____ ____ ____ ____ ____

Applicant Number

Georgia Essay Questions
July 2026

Do not touch this packet or start the exam until you are instructed to do so.

- Once the exam begins, you may work on the four essay questions in any order, but remember to type your answers in the appropriate answer window (or write your answer in the appropriate answer book if you are handwriting).

- For each of the four attached essay questions, there is one blank sheet for your use as scratch paper, and you may take notes on any of the attached pages if you wish. You may remove the staple or tear out any pages, but you will need to put the packet back in order when the exam session is over.

- On each essay question, remember to demonstrate not merely your memory but also your ability to think clearly and to analyze the issues.

- Assume the questions arise under the laws of Georgia unless otherwise indicated.

ESSAY 1

Laptop applicants: Answer this question in the **FIRST** answer window.

Handwriting applicants: Answer this question in the **BLUE** answer book.

Buffalo Bob Manley is a mechanical bull manufacturer and bar owner. A mechanical bull is an amusement and life-size riding bull with a saddle, equipped with a bucking element that causes the bull to violently buck the rider. The bull comes with a button-operated pay box that charges $5 per ride. The objective is to ride the bucking bull for eight seconds. Industry data shows that 90% of all mechanical bull riders are bucked off before eight seconds. Bob has installed his product (the "Buffalo Bull") at three of his bars in Georgia. He offers bull riding and square dancing.

Lucy's Friendly Bulls is a competing manufacturer that sells mechanical bulls equipped with protective housing with well-cushioned floors and walls. With cushioned bull rides, no one has ever been seriously injured. Lucy offered Bob a 50% discount on her patented housing. Bob scoffed at the offer. "Cushions are for babies," he said. "Danger is what people want. I don't give a flip about cushions and I never will."

There have been reports of serious injuries on un-cushioned rides, but Bob's bars have not encountered any since opening three years ago. At each of Bob's bars, the bull ride is staffed by an attendant. Before any patron is permitted to ride the bull, the attendant requires the patron to verbally acknowledge that he or she has read and understood the following warning that is printed on placards that surround the bull:

> **WARNING**: This is a dangerous ride. Ride at your own risk! Wood floors. No cushions. Bob and this bar are not liable for any injuries from riding or being thrown off.

Max Shauoff is a regular customer at Bob's bar in Macon. He goes by the nickname of "The Suburban Cowboy." He dances with his fiancée, Susie Quonset (affectionately known as Susie Q). In addition to dancing, Max is a regular bull rider at the Macon bar. He has ridden the bull there at

least 20 times over the last year and he has been thrown off 15 times. His falls typically involve him slipping gracefully down the side of the bull and catching himself, without any hard falls to the floor.

Max and Susie Q went to Bob's Macon Bar on June 10, 2026. The couple got a table for two. Susie ordered a club soda. Max ordered a No Bull, a non-alcoholic, caffeinated energy drink. Max drank three No Bulls in quick succession as the couple sat together for an hour waiting for the regular crowd to shuffle in. Susie Q chided Max for downing three No Bulls so quickly, telling him that they would make him too charged up when they danced. "Once the music starts," Max said. "I will be ready. But right now, I am in the mood for a bull ride."

Susie tried to dissuade him and told him to ride later, but Max rebuffed her. He mounted the bull, which threw him off almost immediately. Max went airborne, flailed wildly to remain upright and then landed on his fully extended right leg. Unbeknownst to Max, he suffers from eggshell osteoporosis. The bones in his lower right leg disintegrated on impact. At the hospital, the doctors had no choice but to amputate Max's lower right leg. Max was later fitted with a prosthetic. He lost his job as a forklift operator and now suffers severe depression. He will require lifelong physical and mental health care. Susie Q married another square dancer.

Please complete the following tasks, applying Georgia law:

1. Prepare an analysis of the potential strict liability and negligence claims that Max might assert against Bob. Identify the elements of each claim and any facts that support each element.

2. Prepare an analysis of Bob's potential defenses to Max's claims, addressing defenses to the merits of each claim, as well as affirmative defenses (e.g., assumption of the risk, contributory negligence, and comparative negligence).

3. Prepare an analysis of the types of damages that Max might attempt to claim and the factual bases for each claim. Include an assessment of whether Max may be able to seek punitive damages.

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ESSAY 2

Laptop applicants: Answer this question in the **SECOND** answer window.

Handwriting applicants: Answer this question in the **YELLOW** answer book.

