1)

TO: Simone Rice

FROM: Examinee

DATE: July 28, 2026

RE: Memorandum: Subpoena from US Attorney

Simone Rice,

You have tasked me with identifying whether the Franklin Rules of Professional Conduct prevents you from disclosing the documents about your conversations with David Dawes. You also asked me to assess whether the crime-fraud exception to the attorney-client privilege applies to the documents you have on file, and whether the government can successfully compel the documents disclosure based on the information in the government's possession.

I will address each question in the order you laid out in your email.

1. Whether the Franklin Rules of Professional Conduct prevents disclosure to the government of documents on file about the conversation between Simone Rice and David Dawes.

Under the Franklin Rules of Professional Conduct (the "Rules"), 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)." [Franklin R. Prof. Conduct, 1.6]. The exceptions laid out in Rule 1.6, that if applicable, "permit but do not require an attorney to disclose. If no exception applies...the rule prevents disclosure." [United States v. Coving, (15th Cir. 2019)]. Further, the Rules also state that a even when a client-lawyer relationship does not ensue, a lawyer who has learned information from a perspective client "shall not use or reveal that information, except as Rule 1.9 would permit with respect to the information of a former client." [FRPC 1.18]. Rule 1.9 states that a lawyer shall not "reveal information relating to the representation except as these Rules would permit or require to a client." [FRPC 1.9].

United States v. Coving is instructive in assessing the issue at hand because it discusses the application of the Franklin Rules of Professional Conduct to documents. In *United States v. Coving*, an attorney, Marvin Jackson, was issued a subpoena that required him to produce documents describing, what he knew, including any details about the crime, which was kidnapping. Jackson was then interviewed in chambers by a judge to determine if the evidentiary privilege for lawyer-client communications did not apply. [*Coving*, (15th Cir. 2019)]. The court then ordered him to comply with the subpoena. [*Id*.] The Court goes on to state the first three relevant exceptions under Rule 1.6, which are as follows: "Rule 1.6(b)(1) permits disclosures that are reasonably necessary to prevent 'reasonably certain death or substantial bodily harm.'" [*Coving*]. The second exception "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." [*Id*.]. The third exception "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

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." [*Id*.].

The first exception does not apply in the current situation. There was no reasonable basis to conclude that death or substantial bodily harm was reasonably certain to occur. The second exception may apply because Dawes came to Attorney Rice seeking advice that would result in substantial injury to the financial interests of another. However, the interpretation of the words "to prevent" at the beginning to the exception seem to apply *before* the crime or fraud was committed, and Rule 1.6 is clear that a lawyer "may" reveal information; not the lawyer "must" reveal information. The third exception is similar to the second, but applies to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that "has resulted" from the client's actions. [FRPC 1.6(b)(3)]. The exception is one that prevents an attorney from disclosing a client's communication about a past crime, and "is limited, however, to situations in which disclosure would prevent or reduce some kind of ongoing financial injury." [*Coving*]. It also does not apply where all financial loses have already occurred.This exception may apply to the communications related to Dawes' outstanding warrant for violating his probation requirements, but it most likely will not apply to the illegal receipt of VA Benefits from July 1, 2020, to May 1, 2026. Attorney Rice interviewed and declined to represent Mr. Dawes on or around March 11 and 12 of 2020.[*See* second conversation with David Dawes: research, advice, and declining representation]. Further, 1.6(b)(2) and (b)(3) require a showing that the client "has used the lawyer's services in furtherance of" the future crime or financial injury. [*Coving*]. Much like in *Coving*, the advice Attorney Rice gave to Mr. Dawes did not further either the alleged crime or any financial injury resulting from the crime; Mr. Dawes was merely advised of his legal obligation to comply with the warrant and resolve it before obtaining VA benefits.

The last instructive exception is Rule 1.6(b)(6) which allows disclosure "to comply with other law or a court order." [FRPC 1.6(b)(6)]. The decision in *Coving* hinges on whether this exception supersedes the rules of evidence and prevents complying with the subpoena. [*Coving].* The court states that the court order which approved the subpoena allowed disclosure. [*Id*.]. However, there is a three-step procedure that needs to be followed before use of privileged information under the crime-fraud exception is allowed. [*In re Grand Jury Proceedings* (15th Cir. 2023)]. This procedure will be discussed in the next section.

