *Id. internal quotation marks omitted.* This is not what occurred here. Instead, like in *United States v. Coving*, the attorney at issue, Attorney Rice, simply "correctly advised [the client] of his legal obligations." *Id.* Attorney Rice told Mr. Dawson that he was required to inform the VA of his outstanding arrest warrant and, absent his willingness to do so, Attorney Rice would be unable to represent him. He also identified the legal consequences that he could face if he failed to disclose his arrest warrant. The 15th Circuit has held that, as it relates to Rule 1.6(b)(3), this type of disclosure is insufficient grounds to find the lawyer's advice furthered the crime. *Id*. Further, Attorney Rice is required to assert all non-frivolous claims to prevent disclosure under the comment to rule 1.6(b)(6). As a result Attorney Rice is not exempted from the duty not to disclose under Rule 1.6(b)(3). In other words, the Rule 1.6(b)(3) exception does not apply in this case and the general rule that Attorney Rice is prevented from disclosing information about his client remains in place.

Question 1b: Under Franklin Rule 1.6(b)(6), is Attorney Rice is prevented from disclosing to the government documents in his files about his conversation with Mr. Dawes?

Under Franklin Rule 1.6(b)(6), an attorney may be permitted to disclose information related to their representation of their client in order to "comply with other law or a court order." *Rule 1.6(b)(6)*. Under United States v. Coving, the Fifteenth Circuit held that "when directed by a court order and after the court has properly assessed the evidentiary privilege for attorney-client communications, an attorney must disclosure otherwise confidential information to the court" under Rule 1.6(b)(6). In this case, there is no evidence to suggest that the court has issued an order to comply with the subpoena and there is no evidence that the court has properly assessed the evidentiary privilege for attorney-client privilege as it relates to these two documents. For these reasons, Rule 1.6(b)(6) does not currently apply though it may in the future if the court makes the two requisite actions.

Question 2: Based on the evidence in Attorney Rice's possession the crime-fraud exception applies.

In order to determine if the crime-fraud exception applies to a case, a three step judicial process must be undertaken: "(1) presentation of a factual basis for a reasonable belief that the exception may apply, (2) *in camera* evaluation of the material by the court and (3) affording the party opposed to disclosure the opportunity to contest the disclosure. The government must provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme." *In re Grand Proceedings*.

In *Grand Proceedings,* the court stated that "if [proponent of the exception] had shown that some communication occurred between lawyer and client and that, later, the client committed a criminal act, that showing would be insufficient to establish the requisite reasonable belief hat the communication furthered the crime." The court states that the key information needed is that which shows that the person charged with criminal conduct consulted the client "at a time when they knew" they were engaged in criminal conduct. Further, the court states that, the crime-fraud exception "does not require a completed crime or fraud; it requires only that the client have consulted the attorney in furtherance of one." *Id.* However the phrase "in furtherance of" can be applied to situations where the lawyer gives advice to the client, even if the client disregards the advice later. *United States v. Jones*. The Fifteenth Circuit has held that "application of the exception would apply even if the attorney knew of the client's actions or intentions, advised the client not to pursue them, and withdrew from representation because of the client's actions or plans." *Grand Proceedings*. This is exactly what we see here. In this case, Mr. Dawes first consulted with Attorney Rice before he knew of his obligations to disclose his arrest warrant. He was surprised when Attorney Rice told him he would be

required to. But he disregarded the advise of Attorney Rice and proceeded with his intended course of action and Attorney Rice withdrew from the case. For that reason, the crime-fraud exception applies here.

Question 3: Based on the information in the government's possession, the documents in Attorney Rice's possession do not fall under the crime-fraud exception and the government can not compel disclosure.

