

# **ETHICS Q & A**

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# NON-REFUNDABLE FEE AGREEMENTS



**JANET REPRESENTS CREDITORS IN CONSUMER BANKRUPTCY CLAIMS LITIGATION. SHE HAS AN INSTITUTIONAL LENDING CLIENT WHO RETAINS HER ON MULTIPLE CASES EACH MONTH. SHE RECEIVES A \$5,000 “NON-REFUNDABLE RETAINER” FOR EACH FILE. HER FEE AGREEMENT SPECIFIES THE RETAINER IS NON-REFUNDABLE AND WILL COVER ALL SERVICES UP TO THE TIME OF TRIAL ON THE MATTER. THERE WILL BE ADDITIONAL FEES FOR A TRIAL. JANET PLACES THE RETAINER IN HER OPERATING ACCOUNT.**

- **IN ONE CASE THE DEBTOR FILES A LARGE FAIR DEBT COLLECTION CLAIM AGAINST JANET’S CLIENT WHICH WILL REQUIRE SUBSTANTIAL DISCOVERY AND TIME BEFORE TRIAL. JANET ASKS THE CLIENT TO RENEGOTIATE THE RETAINER AGREEMENT AND AFTER DISCUSSION THE CLIENT AGREES TO PAY JANET ON AN HOURLY BASIS.**
- **WHICH OF JANET’S ACTIONS, IF ANY, WERE POTENTIALLY IMPROPER?**
  - A. CHARGING A NON-REFUNDABLE RETAINER?**
  - B. DEPOSITING THE RETAINER INTO HER OPERATING ACCOUNT?**
  - C. REQUESTING A CHANGE IN THE TERMS OF THE FEE AGREEMENT AFTER THE LITIGATION WAS FILED?**
  - D. A AND B?**
  - E. A, B AND C?**

# SUSPECTED SUBSTANCE ABUSE



**FINIS VALORUM AND SHEEV PALPATINE REPRESENT OPPOSING PARTIES IN AN ADVERSARY PROCEEDING. THEY HAVE KNOWN EACH OTHER MANY YEARS AND HAVE ALWAYS MAINTAINED A PROFESSIONAL (IF SOMETIMES TENSE) RELATIONSHIP. DURING THIS ADVERSARY PROCEEDING, HOWEVER, FINIS NOTICES THAT SHEEV HAS MISSED DEADLINES, FAILED TO PROTECT HIS CLIENT'S INTERESTS, AND HAS MADE NONSENSICAL LEGAL ARGUMENTS.**

**FINIS RECENTLY OBSERVED SHEEV HEAVILY DRINKING ONE WEDNESDAY EARLY AFTERNOON AT THE MOS EISLEY CANTINA. FINIS ALSO SWEARS HE SMELLED ALCOHOL ON SHEEV'S BREATH ONE MORNING IN THE COURTROOM. ALARMED, FINIS CONSIDERS WHETHER HE SHOULD REPORT SHEEV TO THE OFFICE OF CHIEF DISCIPLINARY COUNSEL OR THE TEXAS LAWYER'S ASSOCIATION PROGRAM OR BOTH.**

