

Applicant Number

16500



MPT-1

716

# THE MPT<sup>®</sup>

MULTISTATE PERFORMANCE TEST

*In re Whirley*

**Read the directions on the back cover.  
Do not break the seal until you are told to do so.**



NATIONAL CONFERENCE OF BAR EXAMINERS  
302 S. BEDFORD ST., MADISON, WI 53703  
608-280-8550

[WWW.NCBEX.ORG](http://WWW.NCBEX.ORG)

**In re Whirley**

**FILE**

Memorandum from Della Gregson.....	1
Memorandum to file re: client interview .....	2
Residential lease agreement.....	4
Email correspondence between Barbara Whirley and Sean Spears.....	6
Repair estimate from JB Handyman Services .....	8

**LIBRARY**

Excerpts from Franklin Civil Code.....	9
<b>Burk v. Harris</b> , Franklin Court of Appeal (2002) .....	12
<b>Shea v. Willowbrook Properties LP</b> , Franklin Court of Appeal (2012).....	14

**FILE**

**HUMPHRIES & ASSOCIATES, LLP**  
**ATTORNEYS AT LAW**  
2700 MADISON AVE., SUITE 120  
FRANKLIN CITY, FRANKLIN 33017

**MEMORANDUM**

**TO:** Examinee  
**FROM:** Della Gregson, Partner  
**DATE:** July 26, 2016  
**RE:** Barbara Whirley matter

---

Our client, Barbara Whirley, is renting a house. She is a little over halfway through a one-year residential lease and has encountered several problems with the house. Ms. Whirley would prefer not to move and wants the conditions repaired. She needs to know her options under Franklin law to remedy each condition.

In Franklin, specific statutes govern the landlord-tenant relationship. *See* Franklin Civil Code § 540 *et seq.* Both landlords and tenants have certain statutory duties, in addition to any duties they may have under a written lease.

Please draft a memorandum to me analyzing and evaluating Ms. Whirley's options with regard to each of the unrepaired conditions, which are described in the attached client interview summary. If more than one option is available with regard to a specific condition, explain the potential advantages and disadvantages of each option. If an option is *not* available to Ms. Whirley with respect to a particular condition, briefly explain why. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

**HUMPHRIES & ASSOCIATES, LLP**

**ATTORNEYS AT LAW**

2700 MADISON AVE., SUITE 120  
FRANKLIN CITY, FRANKLIN 33017

**MEMORANDUM TO FILE**

**FROM:** Della Gregson, Partner  
**DATE:** July 25, 2016  
**RE:** Summary of interview of Barbara Whirley

Today I met with Barbara Whirley regarding her dispute with her landlord over repairs needed to the rental house where she resides. This memorandum summarizes the interview:

- In January of this year, Whirley rented a three-bedroom, two-bathroom house from Sean Spears. See attached lease.
- Whirley is the only occupant of the home, and she has a dog, Bentley. She and Spears agreed in a separate "Pet Addendum" to the lease that she was allowed to have a dog. Whirley will provide a copy of the Pet Addendum at our next meeting.
- The house has eight rooms: a kitchen, a living room, a master bedroom with bathroom, two additional bedrooms, one additional bathroom, and a laundry room. The master bathroom is accessible through the master bedroom. The second bathroom is in the hallway between the second and third bedrooms. She uses one spare bedroom as her home office and the other as a guest room for family and friends when they visit her (one or two visits per month).
- Whirley is experiencing a number of problems with the residence.
- About two months after she moved in, the toilet in the second bathroom began leaking.
- In late March, she began having problems with the outdoor sprinkler system not functioning.
- In May, she noticed a smell in the guest bedroom. The smell is coming from the carpet near the sliding glass door leading from the bedroom to the backyard. The carpet is damp, and there is a half-inch gap between the bottom of the door and the door frame. Whirley isn't sure whether the door is off its track or whether the door is too small for the door frame. She has not opened the door since she moved in. The door is currently in the

closed position, but she isn't sure whether any of her houseguests may have used the door. When she discovered the gap between the door and door frame and tried to open the door, the door wouldn't budge. She has placed plastic along the door frame to try to keep outside moisture from coming in, to no avail. The carpet near the sliding door is increasingly discolored and smelly, and she has noticed mold growing around the door. The smell is so bad now that no one can use the room.

