



**THE STATE BAR
OF CALIFORNIA**

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OFFICE OF PROFESSIONAL COMPETENCE

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III.P. Rule 8.3
June 2 -3, 2016
Open Session

MEMORANDUM

DATE: May 16, 2016

TO: Members, Commission for the Revision of the Rules of Professional Conduct

FROM: ABA Model Rule 8.3 Drafting Team (Joan Croker (L), George Cardona, and Lee Harris)

SUBJECT: Consideration of ABA Model Rule 8.3 ("Reporting Professional Misconduct")

Summary:

The drafting team assigned to study ABA Model Rule 8.3 ("MR 8.3") recommends that the Commission report to the Board of Trustees that a California version MR 8.3 was considered by the Commission but is not recommended for adoption.

Background:

The drafting team met by teleconference on May 11, 2016. Among the items considered by the team were the following: MR 8.3; RRC1's proposed rule 8.3 (see Attachment 1); the summary of the Board of Governors consideration of RRC1's proposed rule; the Restatement (Third) of the Law Governing Lawyers, §5 (Professional Discipline); an ABA State Adoption Chart for MR 8.3 (dated March 28, 2016) (see Attachment 2)¹; and the relevant parts of the Rule 1-120 drafting team's report and recommendation prepared for the Commission's May 29 – 30, 2015 meeting. At the teleconference, the drafting team discussed the policy underlying MR 8.3 and the pros and cons of adopting a California version. In particular, the drafting team weighed the experience of RRC1 in recommending a substantially modified version of MR 8.3 that ultimately was not adopted by the Board.

Discussion:

In its entirety, MR 8.3 provides that:

Rule 8.3: Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

¹ The ABA chart indicates that only six (6) jurisdictions have adopted a rule that is identical to the MR 8.3. Those states are: Idaho; Iowa; Montana; Nebraska; Utah; and Wyoming.

(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 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

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 prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] 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.

[5] 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.

As reflected above, ABA MR 8.3 mandates reporting of any violation of the rules that raises a “substantial question” as to a lawyer’s honesty, trustworthiness or fitness as a lawyer. RRC1 proposed a modified version of this rule that was partly permissive and partly mandatory. RRC1’s proposed rule set a standard of permissive reporting for general misconduct that implicates a lawyer’s fitness to practice but mandated reporting where another lawyer committed a felonious criminal act that raised a substantial question as to that lawyer’s honesty, trustworthiness or fitness. The Board of Governors rejected the RRC1’s proposed rule. The Board’s rejection appeared to reflect two concerns.

First, the Board was concerned that lawyers might find it difficult to comply with a rule that appeared to assume that every lawyer possessed expertise on the issue of whether misconduct would constitute a felony. Second, it appeared that the Board shared some of the concerns expressed by a minority of RRC1 that viewed any mandatory reporting rule as the wrong public policy for California. The minority statement observed that mandatory reporting issues often arise in the midst of representing a client and that the experience in jurisdictions with mandatory reporting is that when reporting occurs in this context, an innocent client might suffer. The minority asserted that reporting can lead to disputes among the lawyers representing clients in a matter and that this could cause a change in counsel, imposing delays and costs on innocent clients. In accordance with the Board’s determination, a California counterpart to MR 8.3 was not recommended to the Supreme Court for approval.

In connection with rule 1-120 (Assisting, Soliciting or Inducing Violations), the Second Commission has received no public comments addressing MR 8.3. OCTC has stated, however, that it plans to provide comments on whether the Second Commission should adopt a requirement that members report the misconduct of others.

On balance, the members of the drafting team agree with the Board’s prior decision not to recommend a reporting requirement. The pros of adopting a reporting requirement (whether in the mandatory form of ABA MR 8.3 or a hybrid permissive/mandatory form along the lines of RRC1’s proposed rule) include:

1. improving public protection by requiring lawyer reporting of certain known violations of the rules that raise a substantial question about a lawyer’s “honesty, trustworthiness or fitness as a lawyer”; and
2. bringing California’s rules more in line with the ABA Model Rules.

