

4-8.3 | JUDICIAL AND LEGAL OFFICIALS

(a) Reporting Misconduct of Other Lawyers. 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 must inform the appropriate professional authority.

(b) Reporting Misconduct of Judges. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office must inform the appropriate authority.

(c) Confidences Preserved. This rule does not require disclosure of information:

- (1) otherwise protected by rule 4-1.6;
- (2) gained by a lawyer while serving as a mediator or mediation participant if the information is privileged or confidential under applicable law; or
- (3) gained by a lawyer or judge while participating in an approved lawyers assistance program unless the lawyer's participation in an approved lawyers assistance program is part of a disciplinary sanction, in which case a report about the lawyer who is participating as part of a disciplinary sanction must be made to the appropriate disciplinary agency.

(d) Limited Exception for Florida Bar Established Law Practice Management Program. A lawyer employed by or acting on behalf of the law practice management advice and education program established and supervised by the board of governors is exempt from the obligation to disclose knowledge of the conduct of another member of The Florida Bar that raises a substantial question as to the other lawyer's fitness to practice, if the lawyer employed by or acting on behalf of the program acquired the knowledge while engaged in the course of the lawyer's regular job duties as an employee of the program.



(Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended and effective Feb. 8, 2001 (795 So.2d 1); amended March 23, 2006, effective May 22, 2006 (933 So.2d 417); amended April 12, 2012, effective July 1, 2012 (101 So.3d 807); amended November 9, 2017, effective February 1, 2018 (234 So.3d 632); amended January 4, 2019, effective March 5, 2019 (267 So.3d 891).)

Comments

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

A report about misconduct is not required where it would involve violation of rule 4-1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

If a lawyer were obliged to report every violation of the rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

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

Generally, Florida statutes provide that information gained through a "mediation communication" is privileged and confidential, including information which discloses professional misconduct occurring outside the mediation. However, professional misconduct occurring during the mediation is not privileged or confidential under Florida statutes.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of subdivisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.