

THE SUPREME COURT *of* OHIO

JUSTICE SHARON L. KENNEDY

Fulfill Your Ethical Obligation by Throwing a Lifeline



REPORTING PROFESSIONAL MISCONDUCT

Rule 8.3 (a)

A lawyer who possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform a disciplinary authority empowered to investigate or act upon such a violation.

REPORTING PROFESSIONAL MISCONDUCT

Rule 8.3 (b)

A lawyer who possesses unprivileged knowledge that a judge has committed a violation of the Ohio Rules of Professional Conduct or applicable rules of judicial conduct shall inform the appropriate authority.

QUESTION

What if the misconduct you perceive is a result of substance abuse or mental illness?

WOULD YOU KNOW?

SIGNS & SYMPTOMS

SIGNS & SYMPTOMS

FAMILY

- Withdrawal from activities
- Frequent absences
- Frequent arguments; child/spousal abuse
- Family members display codependent behaviors
- Children engage in abnormal, antisocial or illegal activities
- Sexual problems (impotence, affair)
- Separation or divorce (initiated by spouse)

SIGNS & SYMPTOMS

PHYSICAL

- Multiple complaints
- Increased use of prescription medication
- Increased hospitalization
- Frequent visits to physicians, dentists
- Personal hygiene, dress deteriorate
- Accidents, trauma, ER visits
- Serious emotional crisis

SIGNS & SYMPTOMS

COMMUNITY

- Decrease in community affairs
- Change of friends, acquaintances
- Drunk & disorderly, DUI arrests
- Loss of confidence in attorney by community leaders
- Involvement with place of worship changes
- Sexual promiscuity
- Isolation from support systems

SIGNS & SYMPTOMS

OFFICE

- Disorganized appointment schedule
- Hostile behavior to staff and/or clients
- “Locked door” syndrome (using it at work)
- Borrowing money from co-workers, staff
- Frequently sick
- Clients begin to complain to associates, staff
- Frequent unexplained absences

SIGNS & SYMPTOMS

PROFESSIONAL

- Inappropriate behavior, moods
- Decreasing quality of performance
- Inappropriate pleadings, decisions
- Co-workers and staff “gossip” about changes in behavior
- Malpractice and disciplinary claims
- Missed hearings, appointments, depositions
- Loss of clients, practice, respect.

If you suspect substance abuse or mental illness is the cause driving the misconduct, can you throw a lifeline?

LIFELINE

If you or a colleague you know need help, contact OLAP at one of the numbers below. Your confidentiality, and the confidentiality of anyone about whom you express concerns, will be protected.

OLAP Helpline (24/7): 1-800-348-4343

Scott R. Mote, Executive Director

Stephanie S. Krznarich, Clinical Director

REPORTING PROFESSIONAL MISCONDUCT

Rule 8.3 (c)

Any information obtained by a member of a committee or subcommittee of a bar association, or by a member, employee, or agent of a nonprofit corporation established by a bar association, designed to assist lawyers with substance abuse or mental health problems, provided the information was obtained while the member, employee, or agent was performing duties as a member, employee, or agent of the committee, subcommittee, or nonprofit corporation, shall be privileged for all purposes under this rule.

PERSONAL REFERRAL EXPERIENCE

Reflection by Justice Kennedy

OTHER CONSIDERATIONS

SANCTIONS

SANCTIONS

Relevant factors in determining sanctions:

- (1) Ethical duties violated; and
- (2) Sanctions imposed in similar cases.

Stark Cty Bar Assn. v. Buttacavoli,
96 Ohio St. 3d 424, 2002-Ohio-4743, 775
N.E. 2d 818, ¶ 16

SANCTIONS

The Court also weighs the evidence of aggravating and mitigating factors:

Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21

SANCTIONS

Aggravating Factors:

- (1) Prior offense.
- (2) Dishonest/selfish motive.
- (3) Pattern of misconduct.
- (4) Multiple offenses.
- (5) Lack of cooperation.
- (6) False evidence.
- (7) Refusal to admit wrongdoing.
- (8) Harm to victims.
- (9) No restitution.