The government will need to provide sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. As far as our office knows, the government is only aware of the fact that Mr. Dawes consulted with Attorney Rice a month before he applied for his benefits and Attorney Rice declined to take on his case. The government does not know the contents of the meeting and they do not know why Attorney Rice decided not to take on representation. For that reason, the government will not be able to offer evidence suggesting that Mr. Dawes knew that he was engaged in criminal behavior as it relates to his benefits application at the time of his meeting with Attorney Rice. The government will offer circumstantial evidence of intent by pointing to the fact that Attorney Rice refused the case. The government will ask the court to assume that Attorney Rice declined the case for ethical reasons related to fraud. This will not be sufficient evidence as it is does not meet the "sufficient information" requirement. *In cases that won the government used nonconfidential sourcs to estabish what the consultations wre about .Grand Jury.*

The government will not be able to provide sufficient evidence that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. As a result, they will not be able to argue that the documents in Attorney Rice's possession fall under the crime-fraud exception and will be unable to compel disclosure.

ANSWER TO MPT 2

To: LaVonda Wallace
From: Examinee
Date: July 28, 2026
Re: Estates of Linh and John Nguyen

Dear Ms. Wallace,

You have asked me to draft a memorandum explaining the correct distribution of the asset of John and Linh Nguyens under the controlling documents and relevant Franklin law. Specifically, you are interested in the applicability of the Uniform Simultaneous Death Act of 1993 (USDA 1993) to the Ngueyns' deaths and how that affects the distribution of their assets. The following memorandum explains first, whether the USDA 1993 is applicable to the Nguyens' deaths, and, second, the correct distribution of (1) John's and Linh's interests in the home at 432 Fairview Drive, (2) the proceeds of their respective life insurance policies, and (3) any other asset under the applicable provisions of their respective wills.

1. Applicability of the Uniform Simultaneous Death Act of 1993 (USDA 1993).

Franklin adopted the USDA 1993 in 1995. *In re Estates of Skow* (Fr. Ct. App. 2007). The Act is designed to address inheritance issues that arise when two or more individuals die simultaneously or in close succession to each other. *Walker's Treatise on Trusts and Estates.* The Act applies a 120-hour (five-day) survival requirement to simplify estate administration. *Id*. If an individual does not survive another by at least 120 hours, the individual is deemed to have predeceased the other for the purposes of asset distribution. *Id*. Since spouses often have each other as the primary beneficiary in their wills, if two spouses die within 120 hours of each other, the law treats each spouse as if that spouse had predeceased the other. *Id*. Consequently, neither spouse's assets pass to the other but rather go to each spouse's secondary or contingent beneficiary. *Id*.

In *In re Estates of Skow*, the court had to determine whether the USDA 1993 applied to the deaths of the spouses at issue there. The court noted that Sections 2 through 4 of the Act create the presumption that the person did not survive the death event by 120 hours and requires this presumption to be rebutted by proof of survival with clear and convincing evidence. *In re Estates of Skow* (Fr. Ct. App. 2007). Section 5(2) provides that a certified or authenticated copy of a death certificate provides prima facie evidence of the time of death. *Id*. In that case, the record included the the husband's and wife's death certificates, which indicated that the wife died four minutes after the husband. *Id*. There was no other evidence on the times of deaths. *Id*. Consequently, under the USDA 1993, the spouses died within 120 hours of each other because the statutory presumption was

not rebutted, and the death certificates provided prima facie evidence of the times of their deaths that is not rebutted. *Id*.

Here, John and Linh died from the same car accident. Their certified death certificates indicate that Linh died on March 18 at 10:23 p.m. and John died on March 20 and 10:03 p.m. Their dates and times of death are within five days of each other, satisfied the USDA 1993 120-hour rule. The prima facie evidence provided by their certified death certificates is not rebutted in the record. Thus, like in *Skow*, the USDA 1993 applies to the Nguuyens' deaths.

2. The correct distribution of following assets"

(a) John's interest and Linh's interest in the home located at 432 Fairview Drive

Section 4 of the USDA 1993 provides for dealing with the distribution of real property when co- owned with the right of survivorship. Under that section, if it is not established by clear and convincing evidence that one of the two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hour and one-half as if the other had survived by 120 hours. USDA 1993 § 4. Co-owners with right of survivorship includes joint tenants. USDA § 1(1).

