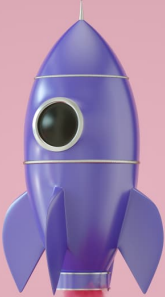

 The logo for 'ACB American College of Bankruptcy FAMILY FEUD' is centered in the left panel. It features a stylized sign with a blue and red border decorated with white dots. The text 'ACB' is in large blue letters, 'American College of Bankruptcy' is in smaller blue text to its right, and 'FAMILY FEUD' is in large yellow letters below. The sign sits on a yellow base with horizontal lines.	<p data-bbox="987 478 1425 604">WAIT, WAIT, YOU DID WHAT?</p> <p data-bbox="987 772 1351 814">HON. DALE L. SOMERS</p>

1

 A blue rocket ship is shown launching upwards against a light pink background. The rocket has a black circular window and is emitting a thick, billowing plume of red smoke from its base.	<p data-bbox="743 1192 1383 1285"><b>Scenario One: "Houston, we have a problem."</b></p> <ul data-bbox="743 1327 1360 1684" style="list-style-type: none"><li>• Bankruptcy Judge and attorney in a relationship, live together, and owned a home together.</li><li>• Attorney worked at a prominent bankruptcy firm.</li><li>• Judge approved millions of dollars in fees for the attorney's time, the law firm, and for other law firms associated with the attorney's firm.</li></ul>

2

	<h2>Scenario One, cont.</h2>
	<ul style="list-style-type: none"> <li>• Everyone claims ignorance of the relationship, even those who socialized with the Judge and the Attorney.</li> <li>• On the off chance someone was aware, what ethical obligations did they have?</li> </ul>

3

	<h2>Let's Play Family Feud!</h2> <p><b>Potential Violations of Model Rules are:</b></p> <ul style="list-style-type: none"> <li>• Too many problems to name; I give up.</li> <li>• Model Rules 8.1 (Bar Admission &amp; Disciplinary Matters); 8.2 (Judicial and Legal Officials); 8.3 (Reporting Professional Misconduct); 8.4 (Misconduct).</li> <li>• Model Rule 4.1. Truthfulness in Statements to Others.</li> <li>• Model Rules 1.7. Conflict of Interest.</li> <li>• Model Rule 5.2. Responsibilities of a Subordinate Lawyer.</li> <li>• Bankruptcy Rule 2014. Employment of Professional Persons.</li> <li>• What's the problem; the bankruptcy group is always a small group of lawyers – we are all friends!</li> </ul>

4

## Guiding Rules to Aid Discussion

- **Model Rule 8.1 – Bar Admission and Disciplinary Matters**

In connection with a disciplinary matter, shall not “knowingly make a false statement of material fact.”

- **Model Rule 8.2 – Judicial and Legal Officials**

Lawyer shall not make a statement concerning the integrity of a judge that is knowingly false or with “reckless disregard as to its truth or falsity.”

- **Model Rule 8.3 – Reporting Professional Misconduct**

A lawyer that “knows” another lawyer or judge has committed a violation raising a “substantial question” as to “honesty, trustworthiness or fitness as a lawyer” or “judge’s fitness for office” “shall inform.”

- **Model Rule 8.4 – Misconduct**

Professional misconduct is engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation,” or “conduct that is prejudicial to the administration of justice,” or “knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.”

5

## Guiding Rules to Aid Discussion

- **Model Rule 1.7 – Conflict of Interest**

A lawyer shall not represent a client if there is a “significant risk” will be “materially limited” by “a personal interest of the lawyer.”

- **Model Rule 4.1 – Truthfulness in Statements to Others**

In course of representation, lawyer shall not knowingly make a materially false statement or fail to disclose a material fact.

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## Guiding Rules to Aid Discussion

- **Model Rule 5.2 – Responsibilities of a Subordinate Lawyer**

Lawyer is bound by Rules of Professional Conduct “notwithstanding that the lawyer acted at the direction of another person.” No violation if acting in accord with “supervisory lawyer’s reasonable resolution of an arguable question of professional duty.”

- **Disclosure - Federal Rule of Bankruptcy Procedure 2014 and Employment**

Requires disclosure of “connections” with “any other party in interest.”

7



## Scenario Two: Texas Two-Step and Bad Faith Filings

- Third Circuit has twice ruled the attempt of Rich Company (Johnson & Johnson) to transfer tort claims to Poorer Company and then place Poorer Company in bankruptcy is bad faith.
- Rich Company pledges billions of dollars to cover the expense of the claims, so Poorer Company is not in financial distress.

