

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.130(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 the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Association's Bar Counsel.
- (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 report such violation to the Judicial Conduct Commission.
- (c) A lawyer is not required to report information that is protected by Rule 1.6 or by other law. Further, a lawyer or a judge does not have a duty to report or disclose information that is received in the course of participating in the Kentucky Lawyer Assistance Program or Ethics Hotline.
- (d) A lawyer acting in good faith in the discharge of the lawyer's professional responsibilities required by paragraphs (a) and (b) or when making a voluntary report of other misconduct shall be immune from any action, civil or criminal, and any disciplinary proceeding before the Bar as a result of said report, except for conduct prohibited by Rule 3.4(f).
- (e) As provided in SCR 3.435, a lawyer who is disciplined as a result of a lawyer disciplinary action brought before any authority other than the Association shall report that fact to Bar Counsel.
- (f) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, should immediately notify Bar Counsel of such event.

HISTORY: Amended by Order 2012-01, eff. 3-1-12; prior amendment eff. 7-15-09 (Order 2009-05), adopted by Order 89-1, eff. 1-1-90

Supreme Court Commentary

2009:

- (1) Self-regulation of the legal profession requires that members of the profession initiate a disciplinary investigation when they know that another lawyer has violated certain minimum standards of behavior as described in the Rule. 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.
- (2) 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 exists in many jurisdictions but has proved unenforceable. The Rule limits the reporting obligation to those violations 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. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial conduct. Lawyers requiring assistance in determining the need to report a violation may confer with their Supreme Court District Committee member. Pursuant to SCR 3.530(7) a lawyer's communications with a District Committee member are confidential.

(3) A lawyer who knows that a judge has committed a violation of the Code of Judicial Conduct that raises a substantial question as to the judge's fitness shall, at a minimum, file a report with the Judicial Conduct Commission. The term "substantial" refers to the seriousness of the possible offense.

(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 client-lawyer relationship.

(5) The duty to report misconduct is an important aspect of self-regulation, and is intended to achieve societal goals. In order to protect a lawyer who makes a report in compliance with the Rule and to encourage a lawyer to make a voluntary report of other acts of misconduct, the Rule provides qualified immunity to the reporting lawyer thereby removing the fear of retaliation by the reported lawyer or judge. The Rule's immunity provision is founded upon a similar rule of immunity provided by SCR 4.300, Canon 3D(3) of the Kentucky Code of Judicial Conduct.