February 2025 MEE Questions

MEE Question 1

Bill and Nancy recently opened a gym, "Comet Fitness," that they operate as a general partnership. Three blocks from the gym is a sporting-goods store that is having a "going-out-of-business sale" with signs in the store's windows stating that "all sales are final." Bill and Nancy are acquainted with the store owner. Last week, Bill called the store owner and said, "I hope you've got some nice treadmills; the gym could use one or more. I'll try to get over there to check them out."

The next day, Bill and Nancy ran into Kim, one of Nancy's friends, at a party. Kim is a personal trainer. Nancy had not seen Kim for several months. Nancy told Kim that she and Bill had opened a gym and that Kim should consider coming to work for them as a personal trainer. Kim said that she would think about it and let Nancy know. While Kim was walking away, she heard Bill say to Nancy, "You know, the gym has only five treadmills, but I sure wish it had two more," and heard Nancy reply, "I agree. We desperately need to buy one or two more."

The day after the party, Kim, thinking that she might be interested in the trainer job and hoping to impress Bill and Nancy with her initiative, went to the sporting-goods store. Telling the store owner that she was acting on behalf of Comet Fitness, Kim purchased a treadmill and directed the store owner to send the treadmill to Comet Fitness, along with the invoice for the purchase. The store owner agreed to do so.

Later that day, Nancy went to the sporting-goods store and purchased two treadmills for the gym. Unlike the treadmill Kim had purchased, these treadmills had built-in video touchscreens and were similar to the ones that Nancy had previously purchased for Comet Fitness. Nancy told the store owner to have the treadmills delivered to Comet Fitness along with an invoice for the purchase. When Nancy returned to the gym, she told Bill that she had bought two treadmills for the business. Bill became furious and said, "You had no right to do that without first consulting me. You should have made sure that I was with you when you bought them to make sure I'd like what you were buying. I'll return them tomorrow after they arrive unless I like what I see."

The following day, three treadmills arrived at the gym. When Bill and Nancy saw the treadmill purchased by Kim, they told the delivery person, "Take that one back. There must be a mistake—we never bought this." When Bill saw the two treadmills Nancy had bought, he told the delivery person, "Take them back, too; they're nice but not the same color as our other treadmills, and they just won't fit in." Nancy objected and told the delivery person to leave the two treadmills.

The delivery person immediately called the store owner, who said, "Leave them all at the gym. All sales are final. Tell them to pay me what they owe me."

1. Was Kim an agent of Comet Fitness when she purchased the treadmill? Explain.

2. Assuming that Kim was an agent of Comet Fitness,
   (a) did she have actual authority to purchase the treadmill for Comet Fitness? Explain.
   (b) did she have apparent authority to purchase the treadmill for Comet Fitness? Explain.

3. Did Nancy have the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens? Explain.

MEE Question 2

Town is a small municipality. Main Street is an eight-block public road that runs through the center of Town with retail shops, restaurants, and other businesses located on each side. The roadway has two lanes of traffic in each direction, separated by a 10-foot-wide median strip on each block. Each median strip is covered with grass and trees, except for paved 10-foot segments on each end. The paved portions of the median strip are part of the crosswalk and are marked for use by pedestrians as they cross the intersections on Main Street.

A Town ordinance prohibits any person other than authorized Town personnel from entering the unpaved portions of the median strip.

The Town council received numerous complaints from Town residents about people who stood in the paved portions of the median strips at intersections on Main Street to solicit money from the drivers of vehicles that stopped at traffic signals. The residents complained that the solicitations were annoying and unwelcome. Law enforcement had no official reports that solicitations from the pedestrian median strips had been aggressive, threatening, or distracting to drivers. Nor were there records of any traffic accidents caused by solicitations made from pedestrian median strips.

In response to the complaints, the Town council enacted the following ordinance:

> (1) No person on a pedestrian median strip on Main Street shall communicate or attempt to communicate with the occupants of vehicles passing by or stopped near the pedestrian median strip.
> (2) A "pedestrian median strip" is the paved portion of the median strip, which is the portion intended for use by pedestrians to cross from one side of the street to the other.
> (3) A violation of this ordinance is a misdemeanor.

The preamble to the ordinance explains that the law was enacted to promote traffic safety by prohibiting those within pedestrian median strips from actively engaging with drivers in a distracting manner. Existing Town ordinances permit posting approved signs on trees and utility poles in median strips, including pedestrian median strips, as well as the posting and carrying of signs on sidewalks adjacent to public roadways. It is also lawful to solicit money from passing vehicles while standing on a sidewalk along Main Street.

Town has charged a man with violating the ordinance by holding a sign stating his opposition to a candidate for Town council while standing in a pedestrian median strip on Main Street in Town.

1. What type of First Amendment forum is the pedestrian median strip? Explain.

2. Is the Town ordinance a content-based or content-neutral regulation of speech? Explain.

3. Assuming that the Town ordinance is content-based, would applying it to the man violate his First Amendment rights? Explain.

4. Assuming that the Town ordinance is content-neutral, would applying it to the man violate his First Amendment rights? Explain.

MEE Question 3

Brenda, a trauma surgeon, was on her way to perform emergency surgery at the hospital. As she drove through her neighborhood, a school bus stopped ahead of her, flashed its red lights, and extended its side-mounted stop sign. The law prohibits passing a stopped school bus under these circumstances. Brenda slowed, considering whether she should pass the bus because of the medical emergency.

Alan was driving a dump truck behind Brenda's car and also saw the bus's extended stop sign. Impatient, he swerved around Brenda's car and the bus. As he did so, his truck's bumper scraped a gash into Brenda's driver's-side doors.

Alan drove out of the neighborhood and onto the four-lane divided highway. Brenda did so also, intent on reaching the hospital quickly. She changed to the left lane and sped past Alan. This angered Alan. He saw Brenda's personalized license plate, "MED DOC." He muttered, "A self-important physician, probably headed to bandage a scraped knee." Alan accelerated and dangerously tailed Brenda's car as both vehicles traveled at 15 miles per hour (mph) above the speed limit. As Alan repeatedly honked his horn, Brenda feared that Alan's truck would hit her car.

Brenda signaled to change from the left lane to the right lane so that she could exit the highway, but Alan positioned his truck beside Brenda's car, matching her speed. Brenda slowed to allow Alan to pull ahead, but Alan slowed also, lowered his window, and yelled, "Oops! Don't miss the exit to the clinic!" Because Alan blocked Brenda from changing into the right lane, she missed the exit for the hospital.

Brenda accelerated more and pulled ahead of Alan into the right lane. She continued 10 miles further at nearly 90 mph, with Alan still close behind. She left the highway at the next available exit intending to double back toward the hospital, but she saw that Alan had followed her off the highway. Brenda pulled into a gas station lot, ran into the restroom, and locked the door. Alan pounded on the restroom door, shouting, "Come out so you and me can have a talk, if you know what I mean!" Brenda shouted back, "I'm not coming out until you leave." Alan yelled back, "I've got all day, so get comfortable." After two minutes, Alan got into his truck and left.

Brenda waited in fear inside the restroom for 20 minutes, after which she peeked out and saw that Alan was gone. She drove to the hospital, using only back roads to make sure that the truck was not following, adding more time to her drive. She finally arrived at the hospital one hour later than she would have arrived if Alan had not prevented her from exiting the highway. The patient had died moments before she arrived. If Brenda had arrived 15 minutes sooner, she would have arrived in time to perform the surgery and the patient likely would have survived.

Brenda sued Alan, asserting two common-law claims. Alan has admitted to all the facts described above. In Brenda's lawsuit, she alleged that Alan "damaged her car as he violated the school-bus law" and that he then "detained her in a public restroom against her will." The patient's family sued Alan for "negligence causing wrongful death."
The jurisdiction expressly allows common-law negligence actions despite the death of the injured party. The jurisdiction's rules mirror the Federal Rules of Civil Procedure.

1. In a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law? Explain.

2. Can Brenda establish Alan's liability based on Alan's allegedly detaining her against her will? Explain.

3. Is Alan's admission sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful-death claim? Explain.

MEE Question 4

Coach is a high school basketball coach who currently lives and works in State A, where she is domiciled. One year ago, Coach visited Hometown, in State H, for her high school reunion. During the reunion, she got into an argument with Fran over which of them was the better athlete in high school. Fran lives in State H, where she is domiciled.

A week after the reunion, when Coach had returned to State A, she learned that Fran was spreading rumors about her. In particular, Fran was telling people that Coach had used illegal drugs with students during her visit to State H.

A newspaper in State A learned of the allegations about Coach and published them, along with quotations from Fran, who had repeated her allegations to a news reporter who had visited Fran in State H. The newspaper story led to a public outcry against Coach, and she was fired. She was unable to find another job for many months.

Coach sued Fran in a state court in State A, alleging that Fran had defamed her under state law. Coach's complaint sought damages in the amount of $74,999. In a sworn affidavit attached to the complaint, Coach asserted that she had lost $130,000 in wages due to Fran's defamatory statements, but she stipulated that she would not seek or accept damages in excess of the amount sought in her complaint. That stipulation is binding under State A law.

A process server handed Fran a summons and a copy of the complaint when Fran was attending a basketball game in State A. That was the first time Fran had ever been in State A, and she was there for less than a day. She had no other connection with State A. Statutory law in State A authorizes its courts to exercise personal jurisdiction over persons who are served with process while physically present in the state, without regard to whether they have any other connection with the state.

Ten days later, before filing any answer or responsive motion, Fran filed a notice of removal and the case was removed from state court to the federal district court for the District of State A. The notice of removal asserted that the amount in controversy was $130,000, the alleged amount of Coach's lost wages.

Coach has moved the federal district court to remand the case to the state court in State A, arguing that the federal court lacks subject-matter jurisdiction over the case.

Fran has moved the federal court to dismiss the case for lack of personal jurisdiction over her and for improper venue.

1. Should the federal court remand the case to the state court in State A on the ground that the federal court lacks subject-matter jurisdiction? Explain.

2. Assuming that the case is not remanded for lack of subject-matter jurisdiction, should the federal court dismiss the case for lack of personal jurisdiction over Fran? Explain.

3. Assuming that the case is not remanded and is not dismissed for lack of personal jurisdiction, should the federal court dismiss the case for improper venue? Explain.

MEE Question 5

Based on the following facts, David has been charged with knowingly obtaining money under the control of a financial institution (Bank) by means of false or fraudulent representations.

David entered Bank on April 18, 2024. After stopping at the counter where pens and banking slips were located, David presented to the teller a check that appeared to be drawn by Customer on her account at Bank and payable to the order of "David" in the amount of $1,000. Before cashing the check, the teller asked David to produce photo identification (ID), which David did. The teller examined the ID, confirming that it was David's and bore his picture. The teller then returned the ID and gave $1,000 to David, who left Bank.

Customer received a notification on her banking app, alerting her that a $1,000 check had just been charged to her account. Customer promptly called Bank to complain. She was transferred to a fraud investigator and immediately exclaimed, "I didn't write that $1,000 check that you just charged to my account!" Customer was noticeably frustrated and angry.

The investigator began an investigation. First, he compared the signature on the check with Customer's signature in Bank's records and concluded that Customer's signature had been forged on the check. He then reviewed the original video recording of the lobby, counters, and tellers, taken by Bank's security cameras on April 18, 2024. Based on that review, the investigator determined that an individual, later identified as David, had presented a $1,000 check purportedly drawn on Customer's account and that the teller had cashed it. The investigator wrote a report detailing Customer's complaint, describing the video recording, and attaching copies of the check at issue and a copy of Customer's signature from Bank's records.

In a statement to law enforcement, David denied visiting Bank that day. He has pleaded not guilty. The case is now scheduled for trial in federal court. Neither Customer nor the teller is available to testify. However, Bank's investigator, who is a 10-year employee of Bank and works in an office next to Bank's lobby, is available and will testify.

Evaluate the admissibility of the following evidence if it is offered during the testimony of Bank's investigator in the government's case-in-chief. (Do not discuss constitutional issues.)

1. Bank's original video recording of its lobby, counters, and tellers from April 18, 2024, which shows David stopping at the counter in the lobby and interacting with the teller. Explain.

2. The investigator's testimony as to Customer's oral complaint to the investigator. Explain.

3. The investigator's written report, if the investigator testifies that he is unable to recall both the details of the investigation and writing the report. (Assume that the report is relevant and not admissible as a business record.) Explain.

MEE Question 6

Six years ago, Alice properly created a trust naming a local bank as the sole trustee and naming herself as the sole beneficiary of the trust income. The trust provided that upon Alice's death, the trust principal would be distributed to her niece, Shirley. Alice and Shirley had a very close relationship, although they lived far apart. The trust also directed the trustee to invest trust assets only in "prudent investments." The trust was silent as to whether it was revocable or irrevocable.

When Alice created the trust, she also properly executed a durable health-care power of attorney naming John, her friend and next-door neighbor, as her agent to make health-care decisions for her. This power was expressly conditioned upon Alice's being unable to make health-care decisions for herself.

Four weeks ago, before she left for a vacation in Europe, Alice had separate telephone conversations first with Shirley and then with John. In both conversations, Alice mused about her wishes if "something should ever happen to me." Alice said to Shirley, "If something should happen to me, I don't want to be connected to a life-support system." In her later conversation with John, Alice told him, "In no event do I ever want to be connected to a life-support system if there is little or no hope of my recovery."

Three weeks ago, Shirley found out that the trustee had imprudently invested 30% of the trust's assets in the stock of a company that later went bankrupt, resulting in a significant loss to the trust. Furious, Shirley immediately contacted the bank officer overseeing the trust. After hearing Shirley's complaints, the trust officer responded truthfully that Alice had approved the investment knowing that it was imprudent. He also accurately told Shirley that Alice was fully competent when she approved the investment. The trust officer then told Shirley, "I guess you win some and you lose some."

The next day, Shirley called Alice, who was still vacationing in Europe, to express her anger about the investment. Alice responded, "We can talk about this when I get home in two weeks."

The day after Alice returned home, she had a stroke and was rushed to the hospital. Three hours later, Alice was connected to a life-support system. Her doctor determined that the stroke had left her unable to make her own health-care decisions. The doctor contacted John and Shirley and told them, "It is unclear whether she will survive or, if she survives, what kind of life she will have. We should know much more in a week or so." Shirley believed that the life-support system should be removed immediately and told the doctor to do so at once. John disagreed and told the doctor to keep Alice on the life-support system.

Ten years ago, the jurisdiction adopted the Uniform Trust Code and a health-care power of attorney act.

1. Is the trust revocable or irrevocable? Explain.
2. (a) Does Shirley have an interest in the trust? Explain.
   (b) Assuming that Shirley has an interest in the trust, how is this interest characterized? Explain.

3. Assuming that Shirley has an interest in the trust, does she have a claim against the bank for making the imprudent investment? Explain.

4. Between Shirley and John, who has the legal authority to direct the doctor whether to remove Alice from the life-support system? Explain.

February 2025
MPT-1 Item

Turner v. Larkin

Turner v. Larkin

FILE

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Tan & Singh Law Offices LLC
740 East Broadway, Suite 200
Centralia, Franklin 33402

MEMORANDUM

To: Examinee
From: Elise Tan
Date: February 25, 2025
Re: Peter Larkin—Defense of housing discrimination claim

Our firm has been retained to defend landlord Peter Larkin in a housing discrimination claim brought by Martin Turner. Turner, a single parent with three minor children, applied to rent a two-bedroom apartment from Larkin. Larkin declined Turner's application. Turner claims that Larkin refused to rent to him for discriminatory reasons in violation of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq*. Larkin claims that he declined the rental application for nondiscriminatory reasons, that he has a long-standing preference for renting to married couples, and that he has a policy of only renting this apartment to a maximum of three people.

Turner filed an administrative complaint with the US Department of Housing and Urban Development (HUD) alleging that Larkin had violated the Fair Housing Act by refusing to rent because of Turner's familial status. The matter has been assigned to an administrative law judge. I attach the factual narrative from Turner's HUD administrative complaint. I also attach a summary of an interview that I conducted with Larkin and a text exchange that Larkin had with a previous prospective tenant for the apartment.

Please draft an objective memorandum to me analyzing the legal and factual arguments that we should raise in Larkin's defense and the legal and factual arguments that Turner may raise in support of his claim. Your memorandum should clearly state the legal test(s) that will be applied to Turner's claims, and you should evaluate the likelihood of success of Larkin's arguments. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

Excerpt from HUD Administrative Complaint form

February 11, 2025

How were you discriminated against? State briefly what happened: I was moving from San Francisco to Centralia in Franklin so that I could be closer to my parents. My spouse died two years ago, and I am a single parent of three children: Martha, age 16; Maura, age 12; and Max, age 6. On November 6, 2024, I saw an advertisement online for a two-bedroom apartment in downtown Centralia that was close to my parents' place. I am employed as a data analyst, and I can easily afford that apartment on my income. I have a good rental history and good credit. I texted the number listed and asked if the apartment was still available. The landlord texted back, leading to this exchange:

Me: Hi. I saw the listing for the apartment in Centralia. Is it still available?

Landlord: Hi. This is Pete Larkin, the landlord. Yes, it is still available. Are you married?

Me: No, I'm widowed.

Landlord: Would anyone else be living there?

Me: Yes, my three kids. Two girls and a boy, ages 6, 12, and 16.

Landlord: I don't know. I need to think about that. I'll get back to you.

The landlord never got back to me. I'm convinced he wouldn't rent to me because I have kids. I checked back on Craigslist over the next two months. The apartment continued to be listed for rent.

Do you feel that you were discriminated against because of your race, color, religion, sex, national origin, familial status (families with children under 18), or disability? Yes, familial status.

Martin Turner

Martin Turner

Tan & Singh Law Offices LLC

FILE MEMORANDUM

From: Elise Tan
Date: February 24, 2025
Re: Interview with client Peter Larkin

I met with our client Peter Larkin this morning to discuss the Fair Housing Act administrative complaint filed by Martin Turner. Larkin verified that the text exchange described in the complaint is accurate and complete. The following summarizes Larkin's answers to my questions.

Tell me about your experience as a landlord. I've owned rental apartments for about 20 years. I first got into it to supplement my salary as an accountant. I now do it full time. I own seven buildings, all in the Centralia area. This building is one of the larger ones I own. It's a five-floor building with 20 units.

Do you live in the building? No. I live in a townhouse about a mile away.

