



FREQUENTLY ASKED QUESTIONS: RULE OF PROFESSIONAL CONDUCT 8.3

These FAQs are a living document. They are subject to revision and will be supplemented and updated as needed.

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GENERAL INFORMATION

1. What is rule 8.3?

[Rule 8.3](#) requires lawyers to report certain misconduct by other lawyers to the State Bar or a tribunal with jurisdiction to investigate or act upon such misconduct.

2. Why is rule 8.3 important?

Lawyers are often in the best position to know if another lawyer is not fulfilling their ethical obligations and violating the Rules of Professional Conduct. Reporting another lawyer's possible misconduct assists the State Bar to protect the public, the courts, and the legal profession from lawyer harm; helps to maintain the integrity of the legal system; and furthers public trust in the legal profession.

REPORTING REQUIREMENTS

3. What types of misconduct must I report under rule 8.3?

A lawyer must report another lawyer if the lawyer knows of credible evidence that the lawyer committed a criminal act or engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

4. Does the rule apply retroactively?

It may. A lawyer's duty to report another lawyer begins on the rule's effective date: August 1, 2023. However, to the extent a lawyer knows of credible evidence of another lawyer's conduct that occurred prior to August 1, 2023, the lawyer is obligated to report that past conduct because the lawyer's knowledge exists on or after the effective date of rule 8.3.

5. When do I have to report the misconduct?

Rule 8.3 states that a lawyer shall report “without undue delay.” Rule 8.3 comment [3] provides that the lawyer must report as soon as the lawyer reasonably believes that 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. The Comment also provides that the lawyer should consider other applicable rules, such as rules [1.4](#) (the duty to communicate); [1.7\(b\)](#) (material limitation conflict); [5.1](#) (responsibilities of managerial and supervisory lawyers); and [5.2](#) (responsibilities of a subordinate lawyer).

6. Where do I report?

A report to the State Bar can be made using this [online complaint form](#). When completing the form, you should indicate that you are a lawyer, and you are submitting under rule 8.3. In some instances, a lawyer can report another lawyer to a tribunal, as defined in [rule 1.0.1\(m\)](#), but only if the tribunal has jurisdiction to investigate or act upon such misconduct. A lawyer who intends to report to a tribunal should review rule 8.3 Comment [6].

7. Are there any exceptions to the reporting obligation under rule 8.3?

Yes, there are exceptions to the reporting obligation under rule 8.3. For example, rule 8.3 does not apply to information gained by a lawyer while participating in a substance use or mental health program, or information that is protected by confidentiality rules or laws.

8. I know that the lawyer’s conduct was already reported to the State Bar. Do I still need to report?

Yes, there is no exception in rule 8.3 for when a lawyer knows that a complaint was already filed with the State Bar, concerning the same conduct.

9. What happens if I fail to report misconduct under rule 8.3?

A lawyer who fails to report conduct as required by rule 8.3 may be subject to disciplinary action by the State Bar.

10. What if I am not sure whether I have a duty to report misconduct under rule 8.3?

If you are not sure whether you have a duty to report misconduct under rule 8.3, you may consult with another lawyer. See rule 8.3, comment [2]. A lawyer may, but is not required to, report any other violation of the Rules of Professional Conduct or the State Bar Act that is not required to be reported under rule 8.3. See rule 8.3(b), comment [4].

11. Can I be disciplined for making a false report or complaint under rule 8.3?

False and malicious reports or complaints can result in criminal penalties or disciplinary action. (See [Bus. & Prof. Code, § 6043.5](#).) Additionally, a false complaint to a judge,

judicial officer, or tribunal may result in discipline. (See [rule 3.3\(a\)](#); [Bus. & Prof. Code, § 6068, subd. \(d\)](#).)

Similarly, if you threaten to file a complaint with the State Bar to obtain an advantage in a civil dispute, you may be subject to disciplinary action by the State Bar. (See [rule 3.10](#).)

12. Can I be disciplined for failing to report my own misconduct under rule 8.3?

No, rule 8.3 applies to reporting misconduct of another lawyer. However, licensees have self-reporting obligations, and this rule does not excuse a lawyer from reporting their own conduct in certain instances. (See [Rule 8.4.1\(d\) & \(e\)](#); [Bus. & Prof. Code, § 6068, subd. \(o\)](#).)

13. Can I report anonymously?

A lawyer can file a complaint anonymously. If a lawyer submits a complaint through the online tool, the lawyer will receive a reference number that they could later use to prove they made a submission. However, if a lawyer a complaint submits using other methods (such as an email from an anonymous email address or by sending the complaint through the mail), there will be limited proof of a submission.

The online complaint tool has required fields in which the complainant must enter data to progress. However, the complainant can input “anonymous” and other non-identifying information in the required fields.

If a lawyer submits an “anonymous” complaint but includes information that would identify the complainant, it is possible that that information will ultimately be available to the respondent.

UPDATES

5/16/2024: FAQ 13 added.