Maryland State Board of Law Examiners

FEBRUARY 2020 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

MPT 1

Representative Good Answer No. 1

Memorandum

To: Hiram Betts

From: Examinee Date: 2/25/20

Re: Downey v. Achilles Medical Device Company

I.

The first issue pertaining to the interview of AMDC employees by the plaintiffs results in different outcomes for each employee based on their position in the company and state of employment.

The Franklin Rules of Professional conduct prohibit communication with employees under 3 prongs of rule 4.2 Comment 7.

Prong 1: Employees who supervise, direct, consult with counsel. Mainly "Control group" of BOD and high level mgmt but must have actual contact or control.

Prong 2. Employees who can enter into K for organization with actual or apparent authority.

Prong 3. Employees whose acts or omissions can be imputed to the organization in the matter and those who supervised these actions.

Even Employees who fail to fall under these three prongs can be protected by attorney- client privilege for communications they were in privy to.

However, former employees are not protected.

1. Ron Adams

Ron Adams is a former director of quality control. In this position he was responsible for supervising and inspecting. Normally, a person in this position can't be contacted by the plaintiff's unless consent is given by defendant's counsel. This is due to FRPC 4.2 Comment 7 that states communication is prohibited, without consent of counsel, with persons whose acts or omissions would be imputed to the corporation. This rule is clarified in FBPC's 2016 Ethic's opinion as the 3rd Prong of rule 7. This includes those who are in a supervising position. As a supervisor, the plaintiff would be prohibited from contacting Ron due to his position. However, Ron Adams is a former employee of AMDC. This status offers less protection from the plaintiffs questioning. FRPC 4.2 Comment 7 states that "consent of an organization's lawyer is not required for communication with a former constituent".

2. Gus Bartholomew

Gus is a current employee, which generally allows for greater protections from plaintiff contact but these protections are not unlimited. Gus is the executive assistant to the president of AMDC, which entails listening and transcribing board meetings, proofreading letters sent to AMDC lawyers, and email access.

Gus does not fall into any of the 3 prongs under 4.2 comment 7. He does not supervise, direct, control, or consult with counsel. He also does not have the authority, apparent or actual, to contract for the company as required

under prong 2. His acts or omissions would not be imputed to the corporation in relation to the current matter as clarified by FBPC's Ethics

Opinion.

However, 4.2 also governs the prohibition of speaking to employees who is privy to communications protected by attorney-client privilege. The plaintiffs is not prohibited from contacting Gus, but the plaintiff is prohibited from asking directly or indirectly about any of the communications protected by the attorney client privilege.

3. Agnes Corlew

Agnes is the head of the PR department. She responds to media and the public the official position of the company that is given to her. She plays no role in litigation or meeting with the company's attorneys. She also has no access to the communication the company has with its attorneys. As such the plaintiff is most likely free to interview her.

She is a current Employee, but she fails to fall under the three prongs of 4.2 and does not have access to information protected by attorney client-privilege.

4. Elise Dunham

Elise is the plant manager who oversees all the manufacturing at the plant, which includes implementing quality control standards. Due to the prohibition of contacting current employees under prong 3 Elise can't be contacted without authorization. Prong 3 of 4.2 is an employee whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. As a supervisor she can be imputed for those she supervised under 4.2 prong 3. Moreover, she maybe considered top level mgmt. that would activate prong 1. However, top level mgmt is not just title but actual contact with counsel which there are no facts indicating. The plaintiffs are prohibited to contact Elise under because of her presumed imputation to the organization from her acts or omissions.

5. Penny Ellis

Penny Elise is the current CFO. Previously, she was in charge of marketing. She can't be contacted by the plaintiffs because she falls under prong 1 of 4.2 FRPC which stats that contact is prohibited with "a constituent of the organization who supervises directs or regular consults the organizations lawyers. Penny is also on the Bod with a vote in matters pertaining the current litigation. It can be inferred from this power that Penny directs the organizations attorneys.

For this reason, she can't be contacted by the plaintiff without authorization.

II.

The second issue is whether AMDC can interview potential class action plaintiffs.

This issue is completely decided in Mahoney et al v. Tomco Manufacturing. F Ct. of App(2010). This case held that unauthorized communications are prohibited only in regards to named plaintiffs in the lawsuit.