There are also significant cons to a reporting requirement; either the Model Rule or RRC1 hybrid approach would:

1. require a lawyer to determine whether a known violation raises a substantial question as to (or implicates) the lawyer’s honesty, trustworthiness or fitness as a lawyer;
2. despite the recognition that reporting could be trumped by the duty of confidentiality with respect to information learned in the course of representation of a client, pose a potential for conflict with that rule, or with the attorney-client relationship, to the extent lawyers might feel obligated to discuss waiver of confidentiality to further the reporting interests of the lawyer rather than the client’s own interests;
3. pose a potential for conflicts with a lawyer’s duty of loyalty if reporting posed a risk of adversely affecting a current or former client’s interests; and
4. potentially be viewed as inconsistent with the discretionary reporting policy reflected in Canon 3D(2) of the California Code of Judicial Ethics that states: “Whenever a judge has personal knowledge, or concludes in a judicial decision,

that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which ***may include reporting the violation to the appropriate authority.***” (Emphasis added.)

On balance, the drafting team agrees that the cons outweigh the pros, particularly given that California has never had such a reporting requirement, and that the analysis required for lawyers to determine the scope of any reporting requirement seems inconsistent with this Commission’s charge to retain the historical nature of the California Rules as a “clear and enforceable articulation of disciplinary standards.”

Conclusion:

In accordance with the foregoing, the drafting team recommends that the Commission report to the Board of Trustees that a California version MR 8.3 is not recommended for adoption.

**Rule 8.3 Reporting Professional Misconduct
(Commission's Proposed Rule – Clean Version)**

- (a) A lawyer who knows that another lawyer has committed a felonious criminal act that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall inform the appropriate disciplinary authority.
- (b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.
- (c) A lawyer who knows that a judge or other adjudicative officer has committed a violation of applicable rules of judicial conduct that raises a substantial question as to that person's fitness for office may, but is not required to, report the violation to the appropriate authority.
- (d) This Rule does not authorize a lawyer to report misconduct if the lawyer is prohibited from doing so by the lawyer's duties to a client, a former client or by law. Such prohibitions include, but are not limited to, the lawyer's duty not to disclose (i) information otherwise protected by Rule 1.6, Rule 1.9, or Business and Professions Code section 6068(e); (ii) information gained by a lawyer or judge while participating in an approved lawyers assistance program; (iii) information gained during a mediation; (iv) information subject to a confidential protective order; or (v) information otherwise protected under laws governing fiduciaries.

COMMENT

[1] In deciding whether to report another lawyer's violation of these Rules or the State Bar Act that is not required by paragraph (a), a lawyer should consider among other things whether the violation raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer.

[2] This Rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required under the State Bar Act. See, e.g., Business and Professions Code section 6068(o). In addition, a lawyer is not obligated to report a felonious criminal act under paragraph (a) committed by another lawyer if doing so would infringe on the reporting lawyer's privilege against self-incrimination.

[3] Even if a lawyer is permitted or required to report under this Rule, the lawyer must not threaten to file criminal, administrative or disciplinary charges to obtain an advantage in a civil dispute in violation of Rule 3.10.

[4] 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 lawyer-client relationship.

[5] A lawyer may not be a party to or participate in offering or making an agreement that would violate Business and Professions Code section 6090.5.

