

**Proposed Rule 8.3: Reporting Professional Misconduct**

(a) A lawyer shall inform the State Bar when the lawyer has personal knowledge that another lawyer has:

- (1) committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects under rule 8.4(b); or
- (2) engaged in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation under rule 8.4(c).

(b) If a lawyer reasonably believes that it would be contrary to the interests of a client of the lawyer or the lawyer's firm promptly to report under paragraph (a), the lawyer shall balance the potential prejudice or damage to the client against the lawyer's duty to report, and shall report the violation as soon as practical.

(c) This rule does not require or authorize disclosure of information gained by a lawyer while participating in a substance use or mental health program, or require disclosure of information protected by the duty of confidentiality, the attorney-client privilege, or by other rules or laws, including information that is confidential under Business and Professions Code section 6234.

***Comment***

[1] 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., Bus. & Prof. Code, § 6068, subd. (o).)

[2] A report about misconduct is not required where it would involve disclosure of information as set forth in paragraph (b). However, a lawyer may encourage a client to consent to disclosure provided the disclosure would not prejudice the client's interests.

[3] The duty to report under paragraph (a) does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question, to a lawyer who consults with a lawyer who is a potential client and whose professional conduct is in question, or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third-party lawyer's professional misconduct. Such situations are governed by the rules applicable to the client-lawyer relationship.

[4] Information about a lawyer's misconduct or fitness may be received by a lawyer while participating in a substance use or mental health program, including but not limited to the Attorney Diversion and Assistance Program. (See Bus. & Prof. Code, § 6234.) In these circumstances, providing for an exception to the reporting requirement of paragraph (a) of this rule encourages lawyers to seek treatment through such programs. Conversely, without such an exception, lawyers 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.

[5] In addition to reporting professional misconduct as required by paragraph (a), a report may also be made to another appropriate agency. A 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.

[6] See rule 8.4(a) with respect to the prohibitions against assisting, soliciting, or inducing another lawyer's ethical violation and rule 5.6(b) and Business and Professions Code section 6090.5 with respect to the prohibition on agreements that preclude the reporting of a violation of the rules. See Business and Professions Code section 6043.5 with respect to prohibitions on false and malicious complaints and section 6094 with respect to the privileges and immunities regarding communications relating to lawyer misconduct.

1 **ABA Model Rule 8.3: Reporting Professional Misconduct**

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3 *Maintaining The Integrity of The Profession*

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

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

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14 (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or  
15 information gained by a lawyer or judge while participating in an approved lawyers assistance  
16 program.

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18 ***Comment***

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20 [1] Self-regulation of the legal profession requires that members of the profession initiate  
21 disciplinary investigation when they know of a violation of the Rules of Professional Conduct.  
22 Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated  
23 violation may indicate a pattern of misconduct that only a disciplinary investigation can  
24 uncover. Reporting a violation is especially important where the victim is unlikely to discover  
25 the offense.

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27 [2] A report about misconduct is not required where it would involve violation of Rule 1.6.  
28 However, a lawyer should encourage a client to consent to disclosure where prosecution would  
29 not substantially prejudice the client's interests.

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31 [3] If a lawyer were obliged to report every violation of the Rules, the failure to report any  
32 violation would itself be a professional offense. Such a requirement existed in many  
33 jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those  
34 offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of  
35 judgment is, therefore, required in complying with the provisions of this Rule. The term  
36 "substantial" refers to the seriousness of the possible offense and not the quantum of evidence  
37 of which the lawyer is aware. A report should be made to the bar disciplinary agency unless  
38 some other agency, such as a peer review agency, is more appropriate in the circumstances.  
39 Similar considerations apply to the reporting of judicial misconduct.

41 [4] The duty to report professional misconduct does not apply to a lawyer retained to represent  
42 a lawyer whose professional conduct is in question. Such a situation is governed by the Rules  
43 applicable to the client-lawyer relationship.  
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45 [5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in  
46 the course of that lawyer's participation in an approved lawyers or judges assistance program.  
47 In that circumstance, providing for an exception to the reporting requirements of paragraphs  
48 (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a  
49 program. Conversely, without such an exception, lawyers and judges may hesitate to seek  
50 assistance from these programs, which may then result in additional harm to their professional  
51 careers and additional injury to the welfare of clients and the public. These Rules do not  
52 otherwise address the confidentiality of information received by a lawyer or judge participating  
53 in an approved lawyers assistance program; such an obligation, however, may be imposed by  
54 the rules of the program or other law.  
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