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Too Many Hats in the Ethical Ring: When Insiders, Affiliates, Friends, and Family Show Up All Over a Restructuring

41st Annual Jay L. Westbrook Bankruptcy Conference

November 17, 2022
Austin, Texas

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You Work for the Client

Rule 1.4 of the Rules of Professional Conduct provides:

- “A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.”

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The General Ethical Obligations Apply In Bankruptcy

- The client is important!
- Basic concepts applicable to bankruptcy counsel – such as the duty of loyalty, independent judgment, and even who the client is – are drawn from the applicable non-bankruptcy law sources.



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Hypothetical 1 – Private Equity and its Portfolio Company

So, you get a call from Peter Parker of Stark Industries . . .

Avengers Corp.—a portfolio company of Stark Industries—needs restructuring help in the wake of the Infinity Wars.

Avengers Corp. is 100% owned by Stark Industries, and its three-person board includes Stark Industries principals: Pepper Potts, Peter Parker and Happy Hogan.

You run conflicts (no preliminary hits), send him an engagement letter. He sends back a letter signed by Sam Wilson, Avengers’ interim CEO. He then wires you a hefty retainer, but you see that it was wired from a Stark Industries bank accounts.



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Diligence and Communications with the Client

Rule 1.3 of the Rules of Professional Conduct provides:

“A lawyer shall act with reasonable diligence and promptness in representing a client.”

Rule 1.4 of the Rules of Professional Conduct provides:

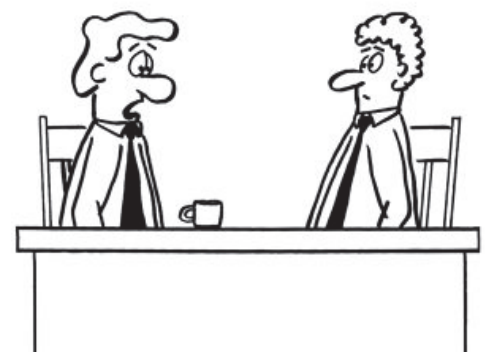
“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation”

Stu's Views

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I always want to do the right thing, but so often it interferes with my legal practice.



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First appeared as part of the conference materials for the
41st Annual Jay L. Westbrook Bankruptcy Conference session

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