The trial court in this case prohibited contact with potential plaintiffs as well as named plaintiffs due to FRPC 4.2 which prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another layer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so. The appellate court held this to be overbroad because 4.2 requires knowledge and is

a high standard. This means there must be actual knowledge of the representation. In the case of mere potential plaintiffs there doesn't appear to be any actual knowledge.

AMDC is free to interview and contact potential plaintiffs, but they are prohibited from contacting "named plaintiffs" as well as potential plaintiffs who are otherwise represented by a lawyer in the matter.

Representative Good Answer No. 2

To: Hiram Betts

From: Examinee

Re: FRCP and Achilles Medical Device Company Class Action

I. STATEMENT OF FACTS

[omitted]

II. DISCUSSION

The firm's client, Achilles Medical Device Company ("AMDC") is defending a class certification regarding the sale of allegedly defective walkers between 2010-2015. Currently the plaintiffs seek to speak with one former AMDC employee and four current AMDC employees. Those persons have been contacted by an investigator (Ashley Parks) working for plaintiffs' attorneys. They have presented two issues under the Franklin Rules of Professional Conduct ("FRCP"): (1) Whether the plaintiff's attorneys have acted properly in that contact, and (2) whether AMDC or its representatives may contract any named plaintiffs in the class action OR potential members, without consent of opposing counsel. This memorandum considers each issue in turn, first with a brief introduction of the relevant rules, and then a discussion of each client in turn, with respect to each issue.

As a threshold matter, a lawyer cannot communicate directly about the subject of representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer consents or is authorized by court order. FRCP Rule 4.2. This rule applies equally to "agents of the lawyer or persons acting at the lawyer's behest." Mahoney (emphasis added). Further, the rule governs communication with agents of an organization.

The 4.2 Knowledge Requirement. However, the knowledge requirement required under Rule

4.2 is a "high standard." Id. Simply stated, the opposing counsel must have actual knowledge of the party's representation; mere "reason to believe or assumption" is insufficient to constitute a violation of Rule 4.2 Id.

Types of Communication. Rule 4.2 provides several tiers of prohibited organizational communications, as follows. First, the rule forbids unauthorized communication with a person who supervises, directs, or consults with the organization's lawyer about a matter. This extends to individuals who give and receive information directly to the lawyer, and have the power to settle matters on behalf of the organization. In short, this covers an organization's control group. Whether an individual is a member of the control group turns on a functional analysis that contemplates whether the person is "actually" consulted with, or directs, the actions of the organization's counsel about the matter. Ethics Opinion 2016-12.

Second, the rule forbids unauthorized communication with a person in the organization with a person with authority to obligate the organization regarding a matter. This ONLY covers agents with authority to enter binding contractual settlements for the organization. Such authority may be actual or apparent. Id. Only

employees with such authority are governed under this prong of the Rule. Thus, an employee with such authority may not be contacted by adverse counsel who has actual knowledge of this relationship.

Third, the rule bars unauthorized communication with an agent whose act or omission in the matter may result in organizational liability (civil or criminal). This is a factual inquiry. The test is whether a fair-minded person could foresee liability. Id. If the agent/employee's act or omission could reasonably be relevant to a finding of liability, then such communication is prohibited by opposing counsel without the consent of the organization's counsel.

1. Contact by Plaintiffs' Investigator and Potential Contact by Client

As a threshold matter, plaintiffs' counsel's use of an investigator does not insulate them from potential discipline under Rule 4.2 A supervising attorney with direct authority over a nonlawyer must make reasonable efforts to ensure compliance with the attorney's own professional obligations. If plaintiffs' counsel has improperly instructed or ratified the acts of the investigator, they may be subject to discipline under the Franklin Rule of Professional Conduct.

A. Ron Adams (Former Employee, 2003-2017)

Generally, under Rule 4.2, opposing counsel are free to communicate with former agents without the consent of the attorney's lawyer regardless of the role that employee may have played in giving rise to the matter. Ethics Opinion 2016-12.

Mr. Adams is a former ACMD employee. As such, he is outside of the ambit of Rule 4.2. Even though he directly oversaw quality control during that time, plaintiffs' counsel or agent are free to contact him directly.

