

LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET Q
INTRODUCTION TO REPORTING LAWYER MISCONDUCT OR UNFITNESS

Worksheet Q is intended to facilitate a discussion about a lawyer's obligation to report lawyer misconduct or unfitness, including the appropriate way to handle situations where the mentee believes another lawyer has committed an ethical violation and where the mentee has been asked by a senior member of the firm to do something that is unethical or unprofessional.

* * *

- Discuss a lawyer's obligation to report lawyer/judge misconduct or unfitness, including the reasons why lawyers should report other lawyers' misconduct or unfitness and to whom such misconduct should be reported. See Prof. Cond. Rules 8.2, 8.3 and 8.4; Admis. Disc. R. 31, sec. 8.
- Discuss the types of factors which should be considered in determining whether misconduct or unfitness should be reported to a tribunal, disciplinary agency, Judges and Lawyers Assistance Program, prosecutor's office, or other authority.
- Discuss the following situations and suggest the most appropriate authority (if any) to whom the conduct should be reported and the reasons therefore:
 - Continuous discovery abuse by opposing counsel
 - Opposing counsel filing frivolous lawsuits or lawsuits merely to harass your client
 - Egregiously unprofessional conduct during litigation
 - Suspected theft by an attorney of a client's funds
 - Suspected financial misconduct by a lawyer who is guardian for an incompetent person
 - An attorney's failure to pay expert fees or other costs of litigation
 - Theft of IOLTA monies by a lawyer in your firm
 - Abusive and disrespectful behavior toward counsel and/or witnesses by a judge
 - Client neglect because of suspected substance abuse or mental health issues by another attorney
 - Erratic, unfair or unprofessional behavior by a judge or attorney because of suspected substance abuse or mental health issues
 - Opposing counsel representing a party with whom there is a conflict of interest
 - Unauthorized practice of law by an attorney licensed in a jurisdiction other than Indiana
 - Another attorney's false statements regarding the qualifications or integrity of a judge.
- Discuss the firm's procedure (if in an in-house mentoring relationship) or the appropriate action for a mentee who suspects that a partner in the firm has committed misconduct. Discuss the procedure when an associate in the firm is suspected of misconduct.
- Discuss what the mentee should do if he or she does not know whether a partner or associate's conduct is inappropriate, but he or she suspects that it might be.

- Discuss what the mentee should do if a superior in the mentee's firm instructs the mentee to do something that the mentee believes to be unethical. See Prof. Cond. Rules 5.1 and 5.2.
 - Discuss the mentee's ethical responsibility to properly oversee non-lawyer assistants to ensure that their conduct is compatible with the professional obligations of the lawyer. See Prof. Cond. Rule 5.3.
 - Read and discuss the attached excerpt regarding dealing with ethical issues in your law firm. Kimm Alayne Walton, *WHAT LAW SCHOOL DOESN'T TEACH YOU...BUT YOU REALLY NEED TO KNOW* (2000).
 - Suggest resources that the mentee can consult for making important ethical decisions, including the following:
 - Identify the procedure for obtaining in-house ethics advice (if you are in an in-house mentoring relationship).
 - Provide suggestions for finding outside ethics counsel and when such action is recommended.
 - Identify other helpful ethics materials, where they can be found, and the importance of supplementing general ethics resources with independent research on Indiana disciplinary case law when the ethics resources reviewed are not based on the Indiana Rules of Professional Conduct.
 - Identify ethics inquiry services of bar associations.
-

RESOURCES

ABA Center for Professional Responsibility: <http://www.abanet.org/cpr/home.html>

ABA ETHICSearch: 1-800-285-2221 or ethicsearch@staff.abanet.org. For information, *see* <http://www.abanet.org/cpr/ethicsearch>

The Indiana Rules of Professional Conduct:
http://www.in.gov/judiciary/rules/prof_conduct/index.html

Rule 23 of the Indiana Admission and Discipline Rules (Disciplinary Commission and Proceedings): http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc241999447

The Indiana Supreme Court Disciplinary Commission: <http://www.in.gov/judiciary/discipline/>

Indiana Judges and Lawyers Assistance Program: <http://www.IN.gov/judiciary/ijlap>

Indiana State Bar Association Legal Ethics Committee/Telephone Advisory Panel.
ISBA phone: (317) 639-5465 (ask for referral to lawyer volunteer for particular county).

Indianapolis Bar Association Senior Lawyer Executive Committee "Safe Ask Program."
IBA phone: (317) 269-2000 (ask for referral to senior lawyer volunteer).

American Legal Ethics Library: <http://www.law.cornell.edu/ethics/>

LegalEthics.com: www.legalethics.com

Association of Professional Responsibility Lawyers: <http://www.aprl.net>

National Organization of Bar Counsel: <http://www.nobc.org>

NeoEthics: Law and Insurance Resources for the ABA's Tort Trial and Insurance Practice Section: <http://www.edicta.org/NeoethicsBucklin/Neoethics.htm>

sunEthics (Florida and national issues): <http://www.sunethics.com/>

Ohio Supreme Court Board of Commissioners on Grievances and Discipline Ethics Advisory Opinions http://www.sconet.state.oh.us/Boards/BOC/Advisory_Opinions/default.aspx

INDIANA RULES OF PROFESSIONAL CONDUCT

LAW FIRMS AND ASSOCIATIONS

RULE 5.1: RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.2: JUDICIAL AND LEGAL OFFICIALS

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. . . .

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

- (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.
- (b) 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 shall inform the appropriate authority.
- (c) This Rule does not require reporting of a violation or disclosure of information if such action would involve disclosure of information that is otherwise protected by Rule 1.6, or is gained by a lawyer while providing advisory opinions or telephone advice on legal ethics issues as a member of a bar association committee or similar entity formed for the purposes of providing such opinions or advice and designated by the Indiana Supreme Court.
- (d) The relationship between lawyers or judges acting on behalf of a judges or lawyers assistance program approved by the Supreme Court, and lawyers or judges who have agreed to seek assistance from and participate in any such programs, shall be considered one of attorney and client, with its attendant duty of confidentiality and privilege from disclosure.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

To view comments to the above rules, *see*
http://www.in.gov/judiciary/rules/prof_conduct/index.html

INDIANA ADMISSION AND DISCIPLINE RULES

RULE 31. JUDGES AND LAWYERS ASSISTANCE PROGRAM

Section 1. Establishment.

The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. . . .

Section 2. Purpose.

The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

Section 8. Referrals.

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.
- (d) The Committee may refer judges, lawyers, and law students to outside agencies, organizations, or individuals for assessment or treatment upon such terms authorized by the Guidelines.

Section 10. Immunity. The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

To view the complete text of the above rule and the "Program Guidelines for the Indiana Judges And Lawyers Assistance Program," *see*

http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc2419994555