INDIANA ESSAY EXAMINATION
Question 1
February 2017

Activities occurring in Indiana state parks and reservoirs are subject to regulation by the Indiana Department of Natural Resources ("DNR"), which has the authority to adopt rules, including licensing and permitting rules, governing activities inside state parks and reservoirs.

Assume that current duly-enacted rules allow dogs, cats, and other domestic pets in Indiana state parks and reservoirs if the animals are on a 6-foot leash. Dogs (but not other domestic animals) are permitted to be off-leash in those same areas when in lawful pursuit of wild animals or when authorized by a license for field trials or in a designated training area. Despite mounting evidence that, like dogs, cats can be used in law enforcement and the military to detect drugs, the DNR's rules do not allow cats to be off leash in state parks and reservoirs.

In response to demands that the same rules should apply to cats as they do to dogs, in January, 2016, the DNR published a "Final Draft Off-Leash Cat Rule." The Final Draft Off-Leash Cat Rule establishes that off-leash cats are legally permitted in the same designated areas as dogs when licensed for field trials or in a designated training area. In addition, the document states that, until the rule becomes final, the DNR will not enforce the present 6-foot leash law for cats.

The Association of Cat Lovers of Indiana ("ACLI") thinks the rule is a bad idea and desires to take legal action.

Assume the Indiana Administrative Rules and Procedures Act ("ARPA") applies.

1. Identify what steps are required to enact a rule under the ARPA and discuss whether the DNR has properly enacted the "Final Draft Off-Leash Cat Rule."

2. Can ACLI seek immediate judicial review of the "Final Draft Off-Leash Cat Rule"? Why or why not?

3. Identify the factors a court will consider in deciding whether to review the validity of a rule prior to its enforcement.

4. Assuming a court does review the Off-Leash Cat Rule and assuming all steps to enact the rule were followed, identify the factors a court will consider in determining the validity of the Rule.

Indiana State Board of Law Examiners

ID:
Question: 1
Exam Name: INBar_2-21-17_PM

Grade: _____

1)

The Indiana Administrative Rules and Procedures Act ("ARPA") applies when state agencies participate in the rulemaking process. Rulemaking is defined as an agency statement of general applicability implementing or interpreting law or agency practice. The rulemaking process is difficult to challenge.

1. As it stands, the Department of Nautral Resources ("DNR") has not properly enacted the rule becuase they did not comply with ARPA. The DNR does not have the authority to the publish a rule on their own.

The first step in enacting a new rule is to submit a Notice of Intent to Adopt a Rule. The notice must but submitted to the Indiana Register and contain an overview of the rule that the DNR plans to make as well as set out the statutory authority that the DNR has to enact the rule. This must be done 28 days before the DNR files a Notice of Public Hearing. The Notice of Public hearing should be much more specific than the Notice of Intent to Adopt a Rule and is should contain the date, time and location of the public hearing. The DNR may request and provide for public comment during this time but they are not required to do so. It needs to be filed at least 21 days before the public hearing. Most notably, the Notice of Public Hearing must contain the full and complete text of the rule that the DNR wishes to adopt. This is because Indiana has a strong policy against secrecy and wants to ensure that the public is fully informed of actions that the government is taking. The notice of public hearing needs to be published not only in the Indiana Register but also in a publication of general circulation, such as the Indianapolis Star.

At some time before the public hearing the DNR is giong to have to reach out to the Small Business Ombudsman who is required to deliver a report on how this regulation will affect small businesses. This report must be completed at least 7 days prior to the public hearing. It seems unlikely given the facts, but, if the rule is

expected to have a financial impact greater than $500,000 the DNR will need to inform the Office of Management and Budget 90 days prior to the public hearing as well.

When the public hearing is held Indiana's Open Door Laws may apply depending on who is at the meeting and what occurs during the meeting. The Open Door Law applies anytime there is a gathering of the majority of the governing body of a public agency for the purpose of conducting official business. Official business includes as receiving information, deliberating, taking final action, or making decisions among others. If that is the case then public notice must be provided 48 hours prior to the meeting, this would not be an issue here given the Notice of Public Hearing. Additionally, minutes of the meeting must be recorded and available for inspection at the conclusion of the meeting. If there is an agenda it most be posted outside of the meeting. The DNR is not required to do anything based on what is said at the public hearing and may continue to go forward with the rule as it was written prior to the public hearing.

After the public meeting the next step is to submit the rule to the Attorney General for approval so long as it is substantially the same as the original rule the agency proposed. The Attorney General has thirty days to review and approve but if the Attorney General does not take action within 30 days they are bypassed and the rule goes to the Governor to sign into law. The Governor has 15 days to sign but may extend for a further 15 days if necessary. After the Governor signs the rule into law it is filed with the Publisher.

