The Committee has been asked to provide guidance concerning the circumstances under which an attorney has a duty to self-report potential misconduct to the Disciplinary Commission. The potential sources of a duty to self-report will be found either in the Indiana Rules of Professional Conduct or the Indiana Rules for Admission and Discipline.¹ As explained below, Indiana lawyers have no general duty to self-report potential misconduct to the Disciplinary Commission. However, there are two exceptions to that general rule requiring Indiana lawyers to promptly self-report to the Commission certain findings of criminal guilt and most discipline issued in a different jurisdiction (i.e., discipline imposed by another state or federal authority).

**NO DUTY TO SELF-REPORT UNDER THE RULES OF PROFESSIONAL CONDUCT**

Rule 8.3 of the Rules of Professional Conduct governs both reporting lawyer misconduct (Rule 83(a)) and judicial misconduct (Rule 8.3(b)). Rule 8.3(a) states: “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.” Indiana’s “appropriate professional authority” in the case of lawyers is the Supreme Court Disciplinary Commission.

The plain language of Rule 8.3 makes it clear that the duty to report applies only to conduct committed by “another lawyer” – that is, a lawyer other than the reporting lawyer. The

¹ The circumstances under which a lawyer has a duty to report misconduct or some other error to a client is beyond the scope of this opinion. For some recent guidance on that important question, see Formal Opinion 481 (ABA Standing Committee on Ethics and Professional Responsibility April 17, 2018). See also *In re Hoffman*, 700 N.E. 2d 1138 (Ind. 1998). [NOTE: I don’t the “see” is used here as a signal, but rather as a verb]
Rule thereby generally relieves Indiana lawyers of the burden to self-report, subject to important exceptions discussed below.

There are no reported decisions in Indiana addressing whether there is a duty of self-reporting under Rule 8.3. However, a Connecticut court considered whether Connecticut’s professional conduct rule on reporting, which contains the same language as Indiana’s Rule 8.3, requires a Connecticut attorney to self-report an ethical violation. The court held that “…the defendant was not under a duty to report his own misconduct to the committee.” *State v. Ankerman*, 81 Conn. App. 503, 513, 840 A.2d 1182, 1190 (2004).

Indiana Rule 8.3’s plain language contrasts with the self-reporting obligation imposed on lawyers in other jurisdictions which expressly extend lawyers’ duty to report misconduct to include self-reporting in addition to reporting misconduct of other lawyers.

For example, Ohio’s professional conduct rule concerning reporting materially differs from Indiana’s Rule 8.3. Specifically, Ohio’s rule does not limit an attorney’s reporting duty to misconduct by “another lawyer.” *OH. PROF. COND. R. 8.3(a).* Instead, Ohio’s rule applies when “a lawyer…possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects…” *Id.* (emphasis added.) The distinction between Ohio’s “any lawyer” language and Indiana’s “another lawyer” language is meaningful and distinguishes an Ohio lawyer’s duty to self-report from an Indiana lawyer’s duty to report only misconduct of another lawyer. *Compare OH. PROF. COND. R. 8.3(a) with IND. PROF. COND. R. 8.3(a).* While Indiana has no interpretive comment to Rule 8.3 that would expand its plain meaning, Ohio’s comments to its Rule 8.3 make the duty to self-report clear. “Self-regulation of the legal profession requires that a member of the profession initiate disciplinary investigation when the lawyer knows of a
violation of the Ohio Rules of Professional Conduct involving that lawyer or another lawyer.”

OH. PROF. COND. R. 8.3, cmt. 1 (emphasis added); see also Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline: Opinion 2007-1 (Feb. 9, 2007), available at:

THE DUTY TO SELF-REPORT CERTAIN FINDINGS OF CRIMINAL GUILT

The Rules of Professional Conduct are the beginning but not the end of the analysis of a duty of self-reporting. A limited duty to self-report is found in Admission and Discipline Rule 23, the procedural rule governing the functioning of Indiana’s lawyer discipline system. There are two instances in Rule 23 that require lawyers to self-report certain specified conduct.

