



RULE 8.3 REPORTING SCENARIOS

The following scenarios provide examples of a lawyer's obligations under [Rule of Professional Conduct 8.3](#), effective August 1, 2023. The discussion regarding these scenarios is provided for educational purposes only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.

SCENARIO 1: MANDATORY REPORTING

FACT PATTERN:

Larry, who represented a defendant in a civil matter, receives a call from his client telling him that the plaintiff keeps calling him and accusing him of failing to make the payment that is due on their settlement agreement. However, Larry's client had already sent the check to the plaintiff's attorney two months earlier. Larry then calls Tom, the plaintiff's attorney, to inquire. During the call, Tom admits that he received the defendant's check two months earlier and assures Tom that there is nothing to worry about because he will distribute the settlement funds to his own client within the next few days. Larry further presses Tom about why Tom's client believes that the defendant still has not yet paid the settlement. Tom explains that he has been busy and just didn't get around to telling his client that he received the settlement funds. Larry continues questioning Tom and asks whether there was any other reason for the delay in distributing funds to the plaintiff. During that discussion, Tom reveals that, for convenience, he deposited the settlement check into his firm's operating account in order to cover the firm's rent for two months, which was equal to Tom's contingency fee in the case, and that he planned to distribute the plaintiff's share of the settlement funds to the plaintiff, just after the second rental payment was withdrawn from the operating account. Is Larry required to report Tom?

DISCUSSION:

Under rule 8.3, Larry is required to report Tom's conduct to the State Bar.

Larry knows of credible evidence that Tom committed various ethical violations because of admissions Tom made about his own conduct during the phone call. In particular, depositing client funds into the firm's operating account in order to pay the firm's expenses is a misappropriation of the client's settlement funds. Also, Tom's concealment of his mishandling of the funds from his client is an act of deceit.

Tom's misappropriation of client funds raises a substantial question as to Tom's honesty, trustworthiness, or fitness as a lawyer. Even if Tom intended to pay, and ultimately pays the

client the full amount due the client from the settlement funds, Tom's honesty and trustworthiness come into question because he allowed his client to believe that the defendant still had not made any payment on the settlement.

Larry must report these violations without delay since the reporting will not cause material prejudice or damage to the interests of Larry's client.

SCENARIO 2: PERMISSIVE REPORTING

FACT PATTERN:

Karen represents Pam in a dispute with her employer. Pam is also going through a divorce, but she is represented by a different attorney, Angela, in the divorce proceedings. Pam complains to Karen that Angela has failed to return Pam's calls or emails for two weeks, and Pam is growing anxious to learn whether there are any new developments in the divorce case. Should Karen report Angela?

DISCUSSION:

Under Rule of Professional Conduct 1.4(a)(3) and Business and Professions Code section 6068, subdivision (m), Angela is required to respond promptly to reasonable status inquiries from her client, Pam, and must keep Pam reasonably informed of significant developments in Pam's divorce proceedings.

Although there may not have been any new developments in the divorce case over the past two weeks, Karen may believe that Pam's requests for information were reasonable, and that a two-week delay in responding to those requests was unreasonable.

Therefore, Karen **may** report Angela to the State Bar. However, Karen is **not required** to report Angela's conduct because rule 1.4(a)(3) and Business and Professions Code section 6068, subdivision (m) are not among the enumerated violations subject to mandatory reporting under Rule 8.3.

SCENARIO 3: EXCEPTIONS TO REPORTING

FACT PATTERN:

Sam has witnessed Fred, an attorney at his firm, tell a client that he missed a deadline and requested an extension from the court due to a recent family death. Sam knows, however, that Fred was on vacation. He is uncertain about his reporting obligations under rule 8.3. Therefore, he hires Jane, an attorney at a different firm, to consult Jane and receive advice about whether Fred's dishonesty to his client and to the court must be reported.

While consulting with Sam, Jane determines that Fred's dishonesty raises a substantial question as to Fred's honesty and trustworthiness. Is Jane required to report Sam or Fred?

DISCUSSION:

Conduct involving dishonesty that raises a substantial question as to a lawyer's honesty is subject to mandatory reporting under rule 8.3.