2. The Association of Cat Lovers of Indiana ("ACLI") will not be able to seek immediate judicial review of the "Final Draft Off-Leash Cat Rule" because as it stands no rule has been enacted and no harm has come to the ACLI. Once the rule is enacted, barring a few limited circumstances where an immediate review is appropriate, the ACLI will have to follow all administrative remedies available to them prior to seeking judicial review. The ACLI must be able to show some level of

harm in order to be able to pursue their case in order to have standing but this is generally a broad definition of harm.

3. There are a few limited circumstances where the court will consider reviewing the validity of a rule prior to its enforcement. The main factor that the court is going to look for is what harm is going to come to ACLI and is it substantial enough merit an early review of the rule. Based on the facts, there is nothing to show that the ACLI would be harmed, but merely that they feel that the rule is a bad idea and therefore they are unlikely to be successful in getting a review prior to enforcement. What the ACLI is looking for is akin to an interlocutory appeal in litigation which are normally only granted if the court finds a substantial harm or reason that they should not wait to pass judgment, if the sale of land is required, if there is potential for a substantial loss of money, or they would somehow be unfairly prejudiced without immediate review. None of these appear to be an issue in this case and it does not appear that it would be unfair or prejudice the ACLI in anyway to wait until the rule is enforced to review the rule.

4. It is very difficult to overturn a rule once it has gone through the ARPA process. The main aspect that the court is going to look for on review is ascertainable standards so that people know whether they have complied with the rule or not. Factors that the court will consider are: is the rule following the will of the legislature, is the DNR acting withing their statutorily granted authroity in enacting this rule, is the rule reasonable, and is the rule consistant and reasonably necessary to carry out the statute.

INDIANA ESSAY EXAMINATION
Question 2
February 2017

Fred is a widower with one adult child, David. Fred is and at all times has been a resident of Indiana. David is a resident of Illinois and has two minor children. Fred's wife, Alice, died in 2012. On the day he died in 2016, Fred possessed the following assets:

a. A residence in Indiana which, prior to his death, he deeded to David, reserving for himself a life estate;

b. Common Stock in Company A in the name of "Fred and Alice, Husband and Wife as joint tenants";

c. Checking account with a balance of $25,000 in the name of "Fred";

d. Savings account with a balance of $50,000 at death in the name of "Fred, Alice, and David, as joint tenants"; and

e. Life Insurance with a cash value at death of $100,000 with a beneficiary designation of "my spouse."

Fred's Last Will and Testament named David the sole Personal Representative and contained a Testamentary Trust for Fred's grandchildren naming David sole Trustee of that Trust.

1. **For each of the listed assets, explain whether they are part of Fred's Estate and will require probate. Please answer fully as to each asset.**

2. **Explain whether and under what circumstances David will qualify as Personal Representative of Fred's Estate and as sole Trustee of the Grandchildren's Trust.**

David is also the Health Care Representative of Helen, an Indiana resident. Helen signed a valid Living Will Declaration, which was properly witnessed, requesting that, if she became terminally ill and her physician determined in writing she was unable to sustain life other than via life support, those life support measures be withdrawn and she be allowed to die. Helen, who is three months' pregnant, was recently involved in a horrible car accident. Although the accident did not cause a miscarriage and Helen remains pregnant, she is brain dead and on life support in an Indiana hospital, with little or no prospects of recovery. Helen's physician told David that Helen is terminal and will die without life support but, for moral reasons, the physician would not put that opinion in writing.

3. **Can David get a court order to enforce Helen's Living Will and take her off life support?**

Indiana State Board of Law Examiners

ID:
Question: 2
Exam Name: INBar_2-21-17_PM

Grade: _____

2)

THE ESTATE OF FRED

ASSETS WHICH ARE PART OF FRED'S ESTATE

Fred, a widower, passed away in 2016. Fred's wife, Alice, passed away in 2012. Fred had only one son, David; David has two minor children who are the beneficiaries of Fred's testamentary trust.

When Fred passed away, he had Common Stock in Company A in the name of "Fred and Alice, Husband and Wife as joint tenants". This stock does not have a named beneficiary which we are aware of and since Alice predeceased Fred, the stock would be an asset of Fred's Estate.

Fred also had a checking account with a balance of $25,000 in the name of "Fred." Again, as far as we are aware, there is no named beneficiary of this checking account, there is no other owner named on the account, therefore it is an asset that must pass through Fred's Estate to be distributed according to the directives of his probated will.

Fred also has a life insurance policy with a cash value of $100,000 with a beneficiary designation of "my spouse". To the best of our knowledge, Fred was a widower when he died, Fred had not remarried, and as far as we know when Fred purchased the life insurance policy, Alice was his spouse. Alice, Fred's spouse, predeceased Fred, effectively canceling the beneficiary designation of the Life Insurance policy at that time and thereafter since Fred did not remarry. Since there is no spouse to collect the life insurance policy, the life insurance policy is an asset of Fred's Estate and should be distributed as such.