B. Gus Bartholomew (Current Employee, 2003-current)

Mr. Bartholomew is a current employee. He is an executive assistant to the present and is responsible for administrative tasks. While he attends board meetings, he only takes notes on what the directors say. Accordingly, he may full under the third prong of FRCP employees with whom adverse counsel cannot communicate.

The third prong prohibits unauthorized contact with an employee whose act or omission may have given rise to liability for the organization. As provided above, the test is whether a fair- minded person (in the position of the employee) could foresee liability from making disclosures to adverse counsel, or an agent of adverse counsel. In other words, when an employee would, but the cover of the organization, be a central actor for purposes of determining liability, communication is inappropriate. Mahoney.

Here, Mr. Bartholomew is an executive assistant. While he may owe a duty of confidentiality pursuant to his work for the president, he is not an actor for purposes of the third prong. He is, rather, a "mere witness." Moreover, he has not retained counsel for himself and the investigator would have no actual knowledge of such. Therefore, there was likely no potential liability created by the unauthorized conduct by plaintiffs' investigator.

C. Agnes Corlew (Current Employee, 2017-current)

Ms. Corlew is the director of media relations. She responds to all media requests. She has no role in making company police and no ability to settle a case. Further, Ms. Corley responds to questions about ongoing litigation from the media. She has never met with AMCD's counsel regarding the pending class action.

First, Ms. Corley does not qualify as an off-limits employee under the first prong, which governs communications with employees who supervise or direct the organization's attorney in the matter. Nor does she have the power to determine settlement. Indeed, she is held out to the public as a press agent. Therefore, plaintiffs' investigator was likely not prohibited from making contact with Ms. Corley on this basis.

Second, and similarly, Ms. Corley has no power to direct the organization to enter binding contracts on behalf of the organization. She has neither actual nor apparent authority. Therefore, she is not a covered employee under this prong.

Third, Ms. Corley cannot qualify as a covered employed under the "actor" prong because, in addition to having no control over the organizational activities giving rise to the class action, she was not even employed by defendant at that time. She began work in 2017; the allegedly defective products were manufactured and sold between 2010-2015.

In sum, the plaintiff' investigator (and counsel) likely did not err in contacting Ms. Corley.

D. Elise Dunham (Current Employee, 2009-current)

Ms. Dunham is likely an off-limits employee, and plaintiffs' investigator erred in contacting her. Ms. Dunham was the manager of the plant that made the defective products at issue, at the time that the products were allegedly produced by defendant. Therefore, under the third prong, she acted on behalf of the company and could be named as party to the lawsuit but for the company's legal existence. She cannot be contacted by opposing counsel, and defendant should report this to the state bar at the earliest opportunity.

As a further note, Ms. Dunham has retained private counsel. She informed the investigator of such. Should the investigator further attempt to contact Ms. Dunham directly, without permission of counsel, to discuss any substantive matter, plaintiffs' attorney is likely in violation of FRCP

4.2.

E. Penny Ellis (Current Employee, 2008-current)

Penny Ellis is also a covered employee who cannot be contacted by plaintiffs' investigator acting on behalf of plaintiffs' counsel. Under the second prong of employees covered by Rule 4.2, as set forth in Ethics Opinion 2016-12 (See Library), Ms. Ellis is covered because she has actual authority to enter binding contractual settlements on behalf of defendant. In addition, she is likely covered under the first prong because she is a voting member of the board of directors of AMDC. Plaintiffs' counsel may argue that Ms. Ellis has no ability to direct the course of the company's litigation and therefore fails to meet the conditions as a covered employee under the first prong. However, the fact that Ms. Ellis has a voting interest on the board is likely the prevailing argument. In sum, plaintiffs' counsel erred in directing (or allowing, or ratifying) her agent to contact Ms. Ellis.,

2. Defendant's Contact with Class Members

Where a named class member is known to opposing counsel to be represented by counsel, and each of those named class members has an attorney-client relationship with the lawyers representing the class, and the opposing counsel has actual knowledge of that relationship, then the opposing counsel's direct contact with the named class constitutes a violation of Rule 4.2

Mahoney, on the other hand, contact initiated by that same opposing counsel is not a violation where the recipient of the contact is merely a potential member of a class and the class opt-out period has not expired. Id. In short, opposing counsel may contact potential (but not named) class members prior to the end of the opt-out period, unless the opposing counsel has some reason to know that that potential member is currently represented by counsel.

