CHICAGO TITLE INSURANCE COMPANY

TOPIC:	Ethics—The Real Estate Lawyer and Ethics

By: Alan E. Ferguson
The Firm at Fisher Park, Greensboro, North Carolina

INTRODUCTION

Discussing lawyer ethics is a humbling experience. I suppose any relevant approach would have to begin with references to the State Bar Revised Rules of Professional Conduct and Ethics Opinions. You should have fingertip familiarity with these, but this paper is not written as an exercise in parsing through what has already been written about ethical behavior. I have cited Revised Rules of Professional Conduct and Ethics Opinions in the following text. But this paper is written more as an answer to the following question: In the heat of the business moment, with currents and eddies of emotion, selfishness, greed and even distress swirling all around us, how do I consistently do the "right thing?"

I began my practice with no training whatever in the field, other that the nuts and bolts of the law I had learned to recognize in law school. I had to learn from the ground up. I learned the pleasure of helping people, of doing a job well, and the pain of rejection and what I like to consider is only occasional ineffectiveness. I know well the issues I am discussing here because I have learned many lessons the hard way, -- by running into obstacles that I might have avoided if I had known better or had sense enough to know were ahead of me. At the same time, nearly every day confronts me with some sort of ethical challenge. I am often initially uncertain as to what I ought to do and then have to work out the facts to some conclusion as to a proper course. However, I am absolutely certain that neither I nor you have any chance of performing our duties ethically without a full and complete understanding of our role in a transaction and in the culture that requires our help with real estate matters. I am equally sure that you must then display the courage necessary to act upon your understanding of your proper course of action. The following is a summary my perspective of the ethical environment we practice in and some of the techniques I use in my struggles to see my way through the thickets.

I. THE GATEKEEPER

A. Work That Adds Value.

I believe that any consideration of principles of morality or justice as they apply to our role as real estate professionals must begin with an inquiry into just what value we bring to any transaction. If we are not contributing expertise that facilitates the smooth completion of the transaction, then you should ask ourselves just what we are doing there to begin with.

Traditionally, the first duty of the attorney in a real estate transaction is to represent the party who has hired him to perform a service. But what does this really mean down on the ground where things happen? In the typical residential transaction, the attorney performs all of the following tasks:

1. performing a title examination for the buyer,
2. counseling the buyer throughout the process,
3. preparing and sending a title opinion to the title insurance company with a request for the issuance of a title insurance binder,
4. preparing documents for the lender providing the money for the transaction,
5. preparing a deed for the seller to sign,
6. paying off the seller's existing mortgage, and
7. disbursing funds to all who are to receive them at the conclusion of the execution and recording of the documents.

See CPR 101, RPC 210, 97 FEO 8 and 2004 FEO 3.

B. <u>You Are A Clever One, And You Have the Knowledge.</u>

Most people seem to have some understanding that the attorney knows how to do a great many "things". They conclude that the attorney is an intelligent and clever person who can fix just about anything that is broken in a legal way, just as many believe that the doctor ought to be able to fix just about any condition that afflicts the body. Again, "don't you just have a form that will do this?" As the fixer of and prophylactic against legal maladies, and as the fabricator of documents that will stand the test of time, to the sophisticated and untutored alike, the attorney assumes the role of "gatekeeper." Any transaction consists of a series of "gates" (loan application, appraisal, insurance and so forth) that an aspiring property owner must pass through before gaining legal title to a parcel of this earth. You are the person who stands at the final series of "gates" and allows this person in to sign a deed, requires that one to do so, another one in to sign a promissory note, and then that fellow over there to appear at your bank and tender a check representing sale proceeds from the transaction.

One of the realities of our economy is that people move rapidly from job to job and industry to industry. In any given transaction, the attorney is likely to encounter someone who is new to the task for which they are responsible. With much of the "institutional memory" as to how things work wrung out of the system, the attorney may be required to assume the tasks of facilitator, coach, trainer, creator and overall guru.

All of the information gathered through the course of the transaction is distilled and funneled to the closing attorney. Like the job superintendent on a construction site, the attorney is the only party with an overview of the entire process. The superintendent is not the carpenter or the ironworker or the concrete contractor, but he understands the tasks each of them is to perform and how the efforts of all fit together into what will be the final product. In the attorney's situation, the final product is a title that is and will remain marketable and a deed of trust on the client's property that will allow for a foreclosure upon default.

At the conclusion of the transaction, everyone will assume your assurance that all has gone well. For example you must be certain that the borrower knows and understands his interest rate and his terms of payment; or that he knows that he has a prepayment penalty in his note that requires that he pay a two-percent penalty if he pays off his note early. Client expectations of your control of the information gate can run very high. (*I know of one attorney who was sued two years after he conducted the closing on his client's property. His client had failed to make <u>any</u> payment on the note for two years. When foreclosure began, he sued his attorney on grounds that the attorney had not told them **where** they were to make their payments!*) Be absolutely certain you are there with the folks to do the explaining, because the perception is that <u>you know everything</u> about the transaction you are facilitating. *See 2001 FEO 8 and 2002 FEO 9.*

C. <u>Risk Elimination</u>.

As the "gatekeeper", it is clear that you as the transactional attorney in charge are in the risk elimination and mitigation business. You have the benefit not only of an overview of facts particular to the title and parties before you but also of the precedents for your being involved to begin with. Armed with your understanding, you are in a position to assure the parties with confidence of the acceptability of the risks posed by the elements that compose a real estate title. You know that the buck-passing has to stop somewhere, and the public says we are it. That is what we get paid for.

Some of us may counter that, yes, what Ferguson says is all well and good, but most titles have a title insurance company standing behind them; and does the title insurance company not stand ready to indemnify your client against loss in the event of a damaging encumbrance or failure of title? Doesn't that protect the attorney from being treated as the "gatekeeper" and from being treated as such? Well, no. Your house may also be insured against loss by fire, but most people would not therefore be entirely indifferent to their house burning to the ground. The integrity of a title is no less important than the day to day survival of your house. What we do to assure that integrity is essentially the value that we bring to a transaction.

D. <u>The Federal View</u>.

If you do not believe in the accuracy of my analogy, you only have to wait until something goes wrong with any part of the transaction. You will be among the first to receive a telephone call. Your client, the seller, the lender, the local tax department, and yes, the federal government (read IRS and FBI) all believe that you were the gatekeeper of the transaction. The government believes that you, the closing attorney, are the only one in a position to see that the transaction is conducted between honest parties and that the numbers you have handled are consistent with the information previously presented to the lender. (See, for example, *2001 FEO 12* regarding affixing inaccurate excise tax stamps to a deed.)