For now, under the Franklin Rules of Professional Conduct, the documents in Attorney Rice's possession about the conversations with Mr. Dawes may be disclosed under Rule 1.6(b)(6), if and when the government follows the three-step procedure and "provides sufficient information to support a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme." [*In re Grand Jury Proceedings*].

2. Whether the crime-fraud exception to the attorney- client privilege applies to the documents on file.

When an attorney is "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." [*Coving*]. No interest of confidentiality exists when a client consults an attorney to further the commission of a crime or fraud, and the crime-fraud exception "ensures that the attorney-client evidentiary privilege does not protect communications" related to the crime or fraud. [*In re Grand Jury Proceedings*]. Use of privileged materials, in the District of Franklin, used 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." [*Id*.]. The client has to intend for the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. [*Id*.].

In re Grand Jury Proceedings is instructive on this issue because it decides when communications are "in furtherance" of a crime or fraud. The government must do more than show that the client meet with counsel and then later committed some criminal or fraudulent act. [*Id*.] The government in that case had nonconfidential sources that the client consulted with counsel about immigration statutes of identified employees at a time when they knew the employees lacked appropriate documents [*Id*.]. If the client consults with an attorney about a plan to commit a criminal act but does not do so until after the relationship ends, the crime-fraud exception still applies. [*Id*.]. The crime does not have to be completed, and a communication can be "in furtherance of" criminal conduct even if the attorney does nothing after the communications. [*Id*.]. This applies even if the client disregards the advice and proceeded with the action. [*see* United States v. Jones, 28 F.3d 766 (15th Cir. 2014) (crime-fraud exception applied when the attorney told the client that her proposed actions would amount to insider trading and the client disregarded the lawyer's advice and proceeding with the action).]

The communications between Attorney Rice and Mr. Dawes would likely amount to communications that are "in furtherance" of a crime or fraud because Mr. Dawes was advised that his actions were criminal and amount to a Federal felony that required prison time if convicted. [*See* second conversation with David Dawes: research, advice, and declining representation]. After being advised that if he applied for VA benefits without disclosing the warrant and received benefits, it would amount to a felony, and that Attorney Rice would not represent him without taking care of the warrant, Mr. Dawes went ahead and applied for the benefits anyway. [*See* second conversation with David Dawes: research, advice, and declining representation].

3. Whether the government can successfully compel disclosure of the documents in Attorney Rice's files under the crime-fraud exception.

The government need only prove 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. [*In re Grand Jury Proceedings*]. This is meant to accompany an *in camera* evaluation by the court and afford opposing counsel an opportunity to contest disclosure. [*Id*.]

Dawes told the prosecution that he consulted with Attorney Rice a month before he filed for VA benefits and that Attorney Rice declined to take the VA benefits case. Further, the public defender Attorney Rice spoke to claims that the prosecution does not have any other information regarding what Dawes and Attorney Rice discussed. After meeting with Mr. Dawes and declining to represent him, Mr. Dawes proceeded to apply for and receive VA benefits within three months of the first meeting in March of 2020. The government knew that Attorney Rice was consulted about representing Mr. Dawes about applying for VA benefits and that that representation was declined followed by Mr. Dawes applying shortly thereafter learning that it was against the law he do so. "[T]he 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 clients 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." [*Id*.]

Based on the above rules, the government most likely can successfully compel disclosure of the documents, but before doing so, the court has to conduct an *in camera* review and hear from both parties and their arguments regarding disclosure or non-disclosure.

Let me know if you have any questions regarding my analysis or want me to investigate the questions further,

Thanks, Examinee

END OF EXAM

1)

MEMORANDUM

To: Attorney Simone Rice

From: Examinee

Date: July 28, 2026

Re: Subpoena from US Attorney

Introduction

Attorney Rice has received a subpoena from the U.S. Attorneys office concerning veteran David Dawes, who she met with regarding legal assistance to apply for Department of Veteran Affairs (VA) benefits. Attorney Rice plans to contest the subpoena if the Franklin Rules of Professional Conduct protect the communications and no exception applies.

Discussion

I. The Franklin Rules of Professional Conduct prevent Attorney rice from disclosing to the government the documents in their files about the conversations with Dawes.