Here, defendant may properly contact UNNAMED members of the prospective class ONLY UNTIL such time as the "opt out" period for the class has closed, unless defendant's counsel has actual knowledge that a prospective class member has already retained counsel, in which case only counsel-to-counsel contract is appropriate under FRCP 4.2, absent permission from that prospective class member's attorney. The prohibition on direct contact with named members remains in effect regardless of whether the class period has closed or remains open. Defendant - our client - must take pains to abide by these rules or counsel may be subject to disciplinary rules.

III. Conclusion

If plaintiffs' attorney has directed or ratified the investigator to contact Dunham and Ellis, then that attorney has likely done so in violation of Franklin Rules of Procedure 4.2 and 5.3(a)-(c). However, with regard to the former employee, Ron Adams, there was likely no violation. Likewise, as set forth above, there was likely no violation for the contact with Bartholomew and Corlew.

MPT 2

Representative Good Answer No. 1

I. Because Eli Doran Lacked Capacity to Consent to Marriage on January 15, 2019, His Marriage to Paula Daws Should Be Annulled.

Legal Standard

A marriage that complies with the licensing and officiating requirements of the Franklin Uniform Marriage and Dissolution Act (FUMDA) is presumptively valid. In re the Estate of Carla Mason Green. This presumption can only be overcome with clear and convincing evidence, which is a more demanding standard than preponderance of the evidence because the right to marry is constitutionally protected. Evidence is clear and convincing in a case such as this if it establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage. The capacity to consent to marriage is defined as the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. Each party to the marriage must freely intend to enter the marital relationship and understand what marriage is. This capacity to consent is measured at the time of marriage.

Argument

Although the marriage met some of the legal requirements of marriage, as far as being officiated by a minister with the marriage license and having two witnesses, the evidence is clear and convincing that it is substantially more likely than not that Eli Doran lacked capacity to consent to marriage at the time of marriage and the marriage should be annulled.

Mr. Doran did not understand the nature, effect, and consequences of marriage and its duties and responsibilities. This is supported by the witnesses who have testified. Many testified that they thought the Mr. Doran was not oriented at the time of marriage. Ms. Richard credibly testified that Mr. Doran had a serious decline in his cognitive abilities and did not know what he was doing. Doctor Anita Bush who specializes in cognitive or mental disorders credibly testified that Mr. Doran was not oriented to time and that when Mr. Doran's physician of 15 years conducted a Mini-Mental State Exam, Mr. Doran's score was low showing cognitive deficiencies. Dr. Bush credibly testified that when she conducted this test on Mr. Doran later, he scored even lower, and that he lacked the ability of ordinary judgment or reasoning. Dr. Bush credibly testified that in January 2019, Mr. Doran did not have the mental capacity to consent to marriage. This is sufficient to show that it is substantially more likely than not that Mr. Doran lacked capacity, as this court has found the testimony of clinical professional to be credible. See In re the Estate of Carla Mason Green.

Ms. Daws may argue that Doctor Bush did not see Mr. Doran on the date that he married Ms. Daws, he could not have known of Mr. Doran's capacity to marry on that date. However, Dr. Bush testified that based on Mr. Doran's condition, is it doubtful that he could have a moment of lucidity, and if he did, it would not have the effect to increase his ability to exercise judgment.

Dr. Bush credibly testified that he saw Mr. Doran before the marriage and after the marriage, and his mental condition only declined, so it is substantially more likely that he did not have the capacity to consent on the day of marriage. Furthermore, the only witness that Ms. Daws had to speak on Mr. Doran's capacity on the date they married is the minister who married them, Reverend Joseph Simms, who is not a doctor or clinical professional of any sort. Mr. Simms had only met Mr. Doran twice, once in January of 2019 before the wedding and on the wedding. Although Rev. Simms stated that he would not have married Ms. Daws and Mr. Doran if he questioned Mr. Doran's mental capacity, he himself admitted that he did not conduct any assessments to determine Mr. Doran's cognitive abilities, nor did he have the training to do so. Accordingly, this witness is not credible.

