

1 **Rule 8.3. Reporting Professional Misconduct.**

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

6 (b) A lawyer who knows that a judge has committed a violation of applicable Rules of  
7 Judicial Conduct that raises a substantial question as to the judge's fitness for office shall  
8 inform the appropriate authority.

9 (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6  
10 or information gained by a lawyer or judge while participating in an  
11 approved lawyers assistance program or in a Utah State Bar-sponsored fee dispute  
12 resolution program.

13 **Comment**

14 [1] Self-regulation of the legal profession requires that members of the profession initiate  
15 disciplinary investigation when they know of a violation of the applicable Rules of  
16 Professional Conduct. Lawyers have a similar obligation with respect to judicial  
17 misconduct. An apparently isolated violation may indicate a pattern of misconduct that  
18 only a disciplinary investigation can uncover. Reporting a violation is especially  
19 important where the victim is unlikely to discover the offense.

20 [2] A report about misconduct is not required where it would involve violation of Rule  
21 1.6. However, a lawyer should encourage a client to consent to disclosure where  
22 prosecution would not substantially prejudice the client's interests.

23 [3] If a lawyer were obliged to report every violation of the Rules, the failure to report  
24 any violation would itself be a professional offense. Such a requirement existed in many  
25 jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to  
26 those offenses that a self-regulating profession must vigorously endeavor to prevent. A  
27 measure of judgment is, therefore, required in complying with the provisions of this Rule.

28 The term "substantial" refers to the seriousness of the possible offense and not the  
29 quantum of evidence of which the lawyer is aware. A report should be made to the bar  
30 disciplinary agency unless some other agency, such as a peer review agency, is more  
31 appropriate in the circumstances. Similar considerations apply to the reporting of judicial  
32 misconduct.

33 [4] The duty to report professional misconduct does not apply to a lawyer retained to  
34 represent a legal professional whose professional conduct is in question. Such a situation  
35 is governed by the rules applicable to the client-lawyer relationship.

36 [5] Information about a lawyer's or judge's misconduct or fitness may be received by a  
37 lawyer in the course of that lawyer's participation in an approved lawyers or judges  
38 assistance program. In that circumstance, providing for an exception to the reporting  
39 requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to  
40 seek treatment through such a program. Conversely, without such an exception, lawyers  
41 and judges may hesitate to seek assistance from these programs, which may then result  
42 in additional harm to their professional careers and additional injury to the welfare of  
43 clients and the public.

44 [6] Information about a lawyer's misconduct or fitness may also be received during a  
45 Utah State Bar-sponsored fee dispute arbitration or mediation. Providing an exception  
46 to the reporting requirements in such cases encourages lawyers to use the Bar's fee  
47 dispute resolution process and helps lawyers and clients resolve such matters without  
48 litigation.