



Gene DuBose, Esq.

DuBose Legal Group, PC

Office: (214) 520-2983 Cell: (214) 675-9022

gene@duboselegalgroup.com www.duboselegalgroup.com

www.facebook.com/DuBoseLegalGroup

<http://www.linkedin.com/in/duboselegalgroup>

Uncle Gene's Three Practical Rules For Business Owners To Avoid Being Hauled Into Court

RULE TWO: FOLLOW THE LAW

This seems both obvious and simple: Follow the Law. It is obvious because you would like it when your angry client/customer/employee (hereinafter: The Angry One) goes to a lawyer and the lawyer looks at what you did and says: you haven't got a case, forget about it.

But it isn't that simple. First and foremost, to follow the law, you must know the law – and the truth is that the law is not always simple. Many think that there is a book out there with all the rules written down and that all the lawyer has to do is look up the rule and tell you whether what was done is legal and illegal. There is no such book. The process of determining what is legal and what is not can be difficult. The law, whether it is embodied in statutes or based on the ruling of courts – what's called the Common Law – only enunciates general principles and fitting the facts of a specific situation into those principles takes education, intelligence, and most important of all, practical experience. Mr. Justice Oliver Wendell Holmes famously stated that “The life of the law has not been logic; it has been experience.”

Please don't think you know what the law is. You would doubtless like to think that the law is what you want it to be. But it probably isn't. If the law has been made by courts, it may be pure guesswork as to what a court would rule in your case. The process is not always easier with legislation. The statutes the legislatures enact may make absolutely no sense. The legislators may have been profoundly ignorant about how their statute will affect the area of commerce it is regulating, and the solutions they have enacted may have created more problems than they solved. You can probably think of some examples on your own. And once a statute has been around a while, the courts will have interpreted (contorted? twisted?) its language, so once again we are back guessing what the next court will do with the facts of your situation.

In addition, virtually every important statute has interpretive regulations drawn up by some governmental agency, whether state or federal, that is charged with enforcing the statute. These regulations are usually much longer and more complex and more unreadable than the long, complex, unreadable statutes from which they are derived. If you think the Internal Revenue Code is impenetrable, just try to read the regulations promulgated to interpret even the simplest section of the Code. They will make your head spin.

While most matters are governed either by state law or federal law, there are cases where you must follow both state and federal law, which doubles your headaches. For example, if you offer securities for sale, you are likely to be governed not only by federal securities law, but also state blue sky laws – and every state’s law is different. And the term “security,” you may be appalled to learn, covers a lot more than stock in a company traded on the New York Stock Exchange. You may think that you are simply bringing a new partner into your business; the Securities and Exchange Commission may decide that you are selling a security.

And every year (every two years in Texas*), statutory law, whether it is enacted by a state legislature or the United States Congress, becomes more complex. Legislators only have one function: to enact laws. And enact laws they do . . . with a vengeance, laws which are ever more complex, which often do not improve our lives in any discernible way. While legislatures can also repeal laws, they rarely do so. Even statutes that have been declared unconstitutional will languish on the books, despite the fact that they are completely unenforceable. And since it is easier to create regulations than to pass statutes, administrative regulations pour forth in huge volumes all year round. In 2014 alone, the federal government printed over 75,000 pages of regulations.

Things you have been doing for years may now be unlawful, even criminal. Especially prolific have been statutes that purport to protect consumers. The buying, selling, renting, and mortgaging of residential housing, for example, has changed radically over the past two decades, with massive regulation at both the state and federal levels. The Occupational Health and Safety Act, the Environmental Protection Act, the Americans with Disabilities Act and a raft of other federal statutes have not only placed substantial administrative burdens on business owners, but have also increased their risks of ending up in court.

It should be obvious, then, that you will need a lawyer to guide you through these thickets. In order to get the guidance you need, you will have to find a lawyer who is familiar with your area of business and is conversant with the various statutes that you have to comply with. Once you find that lawyer, build a relationship with him. Use him on your bigger deals and pay him without objection. Occasionally take him out to lunch. The gift of doing these things will be that when you call him up with smaller problems, he probably won’t charge you. You may even find that what you think are big problems are quite small and easily solved. Even then you may sometimes discover that you have run into an area of enormous

complexity beyond your lawyer's expertise and will require the assistance of a more specialized attorney – as for example when you are dealing with securities law or more arcane aspects of the Internal Revenue Code, adverted to above.

It is possible, however, that all this effort to follow the law may not stop the filing of a lawsuit against you. An abiding problem in the prophylactic power of this tactic is that the lawyer The Angry One engages might not know what the relevant law is. To combat this, if you have consulted your lawyer before taking your action, ask him to write a letter to The Angry One setting out the legal justification for your action. That way you can be sure that the lawyer he goes to will have expert advice to guide him.

Even this, however, may not be enough. The Angry One's attorney may not care that your actions have been completely legal. He is only interested in his fee (I am sure that you will be shocked, *shocked* to learn that there are such lawyers), and if The Angry One is willing and able to finance the lawsuit, he will be glad to take it on. This lawyer knows that any lawsuit has blackmail power: even if the suit is baseless, the business owner may find it cheaper to settle than to fight. Business lawsuits are only rarely about principles; they are always about money. Most of the lawyers I know will not file a frivolous lawsuit, but I have been surprised during the downturn in legal activity in the last few years that firms that I have held in some esteem have taken on questionable lawsuits to guarantee themselves an income stream.

All that having been said, however, following the law will go far to discourage lawsuits, and if a lawsuit is filed, your having sought and followed sound legal advice will stand you in good stead in the courtroom and will substantially reduce the chances of an adverse judgment.

There are some additional legal steps you can take to prevent lawsuits as will be set out in my newsletters to come, for example: *Rule Three of Uncle Gene's Three Practical Rules For Business Owners To Avoid Being Hauled Into Court* and *Provisions That Should Be in Every Contract You Use in Your Business*.

Lesson from Rule Two: Your lawyer is your friend, and seeking his advice before acting may save you from lawsuits.

* The Texas legislature only sits for seven months every two years. When I first came to Texas I thought that was weird . . . until it occurred to me how much less damage our duly elected Lone Star representatives do than if they met all year round, every year, as is the case in our benighted companions in federation.