If the sum total of Fred's assets were less than $50,000, then pursuant to Indiana Probate Code, a full estate would not have to be opened, and the estate assets could

instead be distributed through a small estate. A true estate need only be opened when estate assets exceed $50,000, which in Fred's case, they do.

ASSETS WHICH ARE NOT PART OF FRED'S ESTATE

Fred also held several assets which will not need to be probated through his estate. Fred has a residence in Indiana, which he deeded to his son David while retaining a life estate for himself. The residence has already been titled to David, therefore it does not need to be probated and can pass directly to David outside of an estate. David need only execute a survivorship affidavit, take it to the county auditor and recorder's office in the county where the property is located in order for Fred's life estate to be removed from the property and for it to be solely in David's name.

Fred also has a savings account with a balance of $50,000 at death in the name of "Fred, Alice, and David, as joint tenants". This savings account lists multiple owners, therefore, when Alice died it passed to Fred and David and when Fred died the account passes to David. This asset already has a designated owner who is living, David, and does not need to pass through an estate.

Listing beneficiaries of accounts, life insurance policies, and adding beneficiaries to deeds are always to ensure that assets pass outside of an estate, as estate administration can at times become costly (since David is the named personal representative in Fred's will and his children are the beneficiaries of Fred's testamentary trust, the administration should be fairly straightforward).

QUALIFYING AS PERSONAL REPRESENTATIVE OF AN ESTATE AND AS SOLE TRUSTEE OF A TRUST

In Fred's Last Will and Testament, David is named as the Personal Representative of the estate and the trustee of a Testamentary Trust for the benefit of Fred's grandchildren. Many times, the testator of a Will names their closest loved one as the Personal Representative of their Estate. This is the person whom the testator believes will administer the estate in accordance with his or her last wishes.

Fred wants David to both administer to his estate and to the trust which was created for the benefit of Fred's grandchildren, or David's children.

Indiana Probate Code governs the probate of assets through an estate and when there is no will, through intestate succession. Based on what we know about David, he would not be unqualified to be a Personal Representative, and so long as he faithfully carries out these fiduciary duties, he would not be challenged in those roles either. If David were to engage in self-dealing or actions which harm the trust and the estate but benefit him, then his status as Personal Representative and Trustee could be challenged and he could be removed.

However, in this scenario, there are no other children, we do not know of any other living heir or beneficiary, other than the minor grandchildren (but they cannot administer the estate due to the fact that they are minors). Perhaps when the children become of age of majority, if they feel their father did not faithfully execute the duties as trustee, they could seek damages but the Estate would long have been closed.

In order for David to be officially appointed personal representative of his father's estate, he would need to submit the original Will to the County Clerk where the Estate should be opened (where the testator resided at when he died) so that the will can be probated. David will also need to submit a Petition to Probate the Will and Appoint a Personal Representative of the either Supervised or (likely) Unsupervised Estate and request that the Court which is probating the Will direct the Clerk to issue Letters Testamentary. Once the judge of the court overseeing probate of the estate signs the order opening the estate, appointing David Personal Representative, and directs the Court Clerk to issue Letter's Testamentary, David will need to take an oath that he will administer the office of Personal Representative in accordance with the directives in the will and not against Indiana Law. Since David does not reside in Indiana, the probate court may require that he post bond in the a specific amount (formula of the value of the Estate) before service as Personal Representative. After administering his

oath and posting bond (if required) David will receive Letters Testamentary stating he is the Personal Representative of the Estate, David should then receive instructions from the attorney who is handling the probate of the estate, the instructions give guidance on what David can and cannot, should or should not do as Personal Representative. Depending on the local rules of the probate court, these instructions may have to be signed by David and filed with the court as an ackowledgement of his responsibilities.

Personal Representative and Trustee of a Testamentary Trust can be filled by different people, or they can be filled by the same person. The Testator is presumably appointing a person who he or she trusts and based on their dealings with the Testator. If possible, the court will respect the wishes of the Testator. So long as David fulfills his fiduciary duties and does not engage in actions such as self-dealing, commingling of funds, or stealing from the estate and trust, he would continue to be Personal Representative and Trustee.

LIVING WILL DIRECTIVE

Helen is a resident of Indiana and properly executed a Living Will Declaration, indicating that were she unable to sustain life other than via life support, which was determined by her physician in writing, then she would not want such measures and would like to be allowed to die. Helen is three months pregnant when she is in a car accident which leaves her brain dead. Helen's physician has told David that Helen is brain dead and on life support with little or no prospects of recovery but that he will not put his opinion in writing.

If David truly wants to enforce Helen's Living Will directive, he can petition the local court to have another physician examine Helen or have Helen's current physician come before the court and testify as to his knowledge about Helen's condition. The Doctor has stated he will not certify in writing that Helen is unable to sustain life,

without such a statement, Helen's Living Will does not take effect.

