



Alerts

California's New "Snitch" Rule Means Attorneys Must Report Other Attorneys' Misconduct to the State Bar or Tribunal

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Brief Summary

Previously, as the only state not to adopt some version of the American Bar Association's Model Rule 8.3, California has now finally joined the rest of the nation. California's new Rule of Professional Conduct 8.3, which goes into effect August 1, 2023, establishes a duty to report the misconduct of other lawyers that "raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

Complete Summary

California has adopted a new Rule of Professional Conduct in response to the fallout of the [Thomas Girardi scandal](#). On June 21, 2023, the California Supreme Court approved Rule 8.3, which goes into effect on August 1, 2023. Rule 8.3 now requires California attorneys to report any lawyer who:

- commits a criminal act;
- has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentations;
- has misappropriated funds or property; or
- has committed any act that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness.

These acts must be reported to the State Bar or a tribunal "without undue delay, " i.e., "as soon as the lawyer reasonably believes the reporting will not cause material prejudice or damage to the interests of a client" of the lawyer or their firm. Additionally, the new rule clarifies that a "criminal act" excludes conduct that might be a criminal act in another jurisdiction but is not a criminal act in California.

Finally, this rule does not require disclosure of information gained by a lawyer while participating in a substance-use or mental health program or which is covered by applicable privileges or other confidential information. Communications to the California State Bar relating to lawyer misconduct are privileged and cannot form the basis of a lawsuit. However, there may be

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criminal penalties for false or malicious reports or offering false statements or evidence to a tribunal.

Rule 8.3 permits either reporting to the State Bar or a tribunal with jurisdiction to investigate and act upon such misconduct. So, when should a lawyer go to the State Bar, and when should they go to a court? That depends upon whether there is pending litigation. It is required that the particular tribunal have the ability to "investigate and act upon" the alleged misconduct.

Note that when litigation is pending before a non-judicial tribunal, such as private arbitration, reporting to that tribunal may not be sufficient. When misconduct occurs during litigation, the court may have the power to investigate or act upon the alleged misconduct and to take appropriate corrective action, obviating the need to report to the California State Bar. Additionally, a court's finding of misconduct may be used as evidence to facilitate subsequent State Bar disciplinary proceedings.

The comments to Rule 8.3 make it clear that this rule is not meant to interfere with the relationship between an attorney and their client in the context of a legal malpractice action. Thus, the rule does not apply to lawyers who have been consulted or retained to represent another lawyer whose conduct is in question or lawyers retained to advise on whether a lawyer has a duty to report another lawyer under this rule. Similarly, this rule does not apply to information gained from an ethics hotline or similar service.

Significance of Decision

California has considered and rejected such a "snitch" rule twice before. However, the story of one lawyer allegedly swindling \$18 million from his clients finally overcame the opposition and California has now caught up to the rest of the nation. But, how this new rule will be interpreted remains to be seen. What constitutes "a substantial question as to [a] lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects?" What rises to the level of a "reckless" misrepresentation? Will California follow the standards set by other states or adopt its own? Only time will tell. However, there can be no question that this rule will change how lawyers interact with their peers.