

A Lawyer's Duty to Report Misconduct Under Rule 8.3

by
Mary L. Galvin, Assistant Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Minnesota Lawyer* (December 3, 2001)

Most practicing lawyers in Minnesota understand that they have an obligation to report other attorneys to the Office of Lawyers Professional Responsibility for violations of the Minnesota Rules of Professional Conduct (MRPC). But when does that duty arise? While the topic is difficult to cover comprehensively in a short article, a basic review of the applicable rules may be useful.[Ftn 1](#)

In Minnesota, an attorney's duty to report another attorney who has committed a violation of the professional conduct rules is governed by Rule 8.3, which states in part that:

(a) A lawyer having knowledge 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 Office of Lawyers Professional Responsibility.

* * *

(c) This Rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.

Rule 8.3 thus can be broken down into a few components. A lawyer's duty to report another lawyer is triggered when: (a) she knows that another lawyer has committed a rule violation;[Ftn 2](#) (b) the violation raises a substantial question as to the lawyer's honesty, trustworthiness or fitness; and (c) the matter is not allowed or required to be kept confidential under Rule 1.6.

Thus the obligation to report thus is somewhat limited. A lawyer may not report misconduct without client approval when she learns of the misconduct through a privileged attorney-client communication. But, the lawyer may, in her discretion, disclose client secrets to report.[Ftn 3](#)

Many lawyers who contact the Director's Office seem to be surprised when reminded of the interplay between Rule 1.6, regarding client confidences and secrets, and their obligation to report. If the misconduct is sufficiently serious, even when the violation is learned through a privileged communication, a lawyer should encourage the client to consent to disclosure where the investigation of the matter would not substantially prejudice the client's interests.[Ftn 4](#) There have been no reported cases in Minnesota in which an attorney was disciplined solely for failure to report another attorney.[Ftn 5](#) However, it is clear that law is a self-regulating profession. Minnesota lawyers have an obligation to seriously consider whether their knowledge of another attorney's misconduct requires them to report. When in doubt, attorneys should contact the Director's Office and request an advisory opinion.[Ftn 6](#)

1 For a more in-depth analysis of this issue, see Edward J. Cleary, "The Obligation to Report and Retaliatory Ethics Complaints," in the April 1998 edition of *Bench & Bar of Minnesota*. The article is available online at: <http://www.courts.state.mn.us/lprb>. See also, Douglas R. Richmond, "The Duty to Report Professional Misconduct: A Practical Analysis of Lawyer Self-Regulation," 12 *Geo. J. Legal Ethics*, 175 (1999).

2 The knowledge requirement under the rules is defined as having "actual knowledge of the fact in question." Knowledge also "can be inferred from circumstances."

3 See Rule 1.6(b)(6) of the MRPC, which provides that a lawyer may reveal "secrets necessary to inform the Office of Lawyers Professional Responsibility of knowledge of another lawyer's 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."

4 See Edward J. Cleary, "Obligation to Report and Retaliatory Ethics Complaints," note 1, *supra*.

5 According to Douglas R. Richmond, "The Duty to Report Professional Misconduct," note 1, *supra*, there have been only two cases reported nationwide in which lawyers have been disciplined for failing to report another attorney's misconduct. *In re Himmel*, 533 N.E.2d 790 (Ill. 1988); *In re Condit*, No. SB-94-0021-D (Ariz. March 14, 1995). A recent search has revealed no new cases.

6 The service is provided free of charge to Minnesota lawyers by contacting the Director's Office at (651) 296-3952.