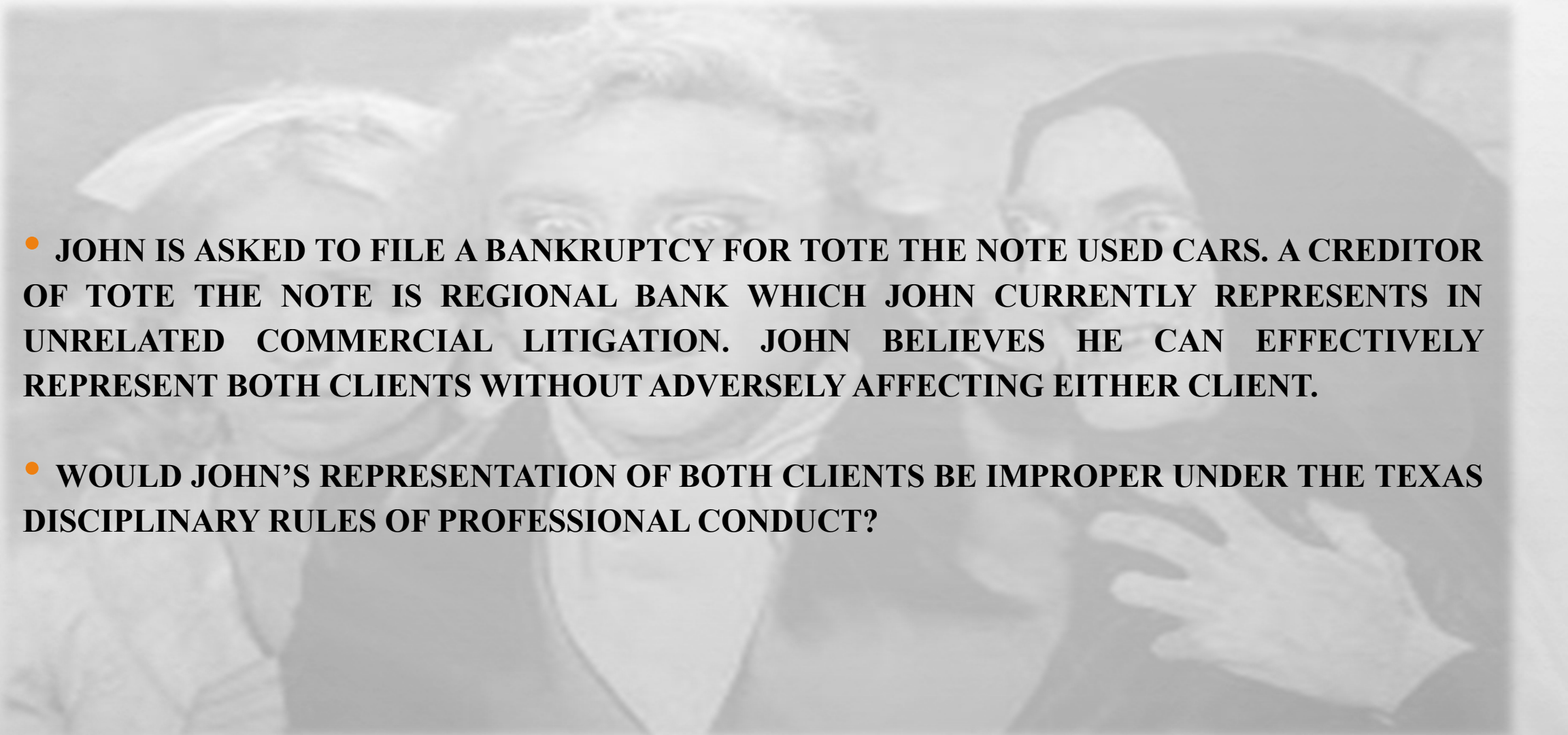
**CHOOSE THE BEST ANSWER:**

- A. FINIS IS REQUIRED TO REPORT THE ETHICS VIOLATION TO CDC, BUT CONTACTING TLAP ABOUT SHEEV'S POSSIBLE ALCOHOL PROBLEM IS DISCRETIONARY.**
- B. FINIS MUST NOTIFY BOTH THE CDC AND TLAP OF SHEEV'S BEHAVIOR.**
- C. FINIS IS NOT REQUIRED TO REPORT SHEEV'S BEHAVIOR BECAUSE HE SKYWALKERS NOT KNOW FOR CERTAIN WHETHER SHEEV EVEN HAS AN ALCOHOL PROBLEM, AND REPORTING SHEEV'S BEHAVIOR COULD DISADVANTAGE FINIS'S CLIENT IN THE CURRENT ADVERSARY PROCEEDING.**
- D. FINIS MUST REPORT SHEEV'S BEHAVIOR, BUT HE CAN CHOOSE WHETHER TO REPORT IT TO EITHER CDC OR TLAP.**

**ANSWER: D**

# REPRESENTING A DEBTOR WHEN A CURRENT CLIENT IS A CREDITOR



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- **JOHN IS ASKED TO FILE A BANKRUPTCY FOR TOTE THE NOTE USED CARS. A CREDITOR OF TOTE THE NOTE IS REGIONAL BANK WHICH JOHN CURRENTLY REPRESENTS IN UNRELATED COMMERCIAL LITIGATION. JOHN BELIEVES HE CAN EFFECTIVELY REPRESENT BOTH CLIENTS WITHOUT ADVERSELY AFFECTING EITHER CLIENT.**
  - **WOULD JOHN'S REPRESENTATION OF BOTH CLIENTS BE IMPROPER UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT?**

