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The “Ethics” Game:



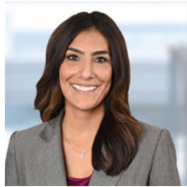


Covid Edition

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Meet your speakers

				
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Scenario 1:

Privileged Conversations While Working Remotely

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Scenario 1: Privileged Conversations While Working Remotely

During these times of COVID you have fortunately been able to work from home. You have an upcoming phone call with a very long-time client, N'gossi, at his request. You have worked with N'gossi for years, are close friends with him, and you have even met each other's families. N'gossi has yet to provide you with specific questions he would like to discuss, and you know that sometimes he calls to chat generally about his company's industry, provide general updates on his business, or talk about each other's families. Even before the pandemic, N'gossi would sometimes ask you to meet up for dinner to talk about sensitive issues. Additionally, N'gossi has occasionally discussed a mix of personal and legal issues with you. During COVID, you seem to have gotten closer as you have had some driveway happy hours and socially-distanced meet ups.

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Scenario 1: Privileged Conversations While Working Remotely

Where is an acceptable place to take the call?

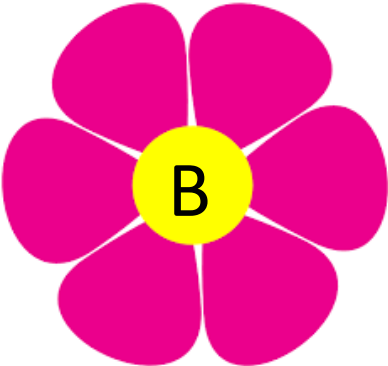
- A. In the kitchen
- B. In the office
- C. You must leave the house

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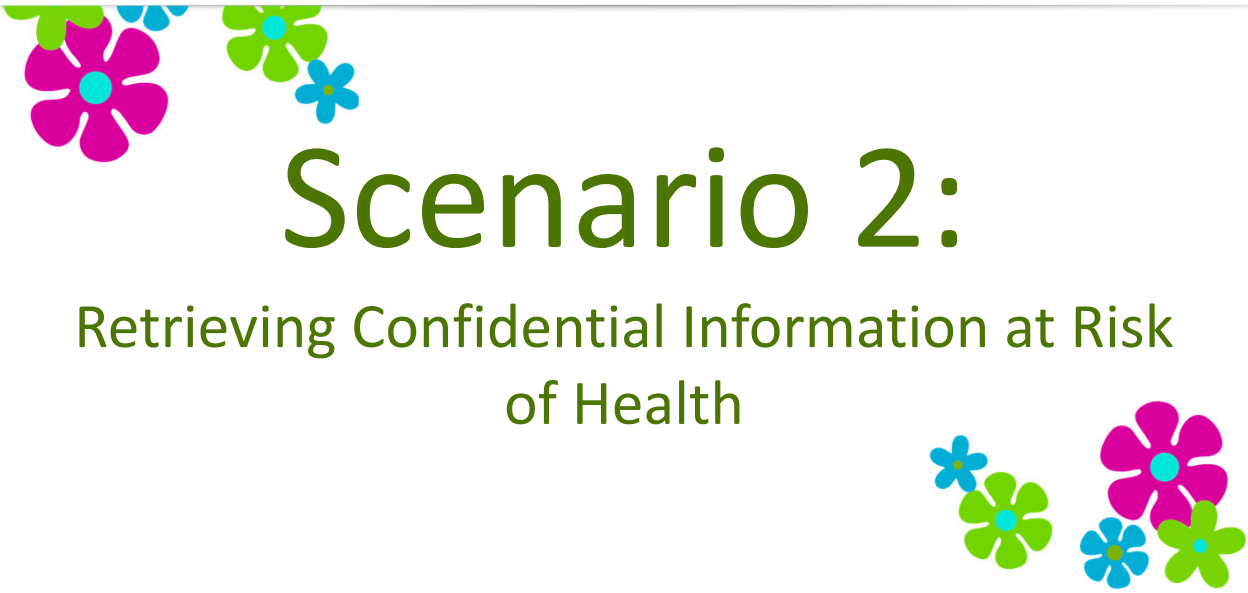
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Scenario 2:
Retrieving Confidential Information at Risk
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Scenario 2: Retrieving Confidential Information at Risk of Health

Since the pandemic began, you have only worked within your home, and due to being immunocompromised, have not left home. In order to continue to represent your clients, you have told all of your clients to mail all documents and packages to your home. Additionally, you have arranged with your office staff to have any and all mail addressed to you to be sent to your private residence.