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	<h2 style="text-align: center;">Scenario Two, cont.</h2> <ul style="list-style-type: none"> <li>• Poorer Company now plans to file a third bankruptcy, with goal to resolve all tort claims in bankruptcy court rather than a non bankruptcy court.</li> <li>• Assuming this attempt is unsuccessful and again dismissed as a bad faith filing, could this rise to the level of a valid ethical violation?</li> </ul>

9

	<h2 style="text-align: center;">Let's Play Family Feud!</h2> <p style="text-align: center;"><b>Potential Violations of Model Rules are:</b></p> <ul style="list-style-type: none"> <li>• Model Rule 2.1. Advisor.</li> <li>• Model Rule 3.1. Meritorious Claims &amp; Contentions.</li> <li>• Model Rule 3.2. Expediting Litigation.</li> <li>• Model Rule 8.4. Misconduct.</li> <li>• Bankruptcy Code. Bad faith filing standards and consequences.</li> <li>• Bankruptcy Rule 9011 or Sanctions.</li> <li>• What's the problem; someone has to be creative and try new things.</li> </ul>
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## Guiding Rules to Aid Discussion

- **Model Rule 2.1 – Advisor**

In representing a client, lawyer must “exercise independent professional judgment and render candid advice,” and may refer to “moral, economic, social and political factors.”

- **Model Rule 3.1 – Meritorious Claims & Contentions**

Must have “basis in law or fact” that is “not frivolous” to bring or defend a proceeding; includes “a good faith argument for an extension, modification or reversal of existing law.”

See also Preamble to Model Rules (as advocate, lawyer zealously asserts the client’s position) and Comment 1 to Model Rule 1.3 Diligence (lawyer must act “with zeal in advocacy”).

- **Model Rule 3.2 – Expediting Litigation**

Must “make reasonable efforts to expedite litigation consistent with the interests of the client.”

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## Guiding Rules to Aid Discussion

- **Model Rule 8.4 – Misconduct**

It is professional misconduct to “engage in conduct that is prejudicial to the administration of justice.”

- **Bankruptcy Code – Bad Faith Filing Standards and Consequences**

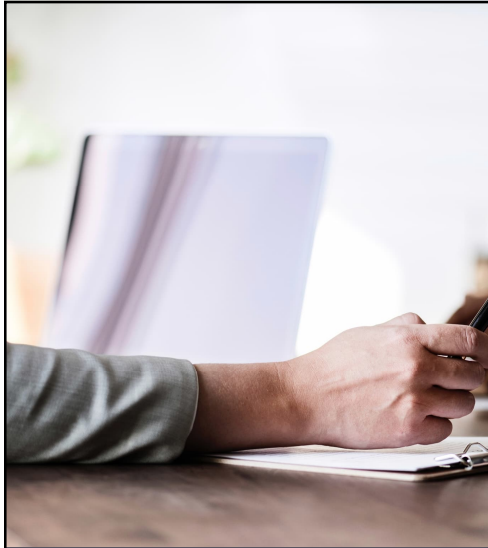
Circuit approaches to allegations of bad faith filing vary. Third Circuit says a “key question” is whether the case serves “a valid bankruptcy purpose” and “assumes a debtor in financial distress.” *In re LTL Mgmt. LLC*, No. 23-2971, 2024 WL 3540467, at \*2 (3d Cir. July 25, 2024).

See also *In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023) (“must show both subjective bad faith and the objective futility of any possible reorganization”); *In re Little Creek Dev. Co.*, 779 F. 2d 1068, 1072 (5th Cir. 1986) (a “conglomerate of factors,” with an “evaluation of the debtor’s financial condition, motives, and the local financial realities”); *In re Kerr*, 908 F.2d 400, 404 (8th Cir. 1990) (“must require a pattern of concealment, evasion, and direct violations of the Code or court order which clearly establishes an improper motive”).

- **Bankruptcy Rule 9011 or Sanctions**

Petition not presented for improper purpose or to harass or cause unnecessary delay or needlessly increase cost of litigation; claims warranted by existing law or nonfrivolous argument for extension. Also, sanctions for filing a bad faith petition may be imposed if “it is clear that on the filing date there was no reasonable likelihood that the debtor intended to reorganize and no reasonable probability that it would eventually emerge from bankruptcy proceedings.” *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 227 (2d Cir. 1991).