What does this mean on the ground? *It means that if the purchaser pays for the closing with cash (and I mean currency) you may wind up testifying before a federal grand jury regarding your dealings with Mr. Currency and the contents of your file as the possessor of relevant evidence regarding his dealings with the drug business. Prior to this testimony you will have your rights read to you, just like on TV, as though you were the defendant. (This is assuming, of*

course, that you reported the receipt of cash as required by law. Otherwise you have a bigger problem.)

Everyone, justifiably or not, expects you to notice glaring inconsistencies in documents or situations. For example, months or even years after you have closed a file, you might be asked the following questions by federal agents.

1. Why did you continue with a closing where the buyer named on your Settlement Statement is different from that person named on the offer to purchase contract?

2. Did your mortgage broker or buyer at that closing tell you that "they had to do it this way in order to qualify for the loan?"

3. Why did you proceed with the closing of an FHA loan with a buyer who was buying his third house in the last six months, when one of the affidavits he had to sign in your office was that he intended to occupy the house as his primary residence? (The suspicion would be that that "buyer" was in fact really "brokering" the house to a third party, and it will be suspected that you knew of the third party.)

You should also assume that if your client is later arrested for federal loan fraud, he will at some point in his interrogation recite that he ran the entire procedure by his attorney (you) and you said it was all OK! One of the next visits you might then receive could be from an agent of the United States government (this would be the Federal Bureau of Investigation) who has dropped by your office to ask you a few questions, which may initially sound rather unthreatening.

If the Justice Department is still interested in you after your chat, you may then receive a subpoena for a series of your files and a request that you testify under oath as outlined above. The assistant United States Attorney conducting the Grand Jury investigation may ask the jurors to impute knowledge to you based upon the perception that your superior training and perspective should have allowed you to recognize an illegal scam when you saw it, before you helped move it forward. If you are then indicted, you will be formally arrested by the federal marshals, generally by an invitation to appear immediately at the nearest federal courthouse. If you prefer, they will come and get you, and give you a ride. There, you will be taken before the federal magistrate, where your pockets will be emptied and your belt taken and shoes removed before you are handcuffed and then led to a holding cell to sit with the government's other customers of the day awaiting arraignment before the magistrate. You will be ordered to surrender your passport and required to remain within a narrow geographic area. You will probably then be released on your promise to appear at your trial. Some months later, if you have not pled guilty to something, you will be tried. If you are found guilty, the Court will set a sentencing hearing to occur some months in the future. At the sentencing hearing, you will be formally sentenced. If active time is imposed, you may again be released and ordered to appear at such and such federal facility (prison) on a certain date. During the course of these months you will likely be unable to continue practicing law and may be unable to have any employment. On the agreed upon date, you will then surrender to the federal marshalls, again, and you will be transported to a federal facility somewhere in the United States. I say somewhere, because you will be sent to whichever of those facilities has room for you at the time. There, with luck, you will have an agreeable cell mate.

It seems that an intelligent person could reasonably conclude that this fate could await only someone whom the government believes was very important to a transaction, the Gatekeeper, now upper-cased, as is consistent with his status.

II. BAD THINGS OR ACTIVE, ETHICAL CHALLENGES

How can we avoid becoming someone's cellmate? I have found it helpful to identify some of the more corrosive elements of the practice. These elements will confront you with some of the most fundamental and subtle ethical challenges you will encounter. The sooner you accept the fact of their existence, the sooner you will find that you can work around them. With a little savvy and perseverance, these obstacles are surmountable.

A. Bullies.

The bully, defined as "one who is habitually cruel, especially to smaller or weaker people" is an unfortunate fact of life in real estate practice. Real estate attorneys are in the position of being perceived as "smaller or weaker" because someone who is beyond our control is sending us the business that keeps us afloat. Coming out of law school, most of us have long forgotten about bullies. We have always been smart enough to counter or avoid them throughout life. The good news is that we still are.

But why does the bully confront us in the practice of law? Remember what I said about the attorney being the gatekeeper. All of the money flows through the attorney's hands. The attorney is the one who "makes it happen". No one gets paid until the attorney says so, thus making some people very anxious and some others quite unpleasant. They may insist adamantly that you must do whatever it takes to make something happen right now. If a transaction collapses (perhaps because you insisted that the uncooperative estranged spouse of one of ten heirs sign a deed) they may blame you. One cardinal rule about bullies: the louder they yell, the more you should be wary regarding the substance of their complaint. (Of course, if it turns out that you were wrong, admit it and go on.)

Some of the more common bully-tactics I have encountered are as follows.

1. "**No body else makes me do this**!" or its slightly less common brother, "Everybody else does it this way!" I have found this to be universally untrue in my practice. Part of my job is to know the standard of care in my community and I know how things are and are not done. (I know what the standard is by staying in touch with my peers -- more on that later.)

2. "I have a **car payment/house payment due today** and I must get that check!" Move as quickly as you can to complete a transaction and then disburse. But first you do have to have permission from your lender to fund the loan, and you must record, and deposit or confirm the receipt of the loan proceeds before you are allowed to disburse loan proceeds.

3. "**My office will not pay me** this month unless I turn in this commission check by 4PM!" Again, and I am not making light of the complainant's problem, but you must disburse

money by the book, and bar rules require recording before disbursal. Circumstances simply may not allow you to get to the courthouse and get recorded on the day of closing.

4. "The **seller will not give the buyer the keys** until they have a check in their hand, and the moving truck is sitting at the curb, waiting to unload." This is a reasonable position and a real problem for the buyers, but see numbers 2 and 3. It's a bigger problem than in the past.

5. "Can't you just **give me my check and I will hold it** until you call me and tell me it is OK to deposit?" This is a perennial problem and is unabated from previous years, in my experience. Don't do this. This constitutes disbursing money before recording and depositing and is therefore a violation of bar rules and the law. With your check now out of your control, you are expecting too much of human nature to presume that anyone will hold an undeposited check for very long. (See *Chapter 45A* of the North Carolina General Statutes, the *Good Funds Settlement Act*, and also *RPC 191* and *RPC 78.*)

6. "I want you to run **one closing statement for the borrower** and **another for the loan company.**" Illegal. They want you to hide something for them. Don't do it and become a party to loan fraud. The Settlement Statement is considered the final word on just what really happened at the closing and by preparing, signing and attesting to its accuracy, you are putting it into the national stream of commerce. Remember that we owe a duty to the title insurance company whose money is at risk under your closing protection letter *and* a similar duty to your own malpractice insurance carrier. (See *RPC 44*)

People may at times get in your face regarding these and other issues, but you have to stand firm on your procedures. They may call you slow and unprofessional and threaten that "if this is the way you do business then we cannot use you again." (An angry party once admonished me that I was so uncooperative that he wondered if I had started drinking!) OK. If you believe you are a professional, then you don't need to be "used" by people who have so little respect for your professionalism that they will ask you to break rules that they know you are required to follow.