Also, Helen's Living Will Directive did not take into consideration the life of her unborn child and the effect of the declaration on it. Although Helen's prospects for recovery are not good, her child is still alive and not deteriorating. David would not be able to receive an order to enforce Helen's Living Will and take her off life support so long as her unborn child is living.

Along with David's Petition to Enforce Helen's Living Will, the unborn child's father would have a right to contest the enforcement of Helen's Living Will. Assuming the unborn child would not survive were Helen taken off life support, the unborn child's father has a right to argue for the life of his child. (If Helen were married presumably her husband would be the unborn child's father; if unmarried, the father could be any person who believes to be the child's father until such time as a DNA test could confirm paternity).

INDIANA ESSAY EXAMINATION
Question 3
February 2017

Wanda is a life-long resident of Maine. While Wanda was driving through Indiana on her way to California, one of her new car tires exploded and Wanda's car collided with Charlie, an Indiana cyclist. Charlie was badly injured. The police report contained Wanda's contact information and her statement that she recently had new car tires installed at Maine Tire Warehouse (MTW). MTW is a large tire retailer, but has no stores outside Maine. A month later, Wanda married, took her spouse's last name, and moved to New Jersey.

Six months after the accident, Charlie sued Wanda and MTW in Indiana, Charlie's attorney attempted to serve Wanda at the address on the police report, but the summons and complaint were returned to as "undeliverable." Charlie's attorney then filed a praecipe for summons with the Indiana Secretary of State, providing Wanda's last known mailing address, indicating her current address was unknown, and paying the requisite fees. The Secretary of State's office subsequently issued an affidavit to the clerk stating the summons on Wanda that was sent certified mail was returned as undeliverable. The court later granted Charlie's motion to enter a default judgment against Wanda for $500,000.

After being served, MTW filed an answer denying liability and raising the single affirmative defense of comparative fault. Over the following four months, both parties engaged in discovery and MTW produced records containing Wanda's new name and address. Charlie then instituted proceedings supplemental against Wanda to collect on the judgment, serving the papers on her in New Jersey.

Five months after it was entered against her, Wanda appeared in Indiana and filed a motion to set aside the default judgment. She claimed the court had no personal jurisdiction over her and that, even if it did, she was not properly served. After reading Wanda's motion, MTW also filed a motion for summary judgment asserting the court lacked personal jurisdiction over it. Wanda claimed that, with the exception of driving through the state, she had no prior or subsequent contacts with Indiana. Similarly, MTW presented evidence that it had never had any contacts with Indiana other than a customer potentially driving through Indiana on tires the customer purchased from MTW.

1. Discuss and explain whether Wanda was properly served?

2. Does the Court have personal jurisdiction over MTW? If so, discuss the specific basis for that jurisdiction.

3. Assuming the court denies Wanda's motion, explain whether and how she can appeal. Identify any applicable deadline to initiating her appeal.

4. Assuming the court denies MTW's motion, explain whether and how it can appeal. Identify any applicable deadline to initiating its appeal.

Indiana State Board of Law Examiners

ID:
Question: 3
Exam Name: INBar_2-21-17_PM

Grade: _____

3)

1. Whether Wanda was properly served.

Under Indiana rules, a party must be served with the complaint under Rule 4. Rule 4 provides for three methods of service: certified mail, abode service, or personal service. Certified mail service can be effectuated upon receiving a return of service, stating the mail was delivered. Abode service can be effectuated by taking the complaint to the party's last known address, leaving a copy there, and subsequently mailing a copy to the same address. You can also leave the complaint with a person of suitable age that is present at the abode. Personal service can be achieved in person, usually by having the Sheriff personally serve the party with the complaint.

Here Charlie attempted service via certified mail, but it was returned undeliverable. Subsequently, Charlie tried to effectuate service through the Secretary of State but the attempt was again returned as undeliverable. Since Charlie's attorney filed a praecipe for summons, and the Secretary of State subsequently issued an affidavit to the court stating that service was undelivered, the court will likely determine that they have proper service over Wanda, since she cannot be found and left no forwarding address.

As an alternative matter, Charlie's attorney could have resorted to service by publication. While this method is not preferred, and is usually used as a "last resort" option, it still remains a possibility when service is difficult or has not been successful despite using other methods. Charlie could post notices in the newspaper, stating the names of the parties, court, case number and a short description of the cause of action. There would need to be 3 notices total, spaced out in time. Once notices were published, service is deemed effectuated when Charlie files a notice of his service method with the court.

2. Whether the court has personal jurisdiction over MTW.

In order to have personal jurisdiction, there are several factors taken into

consideration. A court must have the authority via a long arm statute and the constitution to obtain personal jurisdiction over someone. Personal jurisdiction can be general, based on domicile or the principal place of business of a corporation, or it can be specified, subjecting a party to the court's jurisdiction based on their particular contacts with the state. Here, it is unlikely that the Indiana court will be able to exercise personal jurisdiction over MTW. MTW is a large tire retailer, but does not hve any stores outside of Maine. There are no facts suggesting that the frequently do business in Indiana, or that they have introduced their products into Indiana's stream of commerce. A party must have such contacts with a foreign state that it would be fair to subject them to jurisdiction, and the party must have purposefully availed themselves to the benefits and protections of the state of Indiana. Here, there is no evidence suggesting that MTW has done that. Therefore, it is merely incidental that their tires malfunctioned in the state of Indiana, and they did nothing purposeful to create this harm here.