You have been retained to advise Waycross Outfitters, LLC ("Waycross") concerning a dispute over a shipment of tents it ordered from Cypress Gear Company ("Cypress").

Waycross is a Georgia company that owns and operates a chain of retail sporting-goods stores in Georgia and regularly buys camping equipment from manufacturers to resell to consumers. Cypress is a Georgia company that manufactures and sells camping tents. The two companies have done business together several times before in the past.

On June 2, 2026, Waycross's purchasing manager telephoned Cypress's sales representative. During the call, the two orally agreed that Cypress would sell Waycross 400 tents at $60 per tent, with delivery to Waycross's warehouse by August 1, 2026. Nothing was put in writing during the call.

On June 4, 2026, Cypress mailed Waycross a signed letter confirming the order. The letter described the goods (400 tents), the price ($60 per tent), and the August 1 delivery date. Waycross received the letter on June 6, 2026, read it, and placed it in its files without responding.

On June 12, 2026, Waycross mailed Cypress its own signed purchase-order form, which also listed the 400 tents, the $60 price, and the August 1 delivery date. The purchase-order form said nothing about warranties. Cypress promptly mailed back a signed acknowledgment form that matched the quantity, price, and delivery date, but also contained the following sentence, printed in the same size and typeface as the rest of the form:

> Seller disclaims all implied warranties, including the implied warranty of merchantability, and Buyer's sole remedy for any defect is repair or replacement of the affected goods.

Neither party's form stated that acceptance was limited to that party's own terms, and neither party said anything further about the disclaimer.

On July 20, 2026, Cypress delivered 400 tents to Waycross's warehouse. When Waycross inspected the shipment the next day, it found that 75 of the tents were missing their support poles and could not be assembled or used as tents. The remaining 325 tents conformed to the order in all respects.

Based on the facts stated above, Waycross has engaged you to analyze the following questions under Georgia law.

1. Does Article 2 of the Uniform Commercial Code in Georgia apply to this situation? Explain your answer.

2. Is the June 2, 2026, telephone agreement an enforceable contract between Waycross and Cypress, and what effect, if any, do the parties' later writings have on its enforceability? Explain your answer.

3. Is Cypress's warranty-disclaimer and limited-remedy clause a part of the contract? Explain your answer.

4. With respect to the 75 nonconforming tents, what are Waycross's rights and remedies, and what options, if any, does Cypress have? Explain your answer.

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ESSAY 3

Laptop applicants: Answer this question in the **THIRD** answer window.

Handwriting applicants: Answer this question in the **PINK** answer book.

After a multiple-fatality school shooting in Mifflin County, Georgia, tensions were high over gun rights and mental health issues. The timing of the tragedy was particularly difficult for County leaders because in October 2025—just a month after the shooting—Mifflin County was to host a three-day summit of political leaders (including the U.S. President) at The Preserve, a famous posh resort and economic jewel of the County. The County Board of Commissioners was deeply concerned that the summit would be marred by protests over the recent shooting that could snarl traffic, endanger the security of the President or visiting foreign leaders, hurt tourism, or, frankly, make the County look bad to the world. In a panic, the Board quickly passed this ordinance:

> For only the week of October 14–21, 2025, no public gatherings or protests shall be allowed on any public street or sidewalk within 1,000 yards of The Preserve in which the topics of gun rights or mental health are mentioned, nor shall signs related to those issues be allowed within the "restricted area." Public gatherings or protests or signage related to these two issues during the time period shall be freely allowed, however, in Memorial Park. Violation of this ordinance shall be deemed a misdemeanor trespass punishable by a fine of up to $1,000 or up to 12 months in jail.

Memorial Park is a County-owned public space located miles from The Preserve, away from major traffic arteries or any threat of harm to visitors at The Preserve. It also is in a rundown, crime-ridden area of the County.