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT</p> <p>(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.</p> <p>(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.</p> <p>(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see: http://www.americanbar.org/content/dam/aba/migrated/cpr/pic/ethics_2000_status_chart.authcheckdam.pdf</p> <p>Comments not included.</p> <p>*Current links to state Rules of Professional conduct can be found on the ABA website: http://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest.html</p>
<p>AL Effective 2/19/09</p>	<p>(a) is equivalent to MR (a) but with different wording: <i>A lawyer possessing unprivileged knowledge of a violation of Rule 8.4 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.</i></p> <p>(b) is equivalent to MR (b) but with different wording: <i>A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request.</i></p> <p>Adds (c): <i>A lawyer who is on the Committee on Impaired Lawyers or on the ALA-Pals Committee or who is a member of any committee or sub-committee of the Bar designed to assist lawyers with substance abuse problems shall not be under any obligation to disclose any knowledge or evidence acquired from any other person (including judges and lawyers) during communications made by that other person for the purpose of seeking help of the sort the lawyer's committee was intended to give. Any statement made by either party during such communications shall be privileged, and no claims or disciplinary action based on the lawyer's failure to disclose the knowledge or evidence acquired during such communications may be instituted;</i></p> <p>(d) is equivalent to MR (c) but deletes everything following reference to Rule 1.6.</p>

AK Effective 4/15/09	(a) Adds to end: “unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported;” (b) Adds “disciplinary” before “authority” and adds: “unless the lawyer reasonably believes that the misconduct has been or will otherwise be reported.”
AZ Effective 12/1/03	(a): adds at the end: “except as otherwise provided in these Rules or by law.” (c): second half similar to old MR: “. . .while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.”
AR Effective 5/1/05	(a): uses “having knowledge” after “A lawyer.” (b): uses “having knowledge” after “A lawyer.” (c) ends after “1.6.” Adds: <u>(d) This rule shall not apply to a member of the Lawyer Assistance Committee ("the Committee") of the Arkansas Lawyer Assistance Program ("ALAP") or a volunteer serving pursuant to Rule 4 of the Rules of ALAP regarding information received in one's capacity as a Committee member or volunteer, acting in good faith, unless it appears to said member or volunteer that the attorney in question, after entry into the ALAP, is failing to desist from said violation, or is failing to cooperate with a program of assistance to which said attorney has agreed, or is engaged in the sale of a controlled substance or theft of property constituting a felony under Arkansas law, or the equivalent thereof if the offense is not within the State's jurisdiction.</u> <u>(e) Except as provided by the preceding subsection (d), and Rules 7 (B) and 10 of the Rules of ALAP, no information received, gathered, or maintained by the Committee, its members or volunteers, or by an employee of the ALAP in connection with the work of the Committee may be disclosed to any person nor be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject attorney. However, the Committee may refer any attorney to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee, a volunteer, or an employee of the ALAP gives rise to reasonable suspicion of a direct threat to the health or safety of the subject attorney or other person, then the obligation of confidentiality set forth in this subsection (e) shall not apply, and the Committee member, volunteer, or ALAP employee may make such communications as are necessary for the purpose of avoiding or preventing said threat.</u>
CA Current Rule	[California’s Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules : http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf]
CO Effective 1/1/08	(c) Replaces language after “or judge while” with: “serving as a member of a lawyers’ peer assistance program that has been approved by the Colorado Supreme Court initially or upon renewal, to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.”
CT Effective 1/1/07	(a): adds “A lawyer may not condition settlement of a civil dispute involving allegations of improprieties on the part of a lawyer on an agreement that the subject misconduct not be reported to the appropriate disciplinary authority.” to end (c): replaces language after “Rule 1.6” with “or General Statutes § 51-81d(f)”
DE Effective 7/1/03	do not include the 2nd half of (c) but have a separate (d) regarding lawyer who participate in lawyer assistance programs, ethics committees, fee dispute and mediation programs: the relationship between those persons and a lawyer or a judge shall be the same as that of attorney

