MPT-1 - Sample Answer # 1

From: Applicant
To: Lauren Scott, Managing Partner
Date: February 20th, 2017
Re: ACE Chemical: Potential Conflicts of Interest

Our law firm, Montagne & Parks ("MP") was approached by Ace Chemical Inc. (ACE) to represent them in suing Roadsprinters Inc ("Roadsprinters) for breach of a shipping contract. You have asked me to analyze three potential conflicts of interest related to our representation of ACE against Roadsprinters. It is clear that Roadsprinters will not waive any conflicts of interest.

1. Whether our representation of Columbia Chamber of Commerce ("CCC") ethically prohibits our representation of ACE

It is unlikely that our representation of CCC will ethically prohibit us from representing ACE against Roadster, despite Roadster's membership in CCC of 15 years and Jim Pickens' previous position of CCC board chair. According to Franklin Rules of Professional Conduct ("FRPC") 1.7, a lawyer shall not represent a client if it involves a current conflict of interest if representation to another client or former client would be materially limited. One issue here is whether, by representing CCC in lobbying activities, MP also represented Roadsprinters, a CCC member since its inception. According to Hooper Manufacturing Inc v. Carlisle Flooring, Inc, whether MP is considered to have represented Roadsprinters depends on whether Roadsprinters provided confidential information to MP for MP's representation of the trade association. Lobbying for a trade association is considered representation. Id. MP did not represent Roadsprinters, as MP did not receive any confidential information from or about any of the Chamber's members. Further, the Hooper v. Carlisle also instructs that if a law firm specifically tells the trade association members that any information it receives is treated as confidential, the law firm may be considered to represent the member. The opposite is true in our case because MP specifically told CCC members that their information was explicitly not confidential. Therefore, I conclude that we are not considered to have represented Roadsprinters itself through our representation of CCC because we did not receive confidential member information and we did not tell any members that the information they provided would be considered confidential. Further, members also clarified in writing that we represented CCC, not the members.

Another method by which a firm could represent trade members through its lobbying representation of the trade association is if the member's directors/officers worked closely with the firm. Hooper v. Carlisle. This is not true for our situation, as our Columbia office primarily worked with the Chamber's executive director and not with board officers, such as Jim Pickens--the president of Roadsters.

It is also important to note that the imputation rule of 1.10 applies to all members of the law firm, regardless of the office in which they work. Franklin Ethics Opinion 2015-212. This is not an issue here because our Columbus would likely not be considered to have represented Roadster, so it does not affect the Franklin office's representation of ACE.

2. Whether Samuel Dawes' previous representation of Roadster ethically prohibits our firm from representing ACE

It is unlikely that SD's previous representation of Roadsprinters, during his solo practice, would ethically prohibit us from representing ACE. The issue is whether his representation of Roadster breaches his duty of confidentiality to his former client. It is unlikely that his representation of Roadster in patent issues will constitute a current conflict of interest in his representation of ACE because such previous representation must be substantially related to our representation of ACE, according to FRPC1.9. Two subject matters are "substantially related" if the lawyer could have obtained confidential information in the first representation that would be relevant in the second representation. Franklin Ethics Opinion 2015-212. We have concluded that no information that he learned, or could have learned, could be relevant to the current contract breach litigation against Roadsprinters. Therefore, we will likely not be ethically prohibited from representing ACE based SOLELY on SD's former representation of Roadsprinters.

Another potential conflict in this situation is SD's personal relationship with Roadster's president, Jim Pickens. FRPC rule 1.10 states that a lawyer's conflict of interest may be imputed to the entire firm if that lawyer were prohibited from representing the client if practicing alone-- unless, the prohibition is based on personal interest of the disqualified lawyer. It is clear that SD has a personal relationship with Pickens, judging from the Franklin Daily News article that specifically details their personal relationship and mutual respect. This rule only solidifies the point that we can represent ACE because even if SD were to be disqualified from representing ACE on the basis of his personal relationship to Jim Pickens, the firm would still be able to represent ACE according to Rule 1.10(a)(1). Either way, we can represent ACE because his personal relationship is not imputed to the firm and no additional actions are needed from the firm to represent ACE under the issue of SD's personal relationship.

3. Whether Ashley Kaplan's hiring will ethically prohibit our representation of ACE

AK will likely create a conflict of interest that will be imputed to the entire firm--thus prohibiting our representation of ACE-- unless appropriate screening measures are taken. Therefore, we can hire AK as long as we scrupulously adhere to certain protocol. AK, a recent interviewee, has admitted that she has worked with Roadsprinters through the course of her previous employment at Adams Bailey. This raises the conflict of 1.9 Duties to Former Clients. This rule states that she cannot represent ACE against Roadster because ACE's position is materially adverse to Roadsprinters's and because she acquired information about Roadster that is material to the matter-- thus violating her duty to a former client. It is clear from the facts (which state that she worked on Roadster files) that she could have received information about Roadster that is substantially related to this breach of contracts case. Therefore, she is disqualified from any matters relating to ACE. According to FRCP rule 1.10, this disqualification is imputed to our entire firm, unless we take certain measures, such as: 1) screening AK in timely screened from any participation in the matter, receiving no fee therefrom; 2) written notice of screening procedures are given to Roadster with our agreement to promptly respond to related inquiries; and 3) providing certifications of compliance at reasonable intervals upon Roadster's written request and upon termination of the screening procedures.