Additionally, Mr. Doran also did not freely intend to enter the marital relationship. In determining this, courts have looked to whether the party's livelihood was in control by the party that they married. In the case of In re Marriage of Simon, the court annulled a marriage of two people who were married in a residential facility who had no prior romantic relationship before the party entered into the care of the other. That is just the case here. Ms. Daws and Mr. Doran did not know each other prior to Mr. Doran entering Ms. Daws care. Ms. Daws may argue that they knew each other for a since 2018 and got married in 2019 which is a long time; however,

the entire time they knew each other was when Ms. Daws cared for Mr. Doran and they had no prior romantic relationship. In the case In re the Estate of Carla Mason Green, the married couple had been engaged to be married for two years and planned for marriage and a life together, before the wife got sick. Here, Ms. Daws and Mr. Doran did not have a relationship prior to Mr. Doran entering Ms. Daws's home for her care and did not plan for a life together. Ms. Daws testified that Mr. Doran said to her one night that "You take good care of me. We should get married." and a few days later, they were married. This shows no period of time of an engagement, and the marriage was instead something that occurred on a whim. Furthermore, Dr. Bush credibly testified that he

Furthermore, it is clear and convincing from the provided testimony that Mr. Doran did not understand what marriage was and instead equated marriage with being cared for. As credibly testified to by Ms. Richards, Mr. Doran asked Vera Wilson, his cleaning lady and cook, to marry him. Doctor Anita Bush credibly testified that Ms.

Doran told her that Ms. Wilson took care of him and that he was married to Ms. Wilson, even though he wasn't. Dr. Bush found that Vera equated marriage with being cared for instead of a romantic relationship. Ms. Daws even stated that Mr. Doran asked her to marry him while she was bringing in his laundry.

Thus, it is substantially more likely than not that Eli Doran lacked capacity to consent to marriage at the time of marriage and it is fair and just for the Court to annul the marriage.

Request for Relief

Petitioner respectfully requests that the Court annul the January 15, 2019 marriage of Paula Daws and Eli Doran.

II. Because Eli Doran Lacked Testamentary Capacity on October 7, 2019, His Will Should Be Deemed Void.

Legal Standard

Law requires that a testator have testamentary capacity, which means that the testator, at the time of executing the will, be capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them.

In re the Estate of Dade. A will executed by a testator who lacks testamentary capacity is void. The time for measuring testamentary capacity is the time when the instrument, is executed. A party who seeks to prove the lack of testamentary capacity must do so by a preponderance of the evidence.

Argument

Mr. Doran did not know the nature of signing the will. This is evidenced by Ms. Daws's testimony when she stated that she asked him Mr. Doran did he want to make a will, it was not Mr. Doran who asked to make a will. He only stated that he wanted Ms. Daws to have what he had. Ms. Daws brought up the will. Although Ms. Daws may argue that she didn't force him, Mr. Doran never stated that he wanted to create a will. In fact, Ms. Daws drafted the will and did not take the will to Mr. Doran's lawyer to look over. Additionally, Dr. Bush testified that Mr. Doran could not make ordinary judgment and had cognitive deficiencies. Thus, Mr. Doran did not know the nature of signing a will.

Mr. Doran did not know the nature and the extent of his property. Dr. Bush testified that Mr. Doran did not know the nature and extent of his property or his estate. In re the Estate of Dade, the court found that the testator knew of the nature and extent of his property because he talked regularly about his finances, which is not the case here. Ms. Richards credibly testified that she handled Mr. Doran's finances, and that Mr. Doran's pension went directly to his checking account and monthly payments from his checking account automatically went to Ms. Daws so Mr. Doran would not have to deal with his finances. Per Ms. Daws's testimony, Mr. Doran only ever stated that he wanted Ms. Daws to have all of what he had, with no knowledge of what exactly he had. Thus, Mr. Doran did not know the nature and the extent of his property.