Jim and Pam are Mifflin County residents whose child was killed in the shooting. On October 15, 2025, the day the leaders began to arrive, they felt compelled to express their feelings in hopes of effecting change. Joined by 50 friends, each carrying a sign saying only "Enough is Enough – Protect Our Kids" with a picture of Jim and Pam's child on it, they began peacefully and silently walking in an organized fashion along a sidewalk on a public street

leading to The Preserve, just over 1,000 yards from the resort entrance. As they walked, they inadvertently began to edge a bit closer to The Preserve, and Pam strayed about 10 feet inside the restricted area. Just as she did, a County Sheriff's deputy ran toward Pam with his right hand on his holster while yelling, "stop right there, lady." Dwight, a close friend of the family and part of the gathering, jumped in front of Pam, blocking the deputy and telling Pam, "Run for it, I'll keep him at bay." Pam fled the scene. Dwight is a former Navy Seal trained in self-defense and knew that he had the capability of killing someone with just his hands. The deputy, not taking kindly to Dwight standing in his way, began to yell threateningly at Dwight and started to raise his right hand toward Dwight. Dwight quickly raised his own hand toward the deputy's chest to slow him down, but the deputy ducked at just that point and Dwight struck him severely in the head, breaking the deputy's nose and causing his face to be permanently and grossly deformed.

Pam was later found by the Sheriff, cited for trespass under the ordinance, and assessed a $1,000 fine. She has hired a defense lawyer who will challenge the constitutionality of the County Ordinance. Dwight was arrested by the Sheriff and taken to jail. You have just been hired as an assistant district attorney for the Mifflin County D.A., Michael Scott, who has asked you to write a memo to him answering these two questions:

1. Is the County ordinance unconstitutional on its face or as applied? Please provide the applicable legal elements and standard(s) for reviewing an ordinance of this type for constitutionality, and articulate facts and legal arguments based on those facts that would (a) support the constitutionality of the ordinance and (b) support Pam's defense that the statute is unconstitutional (both generally and as applied to her).

2. What criminal charges should we bring against Dwight? Please include in your answer what facts provided support proving the elements of any such criminal charge and what defenses (and pertinent facts supporting them) that Dwight would likely assert in response to each such charge.

Remember not to use your name in the "from" line of your memo; you can use "Assistant D.A." instead.

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ESSAY 4

Laptop applicants: Answer this question in the **LAST** answer window.

Handwriting applicants: Answer this question in the **TAN** answer book.

On March 15, 2026, a multi-vehicle collision occurred on Interstate 75 in Bibb County, Georgia. Alice, a lifelong resident of Miami, Florida, was driving northbound when a fully autonomous electric truck veered across the median and struck her sedan head-on. Alice suffered serious injuries and was airlifted to the Grady Hospital trauma center in Atlanta. The truck was owned and operated by Brian, a resident of Bibb County, Georgia. Brian had engaged the vehicle's Level 4 fully autonomous driving mode at the time of the accident and claims he exercised no manual control over the truck when it suddenly departed its lane.

The truck is a Model X-9, manufactured by DRIVEN Tech Ltd. ("DRIVEN"), a corporation organized under the laws of the People's Republic of China with its sole headquarters and principal place of business in Shanghai. DRIVEN has no offices, employees, or direct retail operations in the United States. It does, however, maintain a wholly owned U.S. subsidiary, DRIVEN USA, Inc. ("DRIVEN USA"), which is incorporated in Delaware and has its principal place of business in California. DRIVEN USA operates authorized dealerships in New York and California. It has no dealership, office, or registered agent in Georgia and did not play any role in designing the Model X-9. DRIVEN and DRIVEN USA maintain separate corporate books, officers, and bank accounts.

DRIVEN USA has sold approximately 2,000 vehicles in the United States. While DRIVEN ran a splashy Super Bowl ad four years ago, it does not currently do any U.S. advertising and does not focus on the U.S. market due to tariffs and regulatory issues. Brian purchased his Model X-9 from a DRIVEN USA-authorized dealership in New York City approximately two years before the accident. He later titled and registered the vehicle in Bibb County, Georgia.

Post-accident investigation and data recovered from the truck's onboard event recorder indicate a possible malfunction in its autonomous navigation module. Two months before the accident, the National Highway Traffic Safety Administration ("NHTSA") had opened a recall of the Model X-9's autonomous driving system for noncompliance with Federal Motor Vehicle Safety Standards

(the "Federal Standards"). DRIVEN directed DRIVEN USA to send written recall notices to registered owners in the United States, including Brian at his Bibb County, Georgia address. Brian received the recall notice but had not yet brought the vehicle in for the recall repair at the time of the collision.