Franklin Rules of Professional Conduct 1.6 prevents an attorney from revealing "information relating to the representation of a client" made for the purpose of obtaining or providing legal assistance. Therefore, without an exception, the rule prevents disclosure of such information. In addition, Rule 1.18 provides that even if no client-lawyer relationship is created, a lawyer who has learned information from a prospective client shall not use or reveal that information[.]" An exception to Rule 1.6 is Rule 1.6(b)(2), which provides that an attorney may disclose information relating to the representation to prevent a client from committing a crime or fraud that is reasonably certain to occur and result in financial injury to the financial interests of another, in furtherance of which the client has used or is using the lawyer's services. Another exception is Rule 1.6(b)(3), which provides that an attorney may, to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result, disclose information relating to the representation regarding the crime or fraud in furtherance of which the client has used the lawyer's services. However, both Rule 1.6(b)(2) and (3) are dependent on the attorney being able to prevent a future or occurring crime, not one that has already occurred. *United States v. Coving*. Rule 1.6(b)(6) provides an additional exception that a lawyer may reveal information relating to the representation to the extent the lawyer believes reasonably necessary to comply with the law or a court order. *See United States v. Coving* (requiring an attorney to disclose information when directed by a court order to do so, after the court has properly assessed the evidentiary privilege).

Here, David Dawes met with Attorney Rice after hearing that the firm helps veterans for free with filing an initial application for benefits from the Department of Veteran affairs. Dawes approached Attorney Rice with the intent to obtain legal assistance with the application process, falling under Rule 1.6. Although Attorney Rice ultimately decided not to pursue representation of Dawes, Rule 1.8 still protects under attorney-client privilege information learned from a prospective client--creating the same duty as if the attorney had represented the client

prospective client--creating the same duty as if the attorney had represented the client. Therefore, the attorney-client relationship applies unless there is an exception.

Franklin Rule of Professional Conduct Rule 1.6(b)(2)-(3) both provide exceptions to Rule 1.6. However, Rule 1.6(b)(2) specifically requires the attorney to reasonable believe that disclosing the information will "prevent the client from committing a crime or fraud that is reasonably certain to result[,]" where here, the crime has already resulted. Therefore, Rule 1.6(b)(2) is inapplicable. Further, as seen in United States v. Coving, Rule 1.6(b)(3) does not apply if all the financial losses have already occurred. Therefore, Rule 1.6(b)(3) is also inapplicable. In conclusion, both Rule 1.6(b)(2) and (3) will not compel disclosure by Attorney Rice due to the fact that disclosure is not reasonably necessary to prevent future substantial injury to financial interests and that the financial losses here have already occurred.

A possible exception is whether Attorney Rice must provide the information subject to a valid court order under Franklin Rule of Professional Conduct Rule 1.6(b)(6). Attorney Rice received a subpoena from the U.S. Attorney's office, which is not a court order. In *United States v. Coving*, the attorney moved to quash the subpoena arguing that 1.6 prevented him from being able to disclose confidential client communications. The district court ordered the attorney to comply with the subpoena, which the attorney appealed. *Id.* The 15th Circuit specifically found that, when directed to by a court order after the court has properly assessed the evidentiary privilege for attorney-client communications, the attorney must disclose otherwise confidential information to the court. *Id.*; Franklin Rule of Professional Conduct 1.6(b)(6). Here, however, Attorney Rice has only received a subpoena from the U.S. Attorney's office, not a order from the court. Further, Attorney Rice has not had the opportunity to have a court properly assess the evidentiary privilege in Dawes' context, therefore failing to meet the requirements for Rule 1.6(b)(6) to apply.

In conclusion, no exception exists to Rule 1.6. Therefore, the Franklin Rules of Professional Conduct prevent Attorney rice from disclosing to the government the documents in their files about the conversations with Dawes.

II. Based on the information in Attorney Rice's possession, the crime-fraud exception applies, as Dawes understood he was seeking advice in furtherance of crime or fraud.

The protection of attorney-client privilege does not extend to communications that further continuing illegal conduct, whether present or future. *In re Grand Jury Proceedings*. Therefore, the crime-fraud exception exists to ensure that the attorney-client privilege does not protect communications made in furtherance of a crime or fraud. *Id.* For the exception to apply, the client must have consulted with the attorney in furtherance of a crime. *Id.* In *In re Grand Jury Proceedings*, for example, the client first learned that they were committing a crime and only thereafter consulted the attorney about the underlying illegal conduct. Therefore, the client sought legal advice to further an ongoing criminal scheme. *Id.* The crime-fraud exception still applies if the attorney informs the client that their proposed actions are illegal and the client disregards the advice and proceeds with the action. *United States v. Jones*. Further, the exception applies when "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." *In re Grand Jury Proceedings*. U.S.C. section 5313B and 3.665(n) disqualify disability compensation to a veteran who is a "fugitive felon"--which includes those who have an outstanding warrant for probation violation. Further, 18 U.S.C. section 1001 provides that it is a crime to apply for benefits without disclosing an outstanding warrant, as it is concealment of a material fact.