However, by failing to waive a lack of personal jurisdiction as a defense, MTW has wavied their opportunity to do so. When a party is served with a complaint, naming them as a defendant in a lawsuit, they have 20 days to respond with an Answer or file a Rule 12(b) motion to dismiss, questioning the validity of the claim. The 12(b) motions are lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient service, insufficient process, failure to state a claim on which relief can be granted, and failure to join a necessary party. Certain Rule 12(b) motions can be wavied if you fail to assert them in your first responsive pleading, Here, MTW responded to the complaint by asserting comparative fault as their single affirmative defense. Their failure to object to personal jurisdiction consequently waives such an objection, and thus they are consenting to the court's jurisdiction over them.

3. Can Wanda Appeal?

A party can appeal from a final order. An order is final when the judge disposes of all claims and all parties. Here, Wanda is seeking to appeal from the denial of her motion to set aside the default judgment entered against her. This is a final order. In

its default judgment, the court entered judgment in favor of Charlie for $500,000 against Wanda because she failed to appear or otherwise respond to the claims against her. Wanda will be able to seek an appeal, but she could first try a Motion to Correct Errors. While this motion is not a prerequeisite to being able to file an appeal in Wanda's case, it would be a good idea for her. A Motion to Correct Errors can be filed to have the trial court correct an alleged error it made in making its decision. The party filing such motion can claim that there is a discrepancy in the record, or a fact that the court was unaware of, that would have changed the outcome of the case. Here, Wanda can argue that she never had notice of the case because personal service was not effective. She can argue that but for such error, she would have been able to present her case and have her side of the story be heard because there would not have been a default judgment entered against her. This Motion must be filed within 30 days of the final order.

If the motion to correct errors is denied, Wanda will have 30 days to file an appeal with the court of appeals.

4. Can MTW appeal?

The court's denial of MTW's motion for summary judgment is not immediately appealable. Appeals can be made from final orders, and a denial of a motion for summary judgment is not a final order because it does not dispose of all parties and all claims. It simply means that the court has determined that there are material issues of fact in the case and that the moving party is NOT entitled to judgment as a matter of law.

However, MTW can seek certification of the denial for appeal. If the court certifies something for appeal, they are recognizing that it is not a final order but that the moving party should be able to go ahead and appeal the decision. The moving party needs to show that they will suffer harm if they cannot immediately appeal, and that any burden on the other party is outweight by their likelihood of harm. They also must show that they would likely be successful on appeal. Here, the court is unlikely to certify this denial of the motion for summary judgment for appeal. There is little

harm that could come of them having to litigate the remainder of the case. While MTW is correct that the court probablt does not have personal jurisdiction over it, they waived such a defense by failing to assert it before responding. They should have filed a 12(b) motion to dismiss them as a party due to the court's lack of personal jurisdiction over them. By failing to make such a motion, MTW effectively consented to the court's jurisdiction and is thus barred from using it as a defense throughout the case.

INDIANA ESSAY EXAMINATION
Question 4
February 2017

Alex, an Indiana public high school student, was bored and drifting as he sat in his English Literature class. At one point, he looked down at his cell phone to check for messages. Alex knew he was violating a school rule that prohibited cell phone use during class, but he thought he could get away with it. His teacher, however, noticed Alex's behavior, confronted him, and confiscated the phone. Alex's teacher took the phone to the main office where it would be held until the end of the day.

At some point, the school principal, who was increasingly aware of a drug problem at the school, took possession of Alex's phone and started reading the stored text messages. She found a very recent text message from "Brian" that read: "Yo, need a bag?" This prompted the principal to look further through Alex's phone, after which she found several nude images of underage girls. The principal promptly notified the police and turned over the phone.

Alex was later arrested, questioned about his drug use and his relationship with Brian, and ultimately charged with possession of child pornography.

1. Using only the Indiana State Constitution, identify and analyze any arguments Alex might have to suppress the evidence found in the search of his cell phone.
2. Again using only the Indiana State Constitution, identify and analyze what arguments the State might make in response to such a motion to suppress.

Indiana State Board of Law Examiners

ID:
Question: 4
Exam Name: INBar_2-21-17_PM

Grade: _____

4)

This is an Indiana Constitutional Law Question.