Mr. Doran did not know the natural objects of his bounty and his relation to them. In re the Estate of Dade, the court did not find that testator did not know the natural objects of his bounty because while he added to his bequests in codicil, he did not disturb the existing provisions. Also in that case, he was informed about his family who may have a claim in his estate and aware of the value of his estate. In this case, Ms. Richards credibly testified that Mr. Doran intended to leave his entire estate to his church before he became incompetent. In the new will, all of his estate goes to Ms. Daws. Dr. Bush credibly testified that Mr. Doran did not know who his niece, Ms. Richards, was and thought that he still lived with Janet, his deceased wife.

Ms. Daws may argue that because Doctor Bush did not see Mr. Doran on the date that he signed the will, he could not have known of his testamentary capacity on that date. However, as previously stated, Dr. Bush testified that based on Mr. Doran's condition, is it doubtful that he could have a moment of lucidity, and if he did, it would not have the effect to increase his ability to exercise judgment. Dr. Bush credibly testified that he saw Mr. Doran before the will was executed, and after the will was executed, and his mental condition only declined, so it is substantially more likely that he did not have testamentary capacity on the dated he signed the will.

Assessments of credibility are critical to determinations of testamentary capacity and witnesses testimony won't be credible if they have an interest in the estate. In re the Estate of Dade. Ms. Daws may argue that Ms. Richards is disputing the validity of the will because she wanted an interest and shouldn't be found credible. However, Ms. Richards is credible because she stated that she knew that Mr. Doran had wanted to leave his entire estate to a local church, not to Ms. Richards. Furthermore, Ms. Daws herself has an interest in wanting all of Mr. Doran's estate to go to her, as Ms. Daws admitted that she has about $15,000 in credit card debt. This is also why Ms. Daws daughter, Mary Daws Johnson's testimony is not credible, because she would benefit from the will has a descendant of Ms. Daws. Furthermore, Dr. Bush, a cognitive specialist, testified that on the date that Mr. Doran signed his will, he did have the capacity to execute a will.

Thus, there is a preponderance of the evidence that Mr. Doran lacked testamentary capacity at the time he executed the will and it is fair and just that the Court should deem the will as void.

Request for Relief

Petitioner respectfully requests that the Court set aside the will signed by Eli Doran on October 7, 2019.

Representative Good Answer No. 2

Closing Argument

I. Mr. Doran did not have the capacity to consent to marriage when he married Paula Daws in January 2019, the January 2019 marriage of Paula and Eli should be annulled.

A marriage that complies with the licensing and officiating requirement of the Franklin Uniform Marriage and Dissolution Act (FUMDA) is presumptively valid. In re the Estate of Carla Mason Green. It can be overcome only with clear and convincing evidence. Id. Evidence is clear and convincing in a case if it establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage. Id. The capacity to consent to marriage, a requirement of a valid marriage, is defined as the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. Id. Each party to the marriage must freely intend to enter the marital relationship and understand what marriage is. Id.

Here, Eli Doran was placed in an assisted living home, run by Paula Daws, when his niece Carol Richards noticed that he was becoming forgetful and with the recommendation of his family doctor. After Eli moved in with Paula he was becoming more forgetful. Dr. Anita Bush ran several assessments for testing intellectual capacity when she met with him May 3, 2018. Of those test was a MMSE which was conducted years ago by his family physician and yielded a result of 21 compared to the average 23 of someone in the same age, and health as Eli. Dr. Bush results was 19 which was a significant decline. After, the marriage of Eli and Paula Dr. Bush saw him a second time in which his memory got worse and when asked where he lived he stated that he lived with his wife Janet

who died years ago. Dr. Bush also testified that she doubts Eli has moments of lucidity and if he does it is not the same as having the ability to exercise judgement. She further stated that Eli did not possess the mental capacity to consent to marriage. This could be contrasted with the Carla Mason case. In this case, Mason who had terminal cancer married Michael Green at the hospital. However, Mason was alert despite taking medications and it was said that patients can and do have periods of lucidity and alertness. Mason executed a POA two days after the wedding where is was said that she was "alert and oriented" and that her sister, the petitioner, believed that Mason had the capacity to make decisions when Mason signed the POA.

