

**QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III  
OR IN SOFTEST ANSWER SCREEN 9**

Developer Welles Company is suing Developer Kane Company in state court for tortious interference with business expectation in connection with a comprehensive plan Welles had been negotiating and implementing in phases with the Village of Rosebud. After Welles entered into intense negotiations with Rosebud officials for the final and biggest project phase, Kane announced that it had reached an agreement with Rosebud to develop the final phase instead of Welles. The lawsuit ensued.

Trial is set to begin in Welles' suit against Kane. Essential to proving Welles' case is the subject matter discussed at a final meeting between Welles and Rosebud. Unfortunately, the Welles manager who attended the meeting is now deceased. The manager, however, modified and refined his personal notes shortly after the meeting and then memorialized the notes in an e-mail, as a memo to himself. The e-mail is the only evidence of the subject matter discussed during this critical meeting, as the only other record memorializing the meeting are the official meeting minutes maintained by Welles' corporate secretary, which reflect--per business practice--only the date, time, location, and meeting attendees. Welles produced the e-mail in hard copy format in discovery, and identified it as a trial exhibit in response to interrogatories. While the manager deleted the electronic copy of the e-mail prior to his death, forensic data experts were able to recover it from Welles' server and have confirmed that the e-mail was drafted and sent in its current hard copy format with no changes.

Kane objects to admission of the e-mail, arguing that it is hearsay that does not qualify as a business record under MRE 803(6), records of regularly conducted activity.

Without concerning yourself about through whom the e-mail memo will be admitted or the "dead man's statutes," answer the following questions:

1. How should the court rule on Kane's objection? Explain why.
2. What is the best argument for admission of the e-mail under any hearsay exception or as non-hearsay?

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