- Whirley keeps Bentley in the laundry room on weekdays while she is at work, because the laundry room door exits to the backyard and has a "doggy door" that allows Bentley to go in and out of the laundry room throughout the day. Bentley is a golden retriever, and sometimes he gets bored when Whirley is at work and chews on things. Five days ago, Whirley realized that Bentley had sneaked along the side of the washing machine next to the wall and chewed away a two-foot strip of the baseboard and areas of the wall above the baseboard. She has since moved the washing machine closer to the wall to prevent Bentley from having access to the chewed area. Since Spears allowed Whirley to have a dog at the house, she would like to have him take care of the repairs to the wall and baseboard if possible.
- Whirley has notified Spears about the toilet, sprinkler system, and guest bedroom sliding door and carpet, but he has not made any repairs. See attached emails.
- Whirley is now considering making arrangements herself to have the repairs completed. She has obtained an estimate from a handyman, a copy of which is attached.
- Whirley has paid her rent (\$1,200) on time every month.
- The average cost to rent a two-bedroom house in the same area is \$1,000. The average cost to rent a three-bedroom house in the area is \$1,200 (what Whirley is currently paying).
- Whirley does not want to leave her home because it is close to her workplace in a desirable neighborhood with limited rental options.

## **RESIDENTIAL LEASE AGREEMENT**

THIS AGREEMENT (the "Agreement") is made and entered into this 1st day of January 2016 by and between Sean Spears ("Landlord") and Barbara Whirley ("Tenant"). For and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**1. PROPERTY.** Landlord owns certain real property and improvements located at 1254 Longwood Drive, Franklin City, Franklin 33015 (the "Premises"). Landlord desires to lease the Premises to Tenant for use as a private residence upon the terms and conditions contained herein. Tenant desires to lease the Premises from Landlord for use as a private residence upon the terms and conditions contained herein.

**2. TERM.** This Agreement shall commence on January 1, 2016, and shall continue until December 31, 2016, as a term lease.

**3. RENT.** Tenant agrees to pay \$ 1,200 per month by no later than the 3rd day of each month during the lease term . . . .

\* \* \*

**8. PETS.** No animals are allowed on the Premises, even temporarily, unless authorized by a separate written Pet Addendum to this Agreement. Tenant will pay Landlord \$ 25.00 per day per animal as additional rent for each day Tenant violates the animal restrictions by keeping an unauthorized animal. Landlord may remove or cause to be removed any unauthorized animal and shall not be liable for any harm, injury, death, or sickness to unauthorized animals. Tenant is responsible and liable for any damage or required cleaning to the Premises caused by any unauthorized animal . . . .

**9. SECURITY DEPOSIT.** On or before execution of this Agreement, Tenant will pay a security deposit to Landlord of \$ 1,200 . . . . At the end of the lease, Landlord may deduct reasonable charges from the security deposit for damage to the Premises, excluding normal wear and tear, and all reasonable costs associated with repairing the Premises.

\* \* \*

**11. DESTRUCTION OF PREMISES.** If the Premises become totally or partially destroyed during the term of this Agreement such that Tenant's use is seriously impaired, Landlord or Tenant may terminate this Agreement immediately upon three days' written notice to the other.

\* \* \*

**14. PROPERTY MAINTENANCE.**

A. Tenant's General Responsibilities. Tenant, at Tenant's expense, shall

- (1) keep the property clean;
- (2) promptly dispose of all garbage in appropriate receptacles;
- ...
- (11) not leave windows or doors in an open position during any inclement weather;
- (12) promptly notify Landlord, in writing, of all needed repairs.

B. Yard Maintenance. Unless prohibited by ordinance or other law, Tenant will water the yard at reasonable and appropriate times and will, at Tenant's expense, maintain the yard.

\* \* \*

**16. EARLY DEPARTURE FROM PREMISES.** If Tenant vacates the Premises before the end of the lease term, Landlord may hold Tenant responsible for all rent payments due for the balance of the lease term, subject to any remedies available to Tenant under Franklin law.