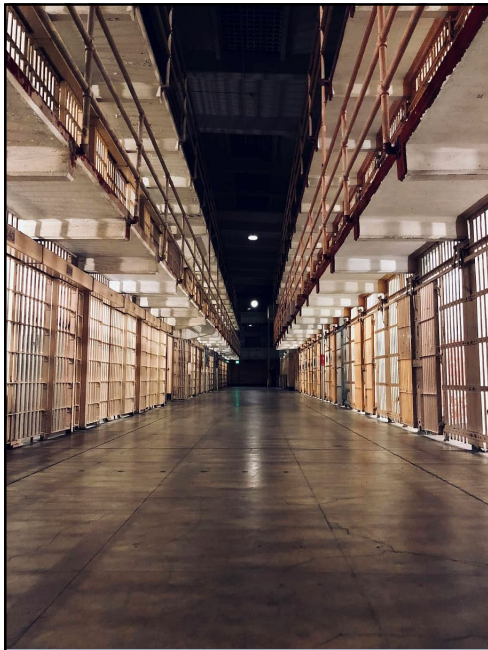
12



## Scenario Three: Don't Go to Jail for Your Client

- Client is an insurance company, but totally owned and operated by an individual. Company sold accidental injury insurance policies for high school athletes.
- To provide the necessary coverage, the company needed to contract with bigger insurance companies for reinsurance. This was not done.
- To the contrary, Individual diverted much of the premiums to himself for personal use.

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## Scenario Three, cont.

- Insurance company was unable to pay claims of injured athletes and filed bankruptcy. Individual filed bankruptcy as well.
- Individual delivered money to his lawyer who deposited it into his trust account and paid parties the Individual directed him to pay.
- State Disciplinary Office began an investigation but never completed it as the lawyer surrendered his law license and was disbarred after pleading guilty to accessory after the fact to bankruptcy fraud. If you're assigned to investigate this situation, what ethical violations would you identify?

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## Let's Play Family Feud!

**Potential Violations of Model Rules are:**

- Again, too many problems; I'm overwhelmed by the volume!
- Preamble: Zealous Representation of Client.
- Model Rule 2.1. Advisor.
- Model Rule 1.7. Conflict of Interest.
- Model Rule 4.1. Truthfulness in Statements to Others.
- Model Rule 8.4. Misconduct.
- Model Rule 1.15. Safekeeping Property; Trust Account Rules.
- What's the problem; everyone deserves representation, right?

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	<h2 style="margin: 0;">Guiding Rules to Aid Discussion</h2>
	<ul style="list-style-type: none"> <li>• <b>Preamble: Zealous Representation of a Client</b></li> </ul> <p>Lawyer has "special responsibility" for the "quality of justice." Must provide client with an informed understanding of rights/obligations and practical implications, "zealously assert" the client's position, and seek a result that is "advantageous to the client" but also "consistent with requirements of honest dealings with others."</p> <p>See also Model Rule 1.3 Diligence, Comment 1 (lawyer must act "with zeal in advocacy"); Model Rule 3.1 Meritorious Claims &amp; Contentions (must have "basis in law or fact" that is "not frivolous" to bring or defend a proceeding; includes "a good faith argument for an extension, modification or reversal of existing law").</p> <ul style="list-style-type: none"> <li>• <b>Model Rule 2.1 – Advisor</b></li> </ul> <p>Must render "candid advice" and refer to not only the law, but also "moral, economic, social and political factors" that are "relevant to the client's situation."</p> <ul style="list-style-type: none"> <li>• <b>Model Rule 1.7 – Conflict of Interest</b></li> </ul> <p>A concurrent conflict of interest when representation of one client is "directly adverse" to another client.</p>

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## Guiding Rules to Aid Discussion

- **Model Rule 4.1 – Truthfulness in Statements to Others**

Shall not “knowingly” make a “false statement of material fact” or “fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.”

- **Model Rule 8.4 - Misconduct**

Professional misconduct to engage in “conduct involving dishonesty, fraud, deceit or misrepresentation,” or “conduct that is prejudicial to the administration of justice,” or “knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.”

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## Guiding Rules to Aid Discussion

- **Trust Account Rules**

A lawyer is a fiduciary of the trust account, and owes fiduciary responsibilities.

- **Model Rule 1.15 Safekeeping Property**

When receiving funds for a third person, lawyer shall “promptly notify” that third person and “promptly deliver . . . any funds” the third person is “entitled to receive.” Must render a full accounting upon request.

If two or more persons claim an interest in funds, the property must be kept separate until dispute is resolved.

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#### TIME FOR ONE MORE?

**Different scenario: lawyer operates a little league baseball team. He collects team's fees from players' parents and deposits them in trust account. Lawyer pays league dues, insurance cost, and tournament entry fees from the trust account. Is this permissible?**

#### MAYBE OKAY?

**In Kansas, trust account rules say funds belonging to a lawyer should NOT go into a trust account but do permit funds belonging to a "third person outright."**

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**THANK YOU**

Hon. Dale L. Somers  
U.S. Bankruptcy Court,  
District of Kansas

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