Please let me know if you have any additional questions.

MPT-1 - Sample Answer # 2

I. Potential Conflict: Columbia Chamber of Commerce

The issue here is whether M&P may now represent a client who has adverse interests to a member of the Columbia Chamber of Commerce (Chamber). Mr. Pickens, who has been a member of the Chamber for 15 years, is the president of Roadsprinters, which has interests that are adverse to a potential client of M&P. The Franklin Rules of Professional Conduct as well as case law from the Franklin Supreme Court control our inquiry here. The Court has stated that it "take[s] for granted that lobbying constitutes representation by an attorney." (Hooper Manufacturing, Inc. v. Carlisle Flooring, Inc.) However, the more searching issue here is directly analogous to that in Hooper--whether M&P's representation of the Chamber is "tantamount to representation" of a member of the Chamber. This inquiry involves two parts: (1) whether the representation of the Chamber to which Mr. Pickens, current Chamber member and former president and chair of the board for the Chamber, is equivalent to the representation of Mr. Pickens himself; (2) whether M&P lawyers who represent the Chamber advised the member (here Mr. Pickens) that information communicated to the M&P attorneys representing the Chamber would be treated as confidential; and (3) whether representation of both Ace Chemical, Inc. and the Chamber will materially limit M&P's ability to represent either client. (Hooper) We will take each issue in turn below.

A. Is the representation of the Columbia Chamber of Commerce equivalent to the representation of Mr. Pickens himself?

This initial inquiry is a fact-based one, and the facts presented here lead us to conclude that the representation of the Chamber is not equivalent to the representation of Mr. Pickens himself. The first question we must ask is whether Mr. Pickens provided confidential information to the M&P attorneys that was necessary for the attorneys' representation of the Chamber. (Hooper) Here, the M&P attorneys "received no confidential business information from Chamber members." (Memorandum) It should be noted that M&P attorneys received "confidential information from the Chamber about legislative strategies and tactics related solely to tax issues," however it is unclear what the source of the information actually is--whether it is from members of the Chamber or from Chamber staff who would be able to provide logistical information to the attorneys about the inner-workings of the legislature, or something entirely different. (Memorandum) Nonetheless, Mr. Pickens is not implicated under that prong as working as the president or chair of the board, as the memorandum states M&P attorneys primarily worked with the Chamber's executive director and not officers of the board.

Even if the answer is "no" to the above question, the Court has stated that the representation "might still be deemed equivalent if the lawyer advised" the Chamber member that "any and all information provided to the lawyer would be treated as confidential." (Hooper) Franklin Rule of Professional Conduct 1.6 provides a broad definition of "confidential": "Confidential information is any information related to the representation of the client and learned through the course of the representation." (FRPC 1.6) It includes "all information, even publicly available information, that the lawyer discovers or gleans while representing the client." (Hooper) Here, M&P attorneys expressly notified the Chamber members that members' conversations with M&P attorneys are not confidential. However, under FRCP, if M&P attorneys received information from the Chamber members that assists them in their representation of the Chamber, it falls under the definition of "confidential." As noted above, M&P attorneys received confidential information from the Chamber about strategies related to tax issues, the attorneys did not receive any confidential information "from or about any of the Chamber's members." (Memorandum) Specifically related to Mr. Pickens, M&P attorneys did not work closely with him,

rather they worked with the Chamber's executive director.

B. Did M&P attorneys advise Chamber members that information provided to them would be treated as confidential?

The information provided states that the M&P attorneys communicated to all Chamber members that they represented the Chamber, not the individual members, and that members' conversations with M&P attorneys are not confidential. Based on this fact and the analysis above, a court would likely find that the information provided to the Chamber and its attorneys was not confidential and that the representation of the Chamber is not equivalent to the representation of Mr. Pickens. However, the problem is not resolved here. We must now examine whether concurrent representation of both Ace Chemical, Inc. and the Chamber will hinder M&P's representation of both clients, as discussed below.

C. Will the representation of both Ace Chemical, Inc. and the Columbia Chamber of Commerce will materially limit M&P's ability to represent either client?

To answer this question we must determine whether Mr. Pickens had an "important position" with the Chamber, and through that position, "worked closely" with the Chamber's attorneys. The answer here is no. We know that Mr. Pickens served as chair of the board for the Chamber, however, throughout his service in both positions he did not "work closely" with M&P attorneys. FRCP 1.7(a)(2) guides us "to focus on the nature and extent of the relationship between the attorneys and [Mr. Pickens]. The closer and more frequent contact and the more active the role of the member representative in directing the lawyer, the greater the risk that the lawyer's ability to engage in concurrent representation is 'materially limited'." (Hooper) Here, Mr. Pickens did not "work closely" with M&P attorneys as M&P attorneys worked primarily with the Chamber's executive director, a position which Mr. Pickens did not hold.

