

# Tip of the Month

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## Snitches Get Stitches?

### What is your duty to report another lawyer under Rule 8.3?

It is Friday night after a long work week and an attorney has stopped off at the local watering hole. She makes her way to the bar and recognizes an old law school classmate whom she has not seen in years. He has apparently had a few cocktails and waves for her to come join him. He offers her a celebratory drink and says, "Come celebrate my big score, 7 digit bill in a simple uncontested matter." As he celebrates and clinks her drink to his "clueless client", she wonders if she has an ethical duty to report his billing misconduct.

According to the Model Rules of Professional Conduct, there is a duty to maintain the integrity of the practice of law. Under Rule 8.3, this requires that members of the legal profession initiate disciplinary investigations against other attorneys when they know of a violation.<sup>1</sup> This duty is especially important where the victim is unlikely to discover the offense. The reportable conduct must raise a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer.<sup>2</sup> A substantial question refers to the seriousness of the possible offense and not necessarily the quantum of evidence of which the lawyer is aware.<sup>3</sup> In practice, what does this mean? What if there is merely suspicion of misconduct? Is there a duty to investigate further before reporting another lawyer?

Although disapproving of her classmate's billing tactics, it is possible that he was just exaggerating about his fee. The Model Rules of Professional Conduct state that for the duty to report to be triggered, a lawyer needs more than mere suspicion of misconduct but "actual knowledge of the fact in question" which "may be inferred from circumstances."<sup>4</sup> Although many jurisdictions use the ABA Model Rules standard, some take a different approach as to what constitutes sufficient knowledge of wrongdoing. So, consider the fact that the Model Rules may impose a broader requirement than that compelled by some state rules.

If it is determined that a violation has occurred under the applicable ethics rule, and the duty to report has been triggered, a report should be made to the relevant bar disciplinary agency. Merely reporting a violation to another lawyer or the trial court does not satisfy the reporting requirement.<sup>5</sup> Once the misconduct is discovered, it should be reported as soon as possible. Although there is not a specific timing requirement, case law explains that the report must be made within a reasonable time under the circumstances.<sup>6</sup> Keep in mind that it has been held that waiting even nine months to report another attorney's misconduct is too long.<sup>7</sup>

External influences can certainly be a factor in a lapse in judgment. Although substance abuse can be a contributing factor to misconduct, there is no duty to report another lawyer solely because of an addiction. Substance abuse alone may not raise a substantial question about a lawyer's honesty, trustworthiness or fitness.<sup>8</sup> Where the facts do not quite trigger the duty to report, but there is concern regarding another lawyer's substance abuse, a report should be filed with the local lawyer's assistance program.<sup>9</sup> However, where there is a known violation of the rules of professional conduct sufficient to trigger the reporting requirement, coupled with a substance abuse issue, the report should be made to the relevant bar disciplinary agency.

Even though her former classmate's conduct raises a substantial question as to his honesty and trustworthiness as a lawyer, the idea of reporting another colleague is extremely uncomfortable. Although no one wants to be in the situation where they are compelled to report a fellow attorney, the failure to report misconduct can result in serious disciplinary action. For example, the Illinois Supreme Court issued an opinion in a disciplinary case, suspending a lawyer for one year because the lawyer failed to report another lawyer's misconduct.<sup>10</sup> So, although reporting another attorney's misconduct can cause one to feel like a "snitch", the legal profession is a self-regulating one which requires honesty, integrity and, if necessary, discipline.

Model Rule 8.3 needs to be taken to heart. Although there is no duty to investigate mere suspicions, one cannot ignore obvious misconduct that raises questions regarding another lawyer's honesty, trustworthiness or fitness as a lawyer. So although "snitches might get stitches" out on the school yard, in the practice of law it is an attorney's ethical responsibility to maintain the integrity of the legal profession.

1. Mod. Rule Prof. Cond. § 8.3(a).
2. Mod. Rule Prof. Cond. § 8.3(a).
3. Mod. Rule Prof. Cond. § 8.3 cmt. 3.
4. Mod. Rule Prof. Cond. § 1.0(f).
5. *In re Riehlmann*, 891 So. 2d 1239 (La. 2005).
6. *United States v. Cantor*, 897 F. Supp. 110 (S.D.N.Y. 1995).
7. *In re Anderson*, 769 A.2d 1282 (Vt. 2000).
8. Colo. Ethics Op. 124 (2012).
9. See [http://www.americanbar.org/groups/lawyer\\_assistance.html](http://www.americanbar.org/groups/lawyer_assistance.html).
10. *In re Himmel*, 533 N.E.2d 790 (Ill. 1998).