

RULE 8.3 Reporting Professional Misconduct

(a) A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6. In addition, a lawyer is not required to disclose information concerning any such violation which is discovered through participation in a Substance Abuse Committee, Service to the Bar Committee or similar committee sponsored by a state or local bar association, or by participation in a self-help organization such as Alcoholics Anonymous, through which aid is rendered to another lawyer who may be impaired in the practice of law.

[History: Am. (a) effective March 11, 1999; Am. (b) effective July 1, 2007.]

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where it would not substantially prejudice the client's interests.

[3] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[4] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Kansas Comment

[5] Substance Abuse Committees have earned an important position in the organization of bar association activities and render a valuable and important service to the profession and the public. As such, these committees and other recognized self-help organizations, and the lawyers who serve on them, should be allowed to function without fear of the requirement to report every violation which might be uncovered during the course of their service. To provide otherwise might inhibit free and open communication by the incapacitated lawyer and result in neglected matters remaining so. In this instance, the Kansas Committee feels that the public is better served by providing a measure of confidentiality to the incapacitated lawyer's communications with those who would help the lawyer in serving clients.