# REPRESENTING A DEBTOR WHEN A CURRENT CLIENT IS A CREDITOR





**RULE 1.06 OF THE TDRPC, PROVIDES IN PART AS FOLLOWS:**

**“(a) A LAWYER SHALL NOT REPRESENT OPPOSING PARTIES TO THE SAME LITIGATION.**

**(b) IN OTHER SITUATIONS AND EXCEPT TO THE EXTENT PERMITTED BY PARAGRAPH (c), A LAWYER SHALL NOT REPRESENT A PERSON IF THE REPRESENTATION OF THAT PERSON:**

**(1) INVOLVES A SUBSTANTIALLY RELATED MATTER IN WHICH THAT PERSON’S INTERESTS ARE MATERIALLY AND DIRECTLY ADVERSE TO THE INTERESTS OF ANOTHER CLIENT OF THE LAWYER OR THE LAWYER’S FIRM; OR**

**(2) REASONABLY APPEARS TO BE OR BECOME ADVERSELY LIMITED BY THE LAWYER’S OR LAW FIRM’S RESPONSIBILITIES TO ANOTHER CLIENT OR TO A THIRD PERSON OR BY THE LAWYER’S OR LAW FIRM’S OWN INTERESTS.”**

# CONFUSED CLIENT



**MINA BONTERI REPRESENTS THE ELDERLY SHMI SKYWALKER IN A CHAPTER 13 BANKRUPTCY. MS. SKYWALKER, WHO USED TO OPERATE THE REGION'S MOST PROFITABLE MOISTURE FARM, NOW IS MISSING APPOINTMENTS, FORGETTING ANSWERS TO BASIC QUESTIONS ABOUT HER FINANCES, AND MISUNDERSTANDING BASIC MATH WHEN REVIEWING BUDGETS.**

- **WHAT ARE SOME BASIC STEPS THAT MS. BONTERI MIGHT TAKE TO ASSIST MS. SKYWALKER?**
  - A. PUT DEADLINES INTO WRITING AND SEND REGULAR REMINDERS TO MS. SKYWALKER BEFORE CRITICAL APPOINTMENTS.**
  - B. SPEND ADDITIONAL TIME WITH MS. SKYWALKER TO EXPLAIN LEGAL CONCEPTS IN TERMS THAT LAY PEOPLE (I.E., NON-LAWYERS) MAY UNDERSTAND.**
  - C. A AND B.**
  - D. B.**

# CLIENT MORE THAN A LITTLE CONFUSED



**MINA BONTERI HAS CONTINUED TO WORK WITH SHMI SKYWALKER BY TAKING EXTRA TIME TO DISCUSS LEGAL ISSUES IN TERMS HER CLIENT CAN UNDERSTAND AND BY SETTING UP A SYSTEM BY WHICH HER STAFF REGULARLY REMIND MS. SKYWALKER OF IMPORTANT DEADLINES. DESPITE THESE MEASURES, MINA IS CONCERNED THAT MS. SKYWALKER APPEARS TO BE SUFFERING FROM COGNITIVE DEFICITS.**

**• MRS. SKYWALKER LISTED HER ADULT SON ANAKIN AS AN EMERGENCY CONTACT. SHOULD MINA CALL ANAKIN TO DISCUSS THE PARTICULARS OF MS. SKYWALKER'S CASE?**