Where did you place the advertisement for the apartment? What, exactly, did the advertisement say? I placed it on Craigslist. It said this: "Two-bedroom apartment for rent in downtown Centralia. New kitchen appliances. Sunny second-floor walkup. $2,200/month rent, utilities included. Call or text 555-2346."

Why did you say that it would be a problem to rent to Turner? There were two problems. First, he's single. I really don't like to rent to unmarried people because I like to have two incomes for each apartment that I rent. It just makes me feel more comfortable that the rent will be paid on time. Second, I have a policy of renting that particular apartment to a maximum of three people, and with his kids, there would have been four people.

Did you rent the apartment to another person? When? It took me a couple of months, but ultimately I was able to rent the apartment to a married couple.

Can you tell me more about your preference for married people? Again, it is a financial and stability thing. I want to have married couples with two incomes, and I want to reduce the likelihood that one person is going to move out in the middle of the lease. If they are married, it's less likely that only one of the tenants will pay their rent. I've been a landlord for a long time, and I have a bunch of other apartments that I rent

out. Based on my experience, married people are just more stable in their relationships and are more likely to pay their rent on time. They are just more financially stable than single people. I've turned down single people and unmarried couples who have applied for that apartment before.

Did you think that Mr. Turner could afford to rent the apartment? I didn't get to the point of asking him for financial information. He might have had a good job. He might have good credit. I don't have any reason to think otherwise. But as I said, I prefer to rent to married couples because in my experience they are more stable financially. A couple of years ago, I rented to a single guy with a good income. He lost his job and left town, and I was left with no rental income for months. I learned that people who have good jobs sometimes lose them. It doesn't matter how good your credit is if you lose your job. Couples break up. Sure, married people sometimes get divorced, but they are more likely to stay together than unmarried people.

What about your policy of having a maximum of three people in that apartment? It is a pretty small apartment—only 500 square feet. But for me, the major issue is the character of that neighborhood. There are a lot of younger people in their early 20s who live there. It's close to Slate Street, which has a lot of nightclubs. I've had problems with young people cramming four people into a two-bedroom apartment to keep their housing costs down. So for two bedrooms in that area, my policy is to rent to at most three people, ideally including a married couple.

Did you have any problem with Turner having minor children? Not specifically. As I mentioned, I want to rent to married couples for financial reasons, and my policy of having at most three people in that apartment is about the total number of people in the apartment. I wouldn't want four people in there, whether they are adults or children.

Have you rented to married couples with children before? Yes. I do that often. For example, I'm renting an apartment in this same building to a married couple with two children right now. But that's a much bigger three-bedroom apartment on the fifth floor. I wouldn't mind having a married couple with one child in the apartment that Turner wanted to rent.

Have you applied your policy to other potential renters? Yes. I turned down a group of four single people in their 20s for this same apartment two years ago. Here is the text exchange that I had with one of them:

Jake: Hello. My name is Jake. I'm looking for apartments in Centralia. Is the apartment that you listed still available?

Larkin: It is. Tell me about yourself. Are you married? Would it be just you in the apartment?

Jake: I'm single. It would be me and three of my friends.

Larkin: Oh. Sorry. I really prefer to rent to married couples. And I want at most three people in that apartment—it is pretty small.

Jake: You seriously care about whether I'm married?

Larkin: Yes. I've found that married couples pay their rent on time and are less likely to flake out on me.

Jake: That's stupid. But whatever—I'll find another place.

Excerpts from the United States Fair Housing Act, 42 U.S.C. § 3601 *et seq*.

§ 3602 Definitions

As used in this subchapter . . .

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 3603 Effective dates of certain prohibitions

. . .

(b) Exemptions. Nothing in [section 3604] shall apply to—

. . .

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

§ 3604 Discrimination in the sale or rental of housing and other prohibited practices

[I]t shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

. . .

Excerpt from the Centralia Municipal Housing Code

§ 15 Maximum Occupancy of Dwellings

(A) No dwelling shall be occupied by more than the number of people permitted in this section.

(1) 300 square feet or less: no more than two people.

(2) 301–450 square feet: no more than three people.

(3) 451–700 square feet: no more than four people.

(4) 701–900 square feet: no more than five people.

(5) 901–1,100 square feet: no more than six people.

(6) 1,101–1,300 square feet: no more than seven people.

Karns v. U.S. Department of Housing and Urban Development
(15th Cir. 2006)

Angela Karns filed an administrative complaint with the US Department of Housing and Urban Development (HUD) claiming that property owner Fiona Dickson had violated the Fair Housing Act (FHA), 42 U.S.C. § 3604(a). At issue is whether Dickson's comments to Karns indicated a refusal to rent to Karns on the basis of "familial status." After a hearing, the administrative law judge (ALJ) concluded that Karns had failed to prove that Dickson's statements indicated a refusal to rent on the basis of Karns's familial status. Karns petitioned for review of the ALJ's decision. We hold that Karns proved her claim of discriminatory conduct and therefore reverse.

BACKGROUND

Karns filed an administrative complaint with HUD alleging that Dickson violated 42 U.S.C. § 3604(a) by engaging in discriminatory conduct when she told Karns that she would not rent an apartment to her because Karns was not married and had two children.

At the hearing, Karns testified that, in 1998, she was looking for an apartment for herself and her two children (then ages five and nine) when she saw a newspaper advertisement for a two-bedroom apartment for rent in Smithtown, Franklin. On August 21, Karns spoke by phone to Dickson. Karns wrote detailed notes of the conversation:

Karns: I was calling about the apartment in Smithtown.
Dickson: How many are in your family?
Karns: Three. 1 adult & 2 small children.
Dickson: Are you married?
Karns: No.
Dickson: (Long pause) I don't know. I've got to pay my mortgage. I'll think about it and get back to you.

Dickson never called Karns back. On September 17, Karns noticed another newspaper advertisement for the same apartment that listed the same telephone number. She again called Dickson to inquire about the apartment, but unlike before, Karns stated that she was single and had no children. She again took detailed notes:

Karns: I called about the apartment.
Dickson: How many are in your family?
Karns: One—just me.
Dickson: Do you work?

Karns: Yes, at Smithtown Bank.
Dickson: Well, the apartment has a large dining room, kitchen, two bedrooms. It's on the 1st floor. . . . I can show the apartment on Monday . . .

The ALJ concluded that Karns had failed to show by a preponderance of the evidence that Dickson had violated § 3604(a) because Karns had not proven that the telephone calls with Dickson indicated discrimination based on familial status rather than a concern over financial matters. Karns claims that the ALJ erred.

DISCUSSION

Karns Established Her Claim for Discrimination Based on Familial Status.

We apply the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), for evaluating claims of discrimination under 42 U.S.C. § 3604(a). First, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence. To establish a prima facie case of discrimination under the FHA, plaintiffs must show (1) that they are a member of a protected class, (2) that they applied for and were qualified to rent the dwelling, (3) that they were denied housing or the landlord refused to negotiate with them, and (4) that the dwelling remained available. The term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling. "Qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background.

Second, if a plaintiff establishes a prima facie case of discrimination, a presumption of illegality arises and the burden shifts to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the defendant are merely pretext for discrimination.

The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent or someone with an equivalent custodial relationship. 42 U.S.C. § 3602(k).

It is undisputed that at all relevant times, Karns had two children under the age of 18 who resided with her. Karns demonstrated that she was denied housing. She inquired

about renting the apartment and was qualified to rent the apartment. Dickson, the property owner, refused to negotiate with her. The apartment remained available when Karns made her second call on September 17 to inquire about the apartment. Thus, Karns has made a prima facie case of discrimination based on familial status under the FHA.

The ALJ accepted Dickson's argument that she "was clearly more concerned with financial matters than the makeup of Karns's family" because Dickson expressed her need to "pay [her] mortgage." Karns argues that Dickson's financial argument is pretext for discrimination based on familial status. We agree.

Dickson asserts two nondiscriminatory reasons for her refusal to negotiate with Karns: (1) she was concerned about Karns's finances and (2) she was concerned that Karns was unmarried. The evidence shows that both of these asserted reasons are pretextual. Dickson's statements in the August 21 conversation do not support the ALJ's conclusion that Dickson's only concern was Karns's ability to pay the rent. After learning that Karns was an unmarried mother of two small children, Dickson declined to negotiate with Karns for the rental. In fact, that Karns was an unmarried mother of two small children was all that Dickson knew about Karns at that point. Dickson had not asked a single question about Karns's finances (nor did she at any point in the conversation). She possessed no information whatsoever about Karns's income, credit history, assets, or liabilities. For all Dickson knew, Karns could have been a multimillionaire. Under these circumstances, substantial evidence does not support the ALJ's conclusion that Dickson refused to rent to Karns on August 21 because she was concerned about Karns's ability to pay the rent. Rather, Dickson's refusal to rent the apartment armed only with the knowledge that Karns was a single mother of two small children indicates that Dickson assessed Karns's ability to pay rent based on her familial status, not on her financial situation.

Dickson's argument that the August statements indicate a nondiscriminatory reason for denial based only on Karns's *marital* status, not one based on her familial status, is also unsuccessful. The FHA does not include marital status among its protected classifications. *See* 42 U.S.C. § 3604(a) (omitting "marital status" from categories of protected classes under the FHA).

In support of this argument, Dickson points to her question in the August call about Karns's marital status. During the September call, however, Dickson agreed to show the apartment, thinking that Karns was single. The evidence thus demonstrates that in the August conversation it was Karns's representation that she had children, not the fact that she was unmarried, that constituted the reason for Dickson's refusal to rent to her.

Karns has demonstrated that Dickson's asserted reasons for nondiscrimination were pretexts for her refusal to rent to Karns due to her familial status. Accordingly, the ALJ's conclusion that Karns failed to establish a violation of § 3604(a) is not supported by substantial evidence.

Reversed.

Baker v. Garcia Realty Inc.
United States District Court for the District of Franklin (1996)

This matter is before the court on plaintiffs' motion for summary judgment on their housing-discrimination claim, brought pursuant to 42 U.S.C. § 3604. The plaintiffs, Sheldon and Peggy Baker, are a married couple with five minor children. The family decided to relocate to Creekside, Franklin, because Sheldon Baker had been accepted into a graduate program at nearby Aberdeen University. On June 9, 1994, he traveled from Olympia to Creekside to obtain an apartment for his family. Upon his arrival in Creekside, Baker approached employees of defendant Garcia Realty and requested to see an apartment. Soon thereafter, employees of Garcia showed him two apartments located at 632 Hinman Avenue in Creekside. Baker completed an application for Unit 1A, a three-bedroom apartment. In his application, Baker disclosed that he intended that his spouse and five minor children would live with him, for a total of seven people in the unit.

Around June 23, an employee of Garcia informed Baker that his rental application had been rejected. The stated basis was Garcia's occupancy policy, which provided for a maximum occupancy of four people in a three-bedroom apartment. Under Garcia's "bedrooms plus one" occupancy policy, a maximum of three people may occupy a two-bedroom apartment, a maximum of four people may occupy a three-bedroom apartment, and a maximum of five people may occupy a four-bedroom apartment.

DISCUSSION

The Fair Housing Act (FHA) makes it unlawful to "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . familial status." 42 U.S.C. § 3604(a). "Familial status" refers to the presence of minor children in the household. 42 U.S.C. § 3602(k).

The Bakers are claiming that Garcia's occupancy policy, while facially neutral, had a disparate impact on them because of their familial status. In this type of case, the Fifteenth Circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant first must make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff makes this prima facie showing, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the

defendant landlord meets the burden at step two, the burden shifts back to the plaintiff, who may then prevail only if they can show that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect. Courts apply this disparate-impact analysis when we are analyzing a facially neutral policy. This analysis resembles, but is distinct from, the *McDonnell Douglas* test that is used to analyze claims that a landlord discriminated against a tenant through specific actions that may be ambiguous.

A. Prima Facie Case

Here the Bakers have established a prima facie case of disparate impact. Garcia's "bedrooms plus one" policy clearly impacts families with minor children more than it does the general population. Minor children frequently share bedrooms, and families with minor children tend to have larger households than families without minor children at home.

B. Nondiscriminatory Reason for Policy

Thus, the burden now shifts to Garcia to articulate one or more substantial, legitimate, nondiscriminatory interests served by its policy. Garcia asserts that its occupancy policy avoids the risk of large groups of Aberdeen students overpopulating units in an attempt to reduce their rental payments. Garcia has articulated a substantial, legitimate, nondiscriminatory interest served by its practice—avoiding renting to groups of college students.

C. Overbreadth and Less Restrictive Means

Accordingly, the burden now shifts back to the Bakers to demonstrate that Garcia's policy is overbroad or that there is a less restrictive means to achieve Garcia's goal of avoiding renting to groups of college students. The Bakers argue that Garcia's policy regarding the number of people living in apartments of various sizes is overbroad because it is far more stringent than the requirements of the Creekside Municipal Code. Like many municipalities, the City of Creekside sets maximum occupancy limits on the number of people who can live in housing units of different sizes. Unlike Garcia's policy, which is stated in terms of number of people per bedroom, the Municipal Code is stated in terms of number of people per square foot of living space. Unit 1A is a 1,700-square-foot, three-bedroom apartment. The Code permits up to eight people to live in an apartment of this size. Occupancy of the unit by the seven members of the Baker family would therefore

be permitted under the Code. In contrast, the Garcia policy states that three-bedroom apartments like Unit 1A can be occupied by a maximum of four people.

The Fifteenth Circuit has held that in cases of alleged familial-status discrimination, a significant mismatch between occupancy limits set by a municipal code and those set by a landlord is evidence that the landlord's limit is overbroad. Although there is no specific mathematical formula, Fifteenth Circuit case law indicates that a significant mismatch would occur, for example, where a landlord limits occupancy to two people in an apartment that, under the applicable local housing code, can be occupied by four people. Here, the number of people permitted to occupy Unit 1A under the Creekside Code—eight—is significantly greater than the number permitted under Garcia's policy—four. The Bakers therefore are correct that this difference constitutes a significant mismatch and provides evidence that the Garcia policy is overbroad.

The Bakers can also show that Garcia could use a less restrictive means of meeting its stated goal of avoiding renting to large groups of college students. Among other things, the Bakers have demonstrated that the information collected by Garcia's rental application easily allows the rental company to tell the difference between a group of college students and a family with minor children protected by the familial-status provisions of the FHA. Garcia offers no explanation for why it applies the occupancy policy regardless of whether those seeking to inhabit its apartments are college students as opposed to families with children far too young to attend Aberdeen University.

The Bakers could have met their burden either by showing that Garcia's "bedrooms plus one" policy is overbroad or by showing that the goals of that policy can be achieved with a less restrictive means. They have shown both. Accordingly, the motion for summary judgment is GRANTED.

February 2025
MPT-2 Item

In re University of Franklin

In re University of Franklin

FILE

LIBRARY

University of Franklin
Office of University Counsel
Howler Hall
10 Campus Drive, Ste. 100
Franklin City, Franklin 33701

MEMORANDUM

To: Examinee
From: Loretta Rodriguez, General Counsel
Date: February 25, 2025
Re: Professor Eugene Hagen matter

We have been asked to advise regarding an Inspection of Public Records Act (IPRA) request for records relating to Professor Eugene Hagen. The purpose of IPRA is to allow inspection of records that are normally maintained by public entities in order to provide transparency and insight into public operations and functions. Fr. Civil Code § 14-1 *et seq*. The University of Franklin (UF) is subject to IPRA requests as a public institution. We were contacted by Cheryl Williams, Dean of the UF School of Law, and Chip Craft, Chief of Police of the UF Campus Police Department. They were copied on the request.

Professor Hagen has taught at the law school since 2012. Last fall, the Faculty Misconduct Review Committee (FMRC) conducted a faculty peer hearing. The FMRC suspended Professor Hagen from UF for one year without pay, pursuant to UF disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Professor Hagen was suspended based on a conviction for driving under the influence (DUI) and a positive test for cocaine.

The suspension of Professor Hagen has received a fair amount of attention from the academic community and the media. The requestor, Paul Chen, is a student reporter at the UF student newspaper, *The Daily Howl*. Mr. Chen has already published one article (see attached) about Professor Hagen.

Please write a memorandum to me addressing whether we must produce each of the requested documents. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your conclusions.

The Daily Howl
The Independent Voice of the University of Franklin Since 1922

What Is UP with Professor Eugene Hagen?

By Paul Chen, staff writer

September 19, 2024

Once-beloved University of Franklin (UF) law professor Eugene Hagen will face UF's Faculty Misconduct Review Committee this Friday. A confidential source reports that Hagen is scheduled to appear before the committee on charges that he violated UF's disciplinary policy C07, which allows for suspension of a faculty member for "illegal use of drugs or alcohol." Hagen was arrested by the Franklin City Police on May 25, 2024, for driving under the influence (DUI). At the time of arrest, Hagen tested positive for cocaine. Hagen was convicted of DUI on September 17, 2024, in Franklin City municipal court.

The UF School of Law community is still shocked by Hagen's arrest and subsequent conviction for DUI. "Professor Hagen was my favorite professor 1L year. I can't believe this happened. He's brilliant," said Susan Ellwood. "I actually enjoyed getting cold-called by Professor Hagen," said Thomas Kennedy. However, another student, 3L Kate Rogers, noted that her mother had written a letter complaining about Hagen to UF Law School Dean Cheryl Williams. Rogers added, "I thought there was something wrong with Hagen. I thought that he was a drunk. How was I supposed to know that he was using cocaine?" Pamela Rogers, Kate Rogers's mother, echoed her daughter's statement and said, "Last year I wrote a letter to Dean Williams complaining about Professor Hagen, and I wrote, 'that man has a substance abuse problem and should not be teaching our children.'"

UF's Faculty Misconduct Review Committee has a reputation for being strict. We will keep you informed as the Eugene Hagen story continues to unfold.

The Daily Howl
University of Franklin
30 Campus Drive
Franklin City, Franklin 33701

February 24, 2025

Custodian of Records
University of Franklin
Howler Hall
10 Campus Drive
Franklin City, Franklin 33701

Re: Professor Eugene Hagen, Inspection of Public Records Act request

Dear UF Custodian of Records:

I am a student reporter at *The Daily Howl*. I am writing to request records pursuant to the State of Franklin's Inspection of Public Records Act. The requested items concern the UF School of Law and Professor Eugene Hagen.