Dated this 1st day of January, 2016

Tenant's Signature Barbara Whirley

Landlord's Signature Sean Spears



### **Email Correspondence between Barbara Whirley and Sean Spears**

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Repair request  
**Date:** February 19, 2016

Hi, Sean. Last weekend I noticed some water on the floor of the hall bathroom between the toilet and the shower. I think the toilet may have a leak. Can you please stop by in the next couple of days to see if the toilet is leaking? I'll put a towel down and make sure to keep the area dry in the meantime. Thanks!

---

**From:** Sean Spears<sspears65@cmail.com>  
**To:** Barbara Whirley<bwhirl@cmail.com>  
**Subject:** Repair request  
**Date:** February 27, 2016

Hi, Barbara. I'm sorry it's taken me a while to get back to you. I've been out of town—my oldest son just got married! I'm back in town now, but I'm absolutely snowed under at work this week. I should be able to swing by this weekend—would Saturday morning work for you?

---

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Leaking toilet  
**Date:** March 4, 2016

Sean, I left two phone messages that last Saturday morning was good for me, and I waited at the house until almost 2 p.m. that day, but you never showed up. The leak in the toilet is getting worse. I've put a plastic bucket behind the toilet to catch the dripping water. Please stop by as soon as you can. I am home most weeknights by 6 p.m. and should be around this weekend. Thanks!

---

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Needed repairs  
**Date:** March 31, 2016

Sean, I've tried calling you several times over the last few weeks and left voicemail messages about the leaking toilet, but you haven't called me back. The toilet really needs to be fixed. The leak is so bad now that I have to empty the plastic bucket twice a day and sometimes the toilet doesn't flush. In addition, the automatic sprinkler system for the front yard just stopped working, so I have to water the front flower beds by hand two or three times a week. This takes 15–20 minutes and is a real hassle—especially in this hot weather. I do not see any leaks, so I think the sprinkler box has malfunctioned. Can you please figure out what is wrong and get it fixed? Please call or email me about both of these problems ASAP. Thanks!

---

**From:** Sean Spears<sspears65@cmail.com>  
**To:** Barbara Whirley<bwhirl@cmail.com>  
**Subject:** Needed repairs  
**Date:** April 6, 2016

Barbara, I'm sorry for the delay, but I've got a lot on my plate right now. I promise I will get by the house to check on everything as soon as I can. Please hold down the fort in the meantime! Thanks!

---

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Needed repairs  
**Date:** April 27, 2016

Sean, I just got your voicemail message saying you wanted to stop by this weekend. I will be out of town Friday and Saturday, but anytime on Sunday would work for me. See you Sunday!

---

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Needed repairs  
**Date:** May 4, 2016

Sean, what happened Sunday?! I thought you were going to stop by.... If you can't make it, then please at least have the courtesy to call and let me know! When can you come by?

---

**From:** Barbara Whirley<bwhirl@cmail.com>  
**To:** Sean Spears<sspears65@cmail.com>  
**Subject:** Problem with sliding door and other repairs  
**Date:** May 26, 2016

Sean, I have been very patient. The toilet in the hall bathroom has been leaking for the past three months, and the automatic sprinkler system is still not working. These problems are very troubling, but now there's an even bigger problem—the sliding glass door in the guest bedroom is leaking and the carpet is wet and smelly. The smell is so bad that I can't even use the guest bedroom! Plus, mold is growing around the door, and I know that mold can cause health problems, so I have stopped using this room. I think the door and the carpet need to be replaced! Maybe you didn't take seriously the other problems I reported and that's why you haven't made any of the other repairs I've requested. But now a whole room in the house is completely unusable! Why should I pay rent for a 3-bedroom house when all I'm really getting is a 2-bedroom house and my guests have to sleep on the living room couch? If you don't make arrangements to get everything fixed, then I'm going to look into making the repairs myself and take appropriate legal action. I really like living here, but I can't continue to "hold down the fort" any longer!