**A. ABSOLUTELY NOT. MRS. SKYWALKER'S COMMUNICATIONS WITH MINA ARE PROTECTED BY ATTORNEY CLIENT PRIVILEGE.**

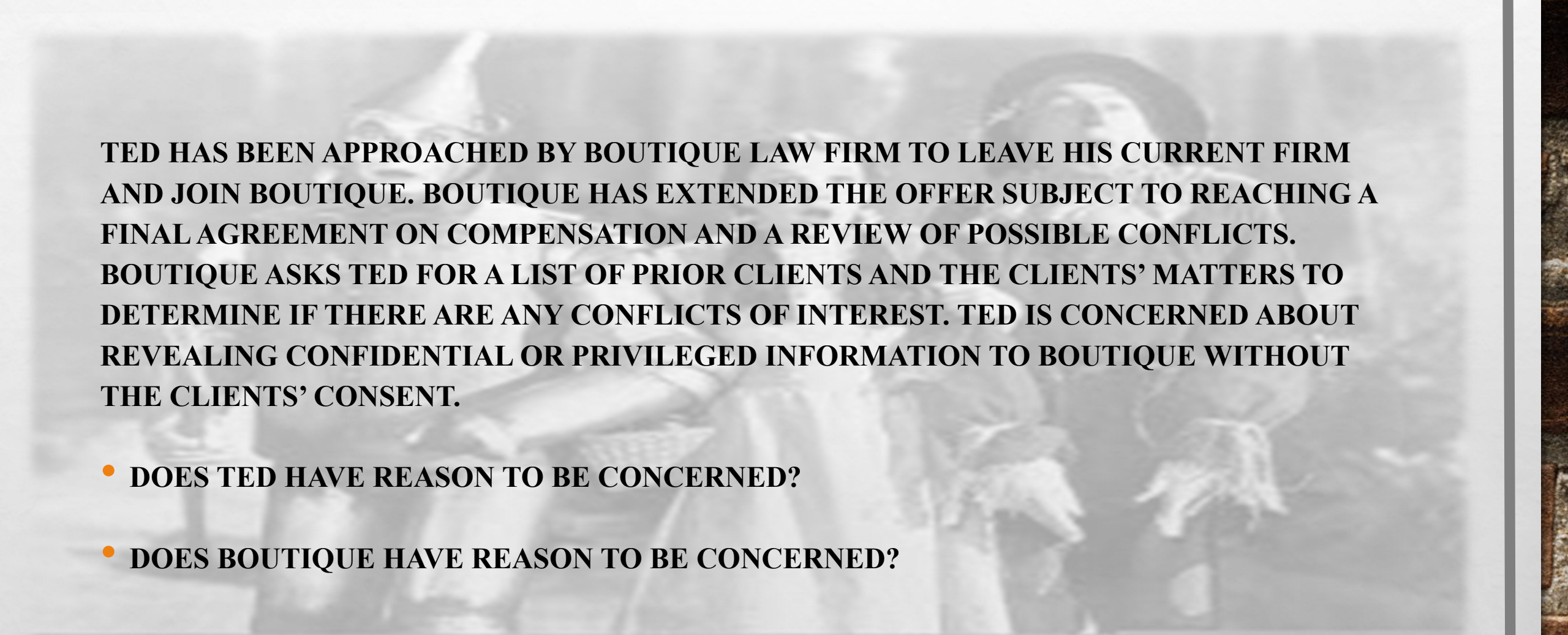
**B. YES, BUT ONLY TO THE EXTENT NECESSARY TO PROTECT MRS. SKYWALKER'S INTERESTS.**

**C. NO, BUT MINA CAN REVEAL CONFIDENCES TO SEPARATE COUNSEL TO THE EXTENT NECESSARY TO SEEK APPOINTMENT OF A GUARDIAN AD LITEM FOR MRS. SKYWALKER.**

**D. B OR C.**

# LAWYERS ON THE MOVE





**TED HAS BEEN APPROACHED BY BOUTIQUE LAW FIRM TO LEAVE HIS CURRENT FIRM AND JOIN BOUTIQUE. BOUTIQUE HAS EXTENDED THE OFFER SUBJECT TO REACHING A FINAL AGREEMENT ON COMPENSATION AND A REVIEW OF POSSIBLE CONFLICTS. BOUTIQUE ASKS TED FOR A LIST OF PRIOR CLIENTS AND THE CLIENTS' MATTERS TO DETERMINE IF THERE ARE ANY CONFLICTS OF INTEREST. TED IS CONCERNED ABOUT REVEALING CONFIDENTIAL OR PRIVILEGED INFORMATION TO BOUTIQUE WITHOUT THE CLIENTS' CONSENT.**

- **DOES TED HAVE REASON TO BE CONCERNED?**
  - **DOES BOUTIQUE HAVE REASON TO BE CONCERNED?**
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# LAWYERS ON THE MOVE





**RULE 1.05(B)(1) WHICH PROVIDES:**

- **(b) EXCEPT AS PERMITTED BY PARAGRAPHS (c) AND (d), OR AS REQUIRED BY PARAGRAPHS (e) AND (f), A LAWYER SHALL NOT KNOWINGLY:**
  - **(1) REVEAL CONFIDENTIAL INFORMATION OF A CLIENT OR A FORMER CLIENT TO:**
    - **(i) A PERSON THAT THE CLIENT HAS INSTRUCTED IS NOT TO RECEIVE THE INFORMATION; OR**
    - **(ii) ANYONE ELSE, OTHER THAN THE CLIENT, THE CLIENT'S REPRESENTATIVES, OR THE MEMBERS, ASSOCIATES, OR EMPLOYEES OF THE LAWYER'S LAW FIRM.**