Here, the deed to 432 Fairview Drive conveyed the property to John and Linh as joint tenants with right of survivorship. They are thus co-owners with right of survivorship as it relates to the property for the purposes of the USDA 1993. As discussed above, it is not established by clear and convincing evidence that one of the Nguyens survived the other by 120 hours. In fact, the evidence indicates they died two days apart. Thus, Section 4 applies to the distribution of the home at 432 Fairview Drive. Consequently, one-half of the property passes as if John survived Linh by 120 hours, and the other half passes as if Linh survived John by 120 hours. In effect, this means that both John and Linh own half of the ownership interest in the home as real property for distribution in their respective wills. Half of the ownership interest is conveyed according to John's will, and the other half according to Linh's will.

Linh's will gives all her real property to John if he survives her, but if they die simultaneously or within three days of each other, her property goes in equal shares to Brandon and Melissa. Section 6 of the USDA 1993 provides that survival by 120 hours is not required if the governing instrument (i.e. a will) contains language dealing explicitly with simultaneous deaths and that language is operable under the facts of the case. Section 6 clearly applies to Linh's will. John and Linh died within three days of each other according to their death certificates, so Linh's property goes to Brandon and Melissa in equal shares under her will. Thus, Brandon and Melissa receive half of Linh's half interest (i.e. Brandon and Melissa each get 25%) in the home at 432 Fairview Drive.

John's will does not contain similar language explicitly dealing with simultaneous deaths, so the Section 6 exception does not apply. Thus the 120-hour rule applies, and Linh is not considered to have survived John. John's will provides that, if Linh does not survive him, then his property goes to Brandon, Melissa, and the University of Franklin Medical Center in equal shares. Those three parties thus each receive a third of of John's 50% interest in the property.

(b) Proceeds of Linh's and John's life insurance policies

Section 3 of the USDA 1993 states that, for the purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event. An insurance policy is a governing instrument under Section 1 of the USDA 1993.

Here, Linh's life insurance policy contains survivorship language, so USDA 1993 § 3 applies. According to that policy, if John does not survive Linh, then Brandon and Melissa are beneficiaries of the policy in equal shares. Since John did not survive Linh under USDA 1993, Brandon and Melissa each get $250,000 from Linh's policy (50% of $500,000 policy).

John's policy contains specific language providing for if he and Linh die simultaneously, so the § 6 exception of USDA applies. According to that policy, if John and Linh die within three days of each other, then John's estate is the beneficiary of his insurance policy. Since John and Linh died within three days of each other, John's $600,000 insurance policy goes to his estate and will be distributed according to his will.

(c) Any other assets under applicable provisions of John's will and Linh's will.

Linh's will includes specific language for if she and John die simultaneously, so USDA § 6 exception applies. Since John and Linh died within three days of each other, Linh's will gives all her remaining property in equal shares to Brandon and Melissa. As discussed above, this includes Linh's 50% interest in the house since the right of survivorship does not operate under Section 4 of the USDA 1993.

John's will does not include express language dealing with simultaneous deaths. Thus, Section 3 of USDA applies, and Linh has failed the survivorship requirement in John's will. *See In re Etates of Skow*. Since Linh did not survive John his will gives all his property in three equal shares to Brandon, Melissa, and the University of Franklin Medical Center. As discussed above, this will bequest includes John's 50% interest in the home on Fairview Drive and his $600,000 life insurance policy as a result of the operation of Section 4 and Section 6 of the USDA 1993.

ANSWER TO MPT 2

MEMORANDUM

TO: LaVonda Wallace
FROM: Examinee
DATE: July 28, 2026
RE: Estates of Linh and John Nguyen

In response to your request, I have drafted the following memorandum to explain whether the USDA 1993 applies to the Nguyens' deaths and how (1) their property interest in 432 Fairview Drive, (2) the proceeds of the their life insurance policies; and (3) any other assets under their wills should be correctly distributed.