Because M&P's representation of the Chamber is not equivalent to Mr. Pickens and because the representation of both Ace Chemical, Inc. and the Columbia Chamber of Commerce will not materially limit M&P's ability to represent either client, there is no potential conflict on interest with respect to the Columbia Chamber of Commerce.

II. Potential Conflict: Samuel Dawes

The potential issues M&P faces with respect to Mr. Dawes are governed by the Franklin Rules of Professional Conduct and will be discussed individually below.
A. Rule 1.7 Conflict of Interest: Current Clients

A lawyer shall not represent a client if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. (FRCP 1.7) Mr. Dawes has potential issues with two parts of this rule: (1) Mr. Dawes has formerly represented Roadsprinters, which has adverse interests to a potential client of M&P; and (2) Mr. Dawes, at one time at least, had a personal relationship with Mr. Pickens, who is the president of Roadsprinters.

First, Mr. Dawes' relationship to Roadsprinters as his former client is governed by FRCP 1.9, which states a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which the person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. Here, Mr. Dawes would not run afoul of this rule

because he represented Roadsprinters in an uncontested trademark registration. The litigation matter Ace Chemical, Inc. would like Mr. Dawes to represent them in involves breach of a shipping contract. These two issues--trademark registration and breach of contract--are not the same matters or even "substantially related." The Franklin Ethics Opinion 2015-212 states that "[a] substantial relationship exists when the lawyer could have obtained confidential information in the first representation that would be relevant in the second representation." Here, there would be no reason for Mr. Dawes to have information regarding Roadsprinters' shipping contracts with third parties during his representation of Roadsprinters to file a trademark registration, and the interview with Mr. Dawes confirmed the he neither learned nor could have learned information that could possibly be relevant to the litigation against Roadsprinters (Memorandum). Therefore, there is no conflict with respect to Roadsprinters being a former client of Mr. Dawes, and he would not need to seek a written waiver from Roadsprinters to represent Ace Chemical, Inc. as required under FRCP 1.7.

Second, Mr. Dawes' relationship with Mr. Pickens is also governed under FRCP 1.7. If there is a "significant risk" that the representation of one or more clients will be materially limited by the lawyer's's responsibilities by a personal interest of the lawyer, the lawyer should take the steps outlined in FRCP 1.7(b) (discussed below) before engaging in representation of that client. Here, Mr. Daws had a close personal relationship with Mr. Pickens. Mr. Pickens took an interest in Mr. Daws throughout his representation in the trademark matter, and Mr. Pickens introduced him to members of the business community and taught Mr. Daws how to develop relationships with potential clients. (Franklin Daily News report) However, we could argue that there is not a "significant risk" of being unable to represent Ace Chemical, Inc. because Mr. Daws does not appear to have a personal interest or any ties with Mr. Pickens any longer. Mr. Daws stated that he has not had any contact with Mr. Pickens for the last five years. Therefore, Mr. Daws does not pose a potential conflict of interest with respect to Mr. Pickens as a personal relationship either.

If, however, you determine that Mr. Daws' lack of communication with Mr. Pickens for five years is insufficient, Mr. Daws will need to seek informed, written consent from Mr. Pickens before representing Ace Chemical, Inc.

III. Potential Conflict: Ashley Kaplan

Franklin Ethics Committee acknowledges lawyers change firms and Rule 1.9 removes "some of the harshness" of the professional rules regarding former clients and confidential information. Ms. Kaplan would like to move from a firm that represents Roadsprinters to a firm that could potentially have a client whose interests are adverse to Roadsprinters. Franklin Ethics Opinion 2015-212 states that a "new firm may represent a client with materially adverse interests to the client of the moving lawyer's old firm so long as the lawyer did not actually acquire confidential information." Ms. Kaplan provided a list of clients she worked with at her old firm, and Roadsprinters is on that list. While the memorandum doesn't explicitly state she received confidential information, it is safe to assume she did through her representation of Roadsprinters. M&P may still hire Ms. Kaplan, however, as long as M&P properly screens Ms. Kaplan according to the procedure below.

The Franklin Ethics Opinion 2015-212 provides guidance on Ms. Kaplan's situation: "Even if the lawyer acquired confidential information, Rule 1.10 allows the law firm to continue representation of the client so long as the moving lawyer is screened from all contact with the matter." Ms. Kaplan must be denied all access to files relating to the conflicting representation--in any format, she may not speak with attorneys working on this matter regarding their work, and she may not receive any portion of the fee received from the

representation of Ace. Roadsprinters must also receive written notice of the adverse representation detailing its options, but it does not have to assent to the representation by M&P.

