

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2023-5
Issued September 14, 2023**

FACTS

The inquiring attorney's practice concentrates on immigration law. Among other services, his office prepares and files Work Authorizations for many clients on a regular basis. An associate attorney in the inquiring attorney's office, who is licensed to practice law in Missouri, was assigned to represent a client seeking asylum before the federal Immigration Court with a hearing date in 2024. The associate attorney informed the client that he would prepare and file a Work Authorization for the client in relation to the client's pending asylum case in January 2023.

However, the associate attorney never prepared or filed the Work Authorization until June 9, 2023, when the client visited the inquiring attorney's office to ascertain the then-current status of his case. According to the inquiring attorney, the associate attorney immediately prepared and filed the Work Authorization but, upon receiving the official receipt from the immigration authorities, altered the date on the receipt using PDF editing software from the correct date of June 9, 2023 to the date upon which it was supposed to be filed in January 2023. The associate attorney then presented a copy of the doctored receipt to the client and deliberately misinformed him that it had been filed in January 2023.

The inquiring attorney reports that upon learning of this incident approximately one (1) week after its occurrence and confirming the associate attorney's actions with his IT team, the inquiring attorney dismissed the associate attorney from his firm.

ISSUE PRESENTED

The inquiring attorney asks whether he is ethically obligated to report the associate attorney's actions to the relevant attorney disciplinary authority in Missouri.

OPINION

It is the Panel's opinion that the inquiring attorney is ethically obligated to report the associate attorney's actions to the relevant attorney disciplinary authority in Missouri.

REASONING

Rule 8.3(a) of the Rules of Professional Conduct states that "[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.”¹ Although the Panel has not had occasion to determine whether this Rule has extra-jurisdictional application, at least one of our sister states has examined this issue. In Opinion 94-23, the Illinois State Bar Association (the “ISBA”) concluded that an Illinois attorney was ethically obligated to report the alleged misconduct of a New York attorney who served as legal counsel to a Delaware corporation headquartered in Illinois. In reaching this conclusion, the ISBA reasoned that “[t]he provisions of [Illinois] Rule [of Professional Conduct] 8.3 are directed to the action of reporting misconduct, not the misconduct itself.” It also found significant the fact that the language of Illinois Rule of Professional Conduct 8.3(a) was not jurisdiction-specific but required the reporting of attorney misconduct to whichever “tribunal or other authority [is] empowered to investigate or act upon such violation.” On these bases, it directed the Illinois attorney to report the New York attorney to the appropriate disciplinary authorities in that state.

The Panel finds the ISBA’s reasoning in Opinion 94-23 persuasive. Like Illinois Rule 8.3(a), Rhode Island’s version requires the reporting of misconduct to “the appropriate professional authority.” The generality of this language indicates that geography is no limitation to the duty to report. This reading comports with the clear language and salutary spirit expressed in the Preamble to the Rules of Professional Conduct regarding the vital importance attorney self-regulation plays in ensuring the professionalism, independence, and effectiveness of the legal profession. See, e.g., Preamble to Rules of Professional Conduct, Paragraph [12] (observing that “[e]very lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves”). It also comports with similar sentiments expressed in the Missouri Rules of Professional Conduct, Rule 4-8.5(a) of which states in relevant part that “[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.”

In reporting the associate attorney’s misconduct to the appropriate Missouri disciplinary authorities, the Panel cautions the inquiring attorney to heed the command of Rule 8.3(c) that no confidential information otherwise protected by Rule 1.6 need be disclosed.

¹ Rule 8.4(c) makes clear that “[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation” Based on the facts as presented by the inquiring attorney, the Panel assumes without deciding that the associate attorney’s actions on June 9, 2023 fall within the ambit of this Rule.