

# Tip of the Month

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## You're Killing Me, Smalls!: Reporting Another Lawyer's Ethical Violation

The legal profession is a proud, (mostly) self-regulating body. We generally call our own balls and strikes, much like the boys on The Sandlot who played ball without an umpire. So, when you learn about another lawyer's ethical violation, is there a duty to report it? What if there is merely suspicion of misconduct? Is there a duty to investigate further before reporting another lawyer? Unfortunately, the consequences of not reporting another lawyer's misconduct can be more serious than losing an autographed baseball to The Beast.

ABA Model Rule 8.3 states that "[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. In other words, in the jurisdictions that have adopted the Model Rule, you are obligated to report the violation. However, Comment 3 to the Rule cautions that a measure of judgment is required in complying with the Rule. First, consider what "substantial" means in this context. The Comment offers this guidance: "The term substantial refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." Further, keep in mind that reporting a violation is especially important where the victim is unlikely to discover the offense. While reviewing the Rule and its Comments are instructive, the practical application of this Rule is admittedly challenging.

Say you know about an inappropriate relationship between a lawyer and their client in violation of Model Rule 1.8. If the violation raises a substantial question as to their honesty, trustworthiness, or fitness, you must inform the appropriate bar disciplinary authority. Of course, not all unethical behavior will be as blatant as Squints kissing Wendy Peffercorn while she's giving him CPR after he pretends to drown. But, if the attorney inadvertently discloses details about their relationship during a casual conversation at a bar association happy hour, you may be obligated to report the lawyer. Of course, you should always consult the laws of your jurisdiction when analyzing whether you must report the conduct.

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Although there is no duty to investigate mere suspicions, if you possess the requisite knowledge about a violation, the rules require that you report it within a reasonable time. This lends the question, how long is too long to wait? Since there is no specific timing requirement (other than as soon as possible), states grapple with this question and seem to have avoided establishing bright line rules. But it has been held that waiting even nine months to report another attorney's misconduct is too long. For purposes of reporting violations, the Louisiana Supreme Court offers this guidance:

The need for prompt reporting flows from the need to safeguard the public and the profession against future wrongdoing by the offending lawyer. This purpose is not served unless Rule 8.3(a) is read to require timely reporting under the circumstances presented. [1]

It can be difficult to discern when you must report the misconduct of another lawyer, in part, due to our general reluctance to do it in the first place. However, keep in mind that not only is it important to maintain the self-regulation and integrity of the profession, but the failure to report misconduct can result in serious disciplinary action that even Benny "The Jet" Rodriguez couldn't escape.

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