

## ETHICS QUESTION OF THE MONTH

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### Question

Partner Y sued Partner X for breaching their partnership agreement when X kicked Y out of the partnership. X concedes kicking Y out of the partnership but contends he was justified because Y was stealing company moneys and acting contrary to the partnership's best interest. Lawyer A represents Partner X, and Lawyer B represents Partner Y in the breach of partnership suit.

Partner X has counterclaimed against Y for fraud and conversion of partnership moneys. The litigation has continued for months, and settlement discussions have gone nowhere. In a conversation before trial, Lawyer A tells Lawyer B, "Look, let's get real about what is going to happen next. Your client faces significant liability at trial and has no real defenses to his misappropriation. Plus, your client could end up in jail for stealing partnership money. What am I missing here?"

Lawyer B responds by claiming that Lawyer A has violated a disciplinary rule by saying anything about the possibility of Partner Y going to jail during settlement discussions. Lawyer B files a grievance against Lawyer A and hopes that the grievance will be enough to get Lawyer A to recommend that his client come back to the negotiating table with a reasonable offer. Lawyer A receives the State Bar notice of Lawyer B's grievance by mail two days before mediation between the parties.

Which of the following is most accurate?

- A. Only Lawyer A has violated a disciplinary rule by threatening criminal prosecution in a civil matter; Lawyer B cannot violate a disciplinary rule because complainants have absolute and unqualified immunity in filing grievances.
- B. Only Lawyer B has violated a disciplinary rule by filing a grievance against Lawyer A; Lawyer A's conduct does not rise to the level of an actual threat.
- C. Lawyers A and B have both violated disciplinary rules.
- D. Neither A nor B has violated disciplinary rules.



#### ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at [legalethictexas.com](http://legalethictexas.com).

#### DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

### Answer

The correct response is D. For the reasoning behind the answer, go to [legalethictexas.com](http://legalethictexas.com).

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