

OPINION 520

May 1997

Question

Does Rule 8.03 of the Texas Disciplinary Rules of Professional Conduct require a lawyer to report suspected misconduct by another lawyer, when the first lacks solid proof that the second lawyer engaged in the suspected conduct?

Discussion

[Rule 8.03](#) of the Texas Disciplinary Rules of Professional Conduct (Rules) provides in pertinent part:

(a) Except as permitted in paragraphs (c) or (d), [FN1] a lawyer having knowledge that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

Comment three explains that Rule 8.03 ". . . describes only those disciplinary violations that must be revealed by the disclosing lawyer in order for that lawyer to avoid violating [the] rules." (Emphasis added.) Comment four further elaborates by stating that Rule 8.03 "limits [a lawyer's] reporting obligations to those offenses that a self-regulating profession must vigorously endeavor to prevent." Hence a lawyer is required to report violations of the applicable rules of professional conduct that raise a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

Comment three, however, also provides that [Rule 8.03](#) "is not intended to . . . limit those actual or suspected violations that a lawyer may report to an appropriate disciplinary authority." (Emphasis added.) Rather, lawyers are instructed to use their best judgment in complying with the reporting requirements of the rule. See comment four.

With regard to a report of alleged misconduct, comment two recognizes that ". . . the existence of a violation [frequently] cannot be established with certainty until a disciplinary investigation . . . has been undertaken. Similarly, an apparently isolated violation may indicate a pattern of misconduct that only such an investigation or inquiry can uncover. Consequently, a lawyer should not fail to report an apparent disciplinary violation merely because he or she cannot determine its existence or scope with absolute certainty."

The text of Rule 8.03(a), however, requires that a lawyer have knowledge (rather than suspicion) that another lawyer has committed a violation of the applicable rules before informing the appropriate disciplinary authority. A report of misconduct must therefore be based upon objective facts that are likely to have evidentiary support.

Conclusion

[Rule 8.03](#)(a) of the Texas Disciplinary Rules of Professional Conduct is limited to those disciplinary violation that must be revealed by the disclosing lawyer in order for that lawyer to avoid violating the rules. As recognized in the commentary, however, Rule 8.03(a) is not intended to limit the actual or suspected violations that a lawyer may report to an appropriate disciplinary authority. Before reporting an alleged violation, however, Rule 8.03(a) requires that a lawyer have knowledge that another lawyer has in fact committed a violation of the rules. A report of misconduct must therefore be based upon such objective facts that are likely to have evidentiary support. It is beyond the scope of this opinion to

comment on specific facts that would constitute sufficient basis for a report of misconduct.

FN1 Paragraph (c) pertains to a lawyer who knows or suspects that another lawyer or judge is impaired by chemical dependency on alcohol or drugs, or by mental illness. Paragraph (d) pertains to the disclosure/non-disclosure of confidential information.