



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 8.3(a) and 8.4 (b) and (c). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 94-23
May 17, 1995**

Topic: Reporting Professional Misconduct

Digest: Illinois Rules of Professional Conduct require a lawyer admitted to practice in Illinois to report misconduct of lawyers who are not admitted to practice in Illinois.

A lawyer has no different duty to report a crime than any other person.

Ref.: Rules 8.3(a); and 8.4(a)(3) and (a)(4)
In Re Himmel, 125 Ill 2d 531, 533 N.E. 2d 790 (1988)

FACTS

Lawyer ("L") admitted to practice in Illinois serves as a member of the board of directors of X Co., a Delaware corporation qualified to do business in Illinois, in which its principal office is located. "L" is not legal counsel to X Co. A New York based lawyer ("A") serves as legal counsel to X Co. Neither "A" nor the President/Commissioner of X Co. ("P"), who is also a New York lawyer, is licensed to practice law in Illinois.

"L" has learned that funds from an Escrow Account for the benefit of X Co. and managed by "A" has been "mismanaged" and that funds were used from that Escrow Account for items and

payments not covered by the purposes of the Escrow Account and unauthorized by the board of directors. Both "A" and "P" are believed to be involved in the matter.

QUESTIONS

- 1.) Is "L" required to report to the Attorney Registration and Disciplinary Commission ("ARDC") the conduct of lawyers who are not licensed to practice law in Illinois but do corporate legal work in Illinois under the circumstances set forth above?
- 2.) Is "L" required to report the conduct of "A" and "P" to the New York equivalent of the ARDC?
- 3.) Is "L" required to report this matter as a "crime" to the authorities in Illinois and/or New York?

OPINION

For purposes of this opinion we have assumed that the behavior of "A" and "P" is conduct involving dishonesty, fraud, deceit or misrepresentation.

Rule 8.4(a) provides: "A lawyer shall not:... (3) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;..."

Rule 8.3(a) provides: "A lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that another lawyer has committed a violation of Rule 8.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation."

In Re Himmel, 125 Ill 2d 531, 533 N.E. 2d 790 (1988) makes clear the duty of a lawyer to comply with Rule 8.3(a), however, since all lawyers involved with that matter were registered in Illinois, the opinion does not address the issue of the reporting of lawyers not admitted to practice in Illinois.

The conduct of "A" and "P" is violative of the rules set forth in the Illinois Rules of Professional Conduct 8.4(a)(3) and (4) and thus raises the duty that "L" must report such conduct. The provisions of Rule 8.3 are directed to the action of reporting misconduct, not the misconduct itself. Therefore, "L" is required to report their behavior under Rule 8.3(a). The reporting should be to the Illinois Attorney registration and Disciplinary Commission who would then forward it on to New York.

Though "L" is not admitted in New York and thus, not subject to their disciplinary rules, where misconduct has occurred by "A" and "P" and they are subject to the disciplinary rules of New York, the disciplinary body of New York is the "tribunal or other authority empowered to investigate or act upon such violation". Therefore, "L" should report the violation pursuant to the mandate to him under Rule 8.3 (a) of the Illinois Rules. It is suggested that the reporting should be not only to Illinois, but also to New York.

Ordinarily an individual does not have a duty to report a crime. Other than as discussed above, a lawyer has no different duty than any other person to report a crime.

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