However, Jane is not required to report Fred's conduct because she learned of Fred's conduct while consulting Sam about Sam's duties under rule 8.3.

Under rule 8.3, Jane is not authorized or required to disclose information learned from her client, Sam, regarding Fred's conduct, or what Sam knows about Fred's conduct because that information is protected by the lawyer-client privilege, Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.8.2.

SCENARIO 4: FALSE REPORTING

FACT PATTERN:

Jacob represents Alicia in divorce proceedings against Todd, who is also an attorney. Jacob is concerned that Alicia cannot pay for living expenses for her and her children on the very low amount that the court awarded Alicia in a temporary child support order. He also believes that Todd mistreated Alicia during the marriage, and therefore believes that Todd should suffer some consequence for his mistreatment of Alicia. Jacob has no reason to believe that Todd's income is any higher than what he reported in the divorce proceedings. Although Jacob's client told him that Todd previously earned a higher salary, years earlier, she also said that she has no evidence that Todd's current income is higher than what he reported. Jacob's discovery efforts also failed to reveal any evidence that Todd misrepresented his current income in the divorce proceedings. However, Jacob thinks that the State Bar's investigators might be able to find something Jacob was unable to find. Jacob is also motivated by the feeling that, even if the State Bar does not find any misconduct by Todd, at least Todd will suffer some inconvenience, which Jacob believes he deserves, after the way he mistreated Alicia during the marriage.

For these reasons, Jacob files a State Bar complaint alleging that Todd violated Business and Professions Code, section 6068, subdivision (d) and Rules 3.3(a) and 8.4(c) by intentionally misrepresenting his income to the court during the divorce proceedings. Jacob asserts that he is complying with his reporting obligations under Rule 8.3. Did Jacob have a basis to report Todd?

DISCUSSION:

Jacob was not aware of any evidence that Todd made misrepresentations to the court. To the contrary, Jacob was aware of evidence that Todd has not made any misrepresentation to the Court. Jacob filed a complaint without an evidentiary basis to see if he could find some evidence that Todd made misrepresentations to the court and to punish Todd.

Rule 8.3 does not require or authorize a lawyer to file a complaint in hopes that an opponent will be found to have violated their ethical obligations. A lawyer may be subject to criminal penalties for false and malicious reports or complaints filed with the State Bar. (Bus. & Prof. Code §6043.5, subd. (a).) A lawyer may also be subject to State Bar discipline under Rule 8.4(c)

for engaging in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; and discipline under Business and Professions Code, section 6068, subdivision (d) and Rule 3.3(a) for offering false statements or false evidence to a tribunal.

SCENARIO 5: WHERE TO REPORT

FACT PATTERN:

Dimitri represents a plaintiff in litigation against Bob's client. Neither Bob nor his client, the defendant, appeared for the defendant's properly noticed deposition, which was scheduled for 10:00 a.m. at Dimitri's office on the west side of Los Angeles, CA. Due to the nonappearance, Dimitri filed a motion seeking discovery sanctions. In opposition to the motion, Bob filed a response, in which he stated that his mother who lives out of state was rushed to the hospital in a medical emergency, so he took a last-minute flight out of state, early in the morning prior to the scheduled deposition, and was unable to notify opposing counsel that he and his client could not attend the deposition. However, an associate attorney, who works for Dimitri, saw Bob walking into a mediator's office in downtown Los Angeles at 10:00 a.m., the same day of the deposition. When she returned to the office that afternoon, she asked Dimitri whether a different attorney represented the defendant at deposition because she saw Bob somewhere else in Los Angeles at the time of the scheduled deposition. Where should Dimitri report if he determines that reporting is appropriate?

DISCUSSION:

Through the eyewitness information from his associate, Dimitri knows of credible evidence that Bob made an intentional misrepresentation to the court about Bob's whereabouts on the day and time of his client's deposition.

Bob's intentional misrepresentation raises a substantial question as to his honesty and is among the list of conduct enumerated for mandatory reporting under rule 8.3.