Alice, who is seeking to recover over $1 million, is considering filing suit and has identified the following potential causes of action:

1. Negligence against Brian, for operating the vehicle in fully autonomous mode despite the outstanding recall and failing to maintain proper control;

2. Strict products liability against DRIVEN and DRIVEN USA, for a defective autonomous driving system;

3. Negligent design against DRIVEN and DRIVEN USA, for designing an autonomous system prone to sudden, uncontrolled lane departure; and

4. Negligence per se against Brian and DRIVEN, for violation of specific Federal Standards governing autonomous vehicle safety systems and lane departure safeguards.

Brian's counsel will seek to remove any state-court action to federal court. DRIVEN's U.S. litigation counsel has stated that DRIVEN will challenge personal jurisdiction if it is sued in Georgia or any forum other than China.

1. For each defendant—Brian, DRIVEN, and DRIVEN USA—analyze whether Alice can establish personal jurisdiction in Georgia and proper venue either in a Georgia state court located in Bibb County or, if the case is filed or removed to federal court, in the appropriate federal district court.

2. Assume Alice files one action against Brian, DRIVEN, and DRIVEN USA in the Superior Court of Bibb County, Georgia, and all defendants have been properly joined and served. Defendants file a joint notice of removal to the United States District Court for the Middle District of Georgia. What arguments would defendants make in support of removal? What arguments would Alice make in support of remand? Is removal likely to succeed?

3. Assuming the action is tried in a state or federal court in Georgia, identify the procedural and substantive law governing each claim. Explain your reasoning.

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July 2026
MPT-1 Item

Matter of David Dawes

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Matter of David Dawes

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

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

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

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

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

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

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

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

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

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

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UNITED STATES DISTRICT COURT
for the
District of Franklin

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

INDICTMENT

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

A TRUE BILL

July 9, 2026

Jean Pearsall Schmidt

Jean Pearsall Schmidt
Foreperson

Amalie Semmes

Amalie Semmes
United States Attorney

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TRANSCRIPT OF INTERVIEW

Between Attorney Simone Rice and Mr. David Dawes

March 11, 2020

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

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

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

Dawes: Yes, I am.

Rice: Why are you here today?

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

Rice: What kind of problems?

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

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

Dawes: That's right.

Rice: How long has this been going on?

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

Rice: Where did you live before?

Dawes: Centerville, in Columbia.

Rice: Did you have the same trouble there?

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

Rice: Tell me about that.

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

Rice: Using what?

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

Rice: Did you finish your probation before that happened?

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

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

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

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

Dawes: I never checked. They must have.

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

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

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

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

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

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

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

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

Rice: That's how the VA rules work.

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

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

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

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

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

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

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

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

Dawes: What? Why not?

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

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

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

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

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

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Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

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

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

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

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

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

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

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

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

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Franklin Rules of Professional Conduct

Rule 1.6: Confidentiality of Information

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

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

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

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

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

. . .

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

Comment to Rule 1.6:

. . .

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

Rule 1.9: Duties to Former Clients

. . .

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

. . .

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

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Rule 1.18: Duties to Prospective Client

. . .

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

. . .

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

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

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

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

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

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

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

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

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

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

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

Affirmed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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July 2026
MPT-2 Item

Estates of Nguyen

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Estates of Nguyen

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

MEMORANDUM

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

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

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

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

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

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

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

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

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Last Will and Testament of Linh Ha Nguyen (excerpt)

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

. . .

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

. . .

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

Last Will and Testament of John Khanh Nguyen (excerpt)

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

. . .

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

. . .

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

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Certified Death Certificate of Linh Ha Nguyen (excerpt)

Name of Decedent: Linh Ha Nguyen

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

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

Certified Death Certificate of John Khanh Nguyen (excerpt)

Name of Decedent: John Khanh Nguyen

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

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

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Deed to 432 Fairview Drive, Utopia Springs, Franklin

General Warranty Deed

Made the 14th day of May, 2009

BETWEEN

Laura Drake Williams (Grantor)

And

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

WITNESSETH

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

[Legal description of the 432 Fairview Drive property]

. . .

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

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

Laura Drake Williams

State of Franklin
County of St. John's

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

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

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

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Franklin Mutual Life Insurance Policy (excerpt)

Insured: Linh Ha Nguyen

Death Benefit: $500,000

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

Columbia Insurance Company Life Insurance Policy (excerpt)

Insured: John Khanh Nguyen

Death Benefit: $600,000

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

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Excerpt from Walker's Treatise on Trusts and Estates

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

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

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

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

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

§ 1 Definitions. In this Act,

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

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

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

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

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

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

. . .

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

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

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

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

. . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMED.

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