All of this applies thrice-over for your staff. I have found that one of the biggest causes of staff burnout is verbal abuse. Bullies may be guarded in what they say to you and then thirty minutes later become enraged at a staff person who does no more than repeat the content of directions you had earlier stated to a caller. If your assistant is valuable to you (and they should be, because good people are hard to find), you have to get creative and find a way to protect them from unreasonable verbal attacks.

B. <u>Isolation</u>.

Every year I am more certain that isolation from other attorneys is one of the biggest impediments to practicing ethically. I absolutely will not tolerate allowing the conditions we practice within to isolate me from legal associates and friends. Face it: The likelihood of any issue I encounter in practice being a matter of first impression to the legal community is remote. Why would we put ourselves in the position of having no professional friends who could at least serve as sounding boards for us? Make other attorneys your friends, find those you can talk to and use them freely. They will be happy to talk to you. They are not simply indulging you; they also instinctively know that by listening to you they may learn from your problems, and

that by helping you think through an issue, they may be better able to work through a similar problem when they encounter it. An experienced attorney may in fact know the parties involved in your issue or she may have been through circumstances similar to your own. They should at the least have judgment tempered by many years in the trenches.

If you use your lawyer friends, their advice will help to **give you the balance** you need to successfully practice. By exposing your own thoughts to the "fresh air" of their insight you may come to realize that your own thinking was off base, or that you need to go in another direction in order to avoid error. This is also a great way to steer clear of paranoia and cynicism. In addition to serving as sources of practical advice, collegial friendship is a great source of emotional and psychological support. There is no substitute for strength afforded by comradeship.

Joining your **local bar association** is a great way to begin to form these relationships. These are voluntary associations, and my own has been a constant source of friendship and support since I began going to meetings twenty years ago.

You should also cultivate your relationship with the attorneys employed by the **title insurance companies** you use. These people are your friends and allies in doing a good job and are eager to help you work through problems. They are in the fight to do a good job with you and can be of great assistance in times of need.

Another benefit of cultivating a collegial relationship with other attorneys is that that man or woman you got to know at the last bar meeting may be in a position to **vouch for you** during some time of trouble. Having someone who knows you and can honestly attest that you are a reputable person of good faith who seems to try to do the right thing may be invaluable in getting you through a scrape.

C. Anti-Social Behavior

As I earlier stated, if everyone did the right thing every time, there would be no need for attorneys. Unfortunately, in your practice you will encounter some individuals of very bad faith. It is better to go ahead and recognize that now and be on your toes. Again, see the above paragraphs regarding your role as gatekeeper. Some people seeking to accomplish their goals are clever enough to know that if they are honest with you they will fail in their ends. As I mentioned above, some will attempt to include you as a part of their conspiracy to do wrong. The following are a several of the more conspicuous types of "lying liars who lie to you". Beware.

1. Identity Thieves. Yes, there are those out there with enough audacity to walk into a lawyer's office and pretend to be someone other than himself or herself. Prime examples arise in domestic problem situations. For example, John Smith may be married to Jane Smith but is now separated from her and has been kicked out of the marital home. Seeing that the real estate has equity in it, he convinces his girlfriend, Susie Jones, to go with him to the mortgage broker to apply for a loan secured by an equity line deed of trust on John and Jane's house. Susie of course will have to pass herself off as Jane Smith. This is easily enough done when John tells the mortgage broker that she, "Jane", cannot come to the office to sign the application because

she has to work, and that he will simply take it "home" and have her sign it there. Believe me, if they get over the hurdle of the loan application, they are not going to confess in your office when it comes time to sign the loan documents. A variation on the theme is a son or daughter in desperate need of cash (perhaps to be used to purchase substances that are not currently legally available) doing the same thing, with the twist of representing himself or herself as a parent. How do you avoid this? Check identifications closely and keep your antennae up at all times.(See *Chapter 10B* of the *North Carolina General Statutes* requiring personal appearance before a notary)

2. Attorneys-In-Fact. On occasion, a person who has been given power of attorney for another person, usually an ailing or elderly parent, aunt or uncle, will attempt to overstep the bounds of their authority by committing some self-serving act such as deeding their principal's real estate to themselves. This is generally justified on grounds to the effect of "mama would have wanted me to have this anyway, since my no good brother never did anything for her." Well, maybe so, but be certain the recorded document granting the agency authority granted the authority the attorney-in-fact is claiming he now has. (See 2003 FEO 7 and the historical rules against self-dealing by a fiduciary.)

3. <u>Free Men and Common Law Liens</u>. This is a less common variation on the theme of shifting identities described above. During the Nineteen-Nineties, someone got the idea that they could execute and file a document that declared their intention of personally seceding from the United States and therefore no longer being subject to the laws that the rest of us live by, including the tax laws promulgated by the IRS. After execution and acknowledgement of their document, they file it in the office of the county Register of Deeds or Clerk of Superior Court. They may also file another document declaring there to be a "common law lien" against their property declaring that the "lien" they have filed has priority against other liens on their own property or the property of others (such as that of judges or sheriffs!). These people are trouble and the best advice when you find one of their instruments in the chain of title is to walk away from the transaction. If that is not practical, they need to execute whatever documents work to clean up their titles. (NOTE: Subsequent legislation has allowed officials to accept the liens but limit the indexing, thereby preventing the lien from attaching in many instances.)

D. <u>Surprises</u>

These are my final "bad things" I will identify that impede my ability to practice ethically. During the first years of working in the adult world as an attorney I was often surprised by the actions of various individuals and in general simply by the way some things work. Looking back, I probably shouldn't have been caught flat-footed as often as I seem to have been, but the experience is a fine teacher. I learned that most of my surprises concerned facts and sets of circumstances that are quite common in our work place.

1. My biggest surprise was that people who held jobs that I assumed required a certain body of knowledge **did not always really understand those jobs**. That is, those in a position to know something may not in fact know it. For example, those who send to you loan instructions may not understand that when those loan instructions forbid any deviation from their directions without subsequent written instruction, that is exactly what they mean. You

may be talking to someone who is unsophisticated or inexperienced, who just does not care, or who is working a notice. An oral OK to proceed contrary to written instructions will not do.