I intend to write and publish a follow-up article about Professor Hagen. The public and the UF community have a right to know whether the university knew about Professor Hagen's drug use prior to his DUI arrest.

The requested items are

1. Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present.
2. Any complaints about Professor Hagen submitted by members of the public to the UF School of Law.
3. A chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen.
4. Any records involving Professor Hagen in the possession of the UF Campus Police Department.

Sincerely,
Paul Chen

Paul Chen, staff writer

cc: Dean Cheryl Williams
Chief of UF Campus Police Chip Craft

From: Dean Cheryl Williams
Sent: February 25, 2025, 8:15 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL – IPRA request re: Eugene Hagen

Dear Loretta,

The university received the attached IPRA request from Paul Chen at *The Daily Howl*. He is asking for records from Professor Eugene Hagen's personnel file. I need your advice. As you know, Professor Hagen was suspended for one year without pay on September 20, 2024, under disciplinary policy C07 for "illegal use of drugs or alcohol" related to his September 17, 2024, conviction for driving under the influence (DUI).

Eugene's last two annual performance reviews, which I completed, were mixed. His teaching is strong, and he's a popular teacher. That said, he hasn't been showing up for faculty or committee meetings or his office hours, and I did note concerns about these absences in his annual review both this year and last year. I also referenced Eugene's student course evaluations in his annual reviews. There are a lot of negative comments in the student course evaluations from the past two years to the effect that Eugene has been late for classes and has been moody and erratic in class. Students have noted that Eugene often misses office hours and doesn't respond to students' emails. The student course evaluations themselves are not attached to the annual performance reviews.

The annual performance reviews contain a lot of general information—what classes Eugene taught, the quality of his teaching, the committees he served on, what publications he completed, and the quality of his publications. While Eugene has tenure, annual reviews are still required so that we can assess his ongoing performance as a faculty member.

While I have received several complaints from students about Eugene, I have only received one complaint from a member of the public. It is a letter from Pamela Rogers, the mother of a current law student. I placed the letter in Eugene's personnel file.

We don't have a chart containing the names of people who have made a complaint about Eugene. It would take some time to make one, but we can do it.

Honestly, we knew that something was off about Eugene, but we didn't know what it was until his DUI arrest. I want to ensure that we comply with the law in producing records pursuant to this IPRA request, but I'd also like to protect as many documents as possible from disclosure.

Thanks so much for your help with this.
Cheryl

Cheryl Williams
Dean and Professor of Law, UF School of Law

From: Chief of UF Campus Police Chip Craft
Sent: February 25, 2025, 9:05 a.m.
To: General Counsel Loretta Rodriguez
Subject: PRIVILEGED AND CONFIDENTIAL - IPRA request

Dear Counselor Rodriguez,

I am writing to request your advice regarding the attached IPRA request that the university received yesterday from a student reporter at *The Daily Howl*.

We are aware that Professor Eugene Hagen was arrested by the Franklin City Police for DUI last May. We do not have any records related to that arrest. Those records are kept by the Franklin City Police Department.

However, we do have records here at the UF Campus Police Department related to a recent arrest of Professor Hagen for possession of marijuana. Just two weeks ago, on February 11, 2025, we received a confidential tip that Professor Hagen was smoking marijuana in his office. UF Police Officer Sharla Marx was at the UF School of Law and went immediately to Professor Hagen's office to investigate.

Officer Marx found Professor Hagen and another UF law professor, Hope Sykes, smoking marijuana from a bong in Professor Hagen's office. Officer Marx discovered 8 ounces of marijuana in the office. She then called the Franklin City Police Department, which sent an officer to apprehend Professor Hagen. The District Attorney's office has charged him with possession of marijuana. Professor Sykes was not arrested because, while she was smoking, she was not in possession of a sufficient amount of marijuana to be charged with a crime. While Professor Hagen was suspended at the time of the incident, he was not barred from being on campus or using his office.

In our records, we have only three items: an incident report and two photographs. The incident report contains details about the incident including the time, the date, the location, and the name of the confidential source. It also includes a description of what Officer Marx observed in Hagen's office and the statements made by Hagen and Sykes to Officer Marx. The two photographs are "selfies" showing both Hagen and Sykes with the bong in Hagen's office on the night in question.

Our investigation and the Franklin City Police Department's investigation are ongoing. What, if anything, do I need to produce in response to the request?

Thanks for your help with this.

Chip

Chip Craft
Chief of Police
University of Franklin Campus Police Department

FRANKLIN INSPECTION OF PUBLIC RECORDS ACT
Franklin Civil Code § 14-1 *et seq*.

§ 14-1 Definitions

(a) "Public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

. . .

§ 14-2 Right to inspect public records; exemptions

(a) Every person has a right to inspect public records of this state except

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning licensing or permits;

(3) letters or memoranda that are matters of opinion in personnel files;

(4) portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime, including any record from inactive matters or closed investigations to the extent that it contains the information listed in this paragraph;

(5) trade secrets, attorney-client privileged information, ...

. . .

§ 14-5 Procedure for requesting records

(a) Any person wishing to inspect public records shall submit a written request to the custodian.

(b) Nothing in this Act shall be construed to require a public body to create a public record.

§ 14-6 Procedure for inspection

(a) Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.

. . .

Fox v. City of Brixton
Franklin Court of Appeal (2018)

Plaintiff Robert Fox made a written request to the City of Brixton pursuant to the Franklin Inspection of Public Records Act (IPRA) asking to inspect and copy all citizen complaints filed against John Nelson, a police officer employed by the City. The City denied the request on the ground that the information sought consisted of "letters or memoranda that are matters of opinion in personnel files" under § 14-2(a)(3) and were therefore exempt from disclosure. Fox then sued the City of Brixton, alleging that it had violated IPRA by denying his request. The district court granted summary judgment to the City, finding that there were no material facts in dispute and that the citizen complaints requested were not subject to inspection. The sole issue on appeal is whether the district court erred when it held that Fox was not entitled to inspect citizen complaints concerning the on-duty conduct of a police officer.

Franklin courts have long recognized IPRA's core purpose of providing access to public information, thereby encouraging accountability in public officials. A citizen has a fundamental right to have access to public records. The public's right to inspect, however, is not without limitation. IPRA itself contains narrow statutory exemptions. In ruling that the City was not required to provide Fox with access to the requested citizen complaints, the district court relied on § 14-2(a)(3), which states that "letters or memoranda that are matters of opinion in personnel files" are exempted from disclosure under IPRA. Interpreting this provision requires us to determine what the legislature intended to include within "matters of opinion in personnel files." We agree with the district court's assessment that the location of a record in a personnel file is not dispositive of whether the exemption applies; rather, the critical factor is the nature of the document itself. To hold that any matter of opinion could be placed in a personnel file, and avoid disclosure under IPRA, would violate the broad mandate of disclosure embodied in the statute.

Construing § 14-2(a)(3) in a manner that gives effect to the presumption in favor of disclosure, we conclude that the legislature intended to exempt from disclosure "matters of opinion" that constitute personnel information of the type generally found in a personnel file, i.e., information regarding the employer/employee relationship such as internal evaluations;

disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews. The purpose of the exemption is to protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them.

This interpretation is also consistent with *Newton v. Centralia School District* (Fr. Sup. Ct. 2015). In *Newton*, a journalist sought access to all nonacademic staff personnel records held by the Centralia School District that were not specifically exempt from disclosure under IPRA. The journalist sought a ruling from the court that no portion of the personnel records of the employees was exempt from disclosure. The court held that the exemption applies to "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." The documents listed by the *Newton* court are all documents generated by an employer or employee in support of the working relationship.

Here, Fox argues that the citizen complaints at issue are not personnel information within the meaning of the exemption because the complaints arise from the officer's role as a public servant, not from his role as a city employee. Fox asserts that as a public servant, the officer has a statutory duty to conduct himself in a manner that justifies the confidence of the public. The City, on the other hand, argues that the citizen complaints are in fact personnel information because they relate to the officer's job performance, and the subject matter of the complaints might lead to disciplinary action against Officer Nelson.

We note that Fox is not requesting information regarding the City's investigative processes, disciplinary actions, or internal memoranda that might contain the City's opinions in its capacity as Officer Nelson's employer. The complaints in question were not generated by the City or in response to a City query for information; rather, these documents are unsolicited complaints about the on-duty conduct of a law enforcement officer, voluntarily generated by the very public that now requests access to those complaints. While citizen complaints may lead the City to investigate the officer's job performance and could eventually result in disciplinary action, this fact by itself does not transmute such records into "matters of opinion in personnel files" for purposes of § 14-2(a)(3).

The City also argues that police officers are "lightning rods for complaints by disgruntled citizens" and that, therefore, information in a complaint may be untrue or have no foundation in fact. This argument is unavailing. The fact that citizen complaints may bring negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure. City of Brixton police officers are without question "public officers," and the complaints at issue concern the official acts of those officers in dealing with the public they are entrusted with serving. It would be against IPRA's stated public policy to shield from public scrutiny as "matters of opinion in personnel files" the complaints of citizens who interact with city police officers. Accordingly, the citizen complaints requested by Fox are not protected from disclosure under § 14-2(a)(3).

We conclude, therefore, that citizen complaints regarding a police officer's conduct while performing his or her duties as a public official are not the type of "opinion" material the legislature intended to exclude from disclosure in § 14-2(a)(3).

Reversed.

Pederson v. Koob
Franklin Court of Appeal (2022)

This appeal is brought under Franklin's Inspection of Public Records Act (IPRA). Nancy Pederson appeals from an order denying her petition to compel the Franklin Livestock Board, a public agency, to make available for inspection an investigative report concerning one of its employees. Pederson claims that the court erred in concluding that the report in its entirety is exempt from disclosure under IPRA § 14-2(a)(3), the exemption for "letters or memoranda that are matters of opinion in personnel files." We affirm.

BACKGROUND

Pederson filed a complaint with the Franklin Livestock Board (the Board) alleging that Kenneth Larson, who was employed by the Board as a livestock inspector (a law enforcement position), had engaged in timesheet fraud by billing the Board for his time while working at a second job. The Board retained an outside firm to investigate whether the Board's rules on the billing of time had been violated, to investigate Larson's general job performance and compliance with the Board's rules of conduct, and to advise the Board on whether disciplinary action should be taken. After the investigation had been completed, Pederson sent an IPRA request to the Board's custodian of records, Julie Koob, asking for a copy of "the Investigation Report pertaining to Kenneth Larson [the Larson Report]."

The Board denied Pederson's request, stating that the report was exempt from disclosure under § 14-2(a)(3). Pederson filed a complaint in district court seeking a court order compelling the Board to produce the Larson Report. The district court granted the Board's motion for summary judgment, finding that "the undisputed evidence shows that the Larson Report concerns a potential disciplinary action against Larson, an employee of the Board" and concluding that "evidence is sufficient to shield the Larson Report from disclosure" under IPRA § 14-2(a)(3). This appeal followed.

DISCUSSION

Pederson argues that the Board's custodian of records was required to divide the Larson Report into "factual matters concerning misconduct by a public officer related to that officer's role as a public servant" and "matters of opinion constituting personnel information" that are related to the officer's role as an employee. Pederson agrees that

the "matters of opinion" concerning discipline are exempt from disclosure under IPRA § 14-2(a)(3) but claims that "matters of fact" must be disclosed. We disagree.

In *Newton v. Centralia School District* (Fr. Sup. Ct. 2015), the Franklin Supreme Court described this IPRA exemption as applying to letters or memoranda *in their entirety*. It reasoned that the legislature intended the phrase "letters or memoranda that are matters of opinion in personnel files" to include items such as "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." The court characterized these documents as a whole as "opinion information," a reading that is consistent with the plain language of the exemption.

Moreover, the full document exemption under § 14-2(a)(3) overrides the requirement in § 14-6 that nonexempt matter in that document be disclosed. Thus, Pederson is incorrect in asserting that, even if § 14-2(a)(3) applies to "letters or memoranda" in their entirety, under § 14-6(a) the Board must separate "matters of fact" from "matters of opinion" and produce the matters of fact for inspection. Section 14-6(a) requires the custodian of records to separate exempt records from nonexempt records. When an exemption applies only to certain portions of a document, such as the § 14-2(a)(4) exemption related to *portions* of law enforcement records, then separating the exempt from nonexempt material demands redaction of the exempt material in that document. However, when an exemption applies to a document *as a whole*, as § 14-2(a)(3) does, the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed.

We agree that under IPRA the entire Larson Report is exempt from disclosure. Affirmed.

Torres v. Elm City
Franklin Supreme Court (2016)

Section 14-2(a)(4) of the Franklin Inspection of Public Records Act (IPRA) creates an exemption from inspection for certain law enforcement records. Plaintiff James Torres filed an IPRA enforcement action against Elm City after it denied his request for records related to his sister's arrest on the ground that the records were part of an ongoing investigation. The court granted summary judgment to Elm City, finding that the requested records were exempt from disclosure under IPRA, and dismissed Torres's IPRA enforcement action. The Court of Appeal affirmed. Torres filed a petition for a writ of certiorari, which we granted.

Francine Ellis was arrested by Elm City police officers for aggravated assault on March 5, 2015. On April 1, 2015, Ellis's brother James Torres sent a written IPRA request to Elm City seeking various records relating to the arrest. Elm City responded 14 days later, agreeing to produce a primary incident report and one subpoena. But Elm City denied production of all other pertinent records in its possession, citing § 14-2(a)(4), which exempts from the general IPRA disclosure requirement "portions of any law enforcement record that reveal confidential sources or methods or that are related to individuals not charged with a crime." Elm City stated that its police department was investigating the crime and therefore "release of the requested information posed a demonstrable and serious threat to that ongoing criminal investigation" and that the requested records would be released "when the release of such records no longer jeopardized the law enforcement investigation." Elm City claims that, in enacting § 14-2(a)(4), "the legislature intended that records pertaining to ongoing investigations remain sealed until the investigation is complete."

DISCUSSION

As declared by our legislature, the purpose of IPRA "is to ensure . . . that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." § 14, *Declaration of Policy*. The legislature has limited this general rule by providing specific exemptions to the right to inspect public records. *See* § 14-2(a)(1–8). Central to this case is § 14-2(a)(4), which provides certain exemptions for law enforcement records.

Nowhere does § 14-2(a)(4) exempt *all* law enforcement records relating to an ongoing criminal investigation. Rather, the plain language of § 14-2(a)(4) indicates that the legislature was not concerned with the stage of the investigation as such: "[L]aw enforcement record[s] that reveal confidential sources or methods or that are related to individuals not charged with a crime" are exempt, even if the law enforcement records relate to "*inactive matters or closed investigations*" (emphasis added). Contrary to the conclusion of the district court, the plain language of § 14-2(a)(4) indicates that the ongoing Elm City investigation was not, of itself, material to whether the requested records could be withheld. Instead of focusing on whether there was an ongoing investigation, the legislature was concerned with the specific content of the records. The district court seems to have required only that the requested records relate to an ongoing criminal investigation, or perhaps that inspection of the records would "interfere" with an ongoing investigation. Either standard is untethered from the plain language of § 14-2(a)(4).

Section 14-6(a) provides that requested law enforcement records containing both exempt and nonexempt information cannot be withheld in toto. Rather, when requested public records contain a mix of exempt and nonexempt information, the "exempt and nonexempt [information] . . . shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection." § 14-6(a); *see Wynn v. Franklin Dept. of Justice* (Fr. Sup. Ct. 2011) (Attorney General's audio recording relating to financial investigation required to be made available for inspection after redacting 90 seconds related to confidential informant information). Read together, the plain language of §§ 14-2(a) and 14-6(a) provides that Elm City was required to review the requested law enforcement records, separate information that did not "reveal confidential sources or methods or that [did not relate] to individuals not charged with a crime" from that which did, and provide the nonexempt information for inspection. By contrast, and incorrectly, the district court allowed Elm City to broadly withhold law enforcement records simply because there was an ongoing criminal investigation. Such an interpretation is overbroad and incongruent with the plain language of § 14-2(a)(4). *See Dunn v. Brandt* (Fr. Ct. App. 2008) ("The exemptions to IPRA's mandate of disclosure are narrowly drawn.").

We now examine whether the district court was correct to find that the records were exempt from inspection pursuant to § 14-2(a)(4). It is undisputed that there is an

ongoing law enforcement investigation; however, Elm City did not present evidence that any of the specific records that it refused to produce revealed "confidential sources or methods or [were] related to individuals not charged with a crime." § 14-2(a)(4). Nor did Elm City present any evidence that, as required pursuant to § 14-6(a), it had reviewed the requested records to separate exempt from nonexempt information, or that it had provided any nonexempt information. For these reasons, the district court incorrectly determined that the requested records were exempt from inspection pursuant to § 14-2(a)(4).

Reversed and remanded for further proceedings.

February 2025

New York State
Bar Examination

Sample Essay Answers

FEBRUARY 2025 NEW YORK STATE BAR EXAMINATION

SAMPLE ESSAY ANSWERS

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ANSWER TO MEE 1

1. Was Kim an agent of Comet Fitness when she purchased the treadmill?

An agency relationship is formed when one person (the principal) consents to have another (the agent) act on their behalf and the agent so consents to act. The agent must also act pursuant to the principal's control. The degree of control need not be significant.

Kim was not an agent of Comet Fitness when she purchased the treadmill. Kim purchased the treadmill after she ran into Bill and Nancy at a party. Nancy told Kim about the gym opening and suggested that Kim should consider coming to work for them as a personal trainer. Kim responded that she would think about it and let Nancy know. At that point, no agency nor employment relationship existed between Comet Fitness and Kim. Nancy did not consent to have Kim act on her behalf in purchasing the treadmills; Kim merely overheard Nancy and Bill discussing the gym's need for a treadmill and bought the treadmill in order to impress Bill and Nancy with her initiative. She did not do so pursuant to the control of Comet Fitness because Bill and Nancy were not even aware that Kim had planned to purchase the treadmill. Furthermore, not employment relationship arose because Kim had not formally accepted any employment opportunity. Therefore, Kim was not an agent of Comet Fitness when she purchased the treadmill.

2. Assuming that Kim was an agent of Comet Fitness,

(a) did she have actual authority to purchase the treadmill for Comet Fitness? Explain

Actual authority is the authority a reasonable person in the agent's position would believe they have based on the principal's conduct. Actual authority includes express authority: that explicitly stated, and implied authority: that which is incidental to any grants of express authority and necessary or related to carrying out that conduct.

