Rocks & Shoals

*What do ye do when ye see a white whale, men? Sing out for him! And what do ye next, men? Lower away, and after him! And what tune is it ye pull to, men? A dead whale or a stove boat!*  
*Herman Melville, Moby Dick, Ch. 36, The Quarter Deck*

From the moment a lawyer passes the Bar and takes the oath of office, whether he or she signed on for it or not, that lawyer suffers the loss of a significant portion of his or her personal liberties and freedoms in exchange for the privilege of practicing law. It is a demanding, exacting and at times exhilarating calling.

As officers of the court, like members of the military, lawyers in California are subject to a strict code of professional conduct, a chain of command, a unique system of governance with independent professional judge’s ruling on attorney discipline cases, and for many, even a uniform. And like the military, the strictures and constraints put on lawyers are never relaxed, suspended or given a rest—they are as much a part of the life of lawyers as the rocks and shoals that sailors must be on constant lookout for when at sea. Both can sink a career.

"Rocks & Shoals" was the common name given to the Articles for the Governance of the United States Navy until the Articles were replaced after World War II by the Uniform Code of Military Justice (UCMJ). As a Seaman duce going aboard my first ship (a CVA or attack carrier), I can remember the “old salts” telling all us “boots” tales of the bygone terrors of Rocks and Shoals.

"You're lucky that we're not under Rocks and Shoals, because you could be flogged or keel hauled for an infraction in the old navy". I've never heard of the State Bar meting out floggings or keel hauling for violations of our professional and ethical standards of conduct and practice, but the consequences of transgressing on the Rock and Shoals of The Law can be equally dire. Now, a little trivia on rocks and shoals.

The phrase rocks and shoals appears in Article 4 of the Articles of Governance of the United States Navy: "The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person in the naval service...[who]...intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded or maliciously or willfully injures any vessel of the Navy;" Other misdeeds under Rocks & Shoals included the wrongs of those "[who]...strike[] or attempt to strike the flag to an enemy or rebel without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;...or...[who]...in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;..."
As a board certified specialist in legal malpractice (American Board of Professional Liability Attorneys or ABPLA (recognized certification by ABA and California State Bar Board of Legal Specialization), I have had the opportunity over the years to see just about every type of malpractice and ethical transgression imaginable. Some of the cases I have handled are so stunning in terms of their flagrance, audacity and sometimes cunning, that most of us would never even imagine such intrigue outside of a John Gresham novel, much less put such machinations into action. Notwithstanding the rare marquee case, most legal malpractice is so mundane, predictable and preventable it should never occur. Fortunately, most legal mistakes and ethical lapses amounts to little more than an unforced error that is easily remedied before causing any irretrievable damage to the client.

Notwithstanding the pedestrian nature of the garden variety malpractice cases, both sorts, the bold and the banal, stand on equal footing in terms of the elements of duty, breach, causation and damages. In other words, stealing from a client trust account in order to pay for porn or a drug habit or missing a statute of limitations by a day can both cause a policy limits demand to be made against your E & O carrier. Both genres can thrust a lawyer into the Mayday circumstances of having to notify your carrier of a claim and ending up as a defendant in a legal malpractice lawsuit. It is a circumstance worthy of high vigilance and sharp lookout. Avoiding claims of legal malpractice is the subject matter of Rocks & Shoals of the Law.

Rocks & Shoals of the Law will delve into topics and generic circumstances (ranging from the simply careless and even well-intentioned to the truly conniving and malevolent) arising from lawyers running afoul of the standard of care and fiduciary duties in the practice of law. Any activities described, while based on composites of factual circumstances, are entirely fictional. Any similarity to any person or events, living or dead, is purely coincidental. Questions and contributors are welcome.

Rocks & Shoals of the Law is a quarterly newsletter written, produced and edited by James S. Rummonds an AV rated legal malpractice specialist with multiple board certifications in legal malpractice and trial law. For more information go to legalmallaw.com.