

1 **Proposed Rule 8.3: Reporting Professional Misconduct**

2  
3 (a) A lawyer shall inform the State Bar when the lawyer has personal knowledge that another  
4 lawyer has committed a criminal act that reflects adversely on the lawyer’s honesty,  
5 trustworthiness, or fitness as a lawyer in other respects as prohibited by rule 8.4(b).  
6

7 (b) For purposes of this rule, “personal knowledge” is distinct from the definition of  
8 “[k]nowingly”, “known,” or “knows” under rule 1.0.1(f) and is limited to information based on  
9 firsthand observation gained through the lawyer’s own senses.  
10

11 (c) This rule does not require or authorize disclosure of information gained by a lawyer while  
12 participating in a substance use or mental health program, or require disclosure of information  
13 protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and  
14 1.8.2; the lawyer-client privilege; or by other rules or laws, including information that is  
15 confidential under Business and Professions Code section 6234.  
16

17 ***Comment***

18  
19 [1] This rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as  
20 required by these rules or the State Bar Act. (See, e.g., rule 8.4.1(d) and (e); Bus. & Prof. Code, §  
21 6068, subd. (o).)  
22

23 [2] The duty to report under paragraph (a) is not intended to discourage lawyers from seeking  
24 counsel. This rule does not apply to a lawyer who is consulted about or retained to represent a  
25 lawyer whose conduct is in question, or to a lawyer consulted in a professional capacity by  
26 another lawyer on whether the inquiring lawyer has a duty to report a third-party lawyer's  
27 professional misconduct.  
28

29 [3] If a lawyer reasonably believes\* that it would be contrary to the interests of a client of the  
30 lawyer or a client of the lawyer’s firm promptly to report under paragraph (a), the lawyer  
31 should report as soon as the lawyer reasonably believes\* the reporting will no longer cause  
32 material prejudice or damage to the client. The lawyer should also consider the applicability of  
33 other rules such as rules 1.4 (the duty to communicate) and 1.7(b) (material limitation conflict).  
34

35 [4] Information about a lawyer's misconduct or fitness may be received by a lawyer while  
36 participating in a substance use or mental health program, including but not limited to the  
37 Attorney Diversion and Assistance Program. (See Bus. & Prof. Code, § 6234.) In these  
38 circumstances, providing for an exception to the reporting requirement of paragraph (a) of this  
39 rule encourages lawyers to seek treatment through such programs. Conversely, without such an  
40 exception, lawyers may hesitate to seek assistance from these programs, which may then result

41 in additional harm to their professional careers and additional injury to the welfare of clients  
42 and the public.

43

44 [5] In addition to reporting professional misconduct as required by paragraph (a), a report may  
45 also be made to another appropriate agency. A lawyer must not threaten to present criminal,  
46 administrative or disciplinary charges to obtain an advantage in a civil dispute in violation of  
47 rule 3.10.

48

49 [6] A failure to report may also implicate rule 8.4(a) with respect to the prohibitions against  
50 assisting, soliciting, or inducing another lawyer's ethical violation; see also rule 5.6(b) and  
51 Business and Professions Code section 6090.5 with respect to the prohibition on agreements  
52 that preclude the reporting of a violation of the rules.

53

54 [7] Communications to the State Bar relating to lawyer misconduct are "privileged and no  
55 lawsuit predicated thereon may be instituted against any person." See Business and Professions  
56 Code section 6094; but see Business and Professions Code section 6043.5 with respect to  
57 criminal penalties for false and malicious reports or complaints.

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

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

2  
3 *Maintaining The Integrity of The Profession*

4  
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.

9  
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.

13  
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.

17  
18 **Comment**

19  
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.

26  
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.

30  
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.  
44

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.  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79