Here, Kim did not have actual authority to purchase the treadmill for Comet Fitness. A reasonable person in Kim's shoes would not believe, based on Nancy and Bill's conduct or words, that they had granted Kim authority to purchase a treadmill. Nancy told Kim that Kim should consider coming to work for Comet Fitness as a personal trainer. Furthermore, upon Nancy and Bill leaving, Kim overheard a conversation between Bill and Nancy in which the pair discussed a desperate "need" for more treadmills. However, none of this conduct should indicate to a person in Kim's position that they have authority to go out and purchase treadmills. First, it is not clear that even if an employment relationship arose between Kim and Comet Fitness that a personal trainer would have authority to purchase treadmills. Such an inventory purchase is not likely within the scope of a personal trainer, but instead someone who would be a general manager. Therefore, the title of the job offer did not confer actual authority on Kim. Second, overhearing a convo between Bill and Nancy cannot confer actual authority. A reasonable person in

Kim's position might understand the gym to need treadmills, but not that they have the authority to go out and purchase them for the gym. Therefore, Kim did not have actual authority.

(b) Did she have apparent authority to purchase the treadmill for Comet Fitness? Explain

Apparent authority is the authority a reasonable person in a third party's position would believe the agent has based on the principal's representations. Apparent authority must stem from the principal "holding out" another as an agent; it usually is not reasonable for a third party to rely on the representations of the agent alone that they have authority.

Here, Comet Fitness did not hold out Kim as an agent, and therefore she did not have apparent authority to purchase the treadmill for Comet Fitness. Kim went to the sporting goods store and told the store owner that she was acting on behalf of Comet Fitness. The store owner did not have any representations from Comet Fitness in the form of writing or otherwise. It might be argued that Bill's call to the sporting-goods store prior to Kim's purchase conferred apparent authority on Kim. The argument is that based on Bill and Nancy's relationship with the sporting goods store's owner and the telephone conversation in which Bill expressed a desire to "get over" to the sporting goods store to check out the treadmills would make a reasonable person believe that someone would show up to the store to purchase treadmills and have the authority to do so. However, Bill expressed that he was the one hoping to come over to the store. Bill never expressed that Kim had authority or represented that they were affiliated. Kim did not have any relationship with Comet Fitness at the time of the purchase, and the sporting goods store owner had no reason to believe, based on Kim's representations alone, that she had apparent authority to purchase the treadmill.

3. Did Nancy have the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens?

Nancy likely had the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens. A partner is an agent of the partnership and will have the power to bind the partnership in contract if they have actual authority to act, apparent authority to act, or if the partnership ratifies the contract.

Here, Nancy likely had actual authority to bind Comet Fitness. Actual authority is the authority a reasonable person in the agent's position would believe they have based on the principal's conduct. Actual authority includes express authority: that explicitly stated, and implied authority: that which is incidental to any grants of express authority and necessary or related to carrying out that conduct. Here, Bill and Nancy operated Comet Fitness as a general partnership. Nancy, as a partner, had the actual authority to make decisions for the partnership in the ordinary scope of business, even without her partner's consent. For decisions outside the ordinary scope of business, it is likely that Nancy would have

needed consent from Bill. Here, it is reasonable for Nancy to think that she had the power to purchase a treadmill for Comet Fitness. Nancy and Bill had multiple conversations about the gym's need for a treadmill. As owners of a gym, it is reasonable that each partner would believe they have the power to purchase equipment for the gym. Nancy did not need Bill's permission to do so, as this decision was in the ordinary course of business. Furthermore, Nancy's purchase was for treadmills that were similar to ones that Nancy had previously purchased for Comet Fitness. There was no reason for Nancy to believe that she did not have the power to make this purchase. Therefore, Nancy likely had actual authority.

Even if Nancy did not have actual authority to bind Comet Fitness, she likely had apparent authority. Apparent authority is the authority a reasonable person in a third party's position would believe the agent has based on the principal's representations. Apparent authority must stem from the principal "holding out" another as an agent; it usually is not reasonable for a third party to rely on the representations of the agent alone that they have authority. A partner of a general partnership operating a business likely has apparent authority from their job title as partner. A partner would reasonably be able to make purchases for the partnership in order to further the business of the partnership. Furthermore, Bill and Nancy have a relationship with the store owner that would lead the store owner to believe that both Nancy and Bill, as owners of Comet Fitness, have the power to conduct the business and make purchases pursuant to this power. Therefore, Nancy had the authority to bind Comet Fitness to the contract either via actual or apparent authority, and Comet Fitness will be bound, despite Bill's objection.

ANSWER TO MEE 1

1. Was Kim an agent of Comet Fitness when she purchased the treadmill?

The first issue is whether Kim was an agent of Comet Fitness when she purchased the treadmill. An agency relationship is found where 1) the principal manifests intent for the agent to act on the principal's behalf and subject to the principal's control, and 2) the agent manifests assent to act on the principal's behalf and subject to the principal's control. As such, agency can be express or implied from the words and actions of the parties. The first factor is met where the principal's words or conduct would lead a reasonable person in the agent's position to believe that the principal intended the agent to act on the principal's behalf and subject to the principal's control. The second factor is met where the agent's words or conduct would lead a reasonable person in the principal's position to believe that the agent had assented to the agency relationship. Additionally, even where no agency relationship was formed, a court may estop a principal from claiming that no agency relationship existed in certain situations. Agency by estoppel generally applies to situations in which the principal negligently caused a third party to reasonably believe that an individual was acting as the principal's agent, and foreseeably, materially, and detrimentally changed position in reliance on that belief.

Here, neither Bill nor Nancy manifested intent for Kim to act on the partnership's behalf and subject to the partnership's control. Nancy's statement that Kim should consider coming to work for them proposed a future agency relationship. Kim's response that she would think about it and let Nancy know did not express her assent to enter into an agency relationship with the partnership. By responding that she would think about it, Kim explicitly did not assent to act as the partnership's agent at that time. Nancy and Bill's statements that Kim overheard similarly were insufficient to manifest intent for Kim to act as the partnership's agent. Bill's statement that he wished the gym had two more treadmills, and Nancy's statement that "we desperately need to buy one or two more," only establish that the partnership was interested in purchasing more treadmills. The statements did not reasonably communicate an intent for Kim specifically to buy treadmills on behalf of the partnership. A reasonable person in Kim's situation would not have understood these statements, taken together, to mean that Nancy and Ben intended Kim to serve as an agent with respect to the purchase of the treadmills. Nancy and Bill's statements expressed an intent for Kim to work for the partnership as a personal trainer, and purchasing equipment such as treadmills is not within the scope of a personal trainer's usual job description. As such, it would be unreasonable for Kim to conclude that the partnership intended her to purchase treadmills on its behalf, even if she had accepted the personal trainer offer. Additionally, Kim knew that Nancy and Bill were not talking to her when she overheard their statements about the gym's need for new treadmills. A reasonable person in Kim's situation would not understand these statements, that were not directly communicated to Kim, to mean that Nancy and Bill intended for Kim to purchase two treadmills on behalf of the partnership.

Additionally, while Kim's conduct could be sufficient to manifest assent to act as the partnership's agent, this is not sufficient to establish an agency relationship where the principal did not communicate an intent for the agent to act on its behalf. The facts also indicate that Kim did not subjectively believe she was authorized to act as the partnership's agent; she purchased the treadmills in an attempt to impress Bill and Nancy with her initiative in going ahead and purchasing the treadmills *without* authorization from the partnership.

Therefore, a court is likely to find that Kim was not an agent of Comet Fitness.

2. Assuming that Kim was an agent of Comet Fitness:

(a) did Kim have actual authority to purchase the treadmill for Comet Fitness?

A partnership is bound by contracts entered into by an agent with actual or apparent authority. Actual authority exists where the principal communicates to the agent that the agent has authority to take a particular action on behalf of the principal. The principal's communications must be such that a reasonable person in the agent's position would believe they had actual authority to act.

Here, as discussed above, Bill and Nancy's statements would not lead a reasonable person in Kim's position to believe she had actual authority to purchase treadmills on behalf of the partnership. While Bill and Nancy expressed an interest in purchasing more treadmills for the partnership, at no point did they make any statements to Kim that could reasonably be interpreted as an instruction or permission for Kim to make the purchase on the partnership's behalf. Here too, the fact that Kim did not subjectively believe she had been authorized to purchase the treadmills is strong evidence that she did not have actual authority. Rather, Kim intended to impress Bill and Nancy with her initiative in taking action that she had not been authorized to take.

Therefore, Kim did not have actual authority to purchase the treadmill for Comet Fitness.

(b) did Kim have apparent authority to purchase the treadmill for Comet Fitness?

Apparent authority exists where the principal's communications with a third party would lead a reasonable person in the third party's position to believe that the principal had authorized the agent to take some action on the principal's behalf. Apparent authority is concerned with representations between the principal and the third party, not between the principal and the agent or the agent and the third party. Absent some indication from the principal that the agent has authority, a third party may not reasonably rely solely on the agent's representation that she has authority. The third party must make reasonable efforts to ascertain whether the agent with whom it is transacting is authorized. As such, Kim's

representation to the store owner that she was acting on behalf of Comet Fitness is insufficient to establish apparent authority. The only communication between the store and the partnership occurred when Bill called the store to inquire about the treadmills and said, "I'll try to get over there to check them out." This statement would not lead a reasonable party in the store's position to believe that the partnership authorized Kim to make the purchase. Rather, Bill's statement was that he would personally come to the store to make the purchase. There was no basis for the store to believe that Kim or anyone besides Bill was authorized to make the purchase.

Therefore, Kim did not have apparent authority to purchase the treadmill for Comet Fitness.

3. Did Nancy have the authority to bind Comet Fitness to the contract to purchase the two treadmills with the video touchscreens?

The issue is whether Nancy, as a general partner, had authority to bind Comet Fitness to the contract to purchase the treadmills with video touchscreens. A general partner is an agent of the partnership. Generally, a general partner has actual authority to bind the partnership if the partner's exercise of authority is within the limits of the partnership agreement. A general partner has apparent authority to bind the partnership with respect to transactions in the ordinary course of partnership business. If the transaction is outside of the ordinary course of business for the partnership, authority exists only if the other partners consent by an affirmative vote.

Here, Nancy had apparent authority to bind Comet Fitness to the contract if the purchase was within the ordinary course of the partnership's business. Bill could argue that the purchase was not in the partnership's ordinary course of business, because the treadmills were more expensive than ordinary treadmills, or because the treadmills were an unordinary or special transaction for which his consent was required. However, this is not a strong argument because purchasing treadmills is within the ordinary scope of business of a gym. A third party contracting with a gym to sell fitness equipment, including expensive equipment like the touchscreen treadmills, would not have any reason to believe that the transaction was outside the ordinary course of the gym's business. Assuming a partnership agreement exists, there is no inconsistent provision of which the store should have been aware that could have alerted it to Nancy's lack of authority.

Therefore, Nancy did have authority to bind Comet Fitness to the contract because she was acting as a general partner in the ordinary course of business.

ANSWER TO MEE 2

1.)

It is likely this pedestrian median strip will be considered a public forum due to it being a cross walk, and typically open to the public for speech and assembly.

The issue here is what type of first amendment forum is the pedestrian median strip.

A Public Forum is government property that is typically open to the public for speech and assembly. Classic examples of public forums include sidewalks, parks and streets.

Here, as defined by the town council ordinance " (2) "a pedestrian median strip" is the paved portion of the median strip, which is the portion intended for use by pedestrians to cross from one side of the street to another." Additionally, the paved portions of the pedestrian median strip are part of the crosswalk and marked for use by pedestrians as they cross the intersections on the Main Street.

Therefore, it is likely this pedestrian median strip will be considered a public forum due to it being a cross walk, and typically open to the public for speech and assembly.

2.)

The town ordinance is a content-neutral regulation of speech, as it is based on the place of the speech (not its subject matter) and is conducted in a viewpoint neutral manner.

The issue here is whether the town ordinance is a content-based or content neutral regulation of speech.

A content-based regulation of speech is one based on the subject matter of the speech.

A content-neutral regulation of speech is one that is both subject matter neutral and viewpoint neutral (not based on an individual's thoughts or beliefs). Typically, content-neutral regulations of speech are based on some other matters such as the Time. Place. and Manner of the speech.

Here, the town council's restriction on speech is likely content neutral as it is based on the place the speech is occurring, rather than the message. The Town council's ordinance establishes that "(1) No person on a pedestrian median strip on Main Street shall communicate with or attempt to communicate with the occupants of vehicles passing by or stopped near the pedestrian median strip." Thus, this ordinance is prohibiting ALL speech based on its place/location . Accordingly, such a regulation is subject matter

neutral and viewpoint neutral, as it does not discriminate against speech on the basis of its subject matter or an individual's view/belief of the speech.

Therefore, the town ordinance is a content-neutral regulation of speech, as it is based on the place of the speech (not its subject matter) and is conducted in a viewpoint neutral manner.

3.)

If the ordinance is content based, it would violate the man's First Amendment Rights, as the ordinance would fail strict scrutiny.

The issue here is assuming that the Town's ordinance is content-based, would applying it to the man violate his First Amendment Rights.

The First Amendment provides that an individual is entitled to freedom of speech. Speech is defined as words, symbols, or express conduct. Here, man was holding a sign stating his opposition to a candidate for Town council while standing in a pedestrian median strip on Main Street in town.

A content-based regulation of speech is one based on the subject matter of the speech. Accordingly, a content based regulation of speech is subject to strict scrutiny. Strict scrutiny establishes that a law or regulation must: 1.) Be necessary and 2.) The least restrictive alternative available to achieving a compelling government purpose, and thus, is narrowly tailored to achieve that purpose.

Here, while the government likely has a compelling interest, this ordinance was not necessary. The town had received numerous complaints from Town residents about people who stood in the paved portions of the median strip at intersections on Main Street to solicit money from the drivers of vehicles stopped at traffic signals. The residents had complained that such conduct was annoying and unwelcoming. Accordingly, the preamble of the ordinance states the law was created to promote traffic safety and in tum, the safety of its citizens. As a matter of public policy, the government always has a compelling interest to use its general police powers to promote the safety, health, and wellbeing of its citizens.

However, law enforcement had no official reports that solicitations from the pedestrian median strips had been aggressive, threatening. or distracting to drivers. Additionally, there were no records of any traffic accidents caused by solicitations made from pedestrian median strips. Thus, this regulation was not a necessary restriction of speech, as there was no present danger or threat to its citizen's health, safety, or wellbeing.

Therefore, this ordinance would fail strict scurrility as it not necessary, nor the least restrictive alternative available. Accordingly, this would violate man's First Amendment Rights.

4.)

The town ordinance will not violate the man's First Amendment Rights because the regulation satisfies intermediate scrutiny and leaves open alternative channels of communication.

The issue here is assuming the town ordinance is content-neutral would applying it to the man violate his First Amendment Rights.

The First Amendment provides that an individual is entitled to freedom of speech. Speech is defined as words, symbols, or express conduct.

A content-neutral regulation of speech is one that is both subject matter neutral and viewpoint neutral (not based on an individual's thoughts or beliefs). Typically, content-neutral regulations of speech are based on some other matters such as the Time, Place, and Manner of the speech. Content Neutral regulations of speech are subject to intermediate scrutiny. Intermediate scrutiny establishes that a law or regulation must substantially relate to an important government purpose. Furthermore, Content Neutral regulations of speech need not be the least restrictive alternative available but must leave open alternative channels of communication, and thus, not burden substantially more speech than is reasonably necessary.

Here, the government's regulation was likely substantially related to an important government purpose. The town had received numerous complaints from Town residents about people who stood in the paved portions of the median strip at intersections on Main Street to solicit money from the drivers of vehicles stopped at traffic signals. The residents had complained that such conduct was annoying and unwelcoming. Accordingly, the preamble of the ordinance states the law was created to promote traffic safety and in tum, the safety of its citizens. Furthermore, as previously mentioned this restriction need not be the least restrictive alternative available but must leave open alternative channels of communication.

While the ordinance restricted speech on the paved portions of the median strip, the existing town ordinance permitted posting approved signs on trees and utility poles in the median strips, including pedestrian median strips. Furthermore, the ordinance also allowed for posting and carrying of signs on sidewalks adjacent to public roadways and the solicitation of money from people while standing on the sidewalks along main street.

Thus, this ordinance left alternative channels of communications and the man could have posted and carried his sign on the sidewalk adjacent to the public roadway as opposed to standing in the paved portion of the pedestrian strip.

Therefore, the town ordinance will not violate the man's First Amendment Rights because the regulation satisfies intermediate scrutiny and leaves open alternative channels of communication.

ANSWER TO MEE 2

1. Type of Forum

There are traditional public forums, non-traditional public forums, and private forums.

A traditional public forum is a forum that is open to the public and traditionally permitted free speech and other conduct. A traditional public forum includes public parks, public streets, and sidewalks.

The median strip is paved with 10-foot segments on each end. The paved portions are part of a cross-walk and are marked for use by pedestrians as they cross the intersection on Main Street. This would likely be classified as a traditional public forum as it is a common place that the public is allowed to be, and even encouraged to be as it was built out with the purpose of being part of the crosswalks for pedestrians.

As it is a public space that people are always allowed to use, the median strip is likely considered to be a traditional public forum.

2. **Content-based** vs. **Content-neutral**

The ordinance is content-neutral because it is not limiting substance of speech, it is simply limiting time, place, a manner of speech.

A content-based regulation is a regulation that limits or prohibits the actual substance of the speech at hand. This type of regulation is subject to strict scrutiny, and is almost always struct down as unconstitutional.

A content-neutral regulation is a regulation that does not limit or prohibit the substance of the speech, but rather gives time, place, and manner restrictions. This type of regulation is viewpoint neutral, and it regulating all speech in the same way.

This ordinance is considered to be a content-neutral regulation as it is limiting all speech regardless of substance. Instead, it is stating that no person on a pedestrian median strip on Main Street shall communicate or attempt to communicate with the occupants of vehicles passing by or stopped near the pedestrian median strip. The ordinance it attempted to regulate the place and manner of speech by stating that they cannot attempt to speak to drivers while they are on the median strip. This regulation applies to any speech, and it only regulates when they can or cannot attempt to speak to people in cars passing by.