I. Issues:

A) Whether Alex has any constitutional arguments against the State to suppress the evidence found in the search of his cell phone

B) Whether the State has any arugments in response to

II. Rule: Indiana Constitutional right against unreasonable search and seizure

Under the Indiana Constitution there is a constitutional right from unreasonable search and seizure. Although the text of the Indiana Constitution's search and seizure provision is identical to the Fourth Amendment ("4A") of the Federal Constitution, the application and scope of Indiana's provisions are much different. In Indiana, for example, the sole inquiry in determining whether there has been an unreasonable search and seizure is the reasonableness of the search. (The federal 4A, in contrast, takes into consideration the reasonable expectation of privacy of the individual that was searched.) In determining reasonableness of a search, Indiana courts have established a 3-part test (the *Litchfield* test), which balances:

1) The degree of suspicion the State had in conducting the search;

2) The degree of intrusion of the search on the individual; and

3) The extent of law enforcement needs.

In conducting a search, the state needs reasonable and articulable suspicion.

III. Analysis

A) Alex's Arguments:

Here, Alex could argue that the motion to suppress should be granted because the search was an unreasonable search and seizure in violation of the Indiana Constitution. Alex likely has a good argument that the search was unreasonable under the Indiana constitution, because he could argue that under the 1st and 2nd factor of the test, the Litchfield reasonable test fails. Specifically, he should argue degree of suspicion the school had was too low to justify going through his phone, and that the degree of instrusion of the search was too high. While Alex was violating school rules by being on his phone during class, he should argue it would have been enough for the teacher to take his phone away from him for the rest of the day. However, the teacher took the phone to the principal, who proceeded to look through it, which most would agree is very intrusive. While the principal and school officials would argue that they were "increasingly aware of a drug problem" at the school, which is why whey had a certain degree of suspicion in going through the phone, this is likely not enough to justify going through a random student's phone. There is nothing in the facts to indicate that the school had knowledge that Alex was a particular student of interest regarding drug use.

B) The State's arguments in response that the motion to suppress should be denied

Analysis: The state, on the other hand, could argue that the motion to suppress should be denied under the Litchfield test, and that the balancing of the factors weighs in favor of the police. Specifically, the State should argue the extent of law enforcement needs are great because the State did indeed find evidence of child pornography, and the State has a very substantial interest in stopping this kind of crime. In addition, the State could argue that the degree of intrustion really was not all that high because Alex was using his phone at school in violation of school rules, and that the school was reasonable in taking his phone. It could further argue the

school's degree of suspicion was great because the school was in a good position to know what students may be involved with drugs.

IV. Conclusion

Although the State has valid arguments with regard to the extent of law enformcenet needs, Alex likely has the better arguments that the degree of intrusion was high and the degree of suspicion was low. There are no facts indicating that the school had reasonable articulable suspicion that Alex might be involved with drugs, other than a general knowledge that there was increasing drug problem in the school. Although the phone produced very incriminating evidence, the State likely violated the requirement against unreasonable search and seizure here.

INDIANA ESSAY EXAMINATION
Question 5
February 2017

Angelo and Nina were divorced in 2014 in Indiana. Pursuant to the Court's Order, they share joint legal and physical custody of their two children, Tony (age 5) and Maria (age 7). Since the divorce, Angelo and Nina have lived in different houses in the same Indiana neighborhood. Both Angelo and Nina are very involved in the children's daily lives. Angelo coaches the children's various sport teams and Maria volunteers at the children's school. Angelo earns a good living as a dentist and has a flexible work schedule.

Nina recently married a man named Joe and had a baby. After the birth of the baby, Nina decided to quit her job and stay home full time. Shortly thereafter, Joe lost his job. Both Nina and Joe sent out numerous resumes but were not offered any jobs in Indiana. Joe received a great job offer in Tampa, Florida. Nina and Joe are out of money and are unable to pay their bills. Their house is in foreclosure.

Nina and Joe want to move with to Tampa immediately with Tony and Maria. Angelo is adamantly opposed to the children moving to Tampa.

1. Before Nina can legally move to Tampa with Tony and Maria, what is the first legal step Nina should take?

2. What must Angelo do in response?

3. Identify and describe any applicable burdens of proof that apply.

4. Identify and analyze the factors the Court will consider in determining whether the children may move to Tampa with Nina.

Indiana State Board of Law Examiners

ID:
Question: 5
Exam Name: INBar_2-21-17_PM

Grade: _____

5)

1) The first legal step Nina must take before she can legally move to Tampa is to file a notice of relocation. She must file this with Joe as well as with the court that has jurisdiction over the child custody agreement concerning Tony and Maria. This notice must include the following information: the new address, the new phone number, the reason for her relocation, when she intends to relocate, a proposed revised parenting time agreement, any proposed changes to the custody agreement, notice to Joe that he can file a temporary restraining order to prevent relocation of the children (this will not prevent Nina from moving), and notice to Joe that he can petition the court for modification to the custody agreement. Nina must give this information to Joe in writing, a medium such as email would not suffice. Nina must provide this information at least 90 days before moving.