1. **Whether the Uniform Simultaneous Death Act of 1993 applies to the Nguyens' deaths.**

The Uniform Simultaneous Death Act of 1993 (USDA 1993) is a model law designed to address inheritance issues that arise when two or more individuals die simultaneously or in close succession of each other. Walker Treatise on Trusts and Estates. The Act has been widely adopted across the US and aims to simply estate administration and prevent assets from passing through multiple estates in quick succession. *Id.* The USDA 1993 arises when spouses die within a certain amount of time to each other and each spouse has designated the other as the primary beneficiary in their wills. *Id.* The USDA 1993 sets this time of "simultaneous death" at 120 hours and does not require that the deaths must be literally simultaneous. *In re Estates of Skow* (Ct. App. 2007). Sections 2 through 4 of the USDA 1993 address deaths by requiring proof of survival with clear and convincing evidence. Walker's Treatise. The USDA 1993 presumes that the person *did not* survive the event by 120 hours and this presumption must be rebutted by proof of survival with clear and convincing evidence. *In re Estates of Skow* (Ct. App. 2007). Prima facie evidence of the fact, place, date, and time of death and the identity of the decedent can be provided by a certified or authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred. USDA 1993 § 5.

Here, Linh and John died after they were in a car accident. The certified death certificates, which can be used as prima facie evidence of the fact, place, date, and time of death and the identity of the decedent, provide that Linh died on March 18, 2026 at 10:23 p.m and John died on March 20, 2026 at 10:03 p.m. If my math is correct, that means John died within 48 hours of Linh's death, which is well within the 120 hours required by the USDA 1993. Therefore, the terms of the USDA 1993 apply because the presumption that one person did not survive the other by 120 hours is rebutted with the certified death certificates, which provide prima facie evidence of the times of their death. There is no other evidence to rebut the evidence of the death certificates.

Therefore, the USDA 1993 applies to the Nguyens' deaths.

2. How John's interests and Linh's interest in the home located at 432 Fairview Drive should be correctly distributed under USDA 1993.

The USDA 1993 states that for the purposes of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event. *Id.* § 3. A "governing instrument" is defined as a deed, will, trust, insurance, or annuity policy. *Id.* § 1. The court in *Skow* further reiterated that literal survival does not mean a spouse is deemed to have survived the other spouse. *Id.* In that case, the wife survived her husband by only minutes and the court firmly ruled that she is not deemed to have survived her husband under the provisions of the USDA 1993. *Skow.*

Under USDA 1993 § 4, if it is *not* established by clear and convincing evidence that one of two co-owners with right of survivorship *survived* the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours. USDA 1993 further defines "co-owners with right of survivorship" as joint tenants, tenants by the entirety, or other co-owners of property held under circumstances that entitle one or more to the whole property on the death of the others. *Id.* § 1. However, survival by 120 hours is not required if the governing instrument contains language dealing with simultaneous deaths and that language is operable under the facts of the case. *Id.* § 6(1). A "governing instrument" is defined as a deed, will, trust, insurance, or annuity policy. *Id.* § 1.

Here, the deed to 432 Fairview Drive, a governing instrument, explicitly states that John and Linh owned that property as joint tenants with right or survivorship and not a tenants in common. The deed itself does not include other language regarding simultaneous deaths that would be applicable in this case. Therefore, any default rules under USDA 1993 § 4, if applicable, will stand. Given that it can be established by clear and convincing evidence, through the death certificates, that John and Linh did not survive each other by 120 hours, the rule under § 4 applies. There are no contingent beneficiaries listed in the deed, but both Linh and John's wills include the distribution of real property to designated contingent beneficiaries. Therefore, the one-half of the property passes to Linh's estate and one-half of the property passes to John's estate. The exact distribution of the real property is discussed below under part 4.

3. How the proceeds of Linh's and John's life insurance policies should be correctly distributed under USDA 1993.

Under the USDA 1993 § 3, for the purposes of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual

who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event. *Id.* § 3. The USDA 1993 presumes that the person *did not* survive the event by 120 hours and this presumption must be rebutted by proof of survival with clear and convincing evidence. *In re Estates of Skow* (Ct. App. 2007). When clear and convincing evidence has established that one spouse has predeceased another spouse, neither spouse's assets pass to the other spouse or to the other spouse's estate, if the bequest to the other spouse was subject to a contingency requirement. Walker's Treatise on Trusts and Estates. Instead, the assets go to each spouse's secondary (or contingent) beneficiary or beneficiaries in each of the spouses' wills. *Id.*

However, survival by 120 hours is not required if the governing instrument contains language dealing with simultaneous deaths and that language is operable under the facts of the case. USDA 1993 § 6(1). A "governing instrument" is defined as a deed, will, trust, insurance, or annuity policy. *Id.* § 1.