**JB Handyman Services**

*You Break It, We Fix It!*

Estimate 000347

**DATE:** June 23, 2016

98 Meadow Lane  
Franklin City, Franklin 33019  
Phone 111-555-4500

**TO:**

Barbara Whirley  
1254 Longwood Drive  
Franklin City, Franklin 33015

<b>Description</b>	<b>Amount</b>
Replace toilet water supply valve and hose; Reseal toilet tank	\$200
Replace automatic sprinkler control box (6 zones)	\$300
Replace sliding glass door, door frame, and insulation; Replace 10 X 12 square-foot carpet and pad adjacent to door	\$1,800
Replace 2-foot section of baseboard in laundry room; Patch and repair drywall above damaged baseboard; Retexture and repaint damaged wall to match existing wall	\$300

**Total Estimate \$2,600**

THANK YOU FOR YOUR BUSINESS!

# **LIBRARY**

## **Excerpts from Franklin Civil Code**

### **Franklin Civil Code § 540 – Requirement of Tenantability**

The lessor of a building intended for human occupation must put it into a condition fit for such occupation and repair all subsequent conditions that render it untenable.

### **Franklin Civil Code § 541 – Untenable Dwellings**

A dwelling shall be deemed untenable for purposes of Section 540 if it lacks any of the following:

- (1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (2) Plumbing or gas facilities . . . maintained in good working order.
- (3) Heating facilities . . . maintained in good working order.
- . . .
- (7) Electrical lighting, wiring, and equipment . . . maintained in good working order.
- (8) Floors, stairways, and railings maintained in good repair.
- (9) Interior spaces free from insect or vermin infestation.

### **Franklin Civil Code § 542 – Tenant’s Remedies for Untenable Dwellings**

(a) If a landlord neglects to repair conditions that render a premises untenable within a reasonable time after receiving written notice from the tenant of the conditions, for each condition, the tenant may:

- (1) if the cost of such repairs does not exceed one month’s rent of the premises, make repairs and deduct the cost of repairs from the rent when due;
- (2) if the cost of repairs exceeds one month’s rent, make repairs and sue the landlord for the cost of repairs;
- (3) vacate the premises, in which case the tenant shall be discharged from further payment of rent or performance of other conditions as of the date of vacating the premises; or
- (4) withhold a portion or all of the rent until the landlord makes the relevant repairs, except that the tenant may only withhold an appropriate portion of the rent if the conditions substantially threaten the tenant’s health and safety.

(b) If the exercise of any of these remedies leads to an eviction action, a justified use of the remedies provided in (a)(1)–(4) in this section is an affirmative defense and may shape the tenant’s relief in the event it is determined that the landlord has breached Section 540.

(c) For the purposes of this section, if a tenant makes repairs more than 30 days after giving notice to the landlord, the tenant is presumed to have acted after a reasonable time. A tenant may make repairs after shorter notice if the circumstances require shorter notice.

(d) The tenant’s remedies under subsection (a) shall not be available if the condition was caused by the violation of Section 543.

(e) The remedies provided by this section are in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

### **Franklin Civil Code § 543 – Tenant’s Affirmative Obligations**

No duty on the part of the landlord to repair shall arise under Section 540 or 541 if the tenant is in violation of any of the following affirmative obligations, provided the tenant’s violation contributes materially to the existence of the condition or interferes materially with the landlord’s obligation under Section 540 to effect the necessary repairs:

- (1) To keep that part of the premises which the tenant occupies and uses clean and sanitary as the condition of the premises permits.
- (2) To properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits.
- (3) Not to permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto.

\* \* \*

### **Franklin Civil Code § 550 – Eviction Proceedings**

(a) In an eviction action involving residential premises in which the tenant has raised as an affirmative defense a breach of the landlord’s obligation under Section 540, the court shall determine whether a substantial breach of this obligation has occurred.

(b) If the court finds that a substantial breach of Section 540 has occurred, the court shall (i) order the landlord to make repairs and correct the conditions which constitute the breach, (ii)

order that the monthly rent be reduced by an appropriate amount until repairs are completed, and  
(iii) award the tenant possession of the premises.