2) If Angelo does not agree to the proposed relocation his first step should be to file a temporary restraining order to prevent Nina from taking the children to Tampa. Next he should contest the relocation and petition for a change in the custody agreement so that the kids can stay with him in Indiana.

3) The first burden of proof lies with Nina. In a court proceeding Nina must prove that her proposed relocation is reasonable and in good faith. If Nina is able to prove that the proposed relocation is reasonable, then the burden of proof shifts to Angelo who must show that the move is not in the best interest of the children. The factors of each of these burdens is described below.

4) When determining whether the children may move to Tampa with Nina, the court will consider the following factors in establishing the reasonableness of the relocation:

• The time and expense to Angelo to continue exercising his parenting time. Currently

Angelo is very involved in his children's daily lives. If Nina moves the children to Tampa, Angleo would be prohibited from continuing his daily involvement with his children. Routinely traveling to Tampa would be both very costly and time consuming for Angelo. For this reason, this factor weighs against Nina's proposed relocation of the children.

- The effect of the relocation on Angelo's parental relationship with the kids. Again, Angelo currently has a very close relationship with his children. His son as five, and they will likely develop an even stronger father-son relationship as he ages. If Nina relocates the children to Tampa, Angelo's future relationship with his children will be negatively impacted compared to if they all continue to live in the same town. This factor weights against the proposed relocation.
- The reason for Nina's move. Nina is moving because her new husband received a very good job offer. Since Nina and Joe both sent out several resumes here in Indiana and were unable to obtain employment, it is not as though Nina was purposely trying to move far away from Angelo. Instead, it seems that she made a good faith effort to stay close to Indiana, but due to the job market, Florida is the only option. Given how dire Nina's current financial situation is in Indiana, this appears to be a good faith effort on Nina's part. This factor will weigh in favor of allowing Nina to move with the children.
- Whether Nina has a pattern of relocating to interfere with Joe's parenting rights. Nina has never attempted to move in the past from what I can tell. Additionally, she has not interfered with Angelo's ability to be very involved in his children's life. There is no evidence that Nina has a pattern of trying to interfere with Joe's parent rights. This factor will weigh in favor of allowing the reolcation.
- The children's preference, especially if they are over age 14. The court will look to whether the children want to move, and will especially give weight to the wishes of a child over age 14. Since neither child is age 14 here, this factor will be neutral.
- The general best interest of the children. Ultimately the court will evaluate the above factors in light of the overall best interests of the children as described below.

If Nina is able to show that her proposed relocation is reasonable by the factors

identified above, then Joe will then need to show that the reolcation is not in the overall best interests of the children. The best interests of the children with regard to physical custody, which is at issue here, are evaluated against eight criteria as follows:

- The age and gender of the children. The couple has one son and one daughter, both who are of similar young ages, so this factor will be neutral in determining their best interest.
- The wishes of the parents. Here it appears that each parent is interested in obtaining physical custody of the children so this factor will be neutral.
- The wishes of the children, particularly over age 14. Here the children are both under 14 and neither appears to have a stated interest, so this factor will be neutral.
- The children's adjustment to their community including school. The children seem to involved in school including after school sports. It also appears that this is the only neighborhood they have ever lived in. For those reasons, this factor weighs in favor of the kids remaining with Angelo.
- The relationship between the children and the parents. Nina and Angelo are both very active in the children's lives and school. It seems that all parties have good relationships with each other. For this reason, this factor will likely be neutral.
- The mental health of all parties involved. Neither Angelo or Nina appear to have any history of mental illness (nor does Joe) so this factor will be neutral.
- The history of domestic violence of any parties involved. Neither parent appears to have any history of domestic violence so this factor will be neutral.
- Whether a de facto custodian has been taking care of the children. Tony and Maria split their time between Angelo and Nina's house and there appears to be no de facto custodian, so this factor will be neutral.

While it ultimately seems that Nina's proposed relocation is in good faith, and she does not mean to interfere with Angelo's relationship with the children, it is obvious that Angelo's current level of parenting will be severely curtailed if this relocation is permitted to proceed. Many of the factors in evaluating the children's best interest

with regards to this relocation are neutral, but an important one in favor of Angelo's case is that children do have an interest in staying in the community that they are situated. For this reason there is a good chance that the court will allow Angelo to prevent the relocation of the children.

INDIANA ESSAY EXAMINATION
Question 6
February 2017

Rick is a mechanic who sells rebuilt motorcycles out of his home garage. Although he has a garage filled with expensive tools, Rick is frequently short of cash. He asked his friend Bob for a $500 loan to pay for parts Rick needed for a cycle he was working on. Bob gave Rick the money, and then Rick gave Bob a slip of paper that read: "IOU $500." The paper was signed by Rick but was not dated.

Sometime later, Rick found a vintage motorcycle for sale on Craigslist that he thought he could rebuild and sell for a good profit. To finance this purchase, Rick asked another friend, Pete, for a $6,000 loan to pay for the motorcycle. Pete agreed to loan Rick the money but asked Rick to sign the following writing that Pete drafted: "I promise to pay $6,000 to the order of Pete." Rick signed and dated the writing.

