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Matter of David Dawes

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Matter of David Dawes

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FILE

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

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

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

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

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

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

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

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

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

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

UNITED STATES DISTRICT COURT
for the
District of Franklin

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

INDICTMENT

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

A TRUE BILL

July 9, 2026

Jean Pearsall Schmidt

Jean Pearsall Schmidt
Foreperson

Amalie Semmes

Amalie Semmes
United States Attorney

TRANSCRIPT OF INTERVIEW

Between Attorney Simone Rice and Mr. David Dawes

March 11, 2020

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

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

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

Dawes: Yes, I am.

Rice: Why are you here today?

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

Rice: What kind of problems?

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

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

Dawes: That's right.

Rice: How long has this been going on?

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

Rice: Where did you live before?

Dawes: Centerville, in Columbia.

Rice: Did you have the same trouble there?

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

Rice: Tell me about that.

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

Rice: Using what?

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

Rice: Did you finish your probation before that happened?

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

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

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

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

Dawes: I never checked. They must have.

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

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

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

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

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

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

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

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

Rice: That's how the VA rules work.

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

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

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

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

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

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

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

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

Dawes: What? Why not?

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

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

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

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

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

Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Van Every & Rice LLP
Attorneys at Law

FILE MEMORANDUM

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

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

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

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

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

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

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

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

LIBRARY

Franklin Rules of Professional Conduct

Rule 1.6: Confidentiality of Information

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

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

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

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

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

. . .

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

Comment to Rule 1.6:

. . .

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

Rule 1.9: Duties to Former Clients

. . .

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

. . .

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

Rule 1.18: Duties to Prospective Client

. . .

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

. . .

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

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

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

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

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

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

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

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

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

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

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

Affirmed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

Do not include your actual name anywhere in the work product required by the task memorandum.

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