The ordinance will likely be considered content neutral because it is viewpoint neutral, is does not regulate substance, and only regulates time, place, and manner of speech.

3. Content-based regulation constitutionality

Assuming the ordinance was content-based, applying it would likely violate the man's First Amendment rights as it would not pass strict scrutiny, and would therefore be deemed unconstitutional.

Strict Scrutiny

A content-based regulation is subject to strict scrutiny and almost always deemed unconstitutional. Under strict scrutiny, the government must prove that there the regulation is necessary to further a compelling government interest, and that the regulation is narrowly tailored. This is a high benchmark to reach. Language inciting violence or fighting words are not protected speech.

Here, while the residents have complained that the solicitations were annoying and unwelcome, but there have been no official reports that the solicitations have been aggressive, threatening, or distracting, thus, this speech is considered protected speech. Applying a content-based regulation would be violating the man's First Amendment rights. While there is arguably a compelling government interest of promoting traffic safety, and the ordinance is furthering that interest by prohibiting speech that they deem distracting to drivers, there is no evidence that this regulation is necessary to further that interest. Additionally, there have been no records of any traffic accidents caused by solicitations make from pedestrian median strips.

Because the standard for strict scrutiny is so high, and the government cannot prove that the regulation is narrowly tailored and necessary to further the interest of driver safety, the regulation is unconstitutional and therefore, a violation of the man's First Amendment rights to speech.

4. Content-neutral regulation constitutionality

Assuming the ordinance is content-neutral, applying it likely does not violate the man's First Amendment rights because it furthers an important government interest and allows for other time, place, and manner of communication for the man.

Intermediate Scrutiny

A content-neutral regulation is subject to intermediate scrutiny where the government must show that the regulation is significant to further an important government interest and also leaves open alternate channels of communications.

Here, as stated above, there is likely an important interest in promoting safe driving and limiting distractions for drivers. It can be argued that this regulation actively furthers the interest by lessening distractions and nuisances to drivers, as drivers have previously complained that they find the soliciting annoying and unwelcome.

Alternative Channels of Communication

Additionally, an existing town ordinance permits posting approved signs on trees and utility polls on median strips, including pedestrian median strips, as well as the posting and carrying of signs on sidewalks adjacent to public roadways. It is also lawful to solicit money from passing vehicles while standing on a sidewalk on Main Street. This allows for several alternative channels for the man to hold up his sign stating his opposition to a candidate for Town council. For example, the man may place the poster on a utility pole or tree on the median strip, or he may carry the poster on the sidewalk.

Because the government will likely be able to show that the ordinance furthers an important government interest and leave open alternative channels for communication, applying the ordinance is likely not a violation of the man's First Amendment rights.

ANSWER TO MEE 3

1) The issue is whether Brenda, in a negligence action against Alan, can establish that Alan breached his duty of care based solely on his violation of the school-bus law.

In a negligence action, the plaintiff must establish: 1) duty of defendant to plaintiff; 2) breach of duty (the defendant's conduct fell below the standard of care); 3) causation - both proximate (foreseeable) and actual (but-for) causation; and 4) harm. Where a statute dictates conduct, a plaintiff may establish the first two elements by showing: 1) the defendant violated the statute; 2) the plaintiff was of the class contemplated protected by the statute; and 3) the harm/injury suffered was of the type contemplated to be avoided by the statute.

Here, it is not likely that Brenda can establish Alan breached his duty of care based solely on his violation of the school-bus law because: 1) Brenda was likely not of the class contemplated to be protected by the statute; and 2) the damage to Brenda's car was probably unlikely to be the type of harm contemplated to be avoided by the school-bus law. School-bus laws, such as the one as issue here, likely seek to protect school bus children passengers and school bus drivers. Brenda, another non-school-related driver was likely not part of the class protected by the statute. Similarly, the type of harm contemplated by the statute was likely personal injury harm to school bus children and school bus drivers and, possibly, property damage to school buses. Brenda's non-school-bus vehicular damage was likely not the type of harm contemplated by statute.

Therefore, it is unlikely that Brenda can establish that Alan breached his duty of care based solely on his violation of the school-bus law.

2) The issue is whether Brenda can establish Alan's liability for a false imprisonment claim based on Alan's alleged detention against her will.

To establish a claim for false imprisonment, a plaintiff must show: 1) the defendant intended to confine the plaintiff; 2) the defendant actually confined the plaintiff; and 3) the plaintiff knew of the confinement or was harmed by the confinement.

Here, first, Alan's actions evinced an intent to confine the plaintiff, likely satisfying the first element. Alan followed Brenda to the gas station restroom and pounded on the door, shouting intimidating words evincing a threat: "Come out so you and me can have a talk, if you know what I mean." As to duration, Brenda said she would not come out until Alan left, and Alan responded: "I've got all day, so get comfortable."

Second, whether Alan actually confined Brenda is less certain. Alan ultimately left after 2 minutes, but on the basis of Alan's previous reckless and threatening actions while on the road and outside the restroom door, Brenda waited in fear for 20 minutes before peeking

outside the restroom door. Alan could argue that while he intended to confine Brenda, he ultimately did not confine her because he left after two minutes. In response, Brenda would argue: 1) that the intimidating confinement for even two minutes was unreasonable and satisfied the element of actual confinement; and 2) Alan's creation of Brenda's reasonable fear coupled with her inability to check for Alan's presence without potentially subjecting herself to harm's way created a condition of actual confinement. Brenda is likely to establish that Alan actually confined her in satisfaction of the second element.

Third, Brenda is likely to establish that she either knew of her confinement--to an extent-- or, alternatively/concurrently, harmed by the apprehension of confinement established by Alan. At minimum, Alan's actions confined Brenda for two minutes and Brenda understood she was confined for such time. Given the circumstances, such confinement may satisfy this element. Regardless, Brenda was harmed by the confinement through reasonable and, potentially, severe emotional distress, in addition to potential employment consequences not discussed in the fact pattern.

Taken together, Brenda is likely to establish Alan's liability for allegedly detaining her against her will on a false imprisonment claim.

3) The issue is whether the patient's family is likely to prevail on a motion for partial summary judgment establishing Alan's liability for the family's wrongful death claim on the admitted evidentiary record.

On a motion for summary judgment, the claimant must show: 1) there is no genuine dispute as to any material fact; and 2) the claimant is entitled to prevail as a matter of law. The facts are construed in the light most favorable to the non-moving party.

On a wrongful death claim, the plaintiff's family will need to establish: 1) duty; 2) breach; 3) causation; and 4) harm.

Here, given Alan's clearly reckless efforts and his disregard for the patient's care, e.g. when he said "A self-important physician, probably headed to bandage a scraped knee," it is possible that the family can establish duty and breach. Harm is obvious here given the patient died.

The motion for partial summary judgment is likely to turn on the causation analysis, which requires both actual and proximate causation. Here, actual causation is likely to be established. But for Alan's actions, Brenda would likely have arrived in time to perform the surgery (15 minutes earlier) and the patient likely would have survived. Alan's actions caused several forms of delay for Brenda: 1) missing of her original exit; 2) confinement in a gas station restroom; 3) taking back roads only to make sure Alan was not following. However, proximate causation is trickier. Whether or not it was reasonably foreseeable

that Alan's actions could cause the patient's death is perhaps too uncertain to decide on a motion for summary judgment and should be submitted to a jury. While Alan's conduct evinced awareness that Brenda was a medical doctor and maybe a reasonable person would have thought it foreseeable that a speeding medical doctor was on the way to perform important treatment, such factual conclusions when construed in the light most favorable to Alan are too uncertain to grant the motion for partial summary judgment.

Therefore, it is unlikely that the patient's family will prevail in their motion for partial summary judgment on their claim against Alan for wrongful death.

ANSWER TO MEE 3

1. In a negligence action against Alan, can Brenda establish that Alan breached his duty of care based solely on his violation of the school-bus law?

A claim in negligence requires the plaintiff to show (a) a duty, (b) breach of that duty, (c) causation, including actual and proximate cause and (d) damages. A duty of care is owed to all foreseeable plaintiffs. The doctrine of negligence per se provides that a defendant's unexcused violation of a safety statute will conclusively establish breach of duty if the plaintiff is in the class of people protected by the statute and the harm that occurred was the type of harm that the statute seeks to prevent.

Here, Brenda suffered property damage to her car. A safety law prohibits passing a stopped school bus when its lights are flashing and its side-mounted stop sign is extended. Alan breached that safely law without any valid excuse: he was simply impatient. However, the law in question was very likely for the purpose of protecting school children on the bus, or school children embarking or disembarking from the bus. It was not designed to protect fellow drivers on the road. Further, the law was likely to prevent physical harm to school children, rather than damage to property. As such, Brenda was likely not in the class of people protected by the statute, and the type of harm she suffered is not the type of harm the law is designed to prevent.

Therefore, Brenda cannot establish that Alan breached his duty of care based solely on his violation of the school-bus law.

2. Can Brenda establish Alan's liability based on Alan's allegedly detaining her against her will?

False imprisonment is an intentional tort. It requires the plaintiff to show that the defendant intentionally confined the plaintiff to a bound area, and that the plaintiff knew about or was harmed by the confinement. A person is confined if they have no reasonable means of escaping.

Here, Alan dangerously failed Brenda's car at high speed, repeatedly honking his horn. Brenda feared that Alan's truck would hit her car. Further, Alan then blocked Brenda from leaving the highway, chased her for an additional10 miles, and followed her once she was able to leave the highway. Brenda ran into a restroom and locked the door. Although Brenda confined herself in the restroom, this was out of a very legitimate fear of Alan. Alan had chased her in a dangerous and reckless manner. Therefore, Alan had confined Brenda. Alan pounded on the door shouting "Come out so you and me can have a talk, if you know what I mean!" Alan indicated that he would stay outside "all day", even though he left after just two minutes. Alan sinister innuendo about having "a talk" legitimately caused Brenda to fear for her safety if she were to leave the restroom, and demonstrates Alan's intent to confine Brenda. Brenda ended up being confined in the restroom for 20 minutes.

Therefore, Brenda can establish Alan's liability for false imprisonment for detaining Brenda against her will.

3. Is Alan's admission sufficient for the patient's family to prevail in a motion for partial summary judgment establishing that Alan is liable on the family's wrongful death claim?

Are the patient's family likely to succeed in an action for negligence?

A claim in negligence requires the plaintiff to show (a) a duty, (b) breach of that duty, (c) causation, including actual and proximate cause and (d) damages. A duty of care is owed to all foreseeable plaintiffs. The basic standard of care is a reasonable person acting in similar circumstances. Actual causation requires that, but for the defendant's actions, the harm would not have occurred. Proximate causation requires showing that the harm was a reasonably foreseeable consequence of the defendant's actions. In this jurisdiction, negligence actions for damages are allowed despite the death of the injured party.

Here, Alan owed a duty to all foreseeable plaintiffs, which include the deceased patient. Alan's reckless driving clearly was negligent. But for Alan's negligence, the patient's death would not have occurred. Brenda was forced to drive for 10 extra miles and was confined in the restroom for 20 minutes. If Brenda had arrived 15 minutes sooner, she

would have arrived in time to perform the surgery and the patient likely would have survived. However, it is less clear if proximate causation is made out. The plaintiffs will argue that it was reasonably foreseeable, given that Alan recognized Brenda's personalized license plate as likely meaning she was a physician, and appreciated that she might be on her way to "bandage a scraped knee". Further, Alan recognized that Brenda was seeking to turn off for the hospital as, having blocked Brenda from leaving the exit, he lowered his window and yelled "Don't miss the exit to the clinic". As against this, Alan might argue that he did not appreciate that Brenda would be prevented from performing life-saving treatment in this case.

Therefore, the patient's family are likely to succeed in an action for negligence.

Can the patient's family obtain summary judgment?

An application for summary judgment requires the movant to show that there is no genuine issue of material fact, based on admitted evidence. An issue of material fact is a fact that is necessary for establishing an element of the claim. The evidence must be viewed in the light most favorable to the non-moving party.

Here, the patient's family can clearly establish negligence, as described above. However, viewing the evidence in the light most favorable to Alan, the patient's family may not be able to establish proximate cause. Although they likely can establish this at trial, there is enough of an open question about this point that there is still a genuine issue of material fact remaining.

Therefore, the patient's family cannot obtain summary judgment.

ANSWER TO MEE 4

Question 1

At issue is whether the coach's claim for $74,999 means that the claim falls outside of the federal court's diversity jurisdiction.

The federal court has jurisdiction to hear only certain types of cases. In the federal court's federal question jurisdiction, the court will have jurisdiction to hear any claims that arise out of a federal law (including statutes, treaties and the constitution). In the federal court's diversity jurisdiction, the federal court will only have jurisdiction over a claim where the parties are diverse and if the well-pleaded complaint has an amount in controversy that exceeds $75,000, not including costs and interest. Parties are diverse if they citizens of different states, and citizenship is determined on the basis of domicile. Separately, in calculating the amount in controversy of a claim, the amount merely need to be asserted in good faith. However, amounts which are not recoverable to the extent of a legal certainty are not included in the amount used to make this calculation. Additionally, under the Erie doctrine, absent a federal procedural rule, a federal court will apply the substantive law of the state. Substantive laws include those which are necessary to the elements of a claim or defense to a claim, including how damages are pleaded. Removal is only proper where the case could have been filed in federal court. Remand occurs where removal is improper and the case will be sent back to state court.

Here, there is no federal question jurisdiction because Fran is being sued for defamation under state law for Fran's allegations of drug usage to the newspaper leading to the Coach's loss of employment. Looking instead to diversity jurisdiction, because Coach is domiciled in State A and Fran is domiciled in State H, the parties are diverse. However, the key issue here is the amount in controversy. The coach has clearly lost more than $75,000, as his lost wages are for $130,000. However, he has stipulated that he will not seek or accept more $74,999. This takes the amount below the requirement for the court's federal diversity jurisdiction. Therefore, because to a legal certainty, this is the most he can recover, removal would not be appropriate. This is because if the case had been filed in federal court, the federal court would have applied the substantive law of State A with respect to the amount of damages sought. Because State A law makes the stipulation of $74,999 binding, to a legal certainty it is not possible to recover more than $74,999, notwithstanding that the removal notice sets out $130,000.

Therefore, removal is improper and the case will be remanded back to State A's state court.

Question 2

At issue is whether personal service in State A subjects Fran to personal jurisdiction in State A.

Personal jurisdiction over a defendant in federal court can be established in a number of different ways. Fundamentally, it must be authorized by state law, and it must comply with the Due Process clause of the constitution. The constitution requires that any method of providing service must be reasonably calculated to provide notice to the defendant. The traditional rule is that there must be sufficient minimum contacts with the state such that subjecting the defendant to personal jurisdiction would not violate traditional notions of fair play and substantial justice. Normally, the analysis will turn on the relevant contacts that a defendant has with the state, and whether the conduct relates to such contacts and whether it is then fair to assert personal jurisdiction. **However,** it is generally accepted that a defendant who is served in a state whilst they are voluntarily in that state (i.e. not a witness, under duress or not as an attorney) has sufficient minimum contacts with the state as to be subject to personal jurisdiction there.

Here, Fran received summons and a copy of the complaint when she was attending (presumably voluntarily) a basketball game in State A. That Fran is subject to personal jurisdiction via this method is authorized by State A law, which sets out that courts can exercise personal jurisdiction over persons who are located in State A without regard to whether they have connections with the state. This satisfies the state law requirement above. Additionally, being served in such a manner is likely to satisfy the constitutional requirement as well. This is notwithstanding the fact that Fran had otherwise never been to State A, that it was her first time there, that she was there for less than a day and that she had no other connection to state A (including the fact that her defamatory comments were not directed to the newspaper in State A but instead to a reporter in State H). The facts as they stand are sufficient for her to be subject to personal jurisdiction in State A.

Therefore, the federal court will not dismiss the case for lack of personal jurisdiction.

Question 3

At issue is which venue is proper upon **removal** of a case.

Traditionally, whether venue is proper depends on the residence of the parties and where a substantial part of the transaction leading to injury took place. Venue is proper where all defendants reside in the state of the relevant federal court or where a substantial part of the transaction leading to the injury took place (i.e. residential or transactional venue). **However**, the Federal Rules of Civil Procedure has special rules where a case has been properly removed from state court. Where removal is proper, the proper venue is the federal court that embraces the state court.

Here, assuming that the case was not remanded, the proper venue for the federal court to hear the action would be in State A, precisely because the state court action was brought in State A. As Fran sought to remove the case to the District of State A court, the removal was proper and the venue was proper.

Therefore, the court will not dismiss the case for improper venue.

ANSWER TO MEE 4

1. The court should remand the case on the grounds that the federal court lacks subject matter jurisdiction

The issue is whether the court should remand the case to the state court for lack of subject matter jurisdiction.

Federal courts are courts of limited jurisdiction and they may not hear a case absent subject matter jurisdiction (SMJ). SMJ can arise from federal question jurisdiction which arises where, based on a plaintiffs well-pleaded complaint, alleges a violation of federal law. Alternatively, a case can have diversity jurisdiction where there is complete diversity between P and D. For individuals, diversity is established through domicile. Additionally, diversity requires an amount in controversy to *exceed* $75,000 with a good faith basis. If a case is removed from state to federal court if it is done within 30 days on information informing the movant that SMJ exists, they can remove it. Defendants who are at home in the forum state may not remove. If the defendant can prove that the amount in controversy does not exceed $75,000 with legal certainty, then diversity does not exist. Should a case be improperly removed, the non-movant can move to have it remanded within 30 days of removal. Further, a federal court sitting in diversity applies the substantive law of the court in the state in which it sits under *Erie.* Supplemental jurisdiction is only available once there is jurisdiction over the original claim.

Here, Fran removed the case to federal court within 10 days of being served and is thus within the 30 day timeframe. However, there is no SMJ. There is no federal question jurisdiction because the case arises out of, based on the plaintiff's complaint, a state law defamation claim. Further, the amount in controversy is only $74,999. While Fran is alleging an amount in controversy of$130,000, such is not recoverable with legal certainty because they entered a stipulation of damages being $74,999 which is not in excess of$75,000 and such stipulation is binding under State A law. Because the federal court is sitting in diversity under the $130,000, the federal must hold that the stipulation is binding

because it is procedural (outcome determinative). Because the stipulation is binding, Coach is unable to recover $130,000 with legal certainty despite his damages being that, they are capped at $74,999, an amount insufficient to warrant SMJ in federal court. Importantly, there is complete diversity because Coach is domiciled in A and Fran is domiciled in H. There is also no supplemental jurisdiction because the court lacks jurisdiction over the only claim and thus may not be used.