2. You **cannot believe everything that you read**. A set of loan instructions that has no details regarding fees to be paid to the bank is probably in error in that regard. My rule is, if it doesn't look right, odds are it is not right. Read critically and if in doubt make a telephone call. Always document in some way the answer you receive.

3. Attorneys who do not involve themselves in real estate as a part of their practices **do not always understand real estate** law, just as I do not understand trademark and patent rules for example. (And, with all due respect, this sometimes includes judges.) In particular, they do not understand real estate closing procedures. Before you listen to another attorney and follow his advice, be sure he knows what he is talking about. For example, be very careful regarding the opinion of some as to the necessary signatories to a deed conveying title to estate property.

4. Title insurance companies are not obligated to allow you to certify titles to them prior to their issuing title insurance coverage. In other words, they do not have to put you on their list of approved attorneys and, once there, they have absolutely no obligation to keep you there. They are generally too nice to tell you this, but you need to know. Title insurance companies have a responsibility to their own shareholders and are in the business of making money. They do not enjoy paying claims for our mistakes. When you tell them something is so, they expect it to be so and may later hold you accountable for your representation. Remember, you have a duty to the company to certify title accurately according to the public records and to close in compliance with the law.

5. Malpractice insurance carriers do not have to cover you. If they do cover you, they do not have to charge you only a premium you can afford. They too have an understandable aversion to paying your claims and will not tolerate it for long. This can be very inconvenient when you are asked by a lender to provide a copy of the endorsement page of your malpractice policy before they will send you a loan package. Increasingly, lenders will deal only with covered attorneys. For your own edification, call up a carrier different from your own and get a premium quote. You may be shocked.

III. GOOD THINGS

In the sometimes rough and dangerous environment I have described, there are many actions you may take to help you succeed in steering clear of the pitfalls and stay on the ethical path.

A. Amnesia Avoidance

One way to keep yourself clear of problems is to avoid assuming that people with whom you have dealt will later accurately recall your conversations. I call this the "amnesia" problem. That is probably a little harsh because, again, people hear what they want to hear and they interpret ambiguities in favor of how they want things to turn out. This is a primary reason why the attorney is well advised to, for example: (a) explain in detail all of the loan documents his clients are signing so that later, after a borrower has complained at closing about the interest rate being two percent higher than that represented to him by his mortgage broker, the attorney will

be able to testify that he has a procedure during which he always explains the interest rate and always makes copies of the documents for the client, or (b) explain in detail, and in this case perhaps express in writing, why the owner's title insurance policy the buyer has refused to purchase would protect him against a host of dangers against which there is no other protection. You must be able to refute amnesia.

B. Recognizing Red Flags

The ability to recognize signs that there may be trouble ahead is as important to the attorney working his way through a transaction as to a sea captain or to a pilot who must keep an experienced eye on the weather. Some of the more common red flags follow.

1. A client who comes to you **complaining of his last attorney** or who has recently fired his last attorney. There may have indeed been some flaw in the attorney's service that led to unhappiness. We all drop the ball sometimes. However, the individual or the institution now calling on you for assistance might also have been so unreasonable, pushy, arrogant or downright deceitful that the previous attorney could no longer tolerate him. I can assure you that if they were so before, they will likely be so with you and your staff and you had best be prepared for them.

2. An **institution unfamiliar** to either you or your acquaintances probably is completely legitimate, but how do you know so? You have no points of reference with them. Raise your antennae extra high.

3. Big promises of forthcoming business for you if you will help them with this first deal for a special price for some other consideration may pan out, but generally do not.

4. Requests for a special low fee are, of course, a part of doing any business. You cannot blame someone for wanting to secure your services for the lowest possible fee. But they may not understand the degree of effort required of you to accomplish their goals for them. They may therefore also not understand why it takes you so long to complete a task or why you may be unavailable every time they call when you are away at the courthouse working for them or doing the drafting work on their project.

5. The louder they yell, the ruder they are, the bigger the red flag.

6. Be certain that requests for speedy work are reasonable and do not put you in the position of having to do something requiring more time or thought than the time you are being allowed. Remember that **speed kills** in the practice of law as well as on the highway. You must allow yourself the time to think things through. I am not aware of any studies that have concluded that the human brain now processes information faster than in the past. Other information processing systems may have improved dramatically, but the mind is as plodding as ever.

7. Institutions that have **no "brick and mortar"** substance in your area, that operate only over vast distances via telephone lines or the internet are probably just fine and of no danger. Nonetheless, brick and mortar have always implied a commitment to continuity and

permanence and reliability. At least they offer a proximity to you where there are human beings you can go see face to face if necessary.

8. Property values represented to you as being very different from those you would believe should be the case might represent an attempt to defraud a lender into lending more money on the property than its market value would justify. You are not an appraiser and no one expects you to be one. But be sure there is nothing in your file that would lead you to ask the lender or your client if they are aware of a recent alternative valuation. Again, see yourself as the gatekeeper.

9. **Elderly people on social security** may have to raise cash by mortgaging their property when it was previously free and clear of liens. But you have to ask some questions when you see from the application that the payments are $750 per month and the borrower's sole income is a monthly social security check of $525!

C. Credibility

Another aid to assuring an ethical practice is to develop credibility. No trait will serve you better in good professional times and bad than personal credibility with your peers and business associates. Build good relationships by doing a good job day-in and day-out and by being one they can all trust. Do not be someone your peers are afraid to turn their backs on, or about whom they believe they must reduce to writing every oral representation you make. Even today, there remains much credit available to you if you are one who "lets her word be her bond". Then, when something goes wrong, and you need a hand, it will likely be there for you. At the very least you can rest easy in the knowledge that you have behaved with honor and dignity.

I have also noticed that those who have the reputation for "doing things the right way" are not generally the ones who are asked to do work by the more ethically and morally-challenged members of society. If a wheeler-dealer knows that your answer to him will be "no" he is not likely to ask you to begin with. Even the crooks will be straighter with you. I believe this is a great example of your correct conduct working directly in your own self-interest.

D. Community Awareness

There is no substitute for knowing what is going on in your local and professional community. By this, I mean more than an awareness of the law and its constant changes. You must know who is doing what locally; who are the good guys and who are the bad guys. You must maintain some awareness of what huge institutions such as the Federal Trade Commission or large lenders may be proposing that might drastically alter the manner in which you conduct your law practice. You have got to read the newspaper. You must talk to people. You need to know about business in your local community and not allow CNN and FOX to keep you distracted with the crisis of the day. This is one of the best ways to know whom you are working with, and to know who you may not want to work with. You cannot keep up with the game if you don't know the players.

