

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.