Dimitri may satisfy his reporting obligation by reporting Bob's conduct to the court before which the litigation is pending. The court before which the litigation is pending has jurisdiction to investigate Bob's conduct and may properly consider Dimitri's complaint during the discovery sanctions hearing on Dimitri's motion. Dimitri may also satisfy his reporting obligation by reporting Bob's conduct to the State Bar.

SCENARIO 6: CREDIBLE EVIDENCE

FACT PATTERN:

Barbara and Dan are opposing counsel. Barbara represents the plaintiff in a civil litigation matter. Dan represents the defendant. Dan believes his client is telling the truth when his client says that the contract that was signed in 2020 was rescinded by later agreement between the parties. Nonetheless, the plaintiff's complaint seeks to enforce the 2020 contract. At a hearing on a demurrer to the complaint, Barbara argues that the 2020 contract, which is attached as an

exhibit to the complaint, is in full force and effect between the plaintiff and defendant. Should Dan report Barbara?

DISCUSSION:

Intentional misrepresentations as well as reckless misrepresentations are within the list of conduct enumerated for mandatory reporting obligations under rule 8.3.

However, an attorney's duty to report another attorney's misconduct arises only when the attorney **knows of credible evidence** that the offending attorney committed misconduct.

Each attorney in litigation is allowed to rely, in good faith, on their respective client's position regarding the facts in a case. Here, the clients have different positions regarding the status of the 2020 contract.

Barbara is not required to believe Dan's client over her own client. Therefore, Dan does not have evidence that Barbara has made either a reckless or an intentional misrepresentation by stating that the disputed 2020 contract was in full force and effect. Dan is not obligated to report Barbara's conduct, solely on his belief that her statement was inaccurate or incorrect.

SCENARIO 7: CREDIBLE EVIDENCE

FACT PATTERN:

Jill and Darrell are at a party. Jill asks Darrell if he has heard anything about their old law school friend, Jack. Darrell tells Jill that he heard through the grapevine that Jack had been running a Ponzi scheme for years and is now hiding from investors who are angry at the loss of their money. He thinks Jack must have hidden investor money in an offshore account and believes Jack is living outside the country somewhere. Is Jill required to report Jack?

DISCUSSION:

Rule 8.3 imposes a mandatory reporting obligation if an attorney knows of credible evidence that another attorney has committed a crime, when the criminal conduct raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

Rule 8.3 also imposes a mandatory reporting obligation if an attorney knows of credible evidence that another attorney has misappropriated funds or property.

Intentionally defrauding investors through a Ponzi scheme and hiding their money offshore raises a substantial question as to an attorney's honesty, trustworthiness, or fitness as a lawyer in other respects.

However, Jill only heard the information about Jack through rumors told at a party. Rumors do not constitute credible evidence. Therefore, Jill does not have an obligation to report Jack's alleged conduct to the State Bar.

SCENARIO 8: TIMING OF REPORTING

FACT PATTERN:

Manuel is the lead trial lawyer in very contentious litigation. Manuel knows of credible evidence that opposing counsel, Liza, made false statements in a declaration filed with the court. However, Manuel and Liza are in settlement negotiations, and Manuel is concerned that reporting Liza now under his Rule 8.3 obligations would disrupt those negotiations, which will be favorable to Manuel's client's demands. Is Manuel required to report Liza's dishonesty right now, despite the adverse effect it may have on his client's case?

DISCUSSION:

Rule 8.3 contains a temporal requirement for mandatory reporting. It begins: "A lawyer shall, without undue delay, inform the State Bar or a tribunal . . ." (emphasis added). Comment [3] of the rule provides guidance for understanding the phrase "without undue delay." Specifically, the comment provides:

The duty to report without undue delay under paragraph (a) requires the lawyer to report as soon as the lawyer reasonably believes the reporting will not cause material prejudice or damage to the interests of a client of the lawyer or a client of the lawyer's firm. . . .

In this scenario, Manuel reasonably believes that reporting will cause material prejudice or damage to the interests of the client because his reporting could disrupt reaching a favorable resolution for his client. Therefore, he is not required to immediately report Liza's dishonesty. Instead, he can wait until after the settlement agreement is finalized, fully executed and capable of enforcement to report Liza's conduct.

UPDATES

5/16/2024: Scenario 8 added.