E. Supervision

Proper supervision of staff is absolutely essential to your professional survival. (See *RPC 216, 2001 FEO 4, 2002 FEO 9* and the Bar's *Guidelines for Use of Non-Lawyers in Real Estate Practice.*) Staffers can make you and they can break you. Believe me, your clients will judge you as they judge your staff. If your staff is rude, incompetent or unhelpful, you will suffer the consequences of complaints, lost business and even malpractice. On the other hand, if they are professional, diligent, cheerful and competent your clients will love them, will enjoy coming to see you, and you will do a better job of serving clients. They will make you money not just by being efficient, but by being better than those who work in the other law offices your clients may encounter. Clients will be less likely to complain about your fees and much more relaxed and easy to work with when they enter your office. I believe the following are particularly important.

1. Hire as experienced a person as you can afford. If you cannot afford experience, at least hire someone who can read well, and who can spell. That's right, literacy is a problem in this country, and you will soon know what a problem it is. For example, someone has to read those loan instructions you receive, and someone has to put your words on paper for you. "Spellcheck" will not always save them. (I once dictated a motion in a superior court action in which the word "validity" was to appear in the caption of my motion. I believe I speak fairly clearly, but when this document was typed my assistant had typed into my caption the word "virility". Words, schmurds, spellcheck recognized both words as proper. I had a bad habit then of not reading captions -- because, I thought, who could get a caption wrong! -- and only caught this in time by the grace of God.)

A corollary to hiring experienced help is that you should run a criminal check on new hires. (Again, learn from me and don't hire someone only to have the local police show up in your office the next day stating that they have just seen a car in your lot -- her car -- that has been reported stolen for some weeks. When I then checked my new assistant's name out down at the courthouse, I understood.)

2. You get what you inspect, rather than that which you expect. Read staff's work product; it has your name on it and blaming errors on staff will get you nowhere. This is particularly applicable to deed descriptions

3. Do not assume that a staffer knows more than (a) you have trained them to know and (b) have confirmed that they do, in fact, know.

4. **Ask lots of questions**, be very specific (you can apologize later if they complain later that you were talking down to them) and listen skeptically to the answers you receive. Apply the truth test liberally. (My own experience provides a good example of a failure in this regard. I had just hired an assistant, on someone's recommendation, only to discover that her computer skills were not great. In my own example, I cheerfully pointed my new person to the computer and asked her to pull up the such and such folder for me from the desktop menu only to be told, "Lord, Mr. Ferguson, I've hardly seen one of these things before".) My bad, but what a sinking, horrifying feeling.

5. In a real estate practice, your staff will routinely handle large numbers that represent large amounts of dollars. Be absolutely certain that your staff **makes the connection between numbers** they are manipulating within the computer **and real money** for which you are responsible. Yes, I have discovered that, unbelievable as this sounds, when people are not personally responsible for the handling of money, they may not make this connection. (When your closing assistant walks into your office five days after you paid off a $350,000 mortgage, and cheerfully informs you that "the bank just called on the Johnson closing and said our payoff was short ten days interest, and they need a check by 2:00 P.M. today in the amount of $671.23 or they are going to send back your check", you know that the connection has not been made between the numbers and your wallet.) Routine is your enemy here, because staff handles so much paper and so many details so quickly that the papers and the numbers assume some kind of abstract reality of their own. But your assistants must understand deep down that these numbers are real and represent real dollars that must come out of your pocket if their disposition is bungled.

6. With regard to money coming into and going out of your office, here are several essentials.

(a) **When you disburse money, check one more time** to be certain that the money coming into your account equals the total amount of the checks you are writing on your trust account. Again, you can blame the staff for an error, but you will have to pay for it. (See *Chapter 45A* of the *North Carolina General Statutes* and *RPC 191*.)

(b) Be certain that the **checks you write are being sent out or picked up** in a timely way. Often folks who are being paid at closing will come by to pick up those checks personally. Be sure your people know who is coming by and who wants their check mailed. Do not allow them to place on the receptionist's desk for pickup a $75,000 check going to some company in Texas which doesn't even have a representative in your town! Big companies sometimes do not realize for several months that they have not yet received a check for a sale in distant North Carolina. However, when they do they likely will ask you to pick up the interest for those several months.

(c) Be sure your **property tax payment and payoff checks** are sent out immediately. With payoffs, the clock is **runni**ng every day. Time equals money, and there is no forgiveness for tardiness, whatever the reason.

(d) **Do not allow others to sign your name on checks**. I know this is done (with ink stamps and otherwise), but doing so takes away some of your control over where the money goes and has been the source of several NC lawyers' significant dismay!

(See The North Carolina State Bar's Trust Account Handbook.)

F. <u>Sound Practices</u>

There are a number of practice habits and procedures I have discovered over the years that have helped me to provide better client service, that have made my operations smoother, and have

given me greater peace of mind. Incorporating these into my professional life has given me a better chance to achieve a higher standard.

1. Checking Titles Yourself. I know that this is not done now as often as in the past. The proliferation of independent paralegals across the state has made it possible to find someone you can hire to do the work for you in nearly any county in the state. Nonetheless, you are required by state bar rules to supervise anyone who is doing work for you. I do not see how this can be done if I do not know how to do the job myself from start to finish. I believe that supervision in the context of title abstracting includes an understanding of the process your agents are working through and your ability to understand the documents and reports they present. And, as unbelievable as this might sound, there are differences and nuances from county system to county system -- and there are 100 counties in North Carolina. How can you supervise someone competently if you do not understand the process yourself from the inside out? The situation in which a real estate attorney finds himself is similar to that of a pilot. Each has been trained to work the controls of his "machine" so that he can safely "fly" -- in your case law school has trained you in the nuts and bolts of the law and has trained you to think and analyze. To fly an airplane a pilot does not absolutely have to know how the systems work, he has only to know as a minimum how to activate and coordinate his craft's controls. However, you may have heard of the American WWII, Korean War, and Vietnam War fighter pilot, and test pilot, Chuck Yeager. He gave much of the credit for his survival in combat and in testing state of the art aircraft to his in-depth knowledge of the mechanical systems of the planes he was flying. This gave him a sort of sixth sense, allowing him to both detect problems before they became uncorrectable and to correct serious problems before they had fatal consequences for him. He credited this "extra" knowledge with saving his life on several occasions. (See RPC 216.)