(c) If the court determines that there has been no substantial breach of Section 540 by the landlord, then judgment shall be entered in favor of the landlord.

(d) As used in this section, “substantial breach” means the failure of the landlord to maintain the premises with respect to those conditions that materially affect a tenant’s health and safety.

## **Burk v. Harris**

Franklin Court of Appeal (2002)

Defendant Ashley Harris (Tenant) appeals the judgment entered in favor of plaintiff Roger Burk (Landlord) in this eviction action. The issue on appeal is whether the trial court misapplied the law when it found that the conditions proved to exist were nonsubstantial and therefore not a breach of the warranty of tenantability.

Landlord sought possession of the premises, forfeiture of the lease agreement, and past-due rent. Tenant asserted the defense of breach of the warranty of tenantability, set forth in Franklin Civil Code § 540, and the right to withhold rent under § 542(a)(4).

At trial, Tenant testified that the roof and windows of the premises had leaked during the entire term of her tenancy and, as a result, had caused water damage to the walls and floors and had damaged her personal property. Tenant also testified that the thermostat was broken and that the shower leaked. Tenant offered into evidence several letters she sent to Landlord complaining about the leaking roof and other conditions in the apartment, as well as photographs documenting the problems. Landlord denied receiving any such letters, asserted that he had not been inside the premises since Tenant moved in and did not have a key to the residence, and introduced before-and-after photos of repairs he had made upon learning of Tenant's complaints.

The trial court found that the conditions were not "substantial" as defined in Franklin Civil Code § 550. Accordingly, it entered judgment for Landlord for possession of the premises and past-due rent.

In *Gordon v. Centralia Properties Inc.* (Fr. Sup. Ct. 1975), the Franklin Supreme Court held that in every residential lease, there is an implied warranty of tenantability. In *Gordon*, the Franklin Supreme Court further held that a tenant who proves that the landlord has breached the warranty of tenantability is entitled not only to maintain possession of the premises but also to an appropriate reduction of rent corresponding to the reduced value of the premises. The *Gordon* court further held that a tenant is not entitled to a reduction in rent for minor violations that do not materially affect a tenant's health and safety. *Id.*

The *Gordon* decision is codified in the Franklin Civil Code. Under this statutory scheme, when a tenant raises breach of the warranty of tenantability as a defense in an eviction case, the trial court is required to determine whether a substantial breach has occurred. *See* §§ 542(b) and 550(a). If the court finds that there has been a substantial breach, it shall order the landlord to



make the repairs and correct the conditions caused by the breach, order that monthly rent be reduced by an appropriate amount, and award the tenant possession of the premises. § 550(b).

Section 540 requires that the landlord of a building intended for human occupation “put it into a condition fit for such occupation and repair all subsequent conditions that render it untenable.” Under § 541, a dwelling is untenable for human occupancy if it lacks effective waterproofing and weather protection of roof and exterior walls, plumbing maintained in good working order, heating facilities maintained in good working order, and floors maintained in good repair.

Here, the trial court found that the premises were not properly waterproofed from the outside elements, the thermostat did not work, and the shower leaked. The trial court erred when it concluded that these conditions were nonsubstantial. These conditions are not merely cosmetic defects or matters of convenience but affect Tenant’s health and safety.

Accordingly, Tenant is entitled to judgment on the defense of breach of the warranty of tenantability, to possession of the premises, and to an appropriately reduced rent. *See* §§ 542(a)(4) and 550(b).

To determine the appropriate reduction in rent, a trial court may either (i) measure the difference between the fair rental value of the premises if they had been as warranted and the fair rental value as they were during occupancy in unsafe or unsanitary condition, or (ii) reduce a tenant’s rental obligation by the percentage corresponding to the relative reduction of use of the leased premises caused by the landlord’s breach.

Additionally, the trial court must order Landlord to make the repairs necessary under the statute. These are issues for the trial court to determine on remand. Reversed and remanded.