Very early this morning, the office building in which your firm is located confirmed several cases of COVID-19. Out of an abundance of caution, the building closed except for emergency situations. The firm promptly contacted all clients to let them know of the situation, was informed by the building staff that any mail delivered would be available for pick-up. Late that afternoon, you received a panicked call from one of your clients. They had sent a set of highly sensitive documents needed for a filing due the end of the next day, and they had received confirmation that the documents had just arrived at the office rather than your private residence.

You know that no one was at the office to forward or deliver the incredibly important package. Moreover, you know the court is closed for the day, so you are unable to request an extension. You have also attempted to contact the judge—who you know will also be absent the next day—via phone and email for an ex parte conversation but have yet to hear back.

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Scenario 2: Retrieving Confidential Information at Risk of Health

What is the best course of action?

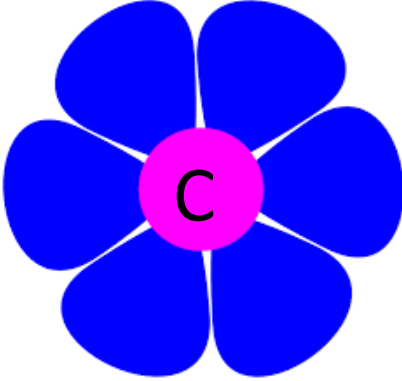
- A. Contact opposing counsel
- B. Do your best to finish the filing with the information you have
- C. Go to the office and retrieve the package yourself

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Answer



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Scenario 3:
Friending the CFO

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Scenario 3: Friending the CFO

You are sitting at your dining room table working on the long to do list of items and trying not to get distracted by the last episode of Queen's Gambit. Your cell phone rings and you see the name of your business client and of course you pick up because hey, with COVID you work any time of the day!

"Hey, got a minute?" she asks and not waiting for you to respond, says: "As you know, we're doing this acquisition of notsohot.com and I'm worried about the other side's CFO. He might be stealing, and I feel like there are likely employment issues he is not telling us about. He seems so sleazy. I want to find out more about him on social media. I'm going to have my friend, a paralegal who used to work here, send a "friend" request to the CFO and get access to his Facebook page. Then we wouldn't have to identify the company and could find out what was there. Can you think of anything specific we should look for or dig around the CFO's Facebook page for?"

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Scenario 3: Friending the CFO

Is it okay to do this? Why or why not?

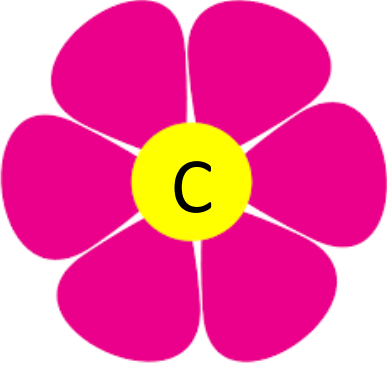
- A. That's a great idea!
- B. Your business client should send the request
- C. Do not friend the CFO!

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Scenario 4:
"Private" Social Media Pages

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Scenario 4: "Private" Social Media Pages

Because no good deed goes unpunished, you volunteered to help out with a matter involving one of your company's executives, Joe Executive, who (along with the company) has been individually named in a lawsuit. He's not only accused of defaming the plaintiff but also for harassment and discrimination. The lawyers on the other side have been aggressive in their discovery requests and recently served the following:

"Produce copies of all of Joe Executive's current and historical Facebook and Instagram pages, including all deleted and archived pages and information."

You call Joe Executive to talk to him about this request and he scoffs and says: "Ha! Good luck with them getting that. Let them file a motion. Most of it was marked "private" anyway."

