

Self-Reporting Misconduct

by

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“I think I violated the Minnesota Rules of Professional Conduct. Do I have a duty to self-report?”

This question is not infrequently posed to the Director’s Office. The short answer is “probably not.”

The only affirmative duty for a lawyer to self-report their own misconduct in the rules governing the lawyer discipline system is found in Rule 12(d) of the Rules on Lawyers Professional Responsibility. The rule establishes a reciprocal discipline obligation to self-report to the Director’s Office if a lawyer is subject to public disciplinary proceedings in another jurisdiction. Otherwise, no duty to self-report exists.

Rule 8.3(a) states that “[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.” (Emphasis supplied.)

The rule imposes a duty to report certain misconduct of other lawyers but not a duty to report one’s own conduct.

Although there is not a general duty to self-report, lawyers nevertheless should consider and may wish to self-report their misconduct.

Anyone can report misconduct: the lawyer’s client, judges, court staff, opposing counsel, opposing parties or total bystanders all have the ability and potential to report an attorney’s misconduct. The Director, pursuant to Rule 8(a) has the ability to seek permission of the Lawyers Board Executive Committee to initiate an investigation without a complaint based on information the Director has learned, including from media reports. Additionally, there is no statute of limitations on reporting attorney misconduct.

Because there are others who could potentially report a lawyer’s misconduct, the anxiety of wondering if someone is going to report the misconduct is relieved through self-reporting.

By self-reporting their misconduct, lawyers allow the Director to take the self-report into consideration when determining what discipline may be appropriate. This is especially true in cases where but for the self-report the Director’s Office may not have found out about the misconduct.

Self-reporting in such situations may demonstrate an attorney’s willingness to accept the responsibility and consequences of his or her own actions. While the decision not to self-report will not be seen as an

aggravating factor that may lead to increased discipline, a self-report where the attorney may otherwise have evaded detection has been considered as mitigation by the Minnesota Supreme Court.^{Ftn 1}

Experienced counsel who regularly represent attorneys before the court and Director's Office have learned this lesson well and the majority of self-reports now come through counsel. Counsel can accompany the lawyer to meet with a representative of the Director's Office, and may be able to present the conduct and the lawyer in as good a light as possible.

Serious misconduct such as major defalcations or felony criminal convictions will still result in substantial discipline whether self-reported or not, but some less serious violations may result in a sanction that would be less than otherwise expected due to the attorney's forthright admission of their misconduct and self-report.

While lawyers only have a duty to self-report if they are subject to public discipline proceedings in other jurisdictions, a lawyer who has violated the disciplinary rules may wish to consider self-reporting. It is better to tell the Director yourself than to have someone else report you.

¹ See *In re Simonson*, 365 N.W.2d 259 (Minn. 1985).