In the same way, to survive in practice for any length of time and to work competently, you must understand the mechanics of indexing, filing, docketing, tax listing and so forth. (For example, what are the indexing standards for grantors and grantees in effect in the office of the register of deeds in the county in which you are working?) There is no way you can do this unless you have learned to perform the task of title examination yourself, from the initial receipt of a request, to the final opinion on title. If you are questioning someone who has abstracted a title for you, how otherwise are you to know if they are providing accurate answers to your questions? A further benefit to a knowledge of the mechanics of the process is that you will become friends with the staff of the offices of the Register of Deeds and the Clerk of Superior Court. They, as do your other friends in life, will help you in times of need. When you need questions answered or need to get in to see an assistant clerk regarding a troublesome estate, for example, they will be much more likely to be there for you. They may even telephone you to correct an error before it has gone too far to be called back.

2. Serve One Master. This is really old agency law. Serving one party at a time is one of the most basic sound practices, and, ironically, one of the easiest to stray from. If you will ask yourself the question, "Whom am I serving by performing this or that act?", many other ethical issues will begin to resolve themselves. But if this is so simple, why do I see trustees advocating for lenders at foreclosure hearings? Why have I within the past month learned of a residential sale where the attorney is acting as both the attorney and as the selling real estate agent, collecting a commission from the seller!

3. Ask Questions. Remember what I said earlier about people respecting you for your intelligence and education? The down side of that is that they will sometimes assume that you know more than you do. For example, if you do not understand loan instruction, telephone someone at the lender and ask what the troublesome instruction means.

Go up the chain of supervision until you get an answer. Always remember that if you don't understand something, it probably isn't very clearly written. (And a caveat, instructions to you are at times intentionally ambiguous.) If you cannot get a satisfactory answer, ask to speak with the legal department of the lender. They will see that you get an answer. If there is no legal department, then, "May I speak to the President of the company, please." I'm serious. You would be surprised how effective this can be. Persevere until you get the answer you need. Do not let an ambiguity place on you a burden of decision that should not be yours.

4. The "Smell Test" is always of value to you. Trust your instincts. If something stinks, there is probably rot there.

5. Take extra care With Loan Payoffs, both before you preside at the closing meeting and after you have completed the execution and recording of closing documents. Believe me, the buyer, the seller, the new lender and the lender you are paying off will each hold you personally responsible for seeing that an amount of money sufficient to the penny to satisfy an outstanding obligation reaches the "paid off" mortgage company.

This can be a tricky and exasperating process at several levels:

(a) When you have finally identified the company whose loan is to be satisfied, and have requested a payoff, be certain that that **payoff statement arrives in your office in writing**, and that it is arriving from the company that actually holds the note. Do not settle for a writing from the mortgage broker, the seller, or the real estate agent. This is a big problem for your staff to grasp because time is so imperative to them. Their initial tendency is to get some kind of payoff and move on.

(b) Be certain your **payoff goes out immediately** after recording. Time equals money. Again, staff does not always realize this, and if you are late with a payoff, a gracious seller may cover it, but if the tardiness lies at the feet of your office, you pay.

(c) Be certain your **payoff does arrive** at its destination. The best way to do this is to either hand-deliver the check to the bank, if it is local, or use an express, next day delivery service that provides a receipt for delivery and has an easily checkable on-line delivery reporting system. You absolutely must be able to trace the route of payoff checks.

(d) **Do not allow clients to carry payoffs** of their own loans to the bank. You will have a problem if the following occurred. Your client purchases Lot 5 from a builder who owns, let's say, lots 1 through 10. After the closing, you cut a check to pay off the builder's construction loan on Lot 5, and, at his request, gave him the check to take to his bank. There, he presented the bank with the check and his request to apply the check

to Lot 7. The bank duly honors his request and applies your check to Lot 7. (The builder is the bank's customer and the bank will likely apply a check he presents as he directs.)

(e) Take particular care with **equity lines of credit**. Be certain that your seller has requested the closing of his account and the satisfaction of the instrument you just paid down to zero. Otherwise, you are at risk that the seller's lender will allow him to draw the full amount of the equity line, which is now of course a lien against the buyer's title you have just certified as lien free. (See 99 FEO 5 and N.C.G.S. 45-81(c))

(f) From time to time, you are likely to hear some complaining about your insistence that you **supervise the delivery of your own checks**. Generally this occurs in something like the following scenario. You have finished a transaction around midday, and finally may disburse at, let's say, 1:45 P. M. (Daily credit for loan payments received usually cuts off at 2:00 P. M.) It is Friday, and Monday may be a bank holiday. In other words, interest will continue to accrue on the loan until Tuesday morning! It's not your fault everyone wanted to close at an hour when it was impossible for you to disburse so that the payoff check could reach the bank by 2:00, but you may get the heat if you don't hand that check over.

6. Real Money. When you believe you have loan proceeds in your possession sufficient to close a transaction and consistent with the amount specified in your loan instructions, be sure that whatever you have is **"real" money** that your bank will in fact credit to your account. The North Carolina Good Funds Settlement Act (N.C.G.S. Chapter 45) specifies what constitutes real money. Nowadays, loan proceeds very often arrive in our trust accounts via a wire transfer from the lender. You must be positive beyond doubt, willing to bet the amount of those loan proceeds, payable from your personal resources, that the funds are indeed there. Do this by arranging to obtain from your bank some sort of immediate written confirmation of the receipt of a wire transfer in your trust account. Most commercial banks have an on-line facility that will accomplish this for you. Do not ever accept an oral assurance from anyone that the money is there. Again, someone may become upset with you about questioning their word, but ask yourself: would they take your word that you had sent them say $300,000.00 and in turn disburse from their account based upon your representation? Of course not.

7. The Trust Account. Do not mess around with a trust account. Follow the State Bar rules to the letter. Trust accounts are repositories of other people's money and it is disgraceful to mishandle sums on deposit with you. This is the "third rail" of law practice: touch it and you are dead. Account for funds there and send the funds to the parties to whom they belong, always.

8. Notaries Public. Either you or someone in your office will likely be a notary public. Never acknowledge any signature that you have not been a witness to. Never allow staff to acknowledge any signature to which they have not been a witness. The ramifications of false acknowledgement are dire. I promise that you will be asked to do this and, in fact, you will be leaned on to do this. (Three days ago, a real estate agent brought several deeds by our office, handed them to one of our people, and turned to leave. I quickly flipped to the first

acknowledgement page and noticed that there was no acknowledgement. I trotted through the door, hailed the agent and noted to her that the documents were not acknowledged. "Oh", she said, a little sarcastically, "I thought you would have a notary in your office." [I resisted the urge to remark that I guess we are not a "full-service" outfit.])