	and client.
District of Columbia Effective 2/1/07	(c): replaces material after “1.6” with “or other law”
FL Amendments To (c) effective 7/1/12	<p>(a): adds “Reporting Misconduct of Other Lawyers.” to beginning (b): adds “Reporting Misconduct of Judges.” to beginning (c): adds: Confidences Preserved. This rule does not require disclosure of information: (1) otherwise protected by rule 4-1.6; (2) gained by a lawyer while serving as a mediator or mediation participant if the information is privileged or confidential under applicable law; or (3) gained by a lawyer or judge while participating in an approved lawyers assistance program , unless the lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction, in which case a report about the lawyer who is participating as part of a disciplinary sanction shall be made to the appropriate disciplinary agency. Adds (d): Limited Exception for LOMAS Counsel. A lawyer employed by or acting on behalf of the Law Office Management Assistance Service (LOMAS) shall not have an obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer’s fitness to practice, if the lawyer employed by or acting on behalf of LOMAS acquired the knowledge while engaged in a LOMAS review of the other lawyer’s practice. Provided further, however, that if the LOMAS review is conducted as a part of a disciplinary sanction this limitation shall not be applicable and a report shall be made to the appropriate disciplinary agency.</p>
GA* Effective 1/1/01	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>(a) And (b) Replaces “who knows” with “having knowledge;” Adds: “There is no disciplinary penalty for a violation of this Rule.”</p>
HI Effective 1/1/14	<p>(b): Changes “who knows” to “having knowledge” (c): Changes “an approved lawyers assistance program” to “the Attorneys and Judges Assistance Program” Adds: (d): “A lawyer shall not” (d)(1): “negotiate, attempt to settle, or settle any legal matter by threatening to file or retain from filing a disciplinary complaint against a lawyer; or” (d)(2): “offer, agree to, attempt, negotiate, enter into, or acquiesce in the formation of any agreement limiting the ability of the lawyer or any other person to” (d)(2)(i): “file a disciplinary complaint against any lawyer; or” (d)(2)(ii): “cooperate with a disciplinary proceeding or investigation.”</p>
ID Effective 7/1/04	Same as MR
IL Effective 1/1/2010	<p>(a) Replaces “the Rules of Professional Conduct...in other respects” with “Rule 8.4(b) or Rule 8.4(c);” (b) Replaces “Rules 1.6” with “the attorney-client privilege or by law;” Adds “or an</p>

	<p>intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred;”</p> <p>Adds (d): “A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.”</p>
IN Effective 1/1/05	<p>(c) This Rule does not require reporting of a violation or disclosure of information if such action would involve disclosure of information that is otherwise protected by Rule 1.6, or is gained by a lawyer while providing advisory opinions or telephone advice on legal ethics issues as a member of a bar association committee or similar entity formed for the purposes of providing such opinions or advice and designated by the Indiana Supreme Court.</p> <p>(d) The relationship between lawyers or judges acting on behalf of a judges or lawyers assistance program approved by the Supreme Court, and lawyers or judges who have agreed to seek assistance from and participate in any such programs, shall be considered one of attorney and client, with its attendant duty of confidentiality and privilege from disclosure.</p>
IA Effective 7/1/05	Same as MR
KS Effective 7/1/07	<p>(a) Replaces language before “shall inform” with: “A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules;”</p> <p>(c) Replaces language after “Rule 1.6” with: “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.”</p>
KY Effective 7/15/09	<p>(a) Replaces “the appropriate professional authority” with “the Association’s Bar Counsel;”</p> <p>(b) Replaces language after “shall” with “report such violation to the Judicial Conduct Commission;”</p> <p>Does not adopt MR (c) but adds:</p> <p><i>(c) A lawyer is not required to report information that is protected by Rule 1.6 or by other law. Further, a lawyer or a judge does not have a duty to report or disclose information that is received in the course of participating in the Kentucky Lawyer Assistance Program or Ethics Hotline.</i></p> <p><i>(d) A lawyer acting in good faith in the discharge of the lawyer’s professional responsibilities required by paragraphs (a) and (b) or when making a voluntary report of other misconduct shall be immune from any action, civil or criminal, and any disciplinary proceeding before the Bar as a result of said report, except for conduct prohibited by Rule 3.4(f).</i></p> <p><i>(e) As provided in SCR 3.435, a lawyer who is disciplined as a result of a lawyer disciplinary action brought before any authority other than the Association shall report that fact to Bar Counsel.</i></p> <p><i>(f) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, should immediately notify the Director of such event.</i></p>
LA	(c) adds at the end: “ or while serving as a member of the Ethics Advisory Service Committee.”

