

The Lawyer's Duty to Report Misconduct

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presented by

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History of the Duty to Self Report in Kansas per Rule 8.3(a)

- First required in Kansas when the Model Code of Professional Conduct was adopted by the Kansas Supreme Court in 1971.
- More clearly defined when the Kansas Supreme Court adopted the Kansas Rules of Professional Conduct in 1989.

Purpose of Reporting Misconduct

Lawyers can be hesitant to report other lawyers and often do not understand when a lawyer is required to report misconduct.

- Important component of attorney self-regulation.
- Avoid legislative interference in attorney regulation.

Attorney Discipline for Failure to Report

- *In Re Himmel*, 533 N.E. 2d 790. (Ill. 1988)
 - First case in United States to discipline a lawyer for failure to report misconduct to another lawyer.
 - Illinois lawyer was suspended for one year because he did not report another lawyer's trust account theft and for entering into an agreement not to report.

State Differences

- Model Rules of Professional Conduct and the Missouri Rules require reporting misconduct of “other lawyers” and only if the violation of the rules “raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer...”
- The Kansas Rules of Professional Conduct impose a much broader duty than the Model Rules. Kansas lawyers must self-report and are required to report all misconduct.
- Reliance upon AI is precarious

A Review of the Rules

- Kansas Rule of Professional Conduct 8.3(a)

“A lawyer having *knowledge* of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority.” (emphasis added)

- ABA Model Rule of Professional Conduct 8.3(a) and Missouri Supreme Court Rule 4-8.3(a)

“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 shall inform the appropriate professional authority.” (emphasis added)

Knowledge Requirement in Kansas

- A Kansas lawyer must report any conduct that the lawyer thinks is misconduct. The duty exists even if the rule violations do not implicate the lawyer's honesty, trustworthiness or fitness.
- Knowledge is defined in KRPC 1.0(g) as “actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.”
 - It must be more than a “mere suspicion.”

KRPC 8.3 Exceptions to Reporting

Comment [2] Any information that would violate on confidentiality (KRPC 1.6)

Comment [3] Representing a lawyer whose professional conduct is in question

Comment [4] Any information provided by a lawyer to a KALAP volunteer.

Kansas Supreme Court Rule 210(c)

“Duty to Report. An attorney who has *knowledge* of any action or omission that in the attorney’s opinion constitutes misconduct must report the action or omission to the disciplinary administrator.” (emphasis added)

If another Report has Already been Made

- A report by another does not absolve you of your duty to self-report.
- Make the self-report independently if you have not yet received formal notice of the prior report.
- If you receive notice of the prior report before you independently self-report then address in your response acknowledgement of duty to report, the steps you took towards that and your admission of rule violations

Threatening a Disciplinary Complaint

- May violate the mandatory duty to report under Rule 8.3.
- Cannot threaten to gain strategic advantage, embarrass, harm or burden opposing counsel.
- Must not condition reporting on any subsequent action or terms.

Other Rules Requiring a Lawyer to Report

- SCR 219 requires a lawyer to report to the disciplinary administrator if the lawyer is charged with a felony, a crime mandating registration as an offender, and class A or B misdemeanor.
- SCR 219 also requires a report if the lawyer is convicted of certain crimes. (*See also* Missouri Supreme Court Rule 5.21(a))
- SCR 221 (b) requires a report to the disciplinary administrator if a Kansas lawyer has been disciplined in another jurisdiction. (*See also* Missouri Supreme Court Rule 5.20)