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# When (and How) to Tell Your Boss They Are Being Unethical

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**M**y supervisor, Keith Call, grew up as the youngest of eight children, including seven boys. There were many times when Keith had to choose between being an accessory to a rule violation and reporting the conduct to parental authorities. Being the accessory was often the easier choice. That choice usually came with some type of benefit, even if only short-term, and no one wanted to be labeled a tattletell.

Young lawyers can sometimes face similar choices. We all know we are required to faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Utah Supreme Court. This is just as true for a first-year lawyer as it is for a seasoned lawyer. It is also true even when a subordinate lawyer is acting at the direction of another person.

Utah Rule of Professional Conduct 5.2(a) makes this clear. It states, “A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.”

Is there any leeway for a subordinate lawyer? Can a brand-new lawyer really be subject to discipline for violating an ethics rule when they were only following the direction of their boss, or another senior attorney in their firm? The answer to this question is, predictably, “It depends.”

Rule 5.2(b) provides that “[a] subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s *reasonable resolution* of

a question of professional duty.” (emphasis added). The comment adds, “Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules.” Rule 5.2(b) cmt. 1.

In short, subordinate lawyers are expected to be aware of and follow the Rules of Professional Conduct. In situations where an ethical decision is not black and white, a subordinate lawyer *may* find some cover in following the supervising lawyer’s “reasonable” interpretation and application of the rule. That said, subordinate lawyers should not blindly follow the directions of those senior to them. Subordinate lawyers have been extensively trained in the Rules of Professional Conduct and, because of that, are responsible to independently evaluate ethical dilemmas and determine whether the Rules are being followed.

So, what should a subordinate lawyer do when asked by a supervising or other attorney to do something they perceive to be unethical? Like Keith’s childhood choices, these situations can be difficult because, on the one hand, young lawyers want to stay employed, receive a paycheck, have good relations with their superiors, and not be labeled as a troublemaker. On the other hand, if the action would indeed amount to a rule violation, it could implicate a lawyer’s good standing before the Bar, something that can have severe long-term consequences. See Andrew J. Seger, *Marching Orders: When to Tell Your Boss “No,”* FLA BAR J., Feb. 2013, at 34.

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Here are three things subordinate lawyers can (and should) do when faced with ethical dilemmas such as those we've described here.

1. In most situations, disagreements about ethical dilemmas can be solved simply by having a conversation. *See id.* The subordinate lawyer should take the time to study the applicable rule, including case law and commentary about the rule. Then, the subordinate lawyer should confidently ask their supervisor to explain the reasoning for their decision in light of the applicable rule. The subordinate lawyer should not be afraid to ask questions designed to challenge the supervisor's explanation. Any good supervisor appreciates an associate who is willing to reasonably challenge decisions and strategies. On the flip side, supervising attorneys should take the time to explain decisions to their subordinates and should be open to learning from someone younger or less experienced.
2. Subordinate lawyers can reach out to the Utah Bar Ethics Hotline, which can be reached at [ethicshotline@utahbar.org](mailto:ethicshotline@utahbar.org). This is a great resource that will keep lawyers' questions confidential. *See id.*

3. If the subordinate lawyer still feels like they are being asked to participate as accessories to a rule violation, they should ask for help from another trusted third-party. *See id.* Ideally, that would be another senior lawyer in the firm. If that is not available, the subordinate lawyer would do well to seek advice from a trusted lawyer outside the firm. In doing so, the subordinate lawyer should be careful to avoid disclosing any privileged or otherwise confidential information.

As a child, Keith learned that "my brother made me do it" was not a good defense. It is not a good defense to a lawyer's ethical violations, either. If you are a subordinate lawyer and find yourself in a sticky ethical situation, don't just assume you'll be free of trouble simply because you're relying on your supervisor's direction. Talk openly to your supervisor about the issue and use the resources available to you. And, finally, be confident that your training and education have prepared you to make good decisions!

*Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the authors.*

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