Effective 3/1/04	
ME Effective 8/1/09	(a) Adds “Maine” before “Rules of Professional Conduct;” (c) Replaces language starting with “an approved” with: “the Maine Assistance Program for Lawyers, or an equivalent peer assistance program approved by a state’s highest court.”
MD Effective 7/1/05	(c): changes the end to “while participating in a lawyer or judge assistance or professional guidance program”
MA Rules effective 9/1/08	Replaces “who knows” with “having knowledge” throughout; (b) Replaces “the appropriate authority” with “the Commission on Judicial Conduct;” (c) Replaces language after “or judge while” with: “serving as a member of lawyer assistance program as defined in Rule 1.6(c), to the extent that such information would be confidential if it were communicated by a client.”
MI* Rules effective 10/1/88	<i>*Made only partial amendments effective 1/1/2011 since the most recent amendments to the ABA Model Rules (amended Rules 3.1, 3.3, 3.4, 3.5, 3.6, 5.5, and 8.5 and adopted new Rules 2.4, 5.7, and 6.6.</i> (a) <i>A lawyer having knowledge that another lawyer has committed a significant violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer shall inform the Attorney Grievance Commission.</i> (b) <i>A lawyer having knowledge that a judge has committed a significant violation of the Code of Judicial Conduct that raises a substantial question as to the judge’s honesty, trustworthiness or fitness for office shall inform the Judicial Tenure Commission.</i> (c) <i>This rule does not require disclosure of:</i> <i>(1) information otherwise protected by Rule 1.6; or</i> <i>(2) information gained by a lawyer while serving as an employee or volunteer of the substance abuse counseling program of the State Bar of Michigan, to the extent the information would be protected under Rule 1.6 from disclosure if it were a communication between lawyer and client.</i>
MN Effective 10/1/05	(c): replaces “otherwise protected by Rule 1.6” with, “that Rule 1.6 requires or allows a lawyer to keep confidential”; deletes “an approved” before lawyer assistance program; and adds at the end: or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.
MS Effective 11/3/05	Retains former MR Did not adopt (c)
MO Effective 7/1/07	Replaces “who knows” with “having knowledge” throughout; (c) Deletes language after “Rule 1.6.”
MT Effective 4/1/04	Same as MR
NE Effective 9/1/05	Same as MR

