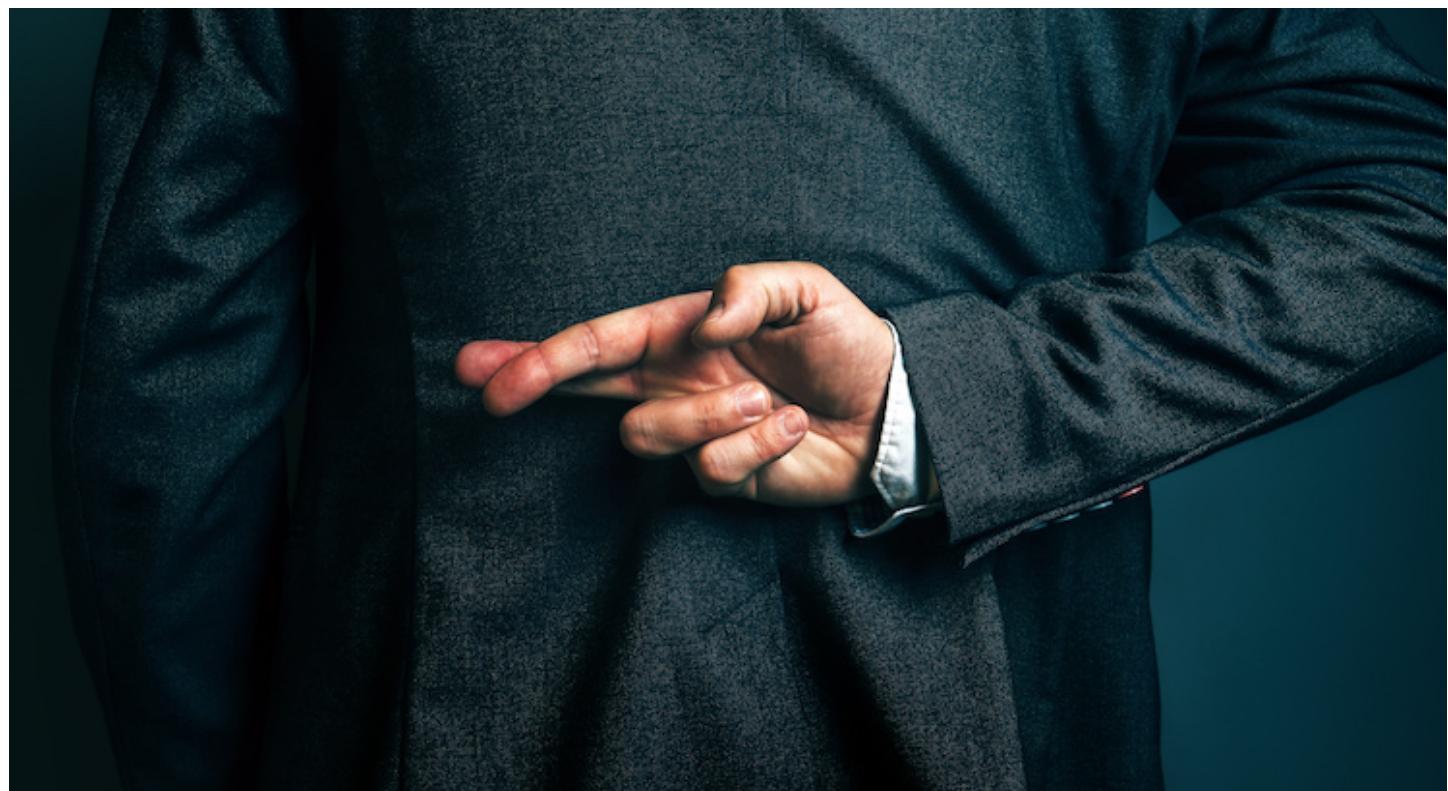
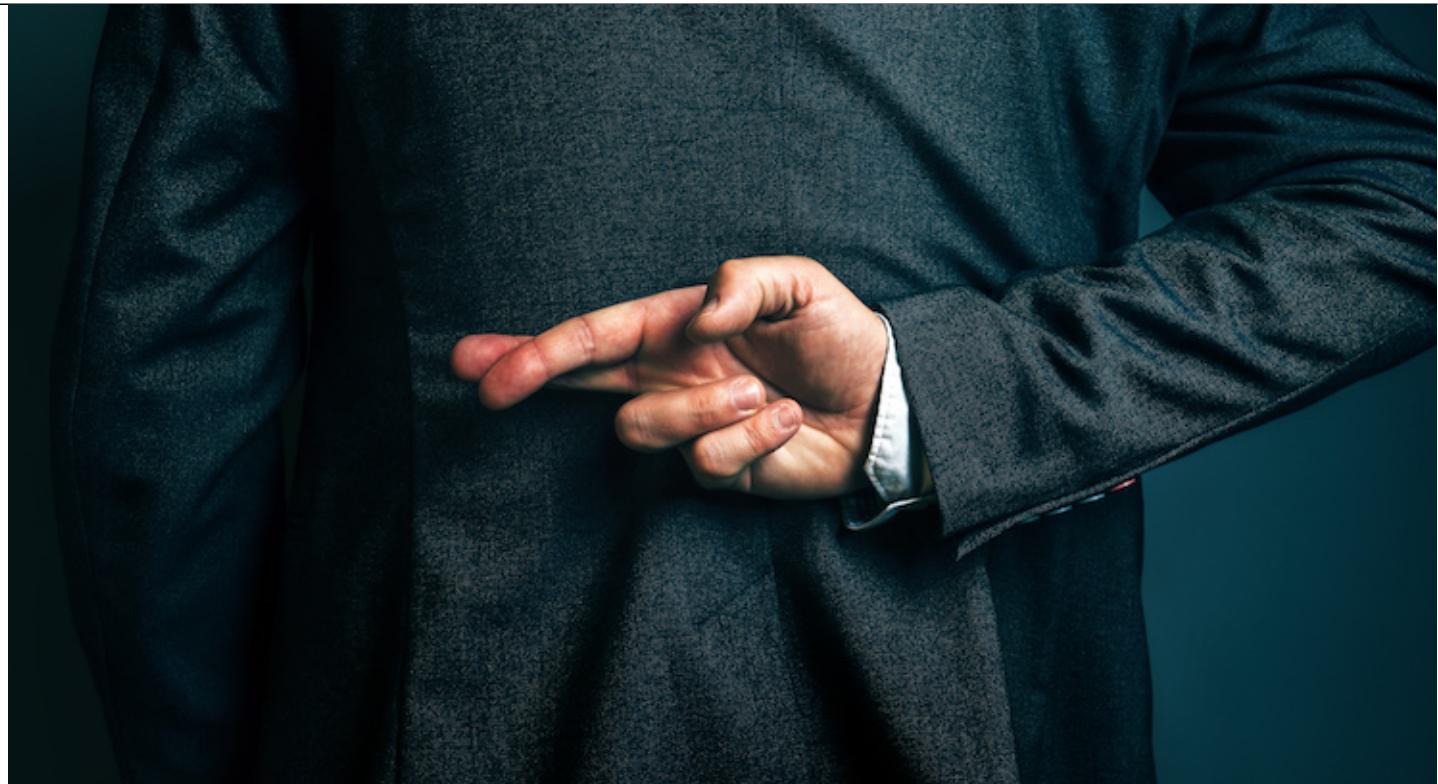




