



RULE 3:07

MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT

MAINTAINING THE INTEGRITY OF THE PROFESSION

[Including amendments through 05/06/2002]

[\[PREVIOUS CHAPTER\]](#) - [\[RETURN TO INDEX\]](#)

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and Article 12 of the Massachusetts Declaration of Rights. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

Corresponding ABA Model Rule. Identical to Model Rule 8.1.

Corresponding Former Massachusetts Rule. DR 1-101; see also DR 1-102.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or a magistrate, or of a candidate for appointment to judicial or legal office.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial or legal offices. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] ABA Model Rule 8.2(b) is inapplicable in Massachusetts since judges are not elected.

Corresponding ABA Model Rule. Different from Model Rule 8.2.

Corresponding Former Massachusetts Rule. DR 8-102.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer having knowledge 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 Bar Counsel's office of the Board of Bar Overseers.

(b) A lawyer having knowledge 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 Commission on Judicial Conduct.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of lawyer assistance program as defined in Rule 1.6(c), to the extent that such information would be confidential if it were communicated by a client.

Comment

[1] This rule requires lawyers to report serious violations of ethical duty by lawyers and judges. Even 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 permitted or 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] While a measure of judgment is required in complying with the provisions of the Rule, a lawyer must report misconduct that, if proven and without regard to mitigation, would likely result in an order of suspension or disbarment, including misconduct that would constitute a "serious crime" as defined in S.J.C. Rule 4:01, § 12(3). Precedent for determining whether an offense would warrant suspension or disbarment may be found in the Massachusetts Attorney Discipline Reports. Section 12(3) of Rule 4:01 provides that a serious crime is "any felony, and ... any lesser crime a necessary element of which ... includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy, or solicitation of another to commit [such a crime]." In addition to a conviction of a felony, misappropriation of client funds or perjury before a tribunal are common examples of reportable conduct. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A lawyer has knowledge of a violation when he or she possesses supporting evidence such that a reasonable lawyer under the circumstances would form a firm opinion that the conduct in question had more likely occurred than not. A report should be made to Bar Counsel's office or to the Judicial Conduct Commission, as the case may be. Rule 8.3 does not preclude a lawyer from reporting a violation of the Massachusetts Rules of Professional Conduct in circumstances where a report is not mandatory.

[3A] In most situations, a lawyer may defer making a report under this Rule until the matter has been concluded, but the report should be made as soon as practicable thereafter. An immediate report is ethically compelled, however, when a client or third person will likely be injured by a delay in reporting, such as where the lawyer has knowledge that another lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

[4] The duty to report past 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.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a lawyer assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs. Failure to do so may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The Rule, therefore, exempts the lawyer from the reporting requirements of paragraphs (a) and (b) with respect to information that would be protected by Rule 1.6 if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer.

Corresponding ABA Model Rule. Different from Model Rule 8.3.

Corresponding Former Massachusetts Rule. None. [DR 1-103 (A) was not adopted in Massachusetts].

Last Updated 10/27/1999

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in Supreme Judicial Court Rule 4:01, § 3, last sentence; or
- (h) engage in any other conduct that adversely reflects on his or her fitness to practice law.

Comment

[1] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[2] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyer. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[4] Paragraph (c) prohibits the acceptance of referrals from a referral source, such as court or agency personnel, if the lawyer states or implies, or the client could reasonably infer, that the lawyer has an ability to influence the court or agency improperly.

[5] Paragraph (h) carries forward the provision of Former DR 1-102(A)(6) prohibiting conduct that adversely reflects on that lawyer's fitness to practice law, even if the conduct does not constitute a criminal, dishonest, fraudulent or other act specifically described in the other paragraphs of this rule.

Corresponding ABA Model Rule. Clauses (a), (b), (c), (d), (e), and (f) identical to Model Rule 8.4; clause (g) incorporates obligations set forth in S.J.C. Rule 4:01, § 3; clause (h) comes from DR 1-102 (A) (6).

Corresponding Former Massachusetts Rule. DR 1-102, DR 9-101 (C). See S.J.C. Rule 4:01, § 3.

RULE 8.5 DISCIPLINARY AUTHORITY

(a) A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.

(b) [RESERVED].

Comment

Disciplinary Authority

[1] Paragraph (a) restates longstanding law.

Choice of Law

[2] Rule 8.5(b) has been reserved because study of ABA Model Rule 8.5(b) has revealed many instances in which its application seems problematic.

[3] Reserved.

[4] Reserved.

[5] Reserved.

[6] Reserved.

Corresponding ABA Model Rule. Rule 8.5 is identical to Model Rule 8.5 (a).

Corresponding Former Massachusetts Rule. S.J.C. Rule 4:01 (Bar Discipline), § 1.

[\[NEXT CHAPTER\]](#)

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