## **Shea v. Willowbrook Properties LP**

Franklin Court of Appeal (2012)

After suffering through two separate bedbug infestations in his apartment, plaintiff Jordan Shea moved out and filed a complaint against his landlord, Willowbrook Properties LP, seeking to recover rent he had paid for the apartment (\$1,000/month for 16 months) and out-of-pocket expenses relating to the infestation (\$2,000). After a bench trial, the trial court found Willowbrook responsible for the first infestation, but not the second. It awarded Shea a fraction of the damages he sought (\$400), limiting his recovery to his documented out-of-pocket expenses and declining to award any rent recovery. Shea appeals.

The facts are as follows: within a few days of entering into a six-month lease with Willowbrook on July 1, 2010, Shea began to suffer from insect bites, which he discovered were the result of bedbugs. He reported this to Willowbrook, which sprayed his apartment, replaced his carpeting, and cleaned his apartment thoroughly to remove the bugs. While this work was being done, Shea stayed at a nearby motel. For several months after Willowbrook cleaned his apartment, Shea experienced no bedbug problems, so he believed that the problem had been corrected. In January 2011, he renewed his lease for an additional year; he then departed for a three-week study-abroad program. Upon his return, he started to get bedbug bites again; the bedbug problem continued throughout the renewal period, but Shea failed to report the second infestation to Willowbrook. He finally moved out of the apartment in October 2011, two months before the end of his lease.

### **A. Rent**

The trial court denied Shea's claim that he was entitled to a full refund of all the rent he had paid over the course of his tenancy. When a landlord breaches the warranty of tenantability and creates an untenable property, as is alleged here, a tenant has several options: (1) repair and deduct the cost of repairs if the cost of the repairs is less than one month's rent; (2) repair and sue, if the cost of the repairs exceeds one month's rent; (3) vacate the premises and be discharged of paying further rent; or (4) withhold some or all of the rent if the landlord does not make the repairs, provided the conditions substantially threaten the tenant's health and safety. Franklin Civil Code §§ 540, 542. In his lawsuit, Shea sought to recover all the rent he had paid (\$16,000) pursuant to the initial and renewed leases.

We believe that the trial court correctly declined to award Shea the rent requested. First, the evidence supports the conclusion that Willowbrook's efforts to address the first infestation (spraying, replacing carpet, and cleaning the apartment) were successful. Shea even renewed his lease for another 12 months, from which the trial court concluded that the apartment was free of the infestation when he renewed and was therefore not untenable as he claimed. Thus there is no factual basis to support awarding Shea damages for rent paid in 2010 under the first lease.

Nor is there a basis to award damages with respect to the second bedbug infestation, which arose in 2011 after Shea returned from abroad. Shea failed to demonstrate that the 2011 prolonged bedbug infestation occurred through Willowbrook's fault and through no fault of his own. If Shea were responsible, he would have been obligated to resolve the issue himself. *See* Franklin Civil Code § 543 (landlord has no duty to repair under § 540 or 541 if tenant has breached his affirmative obligation to keep premises as clean and sanitary as the condition of premises permits). If Shea believed that his landlord was responsible for the bedbug infestation, he had an obligation to mitigate his damages by promptly notifying Willowbrook to give it an opportunity to resolve the problem. *See Burk v. Harris* (Fr. Ct. App. 2002). Since this did not occur, the trial court declined to find Willowbrook responsible for the second infestation and concluded that Shea was not entitled to vacate the premises under § 542(a)(3). Because Shea retained possession of the apartment and reaped the benefit of staying, he could have been held responsible for the remaining two months of rent under the lease had Willowbrook sought it.

The trial court correctly declined to award Shea any damages related to rent already paid. We affirm the denial of the \$16,000 rent reimbursement claim.

#### **B. Out-of-pocket expenses**

Shea also requested a total of \$2,000 for motel and medication costs he incurred while living in the apartment. However, Shea submitted a receipt only for \$400 for the motel room he rented while his apartment was being sprayed for bedbugs during the initial infestation in 2010. He provided no further documentation of his claimed expenses. Therefore, the trial court properly awarded him \$400 but appropriately declined to award \$1,600 for medication because Shea provided no documentation or explanation of how he came to that number.

Affirmed.

# NOTES

# NOTES

# NOTES

## **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.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.