Thus, provided that Coach moves to remand within the proper timeframe, the case should be remanded to the state court, otherwise, it should be dismissed for lack of subject matter jurisdiction.

2. The court should NOT dismiss for lack of personal jurisdiction

The issue is whether the court should dismiss for lack of personal jurisdiction.

Personal jurisdiction can be established in many ways and it must be fair and equitable to force a defendant to litigate in that court. PJ must comport with the due process clause of the constitution. PJ can be established through specific jurisdiction or general jurisdiction. Specific jurisdiction requires minimum contacts which requires purposeful availment, foreseeability of being suit, the stem must relate to those contacts, and it must be fair and equitable. General jurisdiction can be established through domicile. PJ can also be established through tag jurisdiction which is service in the forum state. There must also be compliance with a state long ann statute.

Here, there is no specific jurisdiction because the Fran is from H. The activity which gave rise to the claim emanates from a newspaper statement she made to a state A newspaper who went to state H to elicit the response. Thus, there is no minimum contacts or purposeful availment in state A to provide for PJ. That said, the state A long-ann statute permits service through tag jurisdiction irrespective of whether the Defendant has other relations to the state, provided proper service is effectuated in state A. Here, Fran, despite never being in state A before this, and having no other connections, Fran was served with service while being physically present in state A and state A law permits such service. It is also permitted under the constitution because due process is fulfilled through tag jurisdiction.

Thus, because there is adequate jurisdiction, the court should not dismiss the case for lack of personal jurisdiction.

3. The federal court should NOT dismiss for improper venue

The issue is whether state A court is proper venue.

Venue is proper in any district that any defendant resides if all defendants reside within the same state, where a significant portion of the events leading up to the claim occurred (transactional venue) or if neither of those provide venue, anywhere that the defendant can be subject to personal jurisdiction. When a case is remanded, however, venue is proper in the federal court in the state in which the original claim was brought. Where there is improper venue, the court can dismiss or transfer.

Here, the significant part of the claim arose in state Has that is where the allegedly defamatory statement was made and where the reporter went to get more information from Fran. Further, venue based on domicile since Fran is the only defendant and resides in state H. That said, based on the fallback provision of venue, venue is proper in A because due to the tag jurisdiction, Fran is subject to PJ there.

Additionally, because Fran sought to remove the case, venue is proper in state A because the case was filed in state A and therefore the federal court in which it sits is the proper venue.

Thus, the federal court should not dismiss the case for improper venue.

ANSWER TO MEE 5

1. The issue is whether the Bank's original video from April 18 showing David is admissible.

Evidence such as a video will be admissible if it is relevant and can be authenticated. Evidence is admissible if it has probative value (makes an argument or defense more likely) and is material. A video can be authenticated by someone with knowledge of the contents of the video can attest that the image presented is what it indicates it is.

The video is likely relevant. It is likely relevant because it is probative of the argument that David was present at the bank on the date of the crime, April18, 2024. This makes the fact that David was present for the commission of the crime which is material because his presence cashing the check is necessary to prove he was the one who committed the crime that day. Additionally, it could be used to show the alleged acts by David in delivering the check to the teller.

The video is also likely to be able to be authenticated. Although the teller is unavailable to testify, it is likely that the investigator will be able to authenticate the video's contents.

This is based on the fact that the investigator is a 10-year employee of Bank and would likely have grown familiar with the layout and look of the bank lobby. Additionally, besides his experience investigating crimes against the bank, we are told that the investigator works in an office next to the Bank's lobby. This means that investigator likely has personal knowledge of the look and layout of the lobby and would therefore be able to attest to the contents of the video as valid.

Therefore, because the video is relevant and the investigator would be able to authenticate its contents by personal knowledge, the video should be admissible.

2. The issue is whether the investigator's testimony as to Customer's oral complaint to the investigator is admissible.

Applying the test for relevance above, the Customer's statement would likely be relevant because it goes to show that the Customer did not write the check which is probative of whether or not the check is fraud and material to that matter.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. Typically, hearsay is not admissible as evidence unless it falls into a hearsay exclusion or hearsay exception. When hearsay is included in another hearsay statement, both must meet an exception or exclusion.

Here the investigator would be testifying to the Customer's statement to the fraud investigator. Most likely the Customer's statement is being offered to prove that the Customer didn't write the $1,000, which would be an out of court statement to prove the matter asserted by the customer. Therefore, it would need to meet a hearsay exceptions or exclusion.

The statement could be admissible as a present sense impression exception. A present sense impression occurs when the declarant states something soon after the occurrence of an event. The facts state that the Customer called the investigator promptly after receiving notification of the cashing of a $1000 check. Assuming that the Customer was transferred to the investigator soon after the call was initiated, that call was likely a present sense impression.

The statement could also be admissible as an excited utterance. An excited utterance occurs when an exciting event prompts a stressful reaction to the event and the declarant is still under the stress of that event when the statement is delivered. A notification that an unauthorized $1000 check would be exciting to a reasonable person. Additionally, we are told that the Customer was still noticeably frustrated and angry when she made the statement to the investigator. Therefore, the statement was likely an excited utterance and could be admissible.

3. The issue is whether the investigator's report could be admissible if he is unable to recall both the details of the investigation and the writing of the report.

A prior recollection recorded is admissible if the writer had knowledge of the event when recorded, recorded the knowledge when the memory was fresh and is unable to remember the details of the writing. Here, if the investigator is unable to recall the facts of the report, it could be read aloud by the investigator. The investigator made the report while he was doing the research for the investigation so it was fresh and he made the report so he would have had knowledge of its contents. If the investigator is unable to recall the details, as assumed here, it would be admissible as a prior recollection recorded.

It could also be admissible as present recollection refreshed if it is shown to the investigator simply to jog his memory. In that case it could not be read to the jury, but could be used to aid his recollection.

ANSWER TO MEE 5

1. The bank's video recording is admissible

At issue is whether the recording can be authenticated and admitted as relevant documentary evidence.

In order to be admissible, evidence must be relevant. Evidence is relevant if it is material to the facts in dispute in the case, and is probative of the facts, which means that it tends to prove or disprove a fact. Here, the video recording of April 18, 2024, is clearly relevant, since it records the events leading to the defendant's prosecution - it is material because it relates to the defendant's presence at the bank on the said date (a fact which the defendant denies), and is probative because it makes proof of that fact easier.

Relevant documentary evidence is admissible if it can be authenticated. A video can be authenticated by a person who testifies in court that the video is a recording taken by a properly functioning camera and also testifies to what the video depicts, with familiarity as to the scene *I* premises depicted. The person testifying as to the foregoing need not be the person who took the video - it just needs to be someone who is familiar with the scene. Bank's investigator should be able to provide the required testimony since he works in the office beside the lobby and will likely be familiar with it. The originality of the video can also be certified by the investigator's testimony.

2. The investigator's testimony as to the customer's oral complaint to the investigator is admissible

At issue here is whether the customer's oral complaint constitutes admissible hearsay (i.e., hearsay within an exception). Hearsay refers to out of court statements of a declarant that are admitted to prove the truth of the matter asserted. The investigator will testify as to the customer's statements to the investigator that were made out of court. These statements are being offered to prove the truth of the matter asserted (i.e., that money was stolen from Customer's account and in that context the customer's statement is hearsay.

There are two exceptions relevant to this case, that allow hearsay statements to be admitted: first, the 'excited utterance' exception and the 'present sense impression' exception.

An excited utterance is a statement made by a declarant under the stress of excitement owing to the incident in question. Here, Customer promptly called Bank to complain, and was exclaiming that she did not write the check that Bank charged to her account, and was noticeably frustrated and angry, which taken together indicates that Customer made the statement while under stress of excitement of her account being charged by Bank.

The present sense impression allows hearsay statement to be admitted when they reflect the declarant's then existing state of mind, made immediately after the event in question has occurred. There must be close proximity in time between the event and the hearsay statement. Here, the Customer's call to the bank was promptly after Customer's account was charged, and she mentioned that she never wrote the $1000 check. Therefore, the Customer's call to the bank can be admitted as a present sense impression declaration exception to the hearsay rule.

3. The investigator's written report can be admitted during the investigator's testimony or orally read into evidence. but not separately

During testimony, if a witness is unable to recall particular matters, the witness can be provided with a writing which the witness refers to, to refresh his recollection. The witness cannot read out of the record- the witness must only use the record to refresh his memory. If the investigator is unable to recall the details of the investigation and the writing of the report, the prosecution may first allow him to refer to the report to refresh his memory. If the witness still does not remember the details of the writing, then the writing may be orally read into evidence (but the writing itself may not be admitted) -this is referred to as past recollection recorded. In order to do so, the document must have been made at the relevant time, the witness must have made the document or have had it made under its direction, or adopted its contents. Since the investigator's written report was made by the investigator, it can be admitted as a past recollection recorded exception to hearsay.

However, the report itself contains hearsay statements, i.e., the Customer's complaint, which is hearsay within hearsay. However, as established above, the Customer's complaint is an admissible exception to the hearsay rule. Further, the description of the video recording is also admissible since it is documentary evidence, provided the investigator can authenticate it (as mentioned in Section 1 above).

ANSWER TO MEE 6

1. Revocability of the Trust

At issue is whether, under the Uniform Trust Code (UTC), a trust is revocable or irrevocable when the trust instrument itself is silent as to whether it can be revoked.

The traditional rule, still followed by numerous states, held that a trust was irrevocable unless the settlor expressly reserved the right to revoke the trust. However, under the UTC, the rule is that a trust is revocable unless the settlor has indicated his intent to make the trust irrevocable.

In this jurisdiction, the UTC has been adopted. The trust itself is silent as to whether the trust is revocable or irrevocable. Under the UTC, then, the rule is that the trust is revocable.

Consequently, the trust is to be deemed revocable because the UTC presumes revocability in the absence of express intent to be irrevocable.

2. Shirley's Interest

At issue is the question whether Shirley has an interest in the trust, and if yes, what kind of interest she has.

Interests can be present, such as a fee simple, or they can be future, such as a vested remainder or an executor interest. A vested remainder is a future interest where a person receives the remainder of certain property after another person has received the benefits of that property, and it is certain that the person will receive the property once a certain condition is fulfilled.

Here, Shirley holds a vested remainder which is a future interest. She is entitled to receive the trust property only when Alice, the beneficiary of the trust, dies. When Alice dies, Shirley is certain to receive the property left in trust. There are no conditions to the grant, the only thing that needs to happen is that Shirley has to pass away. Hence, Shirley has a future interest called a vested remainder.

Consequently, Shirley has a vested remainder.

3. Imprudent Investment

At issue is whether a beneficiary of a trust has a claim against a trustee for making an imprudent investment, even though the trustee had consent from the settlor.

Generally, trustees are bound by fiduciary and other duties vis-a-vis the beneficiaries of

the trust. Trustees have the duty of loyalty, a duty to administer the trust in good faith, a duty to report, and many other duties. With regard to investment, the UIPA also imposes further duties upon trustees who are investing assets held under trust. Under the UIPA, a trustee must act with the reasonable skill and care of a reasonably prudent investor. Generally, this means that the trustee must follow a portfolio approach, i.e. assessing the holding of several assets complementary to each other, including an obligation to reasonably diversify the trust assets, generally. When the trustee has special knowledge or skill, she is held to the standard of a person with that knowledge and skill. However, when a settlor has expressly indicated that he wishes the trustee to act in a certain manner and gives him his consent to do so, then the trustee ordinarily must follow the instructions of the settlor.

Here, Bank was bound to his fiduciary duties and his duties under the UIPA, with regard to the investment of the trust assets. This generally requires Bank to exercise the skill and care of a reasonably prudent investor. Bank's standard is further amplified because he is a person with special skill or knowledge. In the case at hand, Bank has imprudently invested 30% of the trust assets in a single stock that later went bankrupt. This may, under ordinary circumstances, be seen as imprudent investment. However, the settlor, Alice, had specifically requested for the investment to be made by the trustee, and the trustee was bound to follow the instructions, consent, and requirements of the settlor in this respect. Bank will then not be held liable against trust beneficiaries, merely because he decided to follow instructions by the settlor.

Consequently, because Alice ratified the action, Bank will not be liable against beneficiaries and Shirley will not have a claim against Bank.

4. Healthcare Authority

At issue is whether John or Alice has the authority to make healthcare decisions on behalf of Alice.

Generally, a person can be vested with the power to make healthcare decisions by another person, should that person be unable to make healthcare decisions for himself. That power is called a durable healthcare. A durable healthcare can be vested in any person, except that it cannot be vested in hospital personnel, unless that personnel is personally related to the person whom is in need of healthcare. Once a person has been granted a durable healthcare, that person may make any healthcare decisions on behalf of the person who is now unable to handle her own healthcare matters. However, decisions made by the person while she was still able to formulate her own will may be taken into account.

Here, John has been granted a durable healthcare by Alice, to act as his agent if and when Alice was unable to make healthcare decisions for herself. When Alice suffered her stroke and became permanently unable to make healthcare decisions of her own, John's durable healthcare sprung to life. So initially, it would be John that makes the healthcare decisions based on his durable healthcare. However, Shirley may be able to offer evidence of the phone calls between Alice and her, and Alice and John, to show that the healthcare is currently being exercised in direct contradiction of the clear will of the person whom is now unavailable to handle her own healthcare matters. If she succeeds, a judge may be persuaded to overrule the healthcare decision made by John, even though he has a durable healthcare power.

Consequently, under the durable healthcare power, it is John who makes the decisions, but Shirley may be able to rebut with evidence that the express will of the person in question, made when she was still available, has been overruled.

ANSWER TO MEE 6

1. The trust is revocable.

The issue is whether the trust is revocable.

Some jurisdictions provide that a trust which is silent as to its revocability is revocable. Other jurisdictions provide that trusts which are silent as to its revocability is irrevocable. Under the uniform trust code, it used to be that silent trusts were irrevocable; however, per current, the UTC provides that silent trusts are revocable unless stated otherwise. However, even under the UTC, a revocable trust becomes irrevocable upon the death of the settlor.

Here, the trust was silent as to its ability to be revoked. However, the jurisdiction has adopted the UTC which provides that all trusts that are silent as to its revocability are freely revocable. Because the trust was silent and the jurisdiction applies the UTC, the trust is presumed to be revocable. Should the jurisdiction not apply the UTC, then the presumption would be that the trust is deemed irrevocable.

Thus, the trust is revocable at will until Alice's death.

2A. Shirley does have an interest in the trust

The issue is whether Shirley has an interest in the trust.

One has an interest in a trust when they are named in the trust document as having an interest in the trust. This interest is present even where the trust is revocable and the settlor has the ability to change the interest. Until the settlor actually changes the interest, the listed beneficiary is a valid beneficiary under the trust.

Thus, because Shirley is listed in the trust, she holds an interest.

2B: Shirley's interest is characterized as beneficiary to the trust's principal and holds a vested interest.

The issue is determining what Shirley's interest is in the trust.

Where one takes under the trust, they are considered a beneficiary. Where a beneficiary is ascertainable and not subject to a condition precedent, they are considered to hold a vested remainder in the trust. Such is subject to divestment when their settlor can freely revoke the interest unless the trust is irrevocable.

Here, Shirley is listed as a beneficiary to the principal of the trust. Further, she holds a vested remainder because she is identified and her interest is not subject to a condition subsequent. However, it is important to note that Shirley's interest can be divested should Alice choose to do so while she is still alive. Because Alice is still alive at this point, the interest is fully vested, but can be divested by Alice's wishes.

Thus, Shirley holds a vested interest in the trust as a principal beneficiary but subject to divestment.

3. Shirley does NOT have a claim against the bank for making the imprudent investment

The issue is whether Shirley has a claim against the bank for making imprudent investments.

A trustee has an obligation to make prudent investments as a reasonably prudent person would pursuant to the reasonable prudent investment act. Where one has higher knowledge than the average, they are held to a higher standard. However, there mere fact that an investment goes down does not mean the investment was imprudent. Further, where a trust is revocable, most jurisdictions permit the settlor can at any time direct the trustee to make or refrain from making specific investments even if such are not prudent because it is an effective revocation of the trust and reconstruction thereof.

Here, as stated above, we have a revocable trust. Further, the settlor is alive and Alice directed the bank to make specific investments. Those investments have since declined by 30% because a stock they imprudently invested in went bankrupt. However, the investments were made by Alice, while fully competent and fully aware that the investments were imprudent at the time of the investment, and it was Alice's decision as to where to invest that money. Because Alice directed the imprudent investments, the bank, as trustee, was absolved from liability from the imprudent investments. While the trust dictates that the trust must be in prudent investments, her ability to change the trust acts as a revocation and recreation and thus, clearly she did not intend for the trust to be subject to the term.

Thus, shirley does not have a claim against the bank for making the imprudent investments.

4. John has legal authority to direct the doctor as to whether to remove Alice from life-support

The issue is whether John or Shirley have the legal authority to direct the doctor to remove Alice from life-support.

A healthcare proxy, alternatively called a durable health-care power of attorney designates an agent to make medical decisions in the event of incapacity. This power can be freely revoked. The holder the proxy (i.e. the agent) is required to make a good faith decision but is not bound by any set guidance, only what they believe that the incapacitated person would want. Where there is a healthcare proxy, the holder has the full rights to make the medical decisions and only they are capable of doing so.

Here, Alice executed the healthcare power to John expressly conditioned on Alice being unable to make her own healthcare decisions. This power kicked in once Alice had a stroke and the doctor determined that she was unable to make healthcare decisions for herself. The doctor is also uncertain about what type of life Alice will live and whether she will ever get off of life support. However, Shirley is trying to assert power to take her off life support immediately. While John has the healthcare proxy and has the rights to make the decision in good faith, Shirley is trying to assert that such is against Alice's wishes. However, Alice's wishes are not to be on life support if she has little to no chance of recovery. At current, doctors are unsure whether there is a chance of recovery, but it is possible, they will know more in the future. John is choosing to wait to determine if and when she should be removed from life support and such is likely in accordance with Alice's wishes to wait until he can at least see the recovery chance. Further, John appears to be acting in good faith.