MPT-1 - Sample Answer # 3

Montagne & Parks LLC
Attorneys at Law
760 Main Street, Suite 100
Essex, Franklin 33702

To: Lauren Scott, Managing Partner
From: Examinee
Date: February 21, 2017
Re: Ace Chemical: Potential conflicts of interest

MEMORANDUM

INTRODUCTION

I have been instructed via the lead attorney, to discussion the potential conflicts of interest that our firm in the Franklin office, we will not face on representing Ace Chemical in their breach of shipping contract against Roadsprinters Inc. The potential conflicts of interest reside in three points: the representation of our Columbia office with the Columbia Chamber of Commerce, where Mr. Jim Pickens (current President of Roadsprinters) was a one time chair of that board; the use of Mr. Samuel Dawes as our lead litigator against his former client Roadsprinters; and the hiring of Ms. Ashley Kaplan who currently works for Roadsprinters outside counsel into our Olympia office.

DISCUSSION

I. Whether the representation of Columbia Chamber of Commerce (a trade association), by our Columbia office is tantamount to representation of Mr. Jim Pickens (a member and one time President of that trade association). Under the Franklin Rules of Professional Conduct 1.7, (b) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. Currently our firm has many locations one of which is in Columbia. In that office the course representation of the Columbia Chamber of Commerce is to lobby the Columbia legislature for tax reform. While this office is in Essex, the representation in Columbia is still on going. Though the Franklin Rules of Professional Conduct are towards disciplining attorneys, they are persuasive in their application. Under this single rule we would not be able to represent Ace Chemicals. However, we can look toward Hooper which applied similar facts and come to a different reasoning. In Hooper lobbying constitutes representation by an attorney, and if the representation is of a trade association is that considered a representation of a member of that trade. A test was created in which we must follow as this is a decision made via the Supreme Court of our Jurisdiction. (1) whether the trade association member provided confidential information to the lawyer that was necessary for the lawyer's representation of the trade association. (2) If the lawyer advised the member of the trade association that any and all information provided to the lawyer would be treated as confidential (3) whether the representation of both [Columbia Chamber of Commerce] and [Ace Chemicals] will materially limit the firm's ability to represent either client.

Utilizing the test in Hooper the test is very broad and includes all information that a lawyer gleans while representing the client, but it must be related to the representation. Extraneous information that is supplied to the lawyer is not protected as confidential and can not be used by the client to prevent the lawyer from representing a adverse party later. Our facts show that the firm in Columbia is used in the lobbying efforts on tax reform, while we would be

representing the adverse party (Ace) on breach of contract. A lawyer would not be gathering information on the clients of the Columbia Chamber of Commerce, because as a trade association it would represent many. A lawyer would gather information on how the tax currently impedes or helps the client and what efforts are needed to progress the Chamber and their activities. Any talk aside from tax reform and materials would be considered extraneous information by this standard. We know that the Memorandum via Ms. Lauren Scott, that all confidential information that was received from the Chamber was regarding legislative strategies and tactics relating solely to tax issues, and no confidential information from any or about any of the Chambers' members were provided. And as such the answer to the first portion of the test would be yes.

As in Hooper, that does not end the qualification, we next look to see if the lawyer advised the member of the trade association that any and all information would be treated as confidential. In Hooper, the lawyers advised the members and the individual that the information provided and used would not be confidential. So too in our case, where the Columbia office advised the Chamber that they represented the Chamber and not the members. And that the content of the communications with members was not confidential. Also that the Chamber and its members acknowledged in writing that the representation was limited to lobbying for the Chamber itself. Therefore, just like in Hooper, the court should find that representation of the trade association is not equivalent to representation of [Jim Pickens nor Roadsprinters].

The last prong of the test weighs heavily on the Franklin Rules of Professional Conduct 1.7(a)(2) on whether representation of both [Columbia Chamber of Commerce] and [Ace Chemicals] will materially limit the firm's ability to represent either client. The critical question in Hooper, was whether an employee had a important position in the trade association and in that position worked closely with the lawyers for the trade association. In that case the CEO of the plaintiff party was one of three members of the trade association's legislative and policy committee. Where she worked closely in developing tactics and strategies with their representation. It calls into question the limiting of the representation of adverse clients as to the personal interest of the lawyer. Because of the closer and more frequent contact and active role of the member representative in directing the lawyer. However, this is where that case and our issue splits greatly. In Hooper, the CEO was a long standing member of the committee and that committee was the main driving force of the relationship with their lobbying representatives. In our issue, Mr. Pickens was a one time President and was not mentioned on a committee that drove the actions of the lobbyist. We can infer by the omission that as a one time President, he would have focused on the whole picture of the trade association and was appraised of progress that the committee was doing. He would not have had the long time and frequent contact with active role that the CEO in Hooper, did. And as such we can argue that there was not a substantial risk that personal interest would materially limit the concurrent representation.

Under these rules and explanation, we are able to represent the Chamber of Commerce in Columbia and the Ace Lawsuit in Essex.