A month later, Pete discovered that Rick did not buy the motorcycle listed on Craigslist. Pete suspected Rick used the $6,000 to pay other bills because he has heard Rick's finances are so bad that Rick is considering filing bankruptcy. Pete asked Rick to pay back the $6,000 Pete had loaned him. Rick did not pay Pete back, saying just that he would pay Pete back when he could.

1. Using the requirements set out in Indiana's UCC, explain whether each writing documenting Bob's and Pete's loans is a negotiable instrument.

2. Explain and discuss what steps Pete could have taken to protect his interest in being repaid if he had utilized Article 9.1 of the Indiana UCC.

3. Assuming Pete did take those steps under Article 9.1, identify any additional remedies Pete would have if Rick failed to repay the loan.

Indiana State Board of Law Examiners

ID: **245**
Question: 6
Exam Name: INBar_2-21-17_PM

Grade: _____

6)

1.

(a) Bob's $500 loan to Rick. The provisions in indiana UCC article 3 ("UCC") govern the requirements for the creation of a negotiable instrument ("NI") in Indiana. The UCC states that a negotiable instrument must be:

- a signed, dated, written
- unconditional
- a promise to pay or an order to pay
- for a fixed amount
- payable in money
- payable at a fixed time or on demand
- payable "to order" (i.e. draft/check) or "to bearer" (i.e. promissory note)

Rick's IOU to Bob stating "IOU $500" /s/ Rick fails to meet the UCC requirements of:

- Promise to pay. The writing Bob has may act as evidence of a debt, but it states no promise of payment.
- Payable at fixed time or on demand. NI's are presumed payable on demand when they are silent to the matter. As a practical point, it is unlikely that Rick meant this IOU as a right in Bob for payment on demand since Rick's borrowing money for parts was the reason for the IOU.
- Payable "to order" or "to bearer". A negotiable instrument must contain these magic words to be valid under UCC

(b) Pete's $6,000 loan to Rick. The same requirements found in part 1(a) apply to the form of Pete's note from Rick with regard to whether it is a NI. As they relate to Pete's writing:

- Pete's writing is signed
- it contains no condition
- it states "I promise"
- $6000 is a fixed amount and it is money
- The presumption is that negotiable instruments that are silent as to whether payable at a fixed time are payable on demand
- Pete's writing contained the words always necessary in a NI, "to the order of".

All UCC requirements have been met, making Pete's writing a negotiable instrument.

2. How Pete could have protected his interest using Indiana UCC Revised Article 9

Indiana UCC Revised Article 9 governs secured transactions in the state.

A SECURED TRANSACTION IS: A transaction is "secured" if a good, quasi-tangible, or intangible property (that is, something of value) is offered as guarantee of payment of a debt. The holder of the guarantee is called the "secured party", the person against whom the secured party can collect is the "debtor". The secured party holds a "security interest" in the debtor's secured property only upon "attachment" of his security interest. A secured party's interest in a debtor's property can be held superior as to against other secured parties of that same property only by properly "perfecting" his security interest.

The Indiana UCC Revised Article 9 ("UCC") gives the requirements to properly attach and perfect a security interest in property.

Attachment - attachment occurs when:

- secured party gives value,
- debtor retains possession of collateral,
- and an agreement.
- may be oral if secured party retains possession or control of the collateral

- Otherwise, must be written. This writing is called a "security agreement"
- Security Agreement - must be:
- signed, dated
- promise to pay
- description of the secured item

It seems as though Rick is in the business of selling motorcycles, Pete could have secured the loan with all of Rick's expensive tools and machinery. To do this, Rick would sign a security agreement that stated that "all inventory and equipment" was collateral for securing Pete's $6,000 loan. Pete could also include an after-aquired property clause giving a security interest in Rick's subsequent purchases of inventory or equipment (although AAP is presumed). The signed security agreement would attach to all of Rick's motorcycle equipment and inventory as soon as Pete handed Rick the money. So if Rick took Pete's money and wasted it, then refused to pay Pete back, Pete could recover through his security interest.

To be superior to other competing secured creditors, I would advise Pete to perfect his security interest in Rick's equipment and inventory. For goods, this can be done by possession or by filing a financing statement with the secretary of state that:

- gives the legal name of the debtor
- address
- reasonably specific description of the goods

Perfecting gives notice to the world of the secured party's interest in the property.

3. Additional Remedies

- Repossession

Pete could seek a replevin order from a judge or could repossess using self help (but only as long as it did not disturb the peace).

- Full or partial strict foreclosure

Pete could accept the equipment as payment in full of Rick's obligation. He would have to provide notice to Rick and any other creditors that this was his plan. If any party objects within 20 days, he must sell the property and give the portion above his recovery to the other parties