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Scenario 4: "Private" Social Media Pages

Is the opposing party going to need luck to get Joe's "private" information on Facebook and Instagram?

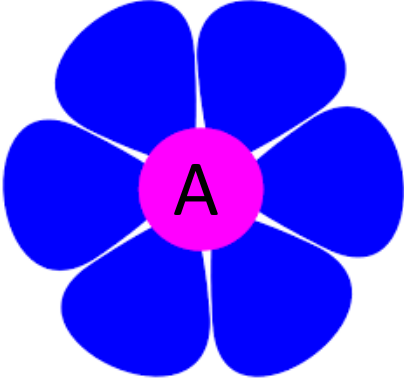
- A. It's a close case
- B. Not much luck needed
- C. They're going to need a lot of luck

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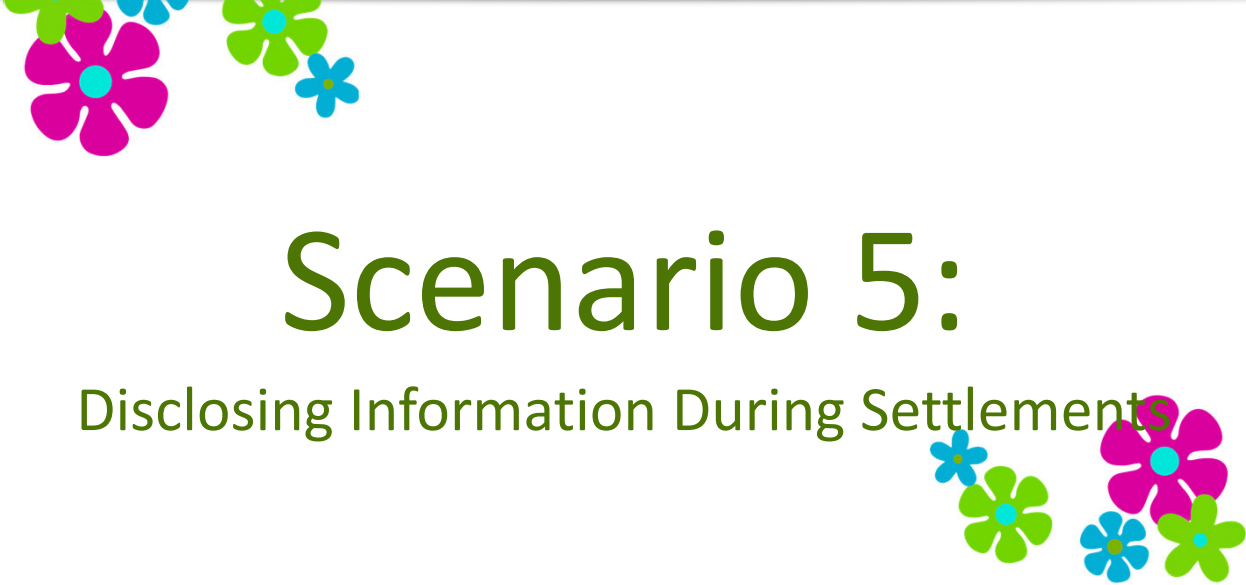
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Scenario 5:
Disclosing Information During Settlements

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Scenario 5: Disclosing Information During Settlements

You are an in-house attorney and your outside counsel calls you about a case that you have been trying to settle for a while.

“Good news,” she tells you, “the plaintiff has agreed to settle that serious accident claim against us for only \$1 million. As you know, that’s far less than the \$4 or \$5 million that we had reserved. But there’s one thing you should know. The plaintiff’s offer came after we’d conducted our independent medical exam on the plaintiff but before we’d received the written report. The examining doctor said that he had found an aortic aneurysm that had not been previously discovered. The doctor didn’t know whether it was caused by the accident in your store, but the condition was fairly serious, and he wasn’t sure that it could be corrected.”

Your outside counsel then lets you know that she told the doctor not to complete the report because we would likely settle the case. Your outside counsel is afraid that if the plaintiff’s lawyer knows about this condition, there won’t be a chance to settle for the \$1 million. Your outside counsel wants your permission to not tell plaintiff’s lawyer about the report.

