

Alabama Rules of Professional Conduct

Maintaining the Integrity of the Profession

Rule 8.3.

Reporting Professional Misconduct.

(a) A lawyer possessing unprivileged knowledge of a violation of Rule 8.4 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request.

(c) A lawyer who is on the Alabama Lawyer Assistance Program Committee or who is a member of any committee or subcommittee of the Alabama Lawyer Assistance Program designed to assist lawyers with addiction and other mental-health-related disorders shall not be under any obligation to disclose any knowledge or evidence acquired from any other person (including judges and lawyers) during communications made by that other person for the purpose of seeking help of the sort the Alabama Lawyer Assistance Program Committee was intended to give. Any statement made by either party during such communications shall be privileged, and no claims or disciplinary action based on the lawyer's failure to disclose the knowledge or evidence acquired during such communications may be instituted.

(d) Inquiries or information received by any lawyer staffing a position with the Alabama State Bar Practice Management Assistance Program shall not be disclosed to the disciplinary authority without written permission of the lawyer seeking assistance. Any statement made by either party during such communications shall be privileged, and no claims or disciplinary action based on the lawyer's failure to disclose the knowledge or evidence acquired during such communication may be instituted.

(e) This rule does not require disclosure of information otherwise protected by Rule 1.6.

[Amended eff. 4-7-92; Amended 7-13-2011, eff. 8-1-2011.]

Comment

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. 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.

A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

A lawyer is obliged to report every violation of the Rules. The failure to report a violation would itself be a professional offense. A report should be made to the Alabama State Bar.

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.

Comment to Rule 8.3(c), Adopted Effective April 1, 1992

In order to encourage a lawyer or judge who has or believes he or she may have a substance abuse problem to seek help with the problem, that person can be assured that disclosure to any lawyer who is on the Committee on Impaired Lawyers or on the ALA-Pals Committee or who is a member of any committee or subcommittee of the Bar designed to assist lawyers with substance abuse problems, will be treated with confidentiality as though a client-lawyer relationship exists.

Comparison with Former Alabama Code of Professional Responsibility

Paragraph (a) carries forward the provisions of DR 1-103(A).

Regarding paragraph (b), DR 1-103(B) provided that “[a] lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.”

Comment to Rule 8.3(c) , Amended Effective August 1, 2011, And to Rule 8.3(d), Adopted Effective August 1, 2011

In order to encourage a lawyer or judge who has or believes he or she may have problems with addiction or any other mental-health-related disorder to seek help, that person can be assured that disclosure to any lawyer who is on the Alabama Lawyer Assistance Program Committee, on the staff of the Practice Management Assistance Program, or on any other committee or subcommittee of the Alabama Lawyer Assistance Program designed to assist lawyers with these problems will be treated with confidentiality as though a lawyer-client relationship exists.

The Committee on Impaired Lawyers began in 1983 as a task force to help lawyers with problems of alcohol and/or drug dependence. In 1985, ALA-Pals was formed as a committee within the State Bar. Members of this committee networked with each other to help intervene with other colleagues when alcohol and/or drug dependency was suspected.

Following the committee's proposal to hire a director and with the approval of the Board of Bar Commissioners, the Bar established a statewide Lawyer Assistance Program ("ALAP") in September 1998. The stated purpose of ALAP is to:

- Provide immediate and continuing help to lawyers, judges, and law students who suffer from drug or alcohol addiction and other types of mental-health disorders;
- Educate the bench and bar about the prevalence of alcohol and drug dependency and/or mental-health illness within the profession;
- Protect the interests of clients from harm caused by impaired lawyers; and
- Protect the integrity of the legal profession from harm caused by impaired lawyers.

The August 2011 amendments make three changes. The first change merely substitutes the updated name "Alabama Lawyer Assistance Program Committee" for "Committee on Impaired Lawyers" and "ALA-Pals Committee" and substitutes "Alabama Lawyer Assistance Program" for "Bar" in the first sentence of subsection (c). The second change is more substantial in nature, changing the phrase "substance abuse problems" to "addiction and other mental-health-related disorders" to reflect the expanded role of the Alabama Lawyer Assistance Program. The third change, in subsection (d), grants lawyers staffing a position on the Practice Management Assistance Program the same exemption and confidentiality afforded lawyers serving on committees or subcommittees of the Alabama Lawyer Assistance Program.

Note from the reporter of decisions: The order amending Rule 8.3, effective August 1, 2011, and adopting the comment to the amendment of Rule 8.3 is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.