

**Vermont Rules of Professional Conduct**  
**Rule 8.3 – Reporting Professional Misconduct**

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*This unofficial version was last updated on **November 14, 2022**.*

*Kennedy's Highlights*

*(NOT a substitute for full research of the rule & opinions/decisions on it)*

- Rule 8.3 was amended in 2022.
- Language added to Comment 4 took effect on 11/14/22. The new language is underlined.

**Rule 8.3. Reporting Professional Misconduct.**

(a) 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.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information gained by Bar counsel in responding to an inquiry or by a lawyer while participating in a lawyer assistance program approved by the Vermont Bar Association or as a member of the Professional Responsibility Committee of the Vermont Bar Association or of information otherwise protected by Rule 1.6.

**Comment**

[1] 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. Lawyers have a similar obligation with respect to judicial misconduct. 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.

[2] 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.

[3] This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as the court in which the violation occurred, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question or to a lawyer who has volunteered to help such lawyers through approved Vermont Bar Association committees. Such a situation is governed by the rules applicable to the client-lawyer relationship. A confidential inquiry to bar counsel does not satisfy the duty set out in paragraph (a) or (b).

## **Reporter's Note – 2022 Amendment**

Inquiries of bar counsel are confidential. Moreover, bar counsel is exempt from the reporting requirement of Rule 8.3 and, in addition, must keep confidential all information related to inquiries and requests for guidance that related to legal ethics and professional responsibility. While contacting bar counsel is encouraged, a lawyer who is bound to report the professional misconduct of a judge or another lawyer does not satisfy that duty by seeking guidance from bar counsel as to whether the duty exists.

### **Reporter's Notes—2016 Amendment**

Rule 8.3(c) is amended to exempt Bar Counsel from the requirement of disclosure of information about misconduct otherwise required by Rule 8.3(a) when Bar Counsel is responding to an inquiry from an attorney pursuant to A.O. 9, Rules 3(B)(1) and 9. The purpose of the amendment is to maintain the integrity of the inquiry process.

### **Reporter's Notes – 2009 Amendment**

V.R.P.C. 8.3 is amended to conform to changes in the Model Rule, retaining references to the Vermont Bar Association-approved lawyer assistance program and the Association's Professional Responsibility Committee as a variation in Rule 8.3(c).

In *State v. Wade*, 2003 VT 99, 176 Vt. 550, 839 A.2d 559 (mem.), the Court held that a trial judge had abused his discretion in dismissing a prosecution with prejudice as a sanction for a long history of alleged prosecutorial neglect and misconduct in discovery matters where the conduct in the instant case had not prejudiced defendant. In a concurring opinion, two justices referred the matter to the PRB under V.R.P.C. 8.3(a) and Canon 3D(2) of the Vermont Code of Judicial Conduct over the majority's objection that Rule 12 of the Rules Governing the Professional Responsibility Program (A.O. 9) required confidentiality before formal disciplinary action was filed.

The ABA Reporter's Explanation in pertinent part is as follows:

TEXT:

1. Paragraphs (a) and (b): Change "having knowledge" to "who knows"

In importing DR 1-103 of the ABA Model Code of Professional Responsibility into the Model Rules, the "having knowledge" formulation was used even though that term is undefined in the Rules. "Knows" and "knowingly," on the other hand, are defined terms, and the Commission is substituting them in this Rule for consistency and to put the mandate into the active voice. No change in substance is intended.

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3. Paragraph (c): Change "serving as a member of" to "participating" This change expands the reporting exception to any lawyer...who participates in an approved lawyers assistance program, even if such participation is limited to a single instance.

### **Reporter's Notes**

This rule narrows the Code's reporting rule by requiring lawyers to report only that misconduct which raises a substantial question as to a lawyer's honesty, trustworthiness or fitness as a lawyer. The new rule also adds a requirement that lawyers report significant judicial misconduct to the appropriate authority.

Paragraph (c) is a significant departure from the present Vermont requirement. It provides that lawyers who counsel other lawyers in trouble or with ethical dilemmas will not be compelled to report violations which come to their attention.