II. Whether our lead litigator Mr. Samuel Dawes is able to be part of this case, where he formerly represented Roadsprinters in a non-substantially related matter. Under the FRPC (Franklin Rules of Professional Conduct) 1.9, Duties to Former Clients. A Lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the client gives informed consent, confirmed in writing. Samuel Daws (SD) is a current partner in the Essex office, who came from a solo private practice seven years ago. during that time SD represented Roadsprinters in an uncontested

trademark registration. Since that one case, SD has not had any contact with Mr. Pickens for over five years. The duty to former clients is made to insure that substantial related materials that a lawyer could have obtained confidentially in the first representation can not be used against that client in a second representation summarized from the Franklin Ethics Opinion 2015-212 Rule 1.9(a). We want people to have confidence in their attorneys and to provide them as much information as needed to have a winning opinion. A substantial amount of information must be gleaned so that an attorney has a full picture of the issue they are raising and must present to the court. Here, SD was the attorney for Roadsprinters in a uncontested trademark registration. To register a trademark, one would need the item that is to be trademarked, a form filed out from the proposer of the trademark giving their basic identification (address, name, who it will belong to), a picture and detail of the item that is to be trademarked and the money to pay for the pending trademark patent. When there is representation on this, it is actually a simple matter of logging into the website, uploading the requested materials and submitting the payment. Then the wait begins as to any others who may contest the trademark as infringing on their rights. As the facts state that it was an uncontested trademark, we know that SD did not have to follow up with Roadsprinters on the matter, as in advising them of their rights and counseling them on the necessary actions to go forth to contest it or to change the mark. As such we understand that there was not a substantial amount of information that would merge into the breach of contract issue that we are currently attending. To further prove this, the article which quotes Mr. Pickens saying that " although it was not all necessary for the work on the trademark registration, I told him how to develop client relationships." This leads to show that his interaction with Pickens was not on substantial amount in which a breach of contract and trademark registration would merge to each other. Therefore, SD is able to be lead in our matter and does not need a waiver from Roadsprinters as the matter is NOT substantially related. However, in the best interests of our clients and we should inform both in writing of the matter and that representation to Ace will not be impeded by the previous uncontested matter.

III. Whether the hiring of Ms. Ashley Kaplan (a current attorney to opposing counsel) to the Olympia office would be allowed at this time.

Under the Franklin Ethics Opinion 2015-212 Rule 1.9 regarding lawyers who move from one firm to another firm, we see that we can hire Ms. Ashley Kaplan as long as we follow the rules to govern the actions.

Ashley Kaplan comes from our current adversarial party's representation of Adams Bailey, where she is a senior associate. A list of the former clients show that Roadsprinters is on it. When a lawyer has acquired information protected by Rule 1.6 that is material to the matter. It allows the new firm to represent a client with materially adverse interests to the client of the moving lawyer's old firm so long as the lawyer did not actually acquire confidential information. But may do so under Rule 1.10 if the new firm screens the moving lawyer from all contact on the matter. Thus Ashley will be denied all access to digital and physical files relating to the client and the matter. These files will be password protected an permission and access will not be given to Ms. Kaplan. All physical files will be under lock in which she will NOT have a key. All lawyers in the 14 offices will be admonished that they cannot speak with or communicate in any way with the Ms. Kaplan about the matter. And that she can not receive any compensation resulting from representation in the matter form which she is being screened. As she is currently being interviewed and an offer has not been extended, We are able to put these measures into place immediately. And to notify her that this is a term for her employment.

Additionally we must give written notice to any affected former clients (Roadsprinters) in order

to enable the former client to understand.

CONCLUSION

For the reasons stated above, we may represent Ace Chemicals, allow Samuel Daws to remain as lead litigator, and hire Ashley Kaplan.

MPT 2 - SAMPLE ANSWER # 1

Ruth King ("Ruth") respectively moves the court to override Henry King's ("Henry") nomination of Noah King ("Noah") as guardian and appoint Ruth as guardian instead. The following are proposed findings of fact and conclusions of law in support of this motion.