Here, both Linh and John's life insurance policies include language regarding survivorship, and therefore survival by 120 hours is not required if the language in the life insurance policy is operable under the facts of the case.

Linh's Life Insurance Policy

Linh has a Franklin Mutual life insurance policy that provides a death benefit of $500,000 to John, if he survives her. If he does not survive her, her son Brandon Nguyen and her daughter Melissa Nguyen-Stevenson are named as contingent beneficiaries and will receive equal shares. There is no language in the life insurance policy that would override the default 120 hours standard in the USDA 1993. Therefore, because John and Linh died within 48 hours of each other, John will be deemed to have predeceased Linh, and thus Brandon and Melissa will each get $250,000 from Linh's life insurance policy.

John's Life Insurance Policy

John has a Columbia Insurance Company life insurance policy that provides a death benefit of $600,000 to Linh, if she survives him. The language goes on to say that if they die simultaneously or if they die within three days of each other, John's estate is the contingent beneficiary of his life insurance policy. As the language in the governing provision that is operable because Linh and John both died, three days, or 72 hours, overrides the 120 hours requirement. Even so, there is no evidence that Linh survived John by 72 hours, so Linh is nevertheless deemed to have predeceased John for purposes of interpreting John's insurance policy. Because John's estate is the contingent beneficiary, the analysis of how his life insurance policy will be distributed will be analyzed below under part 4.

4. **How the tangible personal property and intangible personal property listed in the applicable provisions of John's will and Linh's will should be correctly distributed under USDA 1993.**

Under the USDA 1993 § 3, for the purposes of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event. *Id.* § 3. The USDA 1993 presumes that the person *did not* survive the event by 120 hours and this presumption must be rebutted by proof of survival with clear and convincing evidence. *In re Estates of Skow* (Ct. App. 2007). When clear and convincing evidence has established that one spouse has predeceased another spouse, neither spouse's assets pass to the other spouse or to the other spouse's estate, if the bequest to the other spouse was subject to a contingency requirement. Walker's Treatise on Trusts and Estates. Instead, the assets go to each spouse's secondary (or contingent) beneficiary or beneficiaries in each of the spouses' wills. *Id.*

However, survival by 120 hours is not required if the governing instrument contains language dealing with simultaneous deaths and that language is operable under the facts of the case. USDA 1993 § 6(1). A "governing instrument" is defined as a deed, will, trust, insurance, or annuity policy. *Id.* § 1.

Here, both Linh and John's wills include language regarding survivorship, and therefore survival by 120 hours is not required if the language in the will is operable under the facts of the case.

Linh's Will

Here, Linh's will states that all her property goes to her husband if he survives her. But if they die simultaneously or "within three days of each other," the property goes to her contingent beneficiaries. As the language in the governing provision that is operable because Linh and John both died, three days, or 72 hours, overrides the 120 hours requirement. Even so, there is no evidence that John survived Linh by 72 hours or three days, so John is nevertheless deemed to have predeceased Linh for purposes of interpreting Linh's will. Therefore, Linh's tangible personal property and intangible personal property should be distributed in equal shares shares to her son Brandon Nguyen and her daughter Melissa Nguyen-Stevenson. This distribution includes Linh's one-half interest in 432 Fairview Drive.

John's Will

In contrast to Linh's will, John's will includes language regarding simultaneous deaths but his will only states that if Linh does not survive him, his property goes in three equal

shares to his son Brandon Nguyen, his daughter Melissa Nguyen-Stevenson, and the University of Franklin Medical Center. There is no language that would override the default 120 hours standard in the USDA 1993. Therefore, because John and Linh died within 48 hours of each other, Linh is determined to have predeceased John and thus his tangible personal property and intangible personal property should be distributed to Brandon, Melissa, and the University of Franklin Medical Center in three equal shares as contingent beneficiaries. This includes John's life insurance policy, because the policy named his estate as the contingent beneficiary, and John's one-half interest in 432 Fairview Drive. Brandon, Melissa and the University of Franklin Medical will thus each receive $200,000 from the life insurance policy and a one-third interest in John's one-half interest in 432 Fairview Drive, along with the other assets.