Ask Aliya: What to Do If Your Boss Is Committing Fraud

Skills and Professional Development



“Ask Aliya” is a column for lawyers who are the first legal hire at their company and need advice from an in-house lawyer who has been there before. Aliya Ramji is the director of legal and business strategy for Figure 1 Inc., a network used by more than 1 million healthcare professionals to share

cases and collaborate. To have your legal questions for startups answered, email aramji@figure1.com with "Ask Aliya" in the subject line.

Dear Aliya,

I am a new in-house lawyer at a small publishing house. I think my boss might be committing accounting fraud — but I'm not totally sure. We don't have a whistleblowing hotline. Should I jump ship or report it to the board?

Sam

Dear Sam,

I do not envy your position. You are in a very difficult and complicated ethical situation. As lawyers, we have a duty of confidentiality to our client, and at the same time we have a duty to protect the public from any potential harm. Our role is to be both a trusted legal advisor to the company and the final checkpoint to prevent wrongdoings. Lawyers are generally regarded as the conscience of an organization.

Whistleblowing is the last defense for lawyers, the final fail-safe mechanism. Before reporting anything to the board, it is your responsibility to do a thorough investigation. First, you need to speak to your boss. While you may believe they are committing accounting fraud, you may not have sufficient knowledge of the accounting or your boss may have inadvertently made a mistake. The situation may also be one of oversight because your boss does not understand certain policies or implications. You may be in a position to educate your boss and guide them accordingly. Before assuming the worst, you have a responsibility to voice your concern and ensure that this is not just an error. You may also want to seek advice from colleagues who are more familiar with accounting and financial rules. Check your facts and do not make assumptions.

In the event that you continue to believe and have sufficient evidence to justify that there is more than an honest mistake, you should then go up the reporting structure. As in-house counsel of a small company, you are likely reporting to the general counsel or the CEO. If you do not report to the CEO before going to the board, you should speak to your CEO. It is your CEO's obligation to deal with the day-to-day issues of an organization and it is ultimately their responsibility to address the issue.

Given the severity of the situation, your boss may fire you from the organization simply for escalating the matter. Nevertheless, as counsel, it is your responsibility to protect the organization and its shareholders by vigorously and zealously representing the organization and shareholders — not your boss. It is your fiduciary duty as counsel to protect the organization. If you are unsatisfied with the answers given by your superiors, you should go to the board.

You have also suggested that you are prepared to jump ship. Ask yourself: Are you ready to leave because the confrontation might be too difficult or because you believe the corporation is being unethical? If you want to leave just because it's hard, I suggest you stay. The only way to become a seasoned general counsel is to experience the tough times. You will gain experience working through ambiguity and leading in tumultuous times — skills that will make you a better lawyer and a better businessperson.

Good luck in whatever course of action you choose!

Aliya Ramji



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Aliya Ramji was previously the director of legal and business strategy for Figure 1 Inc. Presently, she is a partner at McCarthy Tétrault, where she offers guidance on in-house law and startup businesses. She also was a 2016 recipient of ACC's Top 10 30-Somethings.