I. PROPOSED FINDINGS OF FACT

1. Henry is 74 years old and lives in Dry Creek, Franklin.
2. Henry's daughter is Ruth, and his son is Noah.
3. In 2013, Henry began to have trouble with his memory and lose his attention span.
4. That same year, his neurologist and psychiatrist diagnosed him with early dementia.
5. At the time, Ruth lived outside the state, and Noah lived in Dry Creek.
6. Henry arranged for his health care and finances if he became incompetent.
7. On May 20, 2013, Henry executed an advance health-care directive, naming Noah as his health-care agent.
8. That same day, Henry executed a durable power of attorney, giving Noah the power to make financial decisions for him.
9. These documents nominated Noah to become Henry's guardian if that became necessary.
10. In late 2015, Henry fell in the shower and bruised the entirety of one of his arms.
11. Noah knew about the fall but did not take Henry to the doctor.
12. Noah did not inform Ruth about the fall.
13. Noah only agreed to take Henry to the doctor after Ruth herself noticed the bruising while visiting her father.
14. On June 22, 2016, Henry tripped over a rug in his bedroom and broke a bone in his wrist.
15. Noah did not notice Henry's wrist was swollen.
16. He only learned that there was a problem after a neighbor pointed out the swelling to him.
17. When Noah learned of the swelling, he did not inform Ruth that her elderly father had broken a bone.
18. In August 2016, Ruth obtained a transfer from her company so she could move back to Dry Creek.
19. Since then, she has spent two or three evenings a week with her father.
20. Around August 2016, Ruth began to notice Noah was not buying any food for Henry. The refrigerator was almost always empty.
21. Ruth therefore began purchasing food and cooking for Henry.
22. She eventually hired and paid for someone to shop and cook for Henry.
23. Over the past several years, Noah has failed to pay numerous bills.
24. Specifically, Noah failed to pay the electric bills over several months, resulting in overdue notices.
25. Noah also failed to pay Henry's doctor, who almost sent the account to collection.
26. Noah also knew about and declined to stop Henry's excessive spending on gifts for friends.
27. Henry receives approximately $2,500 a month from Social Security.
28. Over the last 12 months, Henry has spent approximately $9,000 on gifts.
29. In some months, he has charged as much as $1,200--or approximately half of his income--on gifts for friends.

30. Noah knew about this spending.
31. Noah also knew this spending was preventing Henry from paying his electric, healthcare, and other bills.
32. Noah chose not to stop his father's spending on gifts. He "didn't think it was [his] place to keep him from spending his money the way he wanted." Dep. of Noah at 7.
33. Henry's health has declined. He is unable to care for himself or manage his health or finances.

II. PROPOSED CONCLUSIONS OF LAW

1. A guardian is an "individual appointed by a court to manage the income and assets and provide for the essential requirements for health and safety and personal needs of someone found incompetent." Frank. Guard. Code § 400.
2. A guardian has a fiduciary duty "to apply the income and principal of the ward's estate so far as necessary for the comfort and suitable support of the ward." In re Guardianship of Martinez (Frank. Ct. App. 2009) at 15 (internal quotation marks omitted).
3. A guardian can "breach this duty by action or neglect" and by "harm[ing] the ward through mismanagement of finances, neglect[ing] the ward's physical well-being, or similar actions." Id.
4. A court must appoint as guardian "that individual who will best serve the interest of the adult, considering the order of preferences set forth in this Code section." § 401(a).
5. The order of preferences is (1) "the individual last nominated by the adult," (2) "the spouse of the adult," and (3) an "adult child of the adult." §401(b).
6. "The court may disregard an individual who has preference and appoint an individual who has a lower preference or no preference" upon a demonstration of "good cause." §401(a).
7. Upon petition of a party to disregard the order of preferences for good cause, "the court shall investigate the allegations" and may "in the court's discretion, revoke or suspend the guardian, impose any other sanction or sanctions as the court deems appropriate, or issue any other order as in the court's judgment is appropriate under the circumstances of the case." §402.
8. A court "may refuse to appoint a proposed guardian when that person's previous actions would have constituted a breach of a fiduciary duty had the person been serving as a guardian. Such conduct is of special concern when that person has actually served as a fiduciary for the proposed ward under an advance directive or power of attorney." Matter of Selena (Frank. Ct. App. 2011) at 12.
9. The court must appoint Henry a guardian because he is now incompetent.
10. Henry previously nominated Noah to be his guardian.
11. The court has "good cause" to disregard this nomination because Noah's actions would have constituted a breach of fiduciary duty had he been serving as guardian. See Matter of Selena at 12.
12. Specifically, Noah has "neglect[ed] the ward's physical well-being." In re Guardianship of Martinez at 15. Specifically, he (I) failed to take Henry to the doctor although he knew he had fallen and bruised his entire arm until Ruth persuaded him to do so, (ii) failed to notice Henry's broken wrist until a neighbor pointed it out, and (iii) failed to provide adequate food for Henry.
13. Noah has also "harm[ed] the ward through mismanagement of finances" and failed "to apply the income and principal of the ward's estate so far as necessary for the comfort and suitable support of the ward." In re Guardianship of Martinez at 15. Specifically, he has

known about and failed to stop his father from spending almost half of his income on gifts for friends. Noah does not "think it is his place" to "keep [his father] from spending his money the way he wants," even though Henry's spending has rendered him unable to pay for basic necessaries, such as electricity and healthcare. Noah Dep.

14. Noah's actions are of special concern to the court because Noah is Henry's advance healthcare agent and has durable power of attorney. See Matter of Selena at 12 (citing advance healthcare agency and power of attorney as special factors in the consideration of whether there is good cause to disregard the statutory order of preferences).

15. The court accordingly finds Noah will not "serve the best interests" of his father and that good cause exists to nominate someone in his stead. §401(a).