Thus, John has the power to determine whether Alice should be removed from life support.

ANSWER TO MPT 1

To: Elise Tan

From: Examinee

Date: February 25, 2025

Re: Peter Larkin- Defense of housing discrimination claim

You have tasked me with drafting an objective memorandum analyzing Martin Turner's possible arguments in support of his claims against our client, Peter Larkin, under s 3604(a) of the Fair Housing Act, 42 U.S.C. (the **"FHA"),** as well as Larkin's possible defenses against the same. This memorandum will analyze the following:

1. Preliminarily, whether the FHA applies;
2. Whether Larkin's actions of refusing to rent to single tenants constitute discrimination under the *McDonnell Douglas* three-part burden-shifting test, thus violating s 3604(a) of the FHA; and
3. Whether Larkin's policy of renting the apartment to a maximum of three people constitute discrimination under the *Baker* three-part disparate impact test, thus violating s 3604(a) of the FHA.

1. Applicability of the FHA

s 3604(a) of the FHA prohibits the refusal to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of *inter alia* "familial status". Familial status is in turn defined in s 3602(k) as one or more individuals under 18 years of age being domiciled with a parent or another person having legal custody of such individual(s).

In our case, Turner is a single widowed parent with three minor children, who are aged 16, 12 and 6 and who reside with him. He is alleging that he has faced discrimination on the basis of familial status. He would fall within the protected class within the meaning of s 3602(k), and the FHA would apply to him.

Furthermore, there is an exception under s 3603(b) of the FHA which exempts four-family dwellings where the landlord/owner actually maintains and occupies one of the living quarters from s 3604 of the FHA. However, Larkin lives in a townhouse a mile away from the building in downtown Centralia which Turner sought to rent a unit in. Therefore, this exception does not apply, and the FHA would govern this dispute between Turner and Larkin.

2. Larkin's actions of refusing to rent to Turner

Having established that the FHA applies, the three-part burden shifting test in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) is applicable to claims that a landlord discriminated against a tenant through specific actions which may be ambiguous (per *Baker v. Garcia Realty Inc.* (Franklin District Court, 1996)). The first part of the test requires the plaintiff to first establish, by a preponderance of the evidence, that (1) they are a member of a protected class, (2) they applied for and were qualified to rent the dwelling, (3) they were denied housing or the landlord refused to negotiate with them, and (4) the dwelling remained available. Upon a prima facie showing by the plaintiff of discrimination pursuant to the first part, a presumption of illegality would arise under the second part, and the burden would shift to the defendant to articulate legitimate nondiscriminatory reasons for the challenged policies. Finally, if the defendant satisfies this burden, the third part requires the plaintiff to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted are merely pretext for discrimination.

First part of the test

As analyzed above, Turner is a member of a protected class, as a parent with three minor children. He also appears qualified to rent the apartment, given that he is employed as a data analyst, with a good rental history, good credit and an income high enough to enable him to "easily afford" the apartment (as he asserted in his HUD administrative complaint). "Qualified to rent" has been judicially interpreted to mean that the individual meets factors such as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background (per *Karns v. U.S. Department of Housing and Urban Development* (15th Cir. 2006))- which is similar to the factors Turner is putting forward in his favor. Furthermore, Turner has also applied for the housing by texting Larkin to ask if the apartment was still available, given that the term "applied for" is interpreted broadly and includes inquiries into the availability of a dwelling *(Karns).* Therefore, requirements (1) and (2) of this first part of the *McDonnell Douglas* test are satisfied.

As to requirements (3) and (4), Turner was effectively denied housing since Larkin never got back to him regarding his inquiry, and the housing remained available as Larkin continued to list the apartment on Craigslist over the next few months, before he found a married couple to rent to. Hence, Turner would likely be able to demonstrate all requirements under the first part of the test on a prima facie basis, and consequently a presumption of illegality would arise.

Second part of the test

Larkin would now bear the burden of demonstrating nondiscriminatory reasons for refusing to rent to Turner.

Larkin can argue that he was concerned about Turner's finances and the fact that Turner was unmarried, given his past experiences that showed that married couples are likelier to pay rent on time. Importantly, marital status is not a protected status under the FHA, unlike familial status. This was noted in *Karns*, where the court clarified that marital status was omitted from categories of protected classes under the FHA. These two arguments are also similar to the two arguments given by the landlord in *Karns*, although with significant differences which will be illustrated and analyze below under the third part of the test.

In support of this argument, Larkin can adduce the following evidence: (a) he could articulate cogent reasons for preferring married couples, such as the reduced likelihood of one moving out halfway through the lease, and the increased likelihood of rent being paid on time; (b) his reasons are supported by past experiences where he noticed that married people are "just more stable in their relationships and are more likely to pay their rent on time" (and there is evidence to support this, such as his text messages with a prospective tenant Jake in the past where he clearly turned him down because of his marital status); (c) specifically, when he rented to a single person with a good income in the past, this tenant ended up losing his job and leaving town, leaving Larkin with no rental income for months; (d) he turned down single and unmarried people who applied for that apartment before; and (e) he ultimately rented to a married couple after a few months of searching and waiting, supporting the fact that he was concerned about marital status (and not familial status) all along. These facts demonstrate that Larkin's main concern is with tenants' ability to pay rent on time and stability in the lease (i.e. not leaving or breaking the lease midway).

Third part of the test

Under the final part, Turner can show by a preponderance of evidence that Larkin's reasons given are merely pretexts for discrimination. Turner can argue this because Larkin had ultimately learned that he had minor children, and could be using his financial circumstances or marital status as a pretext.

In *Karns,* the court rejected the contention that the landlord was concerned about the tenant's finances, because he declined to negotiate with the tenant for the rental after learning that she was an unmarried mother of two small children. At that point, he had not asked about her finances, income, credit history, assets or liabilities- as the court remarked, "for all [he] knew, [she] could have been a millionaire". This led the court to the conclusion that he refused to rent to her solely based on her familial status.

Our case is similar in the sense that Larkin did not inquire about Turner's job or finances directly. However, he was using his marital status as a proxy for his finances based on his past experiences dealing with married versus unmarried people. Larkin himself has recognized this- he stated "He might have had a good job. He might have good credit[...] But as I said, I prefer to rent to married couples because in my experience they are more stable financially". Therefore, there is at least a reason to explain why he did not inquire further into Turner's finances.

Furthermore, our case is arguably disanalogous because the first question Larkin asked Turner was "Are you married?" as opposed to "How many are there in your family?" (as the landlord in *Karns* had). In other words, his chief and foremost concerned was with Turner's marital status. Moreover, his second question "Would anyone else be living there?" was not asked to find out information about Turner's children (although this was ultimately revealed by him), but rather as a way to know the intended occupancy rate of the apartment, as he had policy of a maximum occupancy of three people.

In *Karns,* the landlord's other argument that he was concerned about the tenant's marital status (which is an unprotected status) was also rejected because the tenant called him on another occasion and informed him that she was single, and he agreed to show her the apartment. The court surmised that this meant that marital status was not significant to him, and thus the real reason for his refusal must have been based on familial status. However, again, the case at hand is dissimilar because Larkin has maintained a consistent stance throughout his years of experience as a landlord, and has evidence to demonstrate that his chief concern had always been with marital status (e.g. the text exchange with the prospective tenant Jake). Hence, he is in far better standing than the landlord in *Karns.*

Overall, unlike the case of *Karns,* it is likely that Turner would not be able to demonstrate that Larkin's reasons are merely pretextual. Hence, Larkin's refusal to rent to Turner likely would not constitute discrimination in violation of the FHA under the *McDonnell Douglas* test.

3. Larkin's policy of only renting to a maximum of three occupants

In *Baker v. Garcia Realty Inc.* (U.S. District Court, 1996), the court laid down a three-part disparate analysis test to analyze the legality of policies. Under this test, (1) the plaintiff tenant must first make a prima facie showing that a challenged practice caused or will predictably cause a discriminatory effect; (2) if the plaintiff succeeds in this, the burden then shifts to the defendant landlord to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if the defendant succeeds in this, the plaintiff must then show that the said interest(s) can be served by another practice that has a less discriminatory effect. This test applies to challenged policies, as opposed to the *McDonnell Douglas* test which applies to specific ambiguous actions.

Under part 1, Turner will likely be able to show a prima facie case of disparate impact. As the court in *Baker* held, maximum occupancy policies such as Larkin's, which is being challenged here, would impact families with minor children more than the general population, given that families with minor children tend to have larger households, and minor children frequently share bedrooms, etc., making them more affected by such policies.

Under part 2, Larkin would bear the burden of articulating a nondiscriminatory interest served by the policy. He has stated here that the apartment is small, only 500 square feet, and is located near Slate Street which is a street with many nightclubs. In the past, Larkin has had issues with young people cramming four people into a two-bedroom apartment to save on costs, which is why he implemented a policy to rent two-bedroom apartments to at most three people. This would likely suffice for a legitimate and nondiscriminatory reason.

Under part 3, Turner would then have to show that the interest articulated can be served by a less discriminatory practice. Importantly, one crucial factor under this part is overbreadth - whether the policy is too broad to serve its interests - which can be demonstrated by a significant mismatch between occupancy limits set by a municipal code and those set by a landlord *(Baker).* In Baker, a mismatch of 8 people permitted under the municipal code and 4 people permitted by the landlord's policy was deemed significant, and was accepted as evidence that the landlord's policy was overbroad. In our case, the mismatch is only between 4 people set by s 15 of the Centralia Municipal Housing Code, versus 3 people set by Larkin's policy, which is not a significant difference. Furthermore, the apartment in question is 500 square feet, which is close to the threshold of 450 square feet that would have a 3 people limit under the Code. Therefore, this factor would not weigh strongly against Larkin.

Another factor relevant here is whether Larkin could have used a less restrictive means of meeting his goal. In *Baker,* this was found because the landlord's rental application allows the rental company to tell the difference between college students and a family with minor children. Our case is likely similar- it would be fairly easy for Larkin to collect information on whether the tenants were young people (whom his policy targets, and is trying to protect against in terms of the risk of overcrowding his apartment), versus older tenants, married couples or families (whom his policy likely does not target); and make his decisions to impose or relax the occupancy limit accordingly. Therefore, there were certainly less restrictive ways to achieve his goals, and this policy would thus fall afoul of the *Baker* test and constitute discrimination under the FHA.

Conclusion

In conclusion, Larkin's specific actions of refusing to rent to Turner likely would not constitute a violation of the FHA, but his policy of only permitting three tenants likely

would violate the FHA for not being the least restrictive means of achieving his goals and interests.

ANSWER TO MPT 1

I. Applicable Law

The United States Fair Housing Act ("FHA") defines "familial status" as the presence of minor children in the household. 42 USC 3602(k). The FHA provides that it is unlawful to " [r]efuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status." 42 USC 3604(a). However, Section 3604 does not apply to units in dwelling containing living quarters of no more than four families living independently of each other if the owner actually maintains and occupies one of the living quarters. As noted in *Karns v. U.S. Department of Housing and Urban Development* (15th Cir. 2006), marital status, is *not* a protected class.

In evaluating claims for discrimination under the FHA courts apply the three-part burden-shifting test set forth in *McDonnell Douglas Cop. v. Green ,* 411 U.S. 792 (1973), when the plaintiff claims that a landlord discriminated against a tenant through specific actions that may be ambiguous. *Baker v. Garcia Realty Inc.* (D. Fran. 1996). First, plaintiffs bear the initial burden of proving a prima facie case of housing discrimination by a preponderance of the evidence and mush show that: (1) they are a member of a protected class, (2) they applied for (includes inquiries) and were qualified (analyzes credit score, rental and eviction history, monthly income, landlord and professional references and criminal background) to rent the dwelling, (3) they were denied housing or the landlord refused to negotiated with them, and (4) the dwelling remained available. Second, if established, a presumption of illegality arises and burden shifts to defendant to articulate a legitimate nondiscriminatory reason for the denial. Finally, if defendant satisfies this burden, plaintiff then has the opportunity to prove by a preponderance of the evidence that those reasons are pretextual. *See Karns.*

When the claim is instead that a tenant was discriminated against based on a housing policy that is facially neutral, the Fifteenth Circuit applies a three-part disparate-impact analysis: (1) the plaintiff tenant must make a prima facie showing that challenged practice caused or predictably will cause a discriminatory effect; (2) if shown, burden shifts to landlord to prove that it is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests; and (3) if this burden is met, the burden shifts

back to plaintiff who may only prevail if they can show that the policy is overbroad or those interests could be served by another practice that has a less discriminatory effect. *See Baker.*

In the 15th Circuit, when a policy differs significantly from the applicable municipal code maximum occupancy, such as permitting half of what is permitted under the municipal code, it is evidence of overbreadth. See *Baker.* Here, the Centralia Municipal Housing Code ("MHC") provides that the maximum occupancy of a 451-700 square foot apartment be no more than four people. Section 15(A)(3).

II. Analysis of Legal Arguments

Martin Turner ("Turner") is a widower and single parent with three minor children that inquired about renting a two-bedroom, 500 square foot apartment from Peter Larkin ("Larkin"), which he desired to rent to be close to his parents after the death of his spouse. His children are 16, 13 and 6. Martin claims he was denied the opportunity to rent the available apartment by Larkin after being asked about his marital status and the number of occupants for the unit based on his familial status in violation of the FHA.

In order to prove his claim for discrimination under the FHA, Turner must prove that Larking " [r]efused to negotiate for the sale or rental of, or otherwise make unavailable or deny" the apartment" to Turner because of his "familial status." 42 USC 3604(a). There are two different tests that the 15th Circuit utilizes to analyze such claims. Here, the first test applies to Larkin's preference for married couples and the second test applies to Larkin's policy of limiting occupancy in the unit to 3 individuals.

If Turner argues that Larkin discriminated against him through specific actions that may be ambiguous, courts in the 15th Circuit will apply the three-part burden-shifting test set forth in *McDonnell Douglas Cop. v. Green,* 411 U.S. 792 (1973). See *Baker v. Garcia Realty Inc.* (D. Fran. 1996). Under the *McDonnell* test, Larkin will need to first prove a prima facie case of housing discrimination by a preponderance of the evidence showing that: (1) he and his family are members of a protected class, (2) they applied for (includes inquiries) and were qualified (analyzes credit score, rental and eviction history, monthly income, landlord and professional references and criminal background) to rent the dwelling, (3) they were denied housing or the landlord refused to negotiated with them, and (4) the dwelling remained available. Second, if established, a presumption of illegality arises and burden shifts to Larkin to articulate a legitimate nondiscriminatory reason for the denial. Finally, if Larkin satisfies this burden, Turner then has the opportunity to prove by a preponderance of the evidence that those reasons are pretextual. See *Karns.*

Here, Turner will likely meet his burden to prove a prima facie case of housing discrimination by a preponderance of the evidence. He and his three minor children are

plainly members of the protected "familial status" class as defined under the FHA. While he didn't formally apply for the apartment, that term is interpreted broadly to include inquiries, which he clearly made and thereafter was refused further engagement by Larkin. Based on the information provided in the file, he was also likely qualified to rent the apartment. Specifically, he is employed as a data analyst and at least claims that he can easily afford the $2,200 rent per month for the apartment, has a good rental history and good credit. Either way, because Larkin did not inquire into his financial status or conduct any background check, as in *Karns,* this element is likely to be assumed. He was also plainly denied the housing by way of Larkin's failure to ever get back to him. Moreover, while the dwelling was eventually rented by Larkin, it remained available for two months after he inquired, such that it was certainly still available when he was denied further negotiations.

As a result of meeting his prima facie burden, a presumption of illegality of Larkin's refusal to rent to Turner arises and Larkin would be required to articulate a legitimate nondiscriminatory reason for the denial. Here, Larkin has one such reasons that he has a long-standing preference for renting to married couples as they are more financially stable. As noted above, the FHA does not define "marital status" as a protected class, so this preference is permitted. While *Karns* does not provide analysis on whether the alleged nondiscriminatory reasons in that case -- marital status and finances --were legitimate, because the court then goes on to analyze whether or not the plaintiff proved her burden to show they were pretextual, we can assume that they were deemed legitimate by the court. Here, Larkin's similar reasons of marital status/finances is likely to be legitimate; he can articulate evidence that of his past experience showing that married couples are more stable than unmarried couples and single people, even where the single individual has a good job, as that job can be lost easily.

As such, in the final step in *McDonnell,* Turner would bear the burden to show that this reason is, based on a preponderance of the evidence, pretextual. Here, based on the facts as provided by Larkin, it is unlikely that Turner will be able to meet that burden based on the many facts that Larkin would be able to marshal in rebuttal. While Turner might claim that pretext his demonstrated, as in *Karns,* by the fact that Larkin refused to engage with Turner after determining that he had children. Here, that argument is unlikely to be as easily won because Larkin did continue to engage with Turner - he asked about his marital status. Indeed, it was only after obtaining that information that he expressed his reluctance, tying that reluctance to his need to pay his mortgage. As such, unlike in *Karns,* here, it does appear that it was the marital status and Larkin's belief that it is an indicator of financial stability that was the reason he refused to rent the apartment; not a pretext for denying Turner on the basis of his familial status. Most importantly, Larkin will be able to show that he has no issue renting to families where the parents are married based on his past policy of renting to families where the parents are married and indeed his decision to in the end rent this apartment to a married couple.

If Turner argues that he was discriminated against based on Larkin's facially-neutral housing policy to not rent an apartment of that size to more than 3 individuals, the 15th Circuit will apply a three-part disparate-impact analysis. Under this analysis, Turner must make a prima facie showing that challenged practice caused or predictably will cause a discriminatory effect. If shown, the burden shifts to Larkin to prove that it is nonetheless necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. If that burden is met, then the burden shifts back to Turner to show to show that the policy is overbroad or those interests could be served by another practice that has a less discriminatory effect. See *Baker.*

Here, Turner will likely be able to show that Larkin's policy of not renting an apartment of that size to more than 3 individuals causes a discriminatory effect. The exact same analysis that the Court engaged in *Baker* would apply here -- such an occupation limitation necessarily discriminates against families. The facts are a little different here, because the policy is based on the apartment size rather than bedroom count -- and in *Baker* the Court noted that children often share bedrooms -- however the effect is the same and the policy is likely to be shown to cause a discriminatory effect.