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SANCTIONS

Mitigating Factors:

- (1) No prior offense.
- (2) No dishonest/selfish motive.
- (3) Effort to rectify.
- (4) Cooperation with Board.
- (5) Good reputation.
- (6) Other sanctions imposed.
- (7) Existence of a disorder.
- (8) Interim rehabilitation.

SANCTIONS

Mitigating Factor #7: Existence of a disorder when there has been all of the following:

- (a) Diagnosis of a disorder by a qualified professional.
- (b) A determination that the disorder contributed to the misconduct.
- (c) Sustained period of successful treatment.
- (d) Prognosis of ability to return to ethical professional practice.

Failure to demonstrate that a disorder contributed to misconduct:

Disciplinary Counsel v. Hoskins, 119 Ohio St. 3d 17, 2008-Ohio-3194, 891 N.E.2d 324 (2008)

Cleveland Metro. Bar Assn. v. Kaplan, 124 Ohio St. 3d 278, 2010-Ohio-167, 921 N.E.2d 645 (2010)

Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935 (2007)

Cuyahoga Cty. Bar Assn. v. Maybaum, 112 Ohio St. 3d 93, 2006-Ohio-6507, 858 N.E.2d 359 (2006)

Disciplinary Counsel v. Longino, 128 Ohio St. 3d 426, 2011-Ohio-1524, 945 N.E.2d 1040 (2011)

Stark Cty. Bar Assn. v. Marosan, 106 Ohio St. 3d 430, 2005-Ohio-5412, 835 N.E.2d 718 (2005)

Akron Bar Assn. v. Hoffer, 86 Ohio St. 3d 97, 1999-Ohio-373, 712 N.E.2d 116 (1999)

Columbus Bar Assn. v. Linnen, 111 Ohio St. 3d 507, 2006-Ohio-5480, 857 N.E.2d 539 (2006)

Disciplinary Counsel v. Brown, 87 Ohio St. 3d 316, 1999-Ohio-74, 720 N.E.2d 525 (1999)

Dayton Bar Assn. v. Brown, 124 Ohio St. 3d 221, 2009-Ohio-6424, 921 N.E.2d 220 (2009)

Demonstration that a disorder contributed to misconduct:

Disciplinary Counsel v. Pfundstein, 128 Ohio St. 3d 61, 2010-Ohio-6150, 941 N.E.2d 1180 (2010)

Disciplinary Counsel v. Jaffe, 102 Ohio St. 3d 273, 2004-Ohio-2685, 809 N.E.2d 1122 (2004)

Akron Bar Assn. v. Goodlet, 99 Ohio St. 3d 355, 2003-Ohio-3935, 792 N.E.2d 1072 (2003)

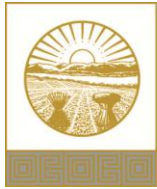
Toledo Bar Assn. v. Lowden, 105 Ohio St. 3d 377, 2005-Ohio-2162, 826 N.E.2d 836 (2005)

Disciplinary Counsel v. Beeler, 105 Ohio St. 3d 188, 2005-Ohio-1143, 824 N.E.2d 78 (2005)

Disciplinary Counsel v. Parker, 116 Ohio St. 3d 64, 2007-Ohio-5635, 876 N.E.2d 556 (2007)

OTHER CASES TO CONSIDER

- **Disciplinary Counsel v. Seabrook, 2012-Ohio-3933**
- **Stark County Bar Assn. v. Williams, 2013-Ohio-4006**
- **Disciplinary Counsel v. Whitfield, 2012-Ohio-2708**
- **Columbus Bar Assn. v. Gill, 2013-Ohio-4619**
- **Columbus Bar Assn. v. Culbreath, 2012-Ohio-5031**
- **Trumbull Cty. Bar Assn. v. Ohlin, 2012-Ohio-4565**
- **Disciplinary Counsel v. Wickerham, 2012-Ohio-2580**



Questions?