16. The individual next on the statutory order of preferences is Henry's daughter Ruth, as Henry has no living spouse.

17. Ruth is fit to serve as her father's guardian.

18. Specifically, Ruth lives near her father. She visits him multiple times a week. She took her father to the doctor when he fell in the shower and bruised his arm. She provides for his food. And she recognizes his spending on friends' gifts as excessive and seeks to stop it.

19. For these reasons, the court finds good cause to override Henry's nomination of Noah as guardian and appoints Ruth as guardian in his stead.

CONCLUSION

Based on the proposed findings of facts and legal conclusions set forth above, Ruth respectfully requests that the court override Henry's nomination of Noah as guardian and appoints Ruth as guardian.

MPT 2 - SAMPLE ANSWER # 2

In the Matter of Guardianship of Henry King

Counsel for Ruth King Maxwell submit the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Henry King ("Henry") is 74 years old and currently incompetent.
2. In 2013, Henry was diagnosed with early signs of dementia.
3. Around that time, Henry set up arrangements for his health care and finances if he became incompetent.
4. At that time, Henry's son, Noah King ("Noah"), lived near Henry.
5. At that time, Henry's daughter, Ruth King Maxwell ("Ruth"), lived in a different state.
6. Because Noah was closer, the family agreed that Henry would give Noah the authority to make health-care and financial decisions, and to nominate Noah as his prospective guardian.
7. The proper documents were executed on May 20, 2013.
8. In 2015, Henry fell in the shower and was bruised up and down the back of his arm.
9. Noah did not notice Henry's bruised arm and did not take Henry to the doctor.
10. When Ruth noticed Henry was favoring his right arm, Ruth discovered Henry's fall.
11. Ruth insisted on taking Henry to the doctor.
12. On June 22, 2016, Noah checked on Henry and did not notice his father in much pain.
13. The following day, a neighbor called Noah because Henry's wrist was swollen.
14. Noah took Henry to the emergency room, and Henry needed a cast for a broken wrist.
15. Henry would not tell Noah how he broke his wrist.
16. Noah did not tell Ruth about the broken wrist.
17. In August 2016, Ruth transferred to a nearby work office and started spending two or three evenings a week with Henry.
18. Around that time, Ruth observed that Henry's refrigerator was always nearly empty, with just skim milk, bread, and canned soup.
19. Because she suspected that Noah was not buying food for their father, Ruth began buying food and cooking for Henry.
20. Ruth eventually hired someone to shop and cook for Henry.
21. Also around August 2016, Ruth observed that Noah was past due in paying many of Henry's bills.
22. Henry is on a fixed income of $2,515 per month between social security and pension.
23. About a year ago, Henry began making online purchases from Amazon and eBay.
24. Henry said he made the purchases as gifts for friends.
25. In some months, Henry charged as much as $1,200 on his online spending.
26. When Noah became aware of these charges, but did not tell Henry to stop.
27. Eventually, Noah explained to Henry that he should stop the charges.
28. Henry did not appear to understand Noah's explanation.
29. Noah was delinquent in paying some of Henry's bills because of Henry's online spending.
30. Noah took no actions to stop his father from continuing to spend money online.
31. No guardian has been appointed by a court.

CONCLUSIONS OF LAW:

1. A "guardian" is an individual appointed by a court to manage the income and assets and provide for the essential requirements for health and safety and person needs of someone found incompetent. § 400
2. Generally, if an individual nominates a guardian for his own care in a signed writing, acknowledged by two witnesses, then the Court may only disregard the listed preference if good cause is shown. § 401.
3. Good cause exists when the designated guardian neglects the individual's financial affairs and neglects to arrange for needed medical care. Matter of Selena J.
4. When good cause may exist to revoke or suspend the guardian or impose sanctions, the Court shall investigate and may require an accounting. § 402.
5. The same good cause analysis applies to prospective appointments of a guardian. Matter of Selena J.
6. A health-care agent and holder of a durable financial power have a legal obligation to act in the principal's best interest and to avoid self-dealing. Matter of Selena J.; In re Guardianship of Martinez.
7. A fiduciary duty exists to preserve and manage the estate for the ward's needs. In re Guardianship of Martinez.
8. A court may refuse to appoint a proposed guardian when that person's previous actions would have constituted a breach of fiduciary duty has the person been serving as a guardian. In matter of Selena J.
10. As the power of attorney and health-care decision maker, Noah owes Henry a fiduciary duty.
11. Noah breached his fiduciary duty by failing to timely and adequately care for Henry when Henry twice fell.
12. Noah breached his fiduciary duty by failing to prevent Henry from falling, or providing Henry the around-the-clock care necessary.
13. Noah breached his fiduciary duty by failing to provide adequate food and nutrition for Henry.
14. Noah breached his duty as power of attorney by failing to pay Henry's bills on time.
15. Finally, Noah breached his duty as power of attorney by failing to protect Henry's assets from his own spending.
16. Good cause exists to disregard Henry's listed preference of Noah as his guardian.
17. Ruth is better able to carry out necessary functions as Henry's guardian.
18. Ruth already visits Henry several times a week.
19. Ruth already provides for Henry's nutrition and monitors his health.
20. Based on Ruth's representation in court, it appears that Ruth would be more diligent in preserving and protecting Henry's financial assets.
21. Ruth is best suited than Noah to act as Henry's guardian, to manage his income and assets, and to provide for his health, safety, and personal needs.
22. The Court appoints Ruth as Henry's guardian.

