

Rule 8.3 Reporting Professional Misconduct (Commission's Proposed Rule – Clean Version)

- (a) A lawyer who knows that another lawyer has committed a felonious criminal act that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall inform the appropriate disciplinary authority.
- (b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.
- (c) A lawyer who knows that a judge or other adjudicative officer has committed a violation of applicable rules of judicial conduct that raises a substantial question as to that person's fitness for office may, but is not required to, report the violation to the appropriate authority.
- (d) This Rule does not authorize a lawyer to report misconduct if the lawyer is prohibited from doing so by the lawyer's duties to a client, a former client or by law. Such prohibitions include, but are not limited to, the lawyer's duty not to disclose (i) information otherwise protected by Rule 1.6, Rule 1.9, or Business and Professions Code section 6068(e); (ii) information gained by a lawyer or judge while participating in an approved lawyers assistance program; (iii) information gained during a mediation; (iv) information subject to a confidential protective order; or (v) information otherwise protected under laws governing fiduciaries.
- substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer.
- [2] This Rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required under the State Bar Act. See, e.g., Business and Professions Code section 6068(o). In addition, a lawyer is not obligated to report a felonious criminal act under paragraph (a) committed by another lawyer if doing so would infringe on the reporting lawyer's privilege against self-incrimination.
- [3] Even if a lawyer is permitted or required to report under this Rule, the lawyer must not threaten to file criminal, administrative or disciplinary charges to obtain an advantage in a civil dispute in violation of Rule 3.10.
- [4] 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 lawyer-client relationship.
- [5] A lawyer may not be a party to or participate in offering or making an agreement that would violate Business and Professions Code section 6090.5.

COMMENT

- [1] In deciding whether to report another lawyer's violation of these Rules or the State Bar Act that is not required by paragraph (a), a lawyer should consider among other things whether the violation raises a