Opposing counsel could argue that if Dr. Bush believed Eli was being abused or exploited she would have called Franklin Elder Protective Services in which she did not. The could also argue that Paula Daws believed Eli had the mental capacity to consent to marriage because he stated over that "You take good care of me. We should get married" and that he stated "You are nice. I love you". However, Eli had said the same thing to Vera Wilson, the hired help, and had even asked her to marry him. Paula Daws has a lot to gain from the marriage and if she did not she would have invited his niece or went to Eli's minister to marry them. Instead Paula went to her own minister in which she is a long-time member of his congregation. Paula did not tell anyone about the marriage until recently as well.

Further, Paula Daws first met Eli when he and his niece came to her home in hopes to put him in assisted living. They did not know each for long before they got married. Contrast to the Mason case, Mason and Green were engaged to be married for two years. They had planned for marriage and a life together. The case here aligns more with In re Marriage of Simon, in which the court annulled the marriage of henry and Nancy Simon after Henry married Nancy while she lived in a residential facility. Nancy suffered a stroke which her doctors determined were disabling and that she was incapable of receiving or evaluating information. Nancy and Henry only knew each for a few weeks prior to her stroke and they had no prior romantic or other relationship. The court found not only that Nancy was incapable of consenting to marriage but at the time of marriage she had no understanding of what marriage is. Eli and Paula had no prior romantic relationships or any other relationship more importantly Elis cognitive assessments prove that he was not in the correct mental capacity to consent to marriage. He did not understand the nature, effect, and consequences of marriage and its duties and responsibilities. Eli did not have the required intent to be married and therefore the January 2019 marriage of Eli and Paula she be annulled.

II. Mr. Doran lacked testamentary capacity when he executed the October 7, 2019 will, the October 7, 2019 will should be set aside.

The law requires that the testator have testamentary capacity. That means that the testator must, at the time of executing the will, be capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them. A will executed by a testator who lacks testamentary capacity is void. The time for measuring testamentary capacity is the time when the instrument is executed. A party who seeks to prove the lack of testamentary capacity must do so by a preponderance of evidence.

In this case, Eli, at the time of executing the will, did not have testamentary capacity to execute because he was not capable of knowing the nature of the act he was about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them. According to Dr. Bush, Eli did not have the capacity to execute the October 7, 2019 will. Dr. Bush testified that in October Eli did not know who his relatives were or who might have a claim on his estate. He did not know who his niece was and thought that he lived with Janet,

his deceased wife. Eli also did not know the nature and extent of his property or his estate. Opposing counsel could argue that Dr. Bush did not see on October 7,2019 so she could not possibly know his mental capacity at that time. However, Eli did not have long periods in which he regained mental capacity as Matthew Dade had long periods of sobriety in the In re the Estate of Dade case. In In re the Estate of Dade case, Matthew Dades adult children appealed to set aside their fathers' codicil due to his alcoholism. However, Dade was able to discuss his finances and correctly state his worth. He was also able to identify the extent and value of his investments and regularly provided updates to his niece and nephew and expressed his need to reward his house keeper. He also had long periods of sobriety between 1999 and 2000.

The court also assessed credibility which is critical to determinations of testamentary capacity. The court in Dades found that Dades adult children were interested in protecting the original gift to them and that their testimony about their father's ability when he drafted the codicil was colored by their interest. In the case at hand, both Paula and her daughter Mary have something to gain. Paula did not take Eli to his lawyer to have the new will drafted but instead drafted it for him using an online kit. It was also brought to our attention that Paula has quite a bit of credit card debt of about $15,000 or so. The money and assets left to her in the will would be more than enough to pay off her debt. As for her daughter Mary, who was present when Eli signed the will, gains her mother's inheritance if something was to happen to her mother after Eli's death. Here, Eli's niece has nothing to gain, in fact his 2016 will leaves his estates to his church that he loves so much.

In closing, Mr. Doran lacked testamentary capacity when he executed the October 2019 will. He did not know who his relatives were or who might have a claim on his estate. He did not know who his niece was and thought that he lived with Janet, his deceased wife, as evidenced by the testimonies of the witnesses. Paula Daws and her daughter both have interests worth protecting if the will is found to be valid. His niece had seen Eli's will from 2016 in which Eli saw his attorney and executed a will leaving his estate to his church, that he loved so much. Therefore, the October 7, 2019 will should be set aside. The reliefs requested are fair and just.