NV Effective 5/1/06	(c), adds to end: "...including but not limited to the Lawyers Concerned for Lawyers program established by Supreme Court Rule 106.5."
NH Effective 1/1/08	(c) Replaces language after "or information" with: "received by lawyers during the course of their work on behalf of the New Hampshire Bar Association Ethics or Lawyers Assistance Committees."
NJ Effective 1/1/04	(c): does not include last phrase. adds (d): "Paragraph (a) of this Rule shall not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program established by the Supreme Court and administered by the New Jersey State Bar Association, except as follows: (i) if the effect of discovered ethics infractions on the practice of an impaired attorney is irremediable or poses a substantial and imminent threat to the interests of clients, then attorney volunteers, peer counselors, or program staff have a duty to disclose the infractions to the disciplinary authorities, and attorney volunteers have the obligation to apply immediately for the appointment of a conservator, who also has the obligation to report ethics infractions to disciplinary authorities; and (ii) attorney volunteers or peer counselors assisting the impaired attorney in conjunction with his or her practice have the same responsibility as any other lawyer to deal candidly with clients, but that responsibility does not include the duty to disclose voluntarily, without inquiry by the client, information of past violations or present violations that did not or do not pose a serious danger to clients."
NM Effective 11/2/09	Changed to Rule 16-803; (a) Renamed to Paragraph " A. Misconduct of other lawyers; " (b) Renamed to Paragraph " B. Misconduct of judges; " changes "appropriate authority" to "New Mexico Judicial Standards Commission;" (c) Renamed to Paragraph " C. Confidential information; " Replaces "Rule 1.6" with "Rule 16-106 of the Rules of Professional Conduct, or as set forth in Paragraph E;" Adds Paragraph " D. Cooperation and assistance required: A lawyer shall give full cooperation and assistance to the highest court of the state and to the disciplinary board, hearing committees and disciplinary counsel in discharging the lawyer's respective functions and duties with respect to discipline and disciplinary procedures;" Adds Paragraph " E. Alcohol and substance abuse exception. The reporting requirements set forth in Paragraphs A and B of this rule do not apply to any communication concerning alcohol or substance abuse by a judge or lawyer that is: (1) made for the purpose of reporting substance abuse or recommending, seeking or furthering the diagnosis, counseling or treatment of a judge or an attorney for alcohol or substance abuse; and (2) made to, by or among members or representatives of the Lawyer's Assistance Committee of the State Bar, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the Judicial Standards Commission or the Disciplinary Board; recognition of any additional support group by the Judicial Standards Commission or the Disciplinary Board shall be published in the Bar Bulletin. This exception does not apply to information that is required by law to be reported, including information that must be reported under Paragraph F of this Rule, or to disclosures or threats of future criminal acts or violations of these rules;" Adds Paragraph " F. Judicial misconduct involving unlawful drugs; reporting requirement. Notwithstanding the provisions of Paragraph E, any incumbent judge who illegally sells,

	<p>purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct. Any lawyer who has specific objective and articulable facts or reasonable inferences that can be drawn from those facts, that a judge has engaged in such misconduct, shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:</p> <p>(1) name of person filing the report;</p> <p>(2) address and telephone number where the person may be contacted;</p> <p>(3) a detailed description of the alleged misconduct;</p> <p>(4) dates of the alleged misconduct; and</p> <p>(5) any supporting evidence or material that may be available to the reporting person.</p> <p>The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.”</p>
NY Effective 4/1/09	<p>(a) Replaces “inform...authority” with “report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation;”</p> <p>(b) Replaces language with: “(b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to respond to a lawful demand for information from a tribunal or other authority empowered to investigate or act upon such conduct;”</p> <p>(c), (c)(1) and (c)(2) are similar to MR (c), but (c)(2) replaces “an approved...program” with “a bona fide lawyer assistance program.”</p>
NC Effective 3/1/03	<p>(c): do not include the 2nd half of (c) because confidentiality for the assistance program is covered in 1.6.</p> <p>adds as (d):</p> <p>(d) A lawyer who is disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court shall inform the secretary of the North Carolina State Bar of such action in writing no later than 30 days after entry of the order of discipline.</p>
ND Effective 8/1/06	<p>(a), changes end to “...shall initiate proceedings under the North Dakota Rules for Lawyer Discipline”</p> <p>(b) A lawyer who knows that a judge has committed a violation of the North Dakota Code of Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness, or fitness for judicial office in other respects shall initiate proceedings under the Rules of the North Dakota Judicial Conduct Commission.</p> <p>(c): deletes “otherwise,” changes end to “... participating as a committee member, peer counselor, or program staff in a lawyer assistance program established under Administrative Rule 49”</p>
OH Effective 2/1/07	<p>(a) A lawyer who possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform a disciplinary authority empowered to investigate or act upon such a violation.</p> <p>(b) A lawyer who possesses unprivileged knowledge that a judge has committed a violation of the Ohio Rules of Professional Conduct or applicable rules of judicial conduct shall inform the appropriate authority.</p> <p>(c) Any information obtained by a member of a committee or subcommittee of a bar association, or by a member, employee, or agent of a nonprofit corporation established by a bar association, designed to assist lawyers with substance abuse or mental health problems, provided the</p>