# LAWYERS ON THE MOVE

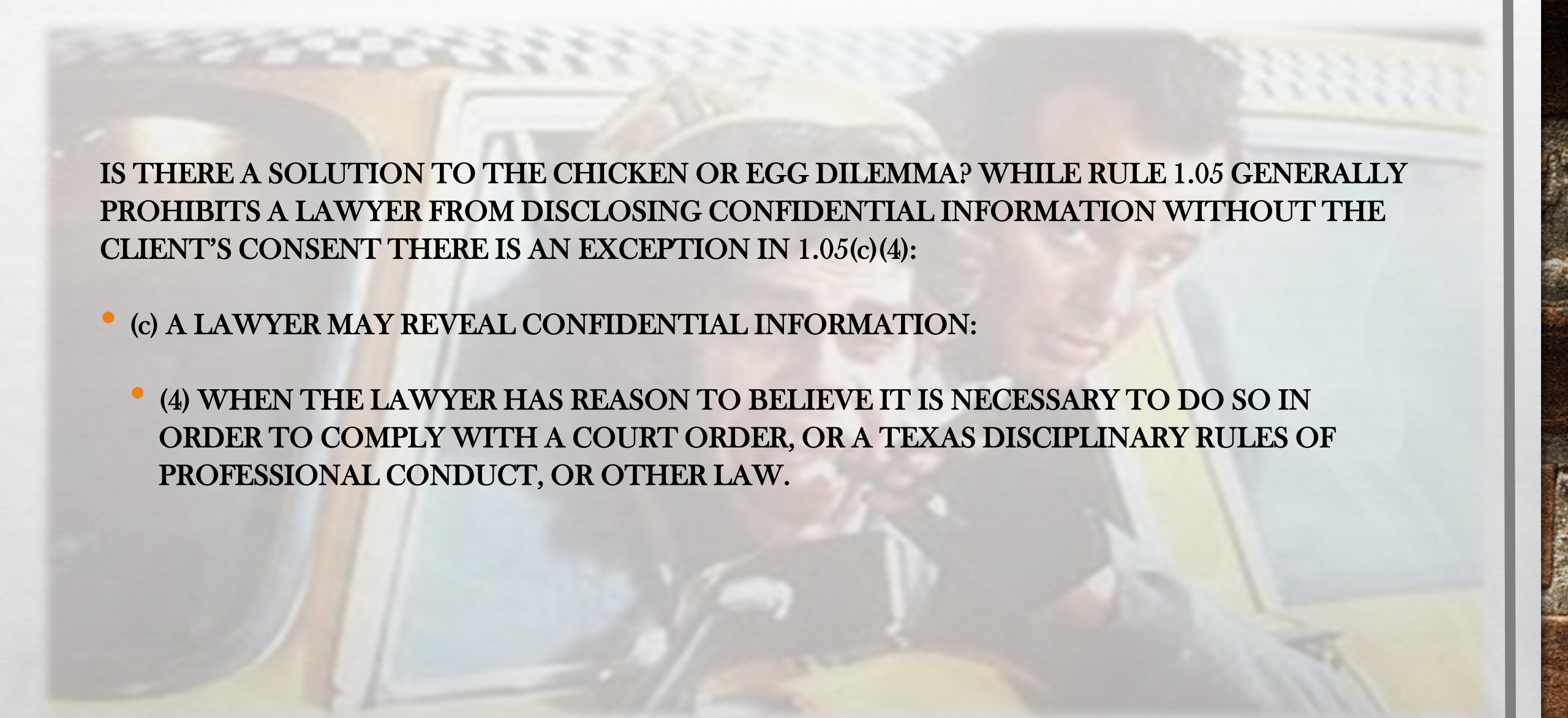


**RULE 1.09 PROVIDES THE FOLLOWING:**

- **(a) WITHOUT PRIOR CONSENT, A LAWYER WHO PERSONALLY HAS FORMERLY REPRESENTED A CLIENT IN A MATTER SHALL NOT THEREAFTER REPRESENT ANOTHER PERSON IN A MATTER ADVERSE TO THE FORMER CLIENT:**
  - **(1) IN WHICH SUCH OTHER PERSON QUESTIONS THE VALIDITY OF THE LAWYER'S SERVICES OR WORK PRODUCT FOR THE FORMER CLIENT;**
  - **(2) IF THE REPRESENTATION IN REASONABLE PROBABILITY WILL INVOLVE A VIOLATION OF RULE 1.05; OR**
  - **(3) IF IT IS THE SAME OR A SUBSTANTIALLY RELATED MATTER.**