Rule 23 requires a lawyer to self-report to the Commission any finding of guilt concerning “any felony or misdemeanor under the laws of any state or of the United States.” IND. ADMIS. DISC. R. 23, sec. 11(a)(1)(ii). The obligation to report is triggered by a finding of guilt, which is not the same as being convicted or sentenced. For example, a lawyer might enter a guilty plea to a crime that the court might accept but defer entering a judgment of conviction until the date of sentencing. In this circumstance, the conviction does not occur until later, but the judicial finding of guilt occurs earlier when the court accepts the guilty plea. Or, if a jury returns a guilty verdict, then the jury’s determination of guilt happens when the court accepts the jury’s verdict even though sentencing might happen at some future time.

The distinction between a finding of guilt and conviction or sentencing is important because ADMIS. DISC. R. 23, sec. 11.1(a)(1)(ii) requires that the self-report occur within ten days after the finding of guilt. Also, the self-report must be accompanied by a certified copy of the order finding guilt.
The duty to self-report a finding of guilt applies to crimes classified as felonies or misdemeanors under the laws of the jurisdiction where the crime was charged. In Indiana, infractions, such as for some traffic violations, are civil in nature and therefore need not be self-reported. Because the duty to self-report is triggered by the classification of the crime under the law of the jurisdiction where the crime was charged, a finding of guilt in a state that has low-level criminal offenses that do not rise to the level of a misdemeanor or felony need not be self-reported.

The scope of the self-reporting duty is sometimes misunderstood because under a different provision, the Commission is authorized to seek an interim license suspension for a finding of guilt of any crime “punishable as a felony.” ADMIS. DISC. R. 23, sec 11.1(a)(2). Thus, a finding of guilt with respect to a misdemeanor must be timely self-reported even if it will not support a petition for interim suspension.

**The Duty to Self-Report Most Foreign Discipline**


Self-reporting is not required for private foreign discipline (such as a private reprimand) or a resignation that is not accompanied by an admission of misconduct. While Indiana does not allow a lawyer to resign from the bar as part of a lawyer discipline proceeding without an admission of misconduct, ADMIS. DISC. R. 23(17)(a), a few jurisdictions allow it. If a lawyer
gives up his or her law license in another jurisdiction without admitting misconduct, even if it is in connection with a disciplinary proceeding, self-reporting of that circumstance is not required. Nor does a deferral agreement before a foreign lawyer discipline agency that does not result in an order of discipline trigger mandatory self-reporting.

Of particular note is that foreign discipline that is imposed in any other “jurisdiction” must be self-reported. This does not just mean discipline by other states. It also includes discipline imposed by federal courts and federal agencies that maintain their own bar, such as the U.S. Patent and Trademark Office.

Many jurisdictions have similar self-reporting duties, so Indiana lawyers who are admitted in other jurisdictions should take care to determine whether they have a duty to self-report Indiana discipline to their other jurisdictions of admission.

**Voluntary Self-Reporting**

A lawyer may nonetheless choose to self-report misconduct to the Commission in circumstances that are not mandatory. Whether and when to so is a complex tactical question with important procedural consequences, discussion of which is outside the scope of this opinion. Other jurisdictions have considered early self-reporting to be a factor considered in mitigation. *In re Cicardo*, 877 So. 2d 980 (La. 2004); *In re Fayssoux*, 675 S.E. 2d 428 (S.C. 2009); *Attorney Grievance Comm’n of Maryland v. Palmer*, 9 A.3d 37 (Md. 2010).

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2 For example, if the Commission’s review of lawyer conduct is initiated by a lawyer’s self-report, the Executive Director is allowed to proceed directly to the docketing stage without issuing a notice of investigation to the self-reporting lawyer or otherwise giving the lawyer an opportunity to be further heard before the docketing. ADMIS. DISC. R. 23, sec. 10(f). Because of this procedural quirk, the self-reporting lawyer should include a detailed explanation of the facts and circumstances of the events that triggered the self-report—whether a finding a criminal guilt, an order of foreign discipline, or a voluntary self-report for some other reason—at the time of making the report, because there will be little in the way of a further opportunity to be heard before the Commission decides whether the lawyer should be formally charged with misconduct.
CONCLUSION

For the reasons stated above, there is no general duty to self-report possible misconduct to the Disciplinary Commission. However, findings of guilt concerning any crime classified as a felony or misdemeanor by Indiana or another jurisdiction must be timely self-reported. Also, any public discipline imposed by another jurisdiction must be timely self-reported.