	information was obtained while the member, employee, or agent was performing duties as a member, employee, or agent of the committee, subcommittee, or nonprofit corporation, shall be privileged for all purposes under this rule.
OK Effective 1/1/08	(b) Replaces “who knows” with “having knowledge;” (c) Deletes language after “Rule 1.6;” Adds: <i>(d) The provisions of Rule 8.3(a) shall not apply to lawyers who obtain such knowledge or evidence while acting as Ethics Counsel or as a member, investigator, agent, employee, or as a designee of the Oklahoma Bar Association Lawyers Helping Lawyers Committee, Judges Helping Judges, or the Management Assistance Program in the course of assisting another lawyer or judge. Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable rule and Rule 1.6.</i>
OR Effective 12/1/06	replaces MR (c) with this: (c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or to lawyers who obtain such knowledge or evidence while: (1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee; or (2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or (3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.
PA Effective 7/1/06	Same as MR
RI Effective 4/15/07	(c) Deletes language after “Rule 1.6;” Adds: <i>(d) This rule shall not apply to members of the Confidential Assistance Committee (“the Committee”) of the Rhode Island Bar Association (“the Association”) regarding information received in their capacity as Committee members, acting in good faith, unless it appears to the members that the attorney in question is failing to desist from the violation or is failing to cooperate with a program of assistance to which the attorney has agreed, or is engaged in the perpetration of fraud or embezzlement, or when disclosure is required to protect the public from substantial harm.</i> <i>(e) Except as provided by the preceding subsection (d), no information received, gathered or maintained by the Committee, or by an employee of the Association in connection with the work of the Committee, may be disclosed to any person or be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject attorney, or by order of a court of competent jurisdiction. However, the Committee may refer any attorney to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee or an employee of the Association gives rise to reasonable suspicion of a direct threat to the health or safety of the subject attorney or other person, then the obligation of confidentiality set forth in this</i>

	<p><i>subsection (e) shall not apply, and the Committee member or Association employee may make such communications as are necessary for the purpose of avoiding or preventing the threat.</i></p> <p><i>(f) Members of the Committee shall be immune from civil liability for actions taken in good faith in the course of performing their duties.</i></p>
SC Effective 10/1/05	<p>(b): adds “honesty, trustworthiness or” prior to “fitness for office”</p> <p>(c): deletes the remaining sentence after “protection by Rule 1.6”</p> <p>adds as (d): Inquiries or information received by the South Carolina Bar Lawyers Helping Lawyers Committee or an equivalent county bar association committee regarding the need for treatment for alcohol, drug abuse or depression, or by the South Carolina Bar law office management assistance program or an equivalent county bar association program regarding a lawyer seeking the program assistance, shall not be disclosed to the disciplinary authority without written permission of the lawyer receiving assistance. Any such inquiry or information shall enjoy the same confidence as information protected by the attorney-client privilege under applicable law.</p>
SD Effective 1/1/04	<p>(a) and (b): use “having knowledge” rather than “knows”</p> <p>add as (d): The names, identities, and treatment of persons seeking assistance of the South Dakota Lawyers Concerned for Lawyers, Inc., or an approved lawyers assistance program, relating to alcohol abuse or chemical dependency shall be kept confidential by members of South Dakota Lawyers Concerned for Lawyers, Inc., who are so contacted.</p>
TN Effective 1/1/2011	<p>(a) Replaces “appropriate professional authority” with “Disciplinary Counsel of the Board of Professional Responsibility;”</p> <p>(b) Replaces “appropriate authority” with “Disciplinary Counsel of the Court of the Judiciary;”</p> <p>(c) Replaces language after “or judge while” with: “serving as a member of a lawyer assistance program approved by the Supreme Court of Tennessee or by the Board of Professional Responsibility.”</p>
TX* Effective 3/1/05	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>(a) and (b) Adds to beginning, “Except as permitted in paragraphs (c) or (d);” changes “who knows” with “having knowledge;”</p> <p><i>(c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyers report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).</i></p> <p>(d) Adds “or information” after “knowledge;” replaces language after “protected” with “as confidential information:</p> <p style="padding-left: 40px;"><i>(1) by Rule 1.05 or</i></p> <p style="padding-left: 40px;"><i>(2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.”</i></p>
UT Effective 11/1/05	Same as MR
VT	(c) Adds “Bar Counsel in responding to an inquiry or by” after “gained by” Moves “otherwise