# LAWYERS ON THE MOVE





**IS THERE A SOLUTION TO THE CHICKEN OR EGG DILEMMA? WHILE RULE 1.05 GENERALLY PROHIBITS A LAWYER FROM DISCLOSING CONFIDENTIAL INFORMATION WITHOUT THE CLIENT'S CONSENT THERE IS AN EXCEPTION IN 1.05(c)(4):**

- **(c) A LAWYER MAY REVEAL CONFIDENTIAL INFORMATION:**
  - **(4) WHEN THE LAWYER HAS REASON TO BELIEVE IT IS NECESSARY TO DO SO IN ORDER TO COMPLY WITH A COURT ORDER, OR A TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, OR OTHER LAW.**

# ANGRY CLIENTS



**PADME NABERRIE REPRESENTS COUNT DOOKU IN AN INDIVIDUAL CHAPTER 11. DURING HER REPRESENTATION, PADMA RECOMMENDS A COURSE OF ACTION TO COUNT DOOKU. THE PROPOSED COURSE OF ACTION HAS TO DO WITH STRATEGY AND DOES NOT INVOLVE A CHAPTER 11 DEBTOR'S FIDUCIARY DUTIES. COUNTY DOOKU THINKS THE ADVICE IS SO AWFUL THAT HE TELLS PADME HE NEVER WANTS TO SEE HER AGAIN. COUNT DOOKU THEN POSTS HATEFUL THINGS ABOUT PADME AND HER LAW FIRM IN AN ONLINE YELP REVIEW.**

**• WHAT ARE PADME'S OPTIONS?**

- A. IMMEDIATELY FILE A MOTION TO WITHDRAW AS COUNSEL BUT KEEP THE REASONS FOR REQUESTING WITHDRAWAL SUFFICIENTLY VAGUE SO THAT NO CONFIDENTIAL INFORMATION IS REVEALED.**
- B. IMMEDIATELY FILE A MOTION TO WITHDRAW AS COUNSEL THAT DETAILS ALL THE HORRIBLE AND NASTY THINGS SHE LEARNED ABOUT COUNT DOOKU – INCLUDING BUT NOT LIMITED TO HIS SECRET SITH STUDIES - IN THE COURSE OF HER REPRESENTATION.**
- C. SET UP A MEETING WITH COUNT DOOKU TO 1) DEFEND HER ACTIONS AND 2) DEMAND THE RETRACTION OF THE YELP REVIEW.**
- D. A AND C.**

**ANSWER: D**

# WHO IS FILING THIS BANKRUPTCY?





**JOHN AND MARY WERE MARRIED FOR TEN YEARS. THEY PURCHASED A HOME WITH A \$250,000 MORTGAGE BUT JOHN MANAGED THEIR FINANCES POORLY AND IN GENERAL WAS DIFFICULT TO GET ALONG WITH. THE COUPLE DIVORCED AND JOHN RECEIVED THE HOUSE IN THE DIVORCE. MARY WAS STILL OBLIGATED ON THE NOTE AFTER THE DIVORCE, HOWEVER. JOHN'S FINANCIAL DIFFICULTIES CONTINUED, AND HE DEFAULTED ON THE MORTGAGE. JOHN UNKNOWN TO MARY, FILED TWO PRO SE BANKRUPTCIES TO STOP THE FORECLOSURE. THE SECOND BANKRUPTCY WAS DISMISSED WITH PREJUDICE FOR TWO YEARS AND JOHN IS FACING FORECLOSURE AGAIN.**