Make it a habit to acknowledge only when you witness and they will stop asking. And remember, an attorney acting as notary must follow the law regarding acknowledgments. (See Chapter N.C.G.S. Chapter 10B and 2000 FEO 8)

9. Patience. Be patient with others and with yourself. I consider it high praise to be complimented for being professionally patient with others. When I hear this, I believe I have been successful in demonstrating compassion and a willingness to help where I can. Give yourself time to think and to be resourceful. Remember what I said earlier about the human thinking process being no speedier than it has been for thousands of years. Hold your temper, hard as that may at times be. You will make fewer enemies that way.

10. Manners. As your mothers always told you, good manners and kindness will take you places nothing else can. (Even if you are incompetent, you will get credit for being a "nice guy" who is struggling to do the right thing!)

11. **Sound Office Procedures.** Develop and use with consistency office procedures. See the above regarding payoffs and notary acknowledgments. When something goes wrong you will have credibility if you can point to a correct procedure you always employ when performing some task. A third party may tend to believe you when weighing the conflicting statements of two individuals. And, you won't have to think quite as much. Your procedures will take over in times of stress.

G. <u>Knowledge of Your Limitations</u>

Go ahead and accept (and find some self-deprecating humor in) the fact that you can never know it all, that you will fail from time to time, and that you can be wrong occasionally. This is so hard for us to do. We have all of this schooling; we have all been successful to this point in life; but will you always be undefeated? None of the great athletic teams have ever won all of their games. No pitcher ever strikes out everybody; no hitter ever bats 1000.

You cannot know it all and you cannot do it all. One of my late partners told me years ago that "the more you do, the more you will be asked to do". That's great when you are getting started, as you may have nothing yet to keep you occupied. But you can see that with the immutable limits to a day being twenty-four hours, and the requirements for rest and sustenance fixed by biology, you can only do so much. Discover where your limits are and work within them. You are not Superman. Learn when enough is enough because your body and your mind have their limits. I now know of too many situations where attorneys who have been unable to walk away from business, unable to say "no", have finally professionally and even physically collapsed. One poor comrade stated to me that "I am relieved that it is finally all over." Do not become a martyr to your own cause, always sacrificing to the detriment of everything and everyone else. Your clients will not cease doing business just because you are physically or legally unable to continue; they will move on down the street to the next office.

IV. SUMMARY OF ESSENTIAL FACTS OF LIFE IN REAL ESTATE

Experience has taught me that to work through any transaction as well and properly as I should, the most salient basic facts common to nearly all are as follows. Once I took these facts to heart, the process became easier for me.

A. One disturbing notion I have encountered is the apparent widely held and pernicious **fallacy that what we do actually requires very little thought**. Many folks believe that our world is now so statistic and document-oriented that transactions move forward primarily through the efforts of clerks choosing the correct form from banks of assorted, blank "legal documents". People must be forgiven for seeing things this way. All through life, in school, in doctors' offices, at job interviews, it seems that there has been a "form" with blanks on it for everything. I don't know how many times I have been asked how little I would charge for something, with a quick follow-up question of "Don't you just have a form for that?" And our culture does not seem to highly value deliberative thought, favoring instead decisive action, using as little time as possible so folks can get on to the next task.

B. People generally **do not like to read** lengthy documents, even when the documents memorialize promises requiring action of them far into the future (such as making loan repayments at a particular rate and term).

C. Other folks involved in the transaction may believe that their jobs **do not include informing the buyer-borrower of the details** of the transaction, such as the borrower's loan terms. (They assume that the attorney will go over all of this.)

D. I have seen others **actively mislead buyer-borrowers**, informing them that their interest rate would be one percentage when, in fact, it was approved at a higher rate. More times than I would like to recall, a borrower has interrupted me, as I was reviewing a promissory note, with an excited query to the effect of, "Wait a second, they told me my interest rate would be such-and-such percent, and now you are saying it is such-and-such percent plus two!" Well, what can you say? Someone was probably something less that truthful.

E. But on the other hand, another tendency we all have is to **hear what we want to hear**, to interpret ambiguities in our own favor. We are all natural optimists, so we all fall victim to this. And it is a part of our job to be certain that a listener is hearing what you are saying.

F. Compounding the selective hearing problem, I am now running into folks who do **not even want to hear anything** I have to say. I am now being told by real estate agents that the buyers do not want to come to their own closing meetings -- and this without having ever met me or talked to me.

G. You will **not get rich** practicing transactional real estate law. Get over that right now. You can make a decent living if you work hard at it. But money is tight and it is hard earned. Fees for the tasks we are asked to perform are essentially where they were or are lower than where they were when I started in 1983. And today, the equipment that you need to practice is

extensive by comparison to twenty years ago -- computers, computer maintenance, copiers, software, software maintenance, telephones, facsimile machines and staff. Certainly, technology has streamlined some parts of the practice, such as the ability to quickly manipulate numbers when preparing a settlement statement. But staff, rent, equipment leasing fees, and supplies all cost more. And believe me, no one you will meet believes the law degree you have entitles you to a living.

H. When a transaction concludes, the attorney as settlement agent will be **the source of money** payments to all of the involved parties, from the guy who mowed the yard for the real estate agent to the seller's mortgage company you are paying off. *See 99 FEO 5*. And you know that if you don't close the deal, nobody gets paid. There will therefore inevitably be a certain amount of pressure to see that the closing occurs. The uncharitable person might say that some of this pressure is motivated by greed.

I. That is one way to look at it, but the point is you may not be working with high moral principles so often as you will be **serving as referee or negotiator** in a dispute regarding chipped paint or a squeaky floor. "Can't we just escrow money for the repairs?", you might be asked. You will also find that few people who take the time to complain about such matters consider them petty concerns, even in the context of a several hundred thousand-dollar transaction.

J. At the end of the transaction, do not be surprised if **the gratitude** expressed to you is something less than that you believe is warranted by your efforts. Some folks are very thankful and are genuinely appreciative, but do not expect recognition for extra effort that you might have had to expend to represent your client and close the transaction. Do not let this bother you because whatever it takes, that is part of your job. No one, with the exception of other brother and sister attorneys understands just what you must do to complete your job.

K. Some people may, in fact, sincerely believe that **you are wasting their time** and money, and that you are there only because "the lawyers" have some kind of stranglehold on the system. These people are what I call **"lawyer haters"** and may hold a deep-seated prejudice against all of us. It could be that the only attorney they have ever met is their ex-wife's who took away their bass boat and Z-28 in their equitable distribution squabble! You may have legitimately needed information from them earlier in the transaction (such as requesting to see their title insurance policy) only to have been told as I have been, "Don't ask me. You're the lawyer!" You will encounter distrust and occasionally even cynicism regarding your role.