MPT 2 - SAMPLE ANSWER # 3

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

1. Henry King is currently 74 years old.
2. Henry's wife died in 2012, but has two adult children, Noah and Ruth.

3. In 2013, Henry began having trouble with his memory and attention span and was informed he had early signs of dementia.
4. After learning of his medical condition, and based upon Noah's proximity to Henry, agreed to provide Noah authority to make health-care and financial decisions.
5. On May 20, 2013, Henry validly executed an advance directive and a power of attorney, both which nominated Noah as his prospective guardian.
6. In the Fall of 2015, Henry sustained an injury to his arm as a result of falling in the shower.
7. Noah was aware of the fall in the Fall of 2015, but did not take Henry to seek care until prompted by Ruth.
8. On June 22, 2016, Henry broke his wrist after tripping over a rug in his bedroom.
9. After the accident, Noah saw the injured hand but did not immediately seek medical attention.
10. After being notified by a neighbor the next day that the wrist was swollen, Noah took Henry to the ER for treatment.
11. In August 2016, Ruth moved in close proximity to Henry.
12. In the Fall of 2016, Ruth noticed that her father's home was not properly stocked with food.
13. Ruth began providing food and cooking for her father as she could.
14. Ruth eventually hired someone to shop and cook for Henry.
15. Henry is on a fixed income, receiving $2,515 per month.
16. Noah is responsible for paying all of Henry's bills.
17. Henry has received numerous letters from the various companies indicating the delinquency and threatening to cut off services if not paid.
18. Noah was aware of the late payments and delinquency notices.
19. For the time period of February 2016 through February 2017, Henry spent approximately $9,000.00 on various items from eBay and Amazon.
20. All purchases were made by Henry and were intended to be gifts for his friends.
21. In certain months, the purchases were as high as $1,200.00.
22. Noah was aware of all purchases during this time period, but took no actions to prevent further purchases.

II. CONCLUSIONS OF LAW

1. A "guardian" is "an individual appointed by a court to manage the income and assets and provide for the essential requirements for health and safety and personal needs of someone found incompetent." FRANKLIN GUARDIANSHIP CODE § 400.

2. "At any time prior to the appointment of a guardian, an adult may nominate in writing an individual to serve as that adult's guardian" and "that nomination shall be given preference." § 401 ©.
3. A court is responsible for appointing a guardian who will serve the best interest of the adult. § 401 (a).
4. In appointing a guardian, the court, "may disregard an individual who has preference and appoint an individual who has a lower preference." § 401 (a).
5. Preference is first given to an individual nominated by the adult, followed by a spouse, and then finally given to an adult child. § 401 (b).
6. Although a court may disregard the order of preference, it may only do so upon a showing of good cause. § 401 (a).
7. In the instant case, Noah was selected by Henry to serve as his guardian and is given first preference to serve in that role. § 401 (b).
8. Because Henry does not have a wife, the next preference is given to adult children.
9. In this case, the only other adult child is Ruth.
10. Ruth may only be appointed as guardian upon a showing of good cause that it is in the best interest of Henry that his preferences not be followed.
11.In cases involving the refusal to appoint a guardian in accordance with the preferences of § 401, good cause may be show upon by presenting evidence that a person with a higher preference's "prior actions would have constituted a breach of fiduciary duty had the person been serving as a guardian" at the time they occurred. Matter of Selena J.
12. Further, "[s]uch conduct is of special concern when that person has actually served as a fiduciary . . . under an advance directive or power of attorney."
13. While serving as Henry's health-care agent, Noah neglected the needs of Henry by failing to properly monitor and seek treatment in a timely manner. In re Guardianship of Martinez.
14. Although not required, Ruth took steps to check on her father's health and pushed for treatment when necessary.
15. While serving as Henry's primary care-giver, Noah neglected the needs of Henry by failing to ensure adequate food was kept in the house and failed to provide assistance for cooking as needed.
16. Although under no obligation, Ruth provided food for Henry and found a cook during his time of need.
17. Under the direction of the power of attorney, Noah breached his duty to Henry by failing to ensure all bills were paid on time.
18. Under the direction of the power of attorney, Noah breached his duty to Henry by failing to put in place proper safe-guards to ensure Henry did not spend thousands of dollars per month given that he lives on a fixed income.
19. Based upon the above, the court finds that Ruth has presented good cause that Noah's prior actions would be a breach of fiduciary duty such that the court can ignore the preference of Noah to serve as guardian.
20. Therefore, the court expressly finds that it would be in the best interest of Henry if Ruth is appointed as guardian, and appoints her as such.