Larkin will also be likely able to show that his policy is necessary to achieve substantial, legitimate and nondiscriminatory interests. Specifically, as was accepted in *Baker,* the desire to limit over-occupation by individuals in an effort to minimize rent payments is a legitimate, nondiscriminatory interest. Here, it is young folks that tend to live in the neighborhood as opposed to students but the same analysis should hold.

Finally, it is not clear which way a court would rule on whether or not Turner would be able to show that the policy is overbroad or that they could be served by a practice that has a less discriminatory effect. In the 15th Circuit, when a policy differs significantly from the applicable municipal code maximum occupancy, such as permitting half of what is permitted under the municipal code, it is evidence of overbreadth, *see Baker,* and here the Centralia Municipal Housing Code ("MHC") provides that the maximum occupancy of a 451-700 square foot apartment be no more than *four* people. See Section 15(A)(3). Thus, while Larkin's limit is less than the code, it is not significantly less than the code and the square footage is on the lower end of the square footage addressed by the code. On the whole, the variance from the code is unlikely to be strong evidence of overbreadth. On the other hand, the same less restrictive measure approved of in *Baker* could be utilized by Larkin here -- distinguish between families with kids and a bunch of 20 year olds. On the whole, it would seem that Larkin has the losing argument here and that the policy of limiting rental to three individuals would not be upheld under the disparate impact test.

In any event, while the caselaw is not clear, because Larkin had a legitimate, non-pretextual reason for not renting to Turner, the fact that his policy on occupation might be

overbroad will be neither here nor there as he only needs one permissible reason not to rent.

III. Conclusion

Turner is unlikely to succeed on his claim for discrimination under the FHA. While he might be able to show that Larkin could apply his occupancy limitation in a narrower fashion to meet his stated purpose of not having his units overrun with young folks looking to avoid rent payments, he is unlikely to show that Larkin's preference for married individuals is pretextual because Larkin has stuck to his preference in his prior rentals and at the same time has been willing to rent to married individuals with children.

ANSWER TO MPT 2

Memo

Re: Professor Eugene Hagen IPRA request

To: Loretta Rodriguez

From: Examinee

Date: February 25, 2025

INTRODUCTION

On February 24, 2025, the University of Franklin (UF) received an Inspection of Public Records Act (IPRA) request from Paul Chen, a staff writer for The Daily Howl. The request is with regards to the recent suspension of law professor Eugene Hagen. The IPRA request asks for four categories of items: 1) annual performance reviews, 2) complaints about Professor Hagen from members of the public, 3) the names of anyone who has made a complaint about Professor Hagen, 4) records in possession of the UF Campus Police department. The following analyzes each category of document in order to assess whether UF must produce each of the requested documents.

STATEMENT OF FACTS

[Omitted]

LEGAL ANALYSIS

Pursuant to the Franklin Civil Code (FCC), every citizen has a fundamental right to have access to public records. *See* FCC§ 14-2, *Fox v. City of Brixton* (2018). Public records include all documents, papers ... and other materials, regardless of physical form or characteristics, that are used, created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained." FCC§ 14-1. Citizens may request access to public records through written IPRA requests to the custodian of the records. FCC § 14-5. Although there is a presumption in favor of disclosure, *Fox,* the right to inspect is subject to enumerated limitations. FCC§ 14-2. Of particular importance to the instant case are the exemptions for 1) letters or memoranda that are matters of opinion in personnel files, and 2) portions of any law enforcement record that reveal confidential sources or methods that are related to individuals not charged with a crime. */d.*

Here, Mr. Chen appears to have appropriately requested public records using the procedure outlined in FCC§ 14-5. He submitted a written request to the Custodian of Records at UF and cc-ed the Chief of UF Campus Police. Ostensibly, these are the record custodians for the records requested. Therefore, each of the four categories of requested items must be taken in turn and analyzed pursuant to FCC§ 14-1 *et* seq. to determine what exactly must be produced to Mr. Chen pursuant to his IPRA request.

<u>Professor Hagen's Annual Performance Reviews</u>

As noted above, there is an exception to the general public record disclosure requirement for "letters or memoranda that are matters of opinion in personnel files." FCC§ 14-2(a)(3). In *Fox v. City of Brixton* (2018), the Franklin Court of Appeals considered what the legislature intended to include within the phrase "matters of opinion in personnel files." The court stated that the location of a record in a personnel file was not determinative of its disclosure-status. *Fox.* Rather, the dispositive factor is "the nature of the document itself." In general, the legislature intended for "information regarding the employer/employee relationship such as internal evaluations; disciplinary reports or documentation; promotion, demotion, or termination information; or performance reviews" to be exempt from disclosure. */d.* The idea being that the exemption's intent is to "protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of the working relationship between them.

FCC § 14-6 states that records containing information that is exempt and nonexempt from disclosure "shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. Although many letters or memoranda in a personnel file contain both matters of fact and matters of opinion regarding an employee's performance, the Franklin Supreme Court has held that FCC § 14-2(a)(3) applies to letters or memoranda *in their entirety. Newton v. Centralia School District* (2015). This full document exemption overrides the requirement in FCC§ 14-6. *Pederson v. Koob* (2022). A custodian need not disclose portions of the letters and memoranda solely because they do not contain an opinion.

Here, the Annual Performance Reviews were clearly generated by UF in support of the working relationship between the law school and Professor Hagen. Despite the fact that there are factual portions of the reviews, such as the notes regarding Professor Hagen's absences at committee meetings and office hours, as well as a list of classes he taught, committees he served on, and publications he completed, those factual portions need not be disclosed because of the aforementioned full document exemption. The performance reviews are primarily an assessment of Professor's ongoing performance as a faculty member, and as such are clearly letters or memoranda that are matters of opinion, and therefore are excluded from required disclosure pursuant to FCC§ 14-2(a)(3).

<u>Complaints About Professor Hagen</u>

When an employer maintains records of complaints in an employee's personnel file, those records may be subject to disclosure under the IPRA. As stated above, the fact that the complaints are located in a personnel file does not render them un-producible. *Fox.* Rather, the question is whether the document requested was generated to support the working relationship between the employer and employee. *Fox.* In *Fox,* the plaintiff requested all citizen complaints filed against a police officer. Although the city argued that the complaints related to job performance and were inadmissible, the plaintiff alleged that the complaints arose from the officer's role as a public servant, not his role as a city employee. */d.* The court considered the fact that the complaints in question were "voluntarily generated by the public" and not "generated by the City or in response to a City query for information," and concluded that they were not the type of "opinion" material the legislature intended to exclude from disclosure. */d.* Notably, the court stated that the fact that the complaints may bring "negative attention to the officers is not a basis under this statutory exemption for shielding such records from public disclosure." */d.*

There have been several complaints from students about Professor Hagen, but only one from a member of the public. The member of the public was Pamela Rogers, a mother of a current law student. Although her complaint is kept in the UF personnel file, it was "voluntarily generated" by a member of the public, not the city, and was not sent "in response to a City query for information." Therefore, like the complaints in *Fox,* the

complaint submitted by Pamela Rogers will need to be disclosed in response to the IPRA request.

Student complaints should not be considered to come from members of the public. In request #3, Paul Chen specifically lists "students" as separate from "members of the public." Therefore, their complaints should not be included in the request for complaints by members of the public. Moreover, to the extent that the student evaluations constitute complaints, these evaluations were generated in response to a UF query for information, and would therefore probably be exempt from production on those grounds as well.

Chart Containing the Names of Anyone Who Has Made a Complaint About Professor Hagen

Despite the aforementioned presumption in favor of disclosure, the Franklin IPRA states clearly that it shall not be "construed to require a public body to create a public record." FCC§14-S(b). UF does not currently maintain a chart containing the names of people who have made complaints about Professor Eugene. Such a chart would need to be created, and it would take time to do so. Therefore, UF is not required to produce such a chart because of the rule stated in FCC § 14-S(b).

UF Campus Police Records Involving Professor Hagen

As previously discussed, there is also an exception to the general public record disclosure requirement for "portions of any law enforcement record that reveal confidential sources or methods that are related to individuals not charged with a crime, including any records from inactive matters or closed investigations to the extent that it contains the information listed in this paragraph." FCC§ 14-2(a)(4). The Franklin Supreme Court has held that this exemption does not bar the production of all law enforcement records relating to ongoing criminal investigations. *Torres v. Elm City* (2016). FCC§ 14-6 requires that requested law enforcement records containing both exempt and nonexempt information cannot be held in toto. Rather, when requested public records contain a mix of exempt and nonexempt information, the 'exempt and nonexempt [information] ... shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection'" *Torres* citing FCC§ 14-6(a); *Wynn v. Franklin Dept. of Justice.*

The UF Campus Police do not have any documents related to the arrest that led to Professor Hagan's DUI and subsequent suspension. Therefore, UF could try to argue that the records they do have are not relevant to Paul Chen's IPRA request, because the request is explicitly related to the DUI, per Paul Chen's email. However, this argument will likely be unavailing.

The UF Campus Police does have records relating to a recent arrest of Professor Hagen for possession of marijuana. This investigation appears to still be ongoing, but that does not exempt its records from disclosure. The arrest was the consequence of a confidential informant's tip, and the records include an incident report and two photographs. The incident report includes the name of the informant and the photographs show Professor Hagen and another Professor who was not charged with any crime related to the marijuana possession. Pursuant to § 14-2(a)(4), the information about the confidential informant and the information identifying the other professor *I* the photos clearly showing an individual (the other professor) not charged with a crime are exempt from production. However, the nonexempt information, meaning the remainder of the incident report, must be disclosed pursuant to FCC§ 14-6(a).

CONCLUSION

In conclusion, the complaint from Pamela Rogers and the UF Police incident report (with the name of the confidential informant and the other professor redacted) must be produced. All other documents, including performance reviews, student evaluations, and the requested chart are not required to be produced.

ANSWER TO MPT 2

To: Loretta Rodriquez, General Counsel, University of Franklin

From: Examinee

Date: February 25, 2025

Re: Professor Eugene Hagen matter

I. INTRODUCTION

You have asked me to assess whether we must produce each of the documents requested by Paul Chen pursuant to the Franklin Inspection of Public Records Act (IPRA) relating to Professor Eugene Hagen. Generally, the University would like to protect as many documents as possible from disclosure. In summary, (a) we do not need to disclose Hagen's annual performance reviews, (b) we do need to disclose the complaints from members of the public, (c) we do not need to produce a chart containing the names of anyone who has made a complaint about Hagen, and (d) we do need to disclose the records of the ongoing campus police investigation into Hagen, subject to the redactions that are described below.

II. REQUIREMENTS OF THE IPRA

The core purpose of the IPRA is providing access to public information, thereby encouraging accountability in public officials. Fox v City of Brixton. A citizen has a fundamental right to have access to public records. Id. Persons are entitled to the "greatest possible information regarding the affairs of government and the official acts of public officers and employees". Franklin Civil Code **(FCC)** §14 Declaration of Policy, cited in Torres v Elm City.

The IPRA accordingly provides that every person has the right to inspect public records, save where an exemption applies. FCC §14-2(a). Generally, the exemptions are narrowly drawn. Dunn v Brandt, cited in Torres v Elm City. "Public records" include all documents that are used, created, received, maintained or held by or on behalf of any public body and related to public business. FCC §14-1(a). To make a request, a person must submit a written request. FCC §14-5(a).

As a public body, the University of Franklin is subject to the IPRA. Chen has properly submitted a written request, by his letter dated February 24, 2025. Each of the documents he has requested are documents that, to the extent they exist, are used, created, received, maintained or held by the University and relate to its public business. Under the IPRA,

each of the documents requested by Chen should be disclosed unless an applicable exemption applies. Therefore, consider each of the documents requested in turn.

III. HAGEN'S ANNUAL PERFORMANCE REVIEWS COMPLETED BY THE DEAN OF THE UF SCHOOL OF LAW FROM 2019 TO PRESENT

The IPRA exempts from disclosure "letters or memoranda that are matters of opinion in personnel files". FCC §14-2(a)(3).

The legislature intended to exempt from disclosure "matters of opinion" that constitute personnel information of the type generally found in personnel files. Fox. The purpose of this exemption is to protect the employer/employee relationship from disclosure of any letters or memoranda that are generated by an employer or employee in support of a working relationship between them. ld.

Specifically, this includes internal evaluations, disciplinary reports or documentation, promotion, demotion or termination information and performance reviews. Id. The Franklin Supreme Court has further held that the exemption applies to "letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be rehired or as to why an applicant was not hired, and other matters of opinion." Newton v Centralia School District, cited in Fox.

It is not possible to divide a document in this category into "matters of opinion" and "matters of fact". Newton v Centralia School District, cited in *Pederson v Koob*. The types of documents in scope are exempt as a whole. Pederson.

In *Pederson,* the appellant argued that an investigation into an employee of a public agency be split into factual matters and matters of opinion, such that the factual matters should be disclosed to the appellant. The court rejected this argument and prevented disclosure of the report in its entirety.

Here, Williams conducted annual performance reviews with Hagen. These included (a) internal performance evaluations by Williams, including in relation to concerns about Hagen's absences (b) summaries of student course evaluations, which included negative comments from student course evaluations from the past two years around Hagen's tardiness, unresponsiveness to emails, and moody and erratic behavior, and (c) general information, which included the classes Hagen taught, the quality of his teaching, the committees he served on, what publications he completed and the quality of his publications.

These detailed performance evaluations fall squarely within the exemption provided in FCC §14-2(a)(3). They are "personnel evaluations" or "performance reviews" that the

Franklin courts have repeatedly held are exempt from disclosure. Fox and Newton. The performance reviews contain a mix of Williams' opinions and matters of fact. However, the reports in their entirety are exempt from disclosure, given that they contain matters of opinion. Fox.

Therefore, Hagen's annual performance reviews are exempt from disclosure.

IV. ANY COMPLAINTS ABOUT HAGEN SUBMITTED BY MEMBERS OF THE PUBLIC TO THE UF SCHOOL OF LAW

As noted above, the IPRA exempts from disclosure "letters or memoranda that are matters of opinion in personnel files". FCC §14-2(a)(3). The purpose behind this exemption is noted above. The location of a record in a personnel file is not dispositive. Fox. Rather, the critical factor is the nature of the document itself. ld.

In *Fox,* the Franklin Court of Appeal held that complaints about a police officer employed by the city were *not* protected from disclosure. The Court noted that the complaints were not generated by the employer; rather they were unsolicited complaints about the officer, voluntarily generated by the public. While that could lead to disciplinary action, this did not make the complaints "matters of opinion in personnel files". The fact that police officers often receive complaints from disgruntled citizens and that complaints may have no foundation in fact did not shield the records from public disclosure. Police officers are "public officers" and the complaints concern the official acts of those officers.

Here, the University has received one complaint from a member of the public. It is a letter from Pamela Rogers, the mother of a current law student. Although the letter was placed by Williams in the personnel file of Hagen, its location is not dispositive and does not make the complaint a letter or memoranda that is a matter of opinion in a personnel file. Similar to the complaints in *Fox,* this complaint was unsolicited. It was voluntarily generated by the mother of a student. The fact that it could lead to disciplinary action does not change the analysis. Unlike the police officer in *Fox,* professors such as Hagen are not "public officers" because they are serving their students rather than the public at large. However, in favor of disclosure, it is clear that Chen already knows about Rogers' complaint. In his September 19, 2024 newspaper article Chen notes that Kate Rogers' mother had written a letter complaining about Hagen to Williams. Chen further quotes Pamela Rogers. Therefore, any potential privacy concerns Pamela Rogers about her complaint becoming known by Chen can be dismissed.

Therefore, the public complaint against Hagen by Pamela Rogers should be disclosed to Chen.

V. A CHART CONTAINING THE NAMES OF ANYONE WHO HAS MADE A COMPLAINT ABOUT HAGEN

The IPRA does not require a public body to create a public record. FCC §14-5(b).

Here, Chen has requested a chart containing the names of anyone who has made a complaint about Hagen. Cheryl Williams has confirmed that such a chart does not exist. Because such a chart does not exist, we are not required to produce one.

Therefore, we do not need to provide Chen with a chart containing the names of anyone who has made a complaint about Hagen.

VI. ANY RECORDS INVOLVING HAGEN IN THE POSSESSION OF THE UF CAMPUS POLICE DEPARTMENT

Portions of law enforcement records are exempt from inspection if they reveal confidential sources or methods or are related to individuals not charged with a crime. FCC §14-2(4). This exemption is not concerned with the stage of the investigation. Torres. If an investigation is ongoing, this is not material to whether the requested records could be withheld. ld. Rather, it is the specific content of the records that is relevant. ld.

Unlike in the case of personnel records, where the requested law enforce records contain both exempt and nonexempt information, the exempt and nonexempt information must be separated, and all nonexempt information made available. FCC §14-6(a), and Torres. For example, an Attorney General's audio recording relating to a financial investigation was required to made available for inspection after redacting 90 seconds relating to a confidential informant. Wynn v Franklin Dept of Justice, cited in Torres. The Franklin Supreme Court has held that the public body is required to review the requested law enforcement records, separate information that is exempt, and provide the nonexempt information. Torres.

Here, the University's police department have records relating to a recent arrest of Hagen for smoking marijuana. Hagen was smoking marijuana with another professor, Hope Sykes. Sykes was not arrested, because she had an insufficient quantity of marijuana to be charged with a crime. The records include three items: (a) an incident report and (b) two photos. The report includes details about the incident, including the time, date, location and name of the confidential source. It also includes a description of what the police officer observed and the statements made by Hagen and Sykes. The photographs show both Hagen and Sykes with the bong in Hagen's office.

The fact that the investigation is ongoing does not affect whether the materials can be disclosed. The police report in general should be disclosed. However, the portion of the

police reports containing the name of the confidential source must be redacted. Further, because Sykes was not charged with a crime, she should be redacted from copies of the photos and her name and her statements redacted from the report.

Therefore, the police report should be disclosed, but we must make the redactions described in the prior paragraph before disclosure.

VII. CONCLUSION

In conclusion, (a) we do not need to disclose Hagen's annual performance reviews, (b) we do need to disclose Pamela Roger's complaint, (c) we do not need to produce a chart containing the names of anyone who has made a complaint about Hagen, and (d) we do need to disclose the records of the ongoing campus police investigation into Hagen, subject to the appropriate redactions described above.