L. Some people you encounter see themselves as **knowing about as much as you** do. After all, these are just words and numbers we are dealing with, are they not? Once, a real estate agent who did not like me very much believed she had found an error in the closing statement I had prepared. When I very politely failed to acknowledge my error, as to have done so would have been dishonest of me, she looked at me intently as though I were the dumbest man she had seen that month. She proceeded to begin explaining her point very slowly and deliberately, as she would have done lecturing a small child who did not understand that he had done something wrong when he left the water running outdoors and flooded the backyard just before a Saturday night cookout. All I can say is persevere to the end and the right will generally prevail.

M. Some **folks may become frustrated** when you point to their error. (For example, a widow may become frustrated when you have to point out that the deed by which she believes she holds title actually named only her late husband as a grantee, and that she now, after his death, holds some interest in the title together with his unfriendly children by a former marriage. The fact that "he intended otherwise" is now irrelevant.) Do not let their frustration in turn frustrate you, as it once did me, but rather be proud that you have properly done your job and are fixing something that is broken. Again, if we all knew from the beginning that everything was correct, there would be no need for attorneys.

N. Many folks believe that the services attorneys provide in a real estate transaction are **fungible from lawyer to lawyer**, much as one bucket of paint being just like another. But is that really true? Of course it isn't. Just as there are different quality suits, some better looking and more durable and effective than others, so are there different "grades" of transactional attorneys. You may spend twice the time examining every document that may be in the chain of title as someone looking at a similar title may devote to the job. You may, as you are required to do, record before you disburse funds, while your competitor is recording once per week or every ten days (or even mailing in deeds of trust to be recorded). You may, as you are required to do, update before you record, to cover the gap period since you performed your title search, while your competitor's eighteen-year-old "runner" breezes into the Register's office and past you directly to the recording desk with their stack for the day. The two of you will likely be paid the same fee based on the prevailing rate in your geographical area. However, quality work does "pay" in the long run in the sense that if you do quality work you will live professionally to work another day, and you will be respected by your peers for your efforts. (And it's just the right thing to do.)

O. Be assured that many potential clients believe that **convenience and price are everything.** All that they see when choosing an attorney is that we all have law licenses, we are all insured (despite the fact that this is not true), and that a title insurance company is issuing a policy insuring the title to the closed-upon real estate; therefore, we are as similar as two peas in a pod. This is the way someone would view the purchase of a bulk staple product, which varies little from one lot to the next, such as potatoes or soybeans. But we must always remember that every service we perform is unique. Every set of circumstances requires the application of your unique judgment.

P. There is also a misconception regarding your **personal wealth**. Since many people hold the belief that we attorneys control just about everything (witness the extensive discussions regarding trial attorneys and their pernicious effects on society during recent political campaigns), they also conclude that we all must therefore be wealthy. Some people may liken you financially to a slightly junior version of Senator John Edwards, did you realize that? And, many folks believe that whatever fee we collect is far in excess of the value we add to a transaction.

Q. And always, always remember that every party involved **will look to your malpractice coverage** in a heartbeat. Many do not realize that a claim against your coverage may have grave effects on you ability to continue that coverage! After a claim a malpractice insurance carrier may raise your deductible (the amount you must pay before they will pay anything, that is $5,000.00, $10,000.00 or $20,000.00) or your premium to an uncomfortable level; and they

have the right to cancel your policy altogether. These companies are in business to serve their shareholders and they do not like to pay claims.

V. YOUR SHIELD AGAINST STRAYING

I will close with a few words regarding certain attitudes or perspectives that I look upon as components of a kind of "daily shield" against adversity, protection against error in judgment, and against the temptation to put my own self-interest above that of my clients. As I suppose was the case with the shields of warriors throughout history, mine has its weak points and allows a thrust to penetrate from time to time. But, all things considered, my odds of a successful day are much better with a shield than without it.

A. Above all, you must have the **honesty with yourself** and others to recognize the right path to take when confronted with options. In a busy practice, every day may contain ethical challenges. Many people you will deal with have ethical muscles that, let's just say, have withered from lack of use. They will challenge you in making the proper choices.

B. Always remember that **thought takes time**. When I began practicing, I was shocked that I was often asked to come to quick conclusions regarding matters I considered complex and nuanced in their details. Again, ours is at its foundation an intellectual pursuit. Non-attorneys often do not understand that the answers to all of the questions lawyers are asked are not contained in some priestly book to which only we have access. This profession remains at bottom intellectually grounded, despite the blizzard of documents and forms that seem sometimes to entirely compose the practice. Contemplation and review of facts and issues are not always straight-line processes. I need time to sort things out and let the details germinate a little. A collateral benefit is that your deliberations may also allow other parties to a transaction to more fully consider their best course of action, smoothing out some of the bumps for you.

C. One caveat comes to mind here. When you are asked questions that are difficult to answer, your instinct automatically kicks on and tells you to proceed with caution. Of course, you need time to analyze and come to the best solution to a problem. But do **not procrastinate** unduly. Lawyers are accused constantly of delay, and I have been guilty of my share. But be aware that undue delay is a problem and serves neither you nor your client. Do come to a decision and put the problem to rest. Move on.

D. You must have the **courage** to take the correct path when you see it, even though it may cost you business or fee when you may really need it. Be prepared when necessary to "just say no", politely and firmly, with humor if you can. Remember that every time you disregard your ethical compass, you are effectively giving someone a "mortgage" on your future, which matures upon their needing some additional favor from you.

E. **Trust yourself**. You are smart, you are trained to understand how the system is supposed to work, and your instincts are nearly always correct.

F. Because you know how the law is supposed to work, you must employ a healthy portion of **skepticism** when analyzing information delivered to you orally and in writing. It has never

been truer in the past than today that you cannot believe all that you hear or read. In fact, with the explosion of information today threatening to inundate us all, I believe this is now truer than ever. You must be a rapt observer of human nature to grope your way through to the "truth" to the facts of a matter.

G. You will from time to time be a source of frustration to people you encounter, whether or not this is any fault of your own. If you did wrong, own up to it and get it over with. If you did not, tell them so. Whatever the case, **do not tolerate rudeness and disrespect** directed toward you or your staff. This is corrosive to you personally and is very hard on your staff. In our business, staff burnout is a big enough problem without allowing abusive and unwarranted behavior to be directed at your assistants. They will look to you to protect them.

H. Be a good listener, and when you listen and respond, do so with **humility**. As is the case with good manners, this will pay dividends you cannot earn by any other means. Despite all that you hear about lawyer jokes and public attitudes regarding our profession, I have found that most lay people expect us to have an extra measure of dignity and believe we are possessed of powers beyond their own. Folks appreciate a little humility in return.