**JOHN GOES TO A BANKRUPTCY ATTORNEY ON THE FRIDAY BEFORE FORECLOSURE. THE ATTORNEY ADVISES JOHN HE CANNOT FILE AGAIN DUE TO THE PREJUDICIAL PERIOD. JOHN ASKS IF HIS EX-WIFE MARY, WHO IS STILL LIABLE ON THE MORTGAGE, CAN FILE TO STOP THE FORECLOSURE. THE ATTORNEY SAYS YES, HAVE HER COME TO MY OFFICE. ON MONDAY JOHN APPEARS AT THE OFFICE AND SAYS MARY IS ATTENDING A FUNERAL AND CANNOT COME INTO THE OFFICE. SHE HAS LIMITED PHONE COVERAGE DUE TO THE REMOTE LOCATION WHERE THE FUNERAL IS HELD BUT CAN EMAIL THE ATTORNEY. JOHN PLEADS WITH THE ATTORNEY TO HELP THEM. THE ATTORNEY, IN AN EFFORT TO HELP JOHN AND MARY ELECTRONICALLY SIGNS MARY'S NAME AND FILES A BANKRUPTCY PETITION, SCHEDULES AND THE STATEMENT OF FINANCIAL AFFAIRS AFTER RECEIVING AN EMAIL AUTHORIZING THE FILING.**

**ON WEDNESDAY THE ATTORNEY RECEIVES A PHONE CALL FROM MARY ASKING WHO HE IS AND WHY FILED A BANKRUPTCY PETITION IN HER NAME.**

**WHAT ARE THE VIOLATIONS AND WHAT CAN MARY DO?**

# AN OFFER YOU CAN'T REFUSE



**ASSUME THESE FACTS IN A HYPOTHETICAL CASE. SAM COMES TO ROGER'S OFFICE TO FILE A CONSUMER BANKRUPTCY. HE TELLS ROGER HIS EMPLOYER IS SUING HIM FOR \$3 MILLION DOLLARS, CLAIMING HE EMBEZZLED MONEY DURING A FIVE-YEAR PERIOD USING HIS POSITION IN THE IT DEPARTMENT. SAM ADMITS THE MONEY WAS TAKEN BUT SAYS, "IT WAS NOT MY FAULT, THE MOB MADE ME DO IT"**

**SAM CONTINUES, "TONY SOPRANO WALKED UP TO ME ONE DAY AND THREATENED ME AND MY FAMILY. HE MADE ME SET UP A SHELL CORPORATION THAT I WAS FORCED TO USE TO PURCHASE COMPUTER HARDWARE FOR MY EMPLOYER'S IT DEPARTMENT. THE PURCHASE PRICES WERE INFLATED, AND \$3 MILLION DOLLARS WAS SKIMMED OFF THE TOP. THE MOB ALSO TOOK MY BUTTERFLY COLLECTION WHICH WAS WORTH \$100,000." SAM THEN SAYS THE MOB FELT BAD LATER AND PURCHASED A \$100,000 LOT WHICH SAM BUILT A HOMESTEAD ON.**

**SAM SAYS HE INCLUDED THE EMBEZZLED MONEY ON HIS TAX RETURNS, WHICH WERE PREPARED BY THE MOB AND THE MOB GAVE HIM THE MONEY TO PAY THE TAXES.**

- **SHOULD ROGER:**
  - A) TELL SAM TO GET OUT OF HIS OFFICE?**
  - B) TELL SAM HE DOES NOT THINK A COURT WILL BELIEVE HIS STORY, AND SAM SHOULD NOT FILE BANKRUPTCY?**
  - C) TELL SAM HE DOES NOT THINK A COURT WILL BELIEVE HIS STORY, BUT WILL NEVERTHELESS FILE A BANKRUPTCY FOR HIM?**
  - D) REFER SAM TO A CRIMINAL DEFENSE ATTORNEY?**
  
- **WHAT ARE THE POSSIBLE RAMIFICATIONS SAM MIGHT FACE IF HE OFFERS PERJURED TESTIMONY? COMMITTING A BANKRUPTCY CRIME IS ONE BUT ARE THERE OTHERS?**

# AN OFFER YOU CAN'T REFUSE





**SHOULD ROGER:**

**A) TELL SAM TO GET OUT OF HIS OFFICE?**

**B) TELL SAM HE DOES NOT THINK A COURT WILL BELIEVE HIS STORY, AND SAM SHOULD NOT FILE BANKRUPTCY?**

**C) TELL SAM HE DOES NOT THINK A COURT WILL BELIEVE HIS STORY, BUT WILL NEVERTHELESS FILE A BANKRUPTCY FOR HIM?**

**D) REFER SAM TO A CRIMINAL DEFENSE ATTORNEY?**

**E) WHAT ARE THE POSSIBLE RAMIFICATIONS SAM MIGHT FACE FOR PERJURED TESTIMONY?**



The End