

Final

ETHICS ADVISORY PANEL  
OPINION # 95-41 , REQUEST # 607  
ISSUED - SEPTEMBER 14, 1995

The inquiring attorney submitted three separate situations and asks this Panel to determine whether the various attorneys' conduct involved in each situation rose to the level of misconduct under Rule 8.3 and if so, must the inquiring attorney report the misconduct to the Disciplinary Board.

Without providing all three situations in total, the inquiring attorney describes the attorneys' conduct as false representations under oath before a tribunal, false misrepresentations made to an opposing party and counsel and false testimony made in court which the judge relied upon in granting a decision.

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.

Rule 8.4 defines "Misconduct" and states that 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.

OP 95-41, - RQ 607

Final

Page 2

In this situation described, the determination as to whether another attorney has violated an ethical rule that raises a substantial question as to that attorney's honesty, trustworthiness or fitness to practice is one which involves credibility determination that are largely subjective and is therefore one to be made by the attorney witnessing such conduct and not by this Panel.

According to the Rules of Professional Conduct, if the inquiring attorney has knowledge that another lawyer has violated a Rule that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer then the inquiring attorney shall inform the Disciplinary Counsel's Office.