Amendm ent Effective 5/9/16	protected by Rule 1.6” to end of paragraph; Changes “an approved lawyer assistance program” to: “lawyer assistance program approved by the Vermont Bar Association or as a member of the Professional Responsibility Committee of the Vermont Bar Association.”
VA Effective 2/1/16	<p>Title: deletes “Professional”</p> <p>(a): replaces “who knows” with “having reliable information” and “as a lawyer in other respects” with “to practice law”</p> <p>(b): replaces “who knows” with “having reliable information”</p> <p>Adds (c) If a lawyer serving as a third party neutral receives reliable information during the dispute resolution process that another lawyer has engaged in misconduct which the lawyer would otherwise be required to report but for its confidential nature, the lawyer shall attempt to obtain the parties’ written agreement to waive confidentiality and permit disclosure of such information to the appropriate professional authority.</p> <p>(d): same as MR (c) but replaces “while participating in” with “who is a member of” and adds “or who is a trained intervenor or volunteer for such a program or committee, or who is otherwise cooperating in a particular assistance effort, when such information is obtained for the purposes of fulfilling the recognized objectives of the program”</p> <p>adds (e) A lawyer shall inform the Virginia State Bar if:</p> <p>(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;</p> <p>(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court;</p> <p>(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.</p> <p>Adds (e): A lawyer shall inform the Virginia State Bar if: (1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction; (2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court; (3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court. The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.</p>
WA Amendm ent Effective April 14, 2015	<p>(a) and (b): replaces “shall” with “should”</p> <p>(a) adds “or LLLT” after “lawyer”; adds “applicable” before “Rules of Professional Conduct”; adds “or LLLT’s” before “honesty, trustworthiness, or fitness as a lawyer” and adds “or LLLT’s” after this phrase.</p> <p>(c) This Rule does not permit a lawyer to report the professional misconduct of another lawyer or a judge to the appropriate authority if doing so would require the lawyer to disclose information otherwise protected by Rule 1.6. Adds “judge, or LLLT” after “misconduct of another lawyer”</p>
WV *Amend	Adds (d): This Rule shall not apply to members of the West Virginia Lawyer Assistance Program or any predecessor or successor organizations to the extent that these persons are acting in their official capacities as members, intervenors, representatives or volunteers in the West

ment effective 1/1/2015	Virginia Lawyer Assistance Program. The Rules of the Lawyer Assistance Program shall determine the procedure for reporting an impaired lawyer who resists all efforts of assistance by the WVLAP to the Office of Disciplinary Conduct.
WI Effective 7/1/07	(c) If the information revealing misconduct under subs. (a) or (b) is confidential under SCR 20:1.6, the lawyer shall consult with the client about the matter and abide by the client's wishes to the extent required by SCR 20:1.6. Adds (d) This rule does not require disclosure of any of the following: (1) Information gained by a lawyer while participating in a confidential lawyers' assistance program. (2) Information acquired by any person selected to mediate or arbitrate disputes between lawyers arising out of a professional or economic dispute involving law firm dissolutions, termination or departure of one or more lawyers from a law firm where such information is acquired in the course of mediating or arbitrating the dispute between lawyers.
WY Effective 7/1/06	Same as MR

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