

ETHICS ADVISORY PANEL
OPINION # 95-10, REQUEST # 568
Issued March 6, 1995

The inquiring attorney is a former co-owner of a professional corporation engaged in the practice of law. The inquiring attorney sold his/her stock in the corporation to the second owner, Attorney X and continued to be employed by the firm in an of counsel capacity.

Recently, a former client contacted the inquiring attorney's home and indicated to the inquiring attorney's son that Attorney X owed her a large sum of money from an estate sale conducted by Attorney X. The inquiring attorney became suspicious of misconduct on Attorney X's behalf and advised the client to contact the Rhode Island Disciplinary Counsel. Attorney X was informed of this and returned the client's money.

The inquiring attorney contacted Attorney X and asked if he/she took the client's money to which Attorney X replied, "No, not hers; others." Based on this admission, the inquiring attorney asks if he/she is obligated to report Attorney X's conduct under Rule 8.3.

Rule 8.3 entitled "Reporting Professional Misconduct" states in pertinent part:

(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 appropriate professional authority . . .

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6.

According to Rule 8.3 a lawyer has a duty to report another lawyer's misconduct unless confidential information would be disclosed. Attorney X did confess the act of co-mingling funds directly to the inquiring attorney therefore the admission is not protected under Rule 1.6. The Panel opines that the inquiring attorney is obliged to report Attorney X's actions to the Disciplinary Counsel's Office because such conduct raises a substantial question as to Attorney X's honesty, trustworthiness or fitness as a lawyer.