

Reporting the Misconduct of Others

by

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Occasionally there appear in the news media stories about lawyers who have run afoul of the law. The lawyer accused of using illicit drugs. The lawyer charged with failing to file income tax returns. The lawyer convicted of domestic assault.

For most people these stories are a curiosity. Despite all of the lawyer jokes, lawyers still occupy a place of respect in society and reports of lawyers engaging in illegal activity are newsworthy precisely because they are so unusual. For most people these accounts of lawyers behaving badly are interesting (and may even engender a sense of *schadenfreude*), but lawyers may have an additional reaction.

Lawyers may find themselves wondering if the disciplinary authorities are aware of this conduct. They may question if they should report this potential misconduct, or even if they have an obligation to report.

The Director's Office has received requests for advisory opinions from lawyers who learn of potentially unprofessional conduct from media reports and wonder if they could be disciplined for failing to report such conduct.

While it is rarely safe to say never, it's difficult to imagine a case in which a lawyer could be subject to discipline for failing to report possible unprofessional conduct in such situations.

For a lawyer's ethical obligation to report to be triggered the lawyer must "know that another lawyer has committed a violation of the Rules of Professional Conduct." There are several reasons why a news report would normally not constitute "knowledge" of a rule violation.

News reports are often just reports of some action taken (e.g., "police today arrested lawyer Jones") that don't go to the underlying conduct, and don't answer whether the lawyer actually engaged in the conduct for which he or she is being arrested. So, unless the potentially reporting lawyer has some independent knowledge, the news account would not be enough to give the lawyer "knowledge" of wrongdoing.

Further, even if the report describes conduct that could be a violation of the Minnesota Rules of Professional Conduct (e.g., "today lawyer Jones was convicted of failing to file income tax returns"), the other lawyer still only knows what's being reported. He or she doesn't have any firsthand knowledge of the accuracy of the report. For the purpose of Rule 8.3, a media report by itself does not constitute actual knowledge.

That leads to the second question — should the lawyer report such conduct? Driving that concern may be

the question, “If I don’t report this, will it be investigated?”

Without someone filing a complaint, how does the matter ever get investigated? And without an investigation, how is an unprofessional lawyer held accountable for his or her conduct?

Under the Minnesota Rules on Lawyers Professional Responsibility — the rules governing the attorney disciplinary system — it is not necessary that someone file a complaint for the Director to initiate an investigation into potential wrongdoing.

The rules specifically provide that subject to prior approval of the Lawyers Professional Responsibility Board Executive Committee, investigations may be commenced at the sole initiative of the Director. Accordingly, in cases where there are media reports of potential wrongdoing by lawyers, the Director may, after receiving authorization from the Executive Committee, initiate an investigation into those reports.

If the news report is in one of the Twin Cities’ major papers, or on one of the Twin Cities’ television stations, it most assuredly will come to the Director’s attention. Also, with such high visibility cases the lawyer who is the subject of the report may well self-report.

Therefore, it is not necessary, nor even desirable, for lawyers to file complaints based solely upon information they’ve obtained through the media.

One possible exception involves lawyers in greater Minnesota who learn of potential unprofessional misconduct through local media outlets. Those media reports may or may not make their way to St. Paul. While the lawyer may not have a duty to report, he or she could certainly contact the Director’s Office to see if the Director is aware of the reports.

Information about complaints, including whether a complaint has even been filed, is generally confidential pursuant to RLPR Rule 20. However, the rule contains an exception allowing the Director to address situations where the potential wrongdoing is already public by permitting the Director to disclose “that a matter is or is not being investigated.”

The reporting attorney wouldn’t need to file a complaint since the Director could initiate the investigation on his own, but the lawyer would at least be able to confirm that the disciplinary authorities are aware of potentially unprofessional conduct.