Here, during the initial interview, Dawes informed Attorney Rice that he may have an outstanding warrant for violating his probation in the State of Columbia. Attorney Rice advised that Dawes would violate the law if he applies and omits a probation violation warrant. Dawes is not distinguishable from the client in *In re Grand Jury Proceedings*. Dawes' purpose of seeking advice from Attorney Rice was due to his friends informing him that he should be able to get full benefits from the VA based on his back pain, hip pain, sleeping problems, and PTSD. The transcript is clear: Dawes was not aware that seeking benefits would be a crime. In fact, Dawes learned about the violation from Attorney Rice during the consultation. The issue for Dawes is that, after learning that omitting his warrant would be a crime, he still requested that the attorney assist because "[a]s far as the local VA office knows, it'll look like I have a clean record." Therefore, although Dawes was not aware at the start of the consultation, he became aware and still sought the attorney's advice in furtherance of such crime. This is similar to the client in *In re Grand Jury Proceedings*, where the client was aware of the illegality of their conduct and still sought advice in furtherance of such conduct, making the crime-fraud exception applicable to such communications. The fact that Dawes consulted with the attorney in furtherance of what he understood at that time to be criminal or fraudulent activity is sufficient to meet the showing required for the crime-fraud exception. Therefore, based on the information in Attorney Rice's possession, the crime-fraud exception applies, as Dawes understood he was seeking advice in furtherance of crime or fraud.

III. The government cannot compel disclosure of the documents in the files under the crime-fraud exception as they do not have a factual basis for a reasonable belief that the exception may apply.

The use of privileged information requires a three step process: "(1) presentation of a factual basis for a reasonable belief that the exception may apply, (2) in camera evaluation of the material by the court, and (3) affording the party opposed to the disclosure the opportunity to contest the disclosure." *In re Grand Jury Proceedings*. The government therefore must provide sufficient information that supports a reasonable belief that the client intended the consultation with the attorney to further an ongoing or planned criminal or fraudulent scheme. *Id.* For example, in *In re Grand Jury Proceedings*, the government was able to establish through nonconfidential sources that the corporation and its president consulted with counsel about the immigration status at a time where they knew the employees lacked appropriate documentation.

Here, Dawes--under questioning by federal agents--told the prosecution that he consulted with Attorney Rice about a month before he filed VA benefits. Attorney Rice also informed the prosecution that Attorney Rice declined to take his VA benefits case. Attorney Rice's firm is known for assisting veterans with such applications; therefore, the prosecution has a reasonable belief that there is an underlying reason for the denial, such as Dawes seeking Attorney Rice's help with concealing the existing warrant. This is similar to *In re Grand Jury Proceedings*. Here, the government was able to establish through nonconfidential sources (directly from Dawes) that Dawes consulted with counsel about applying for benefits; however, there is no evidence to suggest that the government knew that Dawes was doing so at a time where he knew that doing such would consist of a crime or fraud. Although declining representation likely sparks some interest by the prosecution as to why, there are many reasons why an attorney may decline representation. Therefore, the government is unable to present a factual basis for the reasonable belief that Dawes sought such information in

furtherance of a crime or fraud at a time he knew such was crime or fraud. It is just as reasonable, with the evidence that the government has, that Dawes had no intent to consult Attorney Rice in furtherance of an ongoing or planned criminal or fraudulent scheme (as, for example, he could have learned from Attorney Rice that applying is crime and not sought further advice at all). In conclusion, the government cannot compel disclosure of the documents in the files under the crime-fraud exception as they do not have a factual basis for a reasonable belief that the exception may apply.

Conclusion

Although the Franklin Rules of Professional Conduct prevent Attorney rice from disclosing to the government the documents in their files about the conversations with Dawes, the crime-fraud exception applies, as Dawes understood he was seeking advice in furtherance of crime or fraud. However, the government cannot compel disclosure of the documents in the files under the crime-fraud exception as they do not have a factual basis for a reasonable belief that the exception may apply.

END OF EXAM