



## **LAWYER TO LAWYER MENTORING PROGRAM**

### **WORKSHEET R**

### **LAWYER MISCONDUCT**

Worksheet R is intended to facilitate a discussion about a lawyer's obligation to report lawyer misconduct, including the appropriate way to handle situations where the new lawyer believes another lawyer has committed an ethical violation or where the new lawyer has been asked by a senior member of the firm to do something that is unethical or unprofessional.

#### **WHAT WENT WELL?**

Start by sharing with each other a brief story of something that went well in your practice this week:

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Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

#### **ACTIVITIES FOR TODAY**

- Discuss a lawyer's obligation to report lawyer/judge misconduct, including the reasons why lawyers should report other lawyers' misconduct and to whom such misconduct should be reported. See Tennessee Rules of Professional Conduct Rules 8.3 and 8.4.
- Discuss the types of factors which should be considered in determining whether misconduct should be reported to a tribunal, disciplinary agency, prosecutor's office, or other authority.
- Discuss the following situations and suggest the most appropriate authority (if any) to whom the conduct should be reported and the reasons therefore:
  - Continuous discovery abuse by opposing counsel
  - Opposing counsel filing frivolous lawsuits or lawsuits merely to harass your client
  - Egregiously unprofessional conduct during litigation
  - Suspected theft by an attorney of a former client's funds
  - Suspected financial misconduct by a lawyer who is guardian for an incompetent person
  - An attorney's failure to pay expert fees or other costs of litigation
  - Theft of IOLTA monies by a lawyer in your firm



- Abusive and disrespectful behavior toward counsel and/or witnesses by a judge
  - Client neglect because of suspected substance abuse or mental health issues by another attorney
  - Erratic and unfair behavior by a judge because of suspected substance abuse or mental health issues
  - Opposing counsel representing a party with whom there is a conflict of interest
  - Unauthorized practice of law by an attorney licensed in a jurisdiction other than Tennessee.
- Discuss a lawyer's obligation to assist in and provide information about a lawyer's or judge's conduct in an inquiry by a tribunal or other authority investigating that lawyer or judge. See Tennessee Rules of Professional Conduct Rule 8.3.
- Discuss the firm's procedure (if in an in-house mentoring relationship) or the appropriate action for a new lawyer who suspects that a partner in the firm has committed misconduct. Discuss the procedure when an associate in the firm is suspected of misconduct.
- Discuss what the new lawyer should do if he or she does not know whether a partner's or associate's conduct is inappropriate, but he or she suspects that it might be.
- Discuss what the new lawyer should do if a superior in the new lawyer's firm instructs the new lawyer to do something that the new lawyer believes to be unethical. See Tennessee Rules of Professional Conduct Rules 5.1 and 5.2.
- Discuss the new lawyer's ethical responsibility to properly oversee non-lawyer assistants' efforts to ensure that their conduct is compatible with the professional obligations of the lawyer. See Tennessee Rules of Professional Conduct Rule 5.3.
- Read and discuss the attached excerpt regarding dealing with ethical issues in your law firm. Kimm Alayne Walton, *What Law School Doesn't Teach You . . . But You Really Need to Know* (2000)
- Suggest resources that the new lawyer can consult for making important ethical decisions, including the following:
- Identify the procedure for obtaining in-house ethics advice (if you are in an in-house mentoring relationship).
  - Provide suggestions for finding outside ethics counsel and when such action is recommended.
  - Identify other helpful ethics materials, where they can be found, and the importance of supplementing general ethics resources with independent research on Tennessee disciplinary case law when the ethics resources reviewed are not based on the Tennessee Rules of Professional Conduct.
  - Identify ethics inquiry services of bar associations.
  - Discuss procedures for requesting or researching ethics advisory opinions of bar associations or the Tennessee Supreme Court Board of Commissioners on Grievances and Discipline.



### **ACTION STEPS**

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

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### **RESOURCES**

Board of Professional Responsibility of the Supreme Court of Tennessee, *Information for New Attorneys*, at <http://www.tbpr.org/Attorneys/NewAttorneys.aspx>

American Legal Ethics Library <http://www.law.cornell.edu/ethics/>

LegalEthics.com [www.legalethics.com](http://www.legalethics.com)

sunEthics <http://www.sunethics.com/>

## **TENNESSEE RULES OF PROFESSIONAL CONDUCT**

### **V. LAW FIRMS AND ASSOCIATIONS**

#### **RULE 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

#### **RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER**

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.



(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

**RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**VII. MAINTAINING THE INTEGRITY OF THE PROFESSION**

**RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT**

(a) 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 Disciplinary Counsel of the Board of Professional Responsibility.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Disciplinary Counsel of the Court of the Judiciary.

(c) This Rule does not require disclosure of information otherwise protected by RPC 1.6 or information gained by a lawyer or judge while serving as a member of a lawyer assistance program approved by the Supreme Court of Tennessee or by the Board of Professional Responsibility.

**RULE 8.4: MISCONDUCT**

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;



- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

View complete rules and comments at: <http://www.tsc.state.tn.us/rules/supreme-court/8>