

EXERCISE

REPLY BRIEFS

Background

You represent a corporation that's being sued by its supplier for breach of contract. Your client and the supplier have spent nearly a year disputing the scope of discovery and attending numerous meet-and-confer sessions. You finally filed a motion to compel seeking documents related to the supplier's alleged damages. And you've just received the supplier's opposition brief.

You've reviewed the opposition brief and noted the following:

- (1) The opposition brief doesn't respond to two of your arguments with respect to certain requested documents: that searching for these documents would not be unduly burdensome; and that these documents are relevant.
- (2) The opposition brief repeatedly relies on an incorrect interpretation of a recent decision. The correct interpretation is that, in narrow circumstances, the work product doctrine could apply to certain categories of financial statements reviewed by an attorney.
- (3) The opposition brief argues that you mischaracterized one of the documents that you're seeking, and you think their point is valid. You made a mistake.

Also, since receiving the opposition you've found recent caselaw that would strongly support a new argument as to why the discovery is relevant.

Instructions

You've been asked to do a first draft of the reply brief. Come prepared to discuss these questions regarding your draft:

- Will you address the fact that the opposition brief didn't respond to the two arguments? If so, how?
- How and where might you address the misinterpretation of the case?
- Would you address the mischaracterization that you made?
- In your motion to compel, you argued:
 "The documents are relevant because in an exhibit to the complaint, Plaintiff's CFO repeatedly refers to the documents when explaining the alleged losses."
How might you recap this argument in your reply brief?
- Would you include the relevance arguments supported by the new caselaw? Why or why not?