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Scenario 5: Disclosing Information During Settlements

Do you give the permission to your outside counsel to withhold the information?

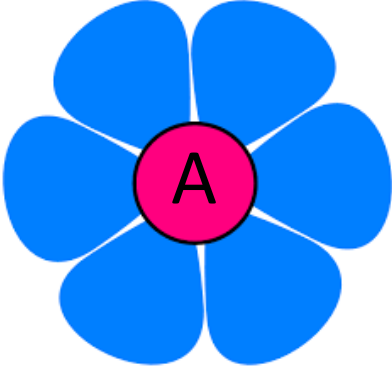
- A. Neither
- B. Yes
- C. No

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Answer



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Scenario 6:
Accidental Disclosure

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Scenario 6: Accidental Disclosure

Your company has been targeted by a foreign plaintiff named Money Umbrella alleging “idea theft.” Money Umbrella is one of your company’s main competitors. You and one of your company’s Creative Executives are attending a Zoom business negotiation meeting with Money Umbrella and its in-house legal team at Money Umbrella’s offices. You and the Creative Executive log into the Zoom and someone lets you in the Zoom Room. You are told there will be a slight delay and are asked to wait for about 15 minutes. You notice in the chat function that there are communications between parties who were previously using the same Zoom link and the discussion appears to relate to “Creation Ideas” and “Items for Negotiation” but you need to scroll down to see more information. The Creative Executive calls you on your cell and says “Did you see the chat, I’m going to scroll down!”

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Scenario 6: Accidental Disclosure

What should you do?

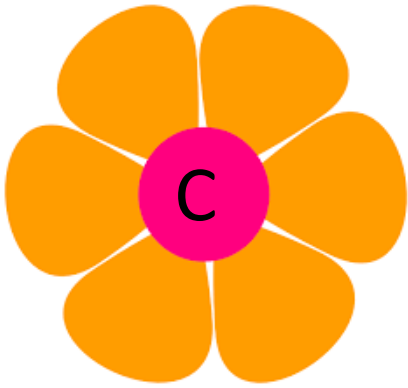
- A. Don’t scroll down, but what’s visible in the chat is fair game
- B. Scroll
- C. Close the chat

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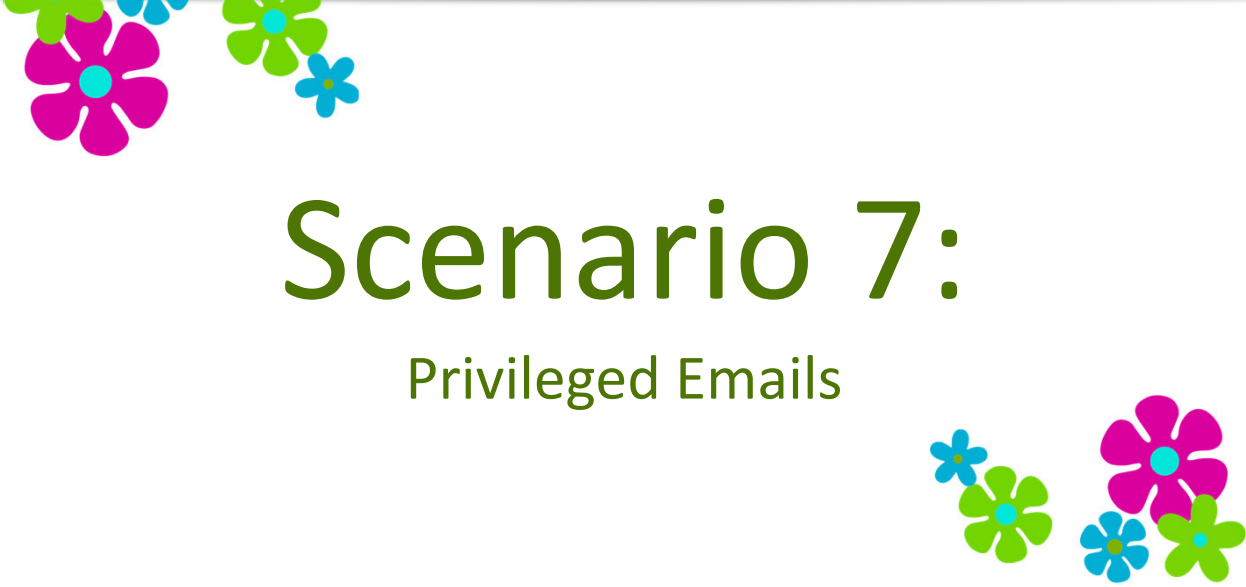
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Scenario 7:
Privileged Emails

