

### C. *Six Rules of Survival*

The best way to avoid trouble in the real world is to follow these rules of thumb:

1. *Never create a duty you don't want to create*
2. *Always be prepared to walk away*
3. *Assume everything you do or say will become publicly known*
4. *Never mistake the client's problem for your own*
5. *Never do as a lawyer anything you find repugnant as a person*
6. *If you mess up, fess up*

The first rule stems from a basic fact. When lawyers get into trouble it is generally because they have violated a duty they have assumed themselves.<sup>1</sup> Lawyers assume duties either by agreeing to do so, as when they agree to represent a client, or by doing things that induce non clients reasonably to rely on the lawyer to have acted competently or to maintain confidential information. Duties are the benchmarks against which your conduct is measured. If you are unwilling or unable to comply with the obligations of a duty, don't assume it.

The second rule has two aspects: (a) Always be prepared to quit a firm or fire a client; (b) always be prepared to be fired by a firm or by a client. Either way, the bottom line is that you have to be prepared to walk away from a situation if the only alternative is to violate the law.

This rule may mean more than is evident at first glance. Many lawyers get in trouble because they feel economic or social pressure to do things they know they should not do. Modern legal practice is highly competitive. Some lawyers compete by taking aggressive positions in litigation or negotiation, or by assuming business as well as legal responsibilities in transactions. Competition is ethical but it can drive competitors too far. At some point "aggressive" lawyering bleeds into unlawful lawyering, and it is often hard to distinguish between the two. In general, the less able you are to leave a job or a client the more leverage the job or the client has in situations in which you might be asked to do something your instinct tells you is wrong.

You should take the third rule literally. With modern technology anyone who is really determined to prove a fact can pretty much do so. The only real question is whether they care enough to spend the time and money needed to do it. No document ever really disappears, much less an e-mail. Invoke this rule anytime you hear anyone say "they'll never find out" or "how could they know?" The answer is easy: they could take your deposition. And then you have to decide between admitting the fact in question or committing perjury.

The fourth rule is a reminder that you have to keep a cool head. Lawyers who get too wrapped up in a case and view it as a personal contest are more likely to do the wrong thing than lawyers who keep their perspective. There is an old maxim (supposedly originating with Thurman Arnold, a well-known antitrust lawyer), which goes like this: At some point in your career, you will face a situation in which either you or your client will go to jail: make sure it is your client. Put differently, you represent your client in dealing with your client's problem. The trick is to remember that it is your client's problem, not yours.

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<sup>1</sup> Lawyers have some duties simply because they are lawyers (duties to report misconduct by other lawyers, for example, discussed in Part 13.A.), but these are less commonly the source of trouble than duties lawyers assume by their actions.

The fifth rule is basic common sense. You have to sleep at night. You have to be able to tell your spouse, partner, or children what you do for a living without being ashamed. Different people will have different tolerances for different things. Most people manage to find stories to tell themselves about why what they do is all right. The point is not to let the pressures of work push you outside the bounds of your tolerances, whatever they may be. In 30 or 40 years, your career will be over and you will look back and ask yourself what you've done. Spend your career crafting an answer to that question that you will be able to live with.

The last rule is a practical one. Everyone makes mistakes. At some point in your career, you will, too. When you do (*when you do*), admit it, try to make it right, and move on. Do not try to weasel out of it or cover it up. You will only make things worse.

This point can be seen in a lesson we repeatedly see re-learned in Washington D.C.: *It's the cover-up that kills you*. Nothing is more common than for a lawyer to take some action they shouldn't, or fail to take some action they should, and to say to themselves that they will break a rule just this once, in this one exceptional case, and then go back to following the law. Nobody will know, they say to themselves; everybody cuts corners at one time or another. (We will study this problem as an aspect of the psychological phenomenon known as loss aversion.) The problem is that almost invariably the first infraction is followed by a situation in which the lawyer has to admit wrongdoing or lie. The first lie requires another, and so on, until the original infraction, which might have been fairly minor, has borne a monster.