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Scenario 7: Privileged Emails

This conversation happens to you one day:

Smart: "Ms. Lawyer, this is Assistant U.S Attorney Albert Smart. I am calling to see if you would accept service of a grand jury subpoena for documents on behalf Your Company. If so, it will save a trip by the FBI to serve it on you in person."

You: "Yes," you say, because you want to be cooperative.

Smart: "Great. By the way, does Your Company's email policy inform its employees that the email system belongs to Your Company, and therefore, the employee has no expectation to privacy in their email?"

You: "Yes," you reply cautiously.

Smart: "Good," says Smart, "because you will notice the subpoena asks for emails pertaining to the XYZ Association, and your CEO is on its Board. Just so the government is clear on this, we want any emails that your CEO's company computer has relating to the XYZ Association, even if the emails are from XYZ's Association's lawyers."

You: "Ok but those emails may be privileged . . ."

The AUSA hangs up before you can finish. . .

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Scenario 7: Privileged Emails

What are you going to tell the CEO if he asks if the emails are privileged?

A. Don't worry about it!

B. I need to see your emails, we may have a problem...

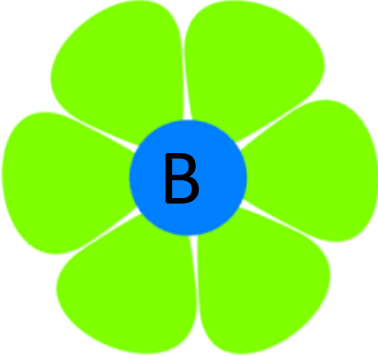
C. You are screwed!

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Answer



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Scenario 8:
Appearing in a Jurisdiction You Are Not Barred In

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Scenario 8: Appearing in a Jurisdiction You Are Not Barred In

This next question is for those of you at companies where your in-house legal department takes or defends depositions without using outside counsel.

One of your in-house colleagues from New York, Kathleen, is visiting. One of the company's IT people has been subpoenaed to give a record's custodian deposition in a California state court case in which the company is not a party. The deposition shouldn't be adversarial and shouldn't last long. It's at 2:00 p.m. today and there is no one available to cover the deposition so you ask Kathleen to cover and represent the witness.

At 2:45 p.m. on the same day, the deposition becomes contentious because the witness can't answer questions. After several "badgering, asked and answered" objections by Kathleen, the examining lawyer says: "I must inquire – are you licensed to practice in California? If so, what is your bar number?"

At a break in the deposition, Kathleen calls you in a panic: "Help. What do I do? Does my New York license help? It's the only state in which I have a license?"

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Scenario 8: Appearing in a Jurisdiction You Are Not Barred In

Does Kathleen have a problem with the California Bar?

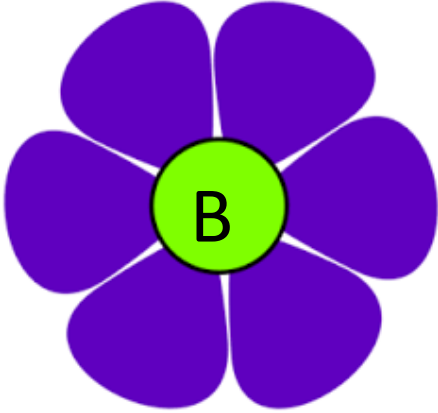
- A. No, because she isn't appearing in court or holding herself out as a California Lawyer
- B. Yes
- C. No, because her involvement is temporary

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Answer



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**Thank you for playing
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