

**ETHICS OPINION NUMBER 247
OF THE MISSISSIPPI BAR
RENDERED NOVEMBER 16, 2000**

REPORTING ATTORNEY MISCONDUCT - A Mississippi attorney must report the possible misconduct of another attorney which occurred in the State of Mississippi, which conduct was brought to the attention of the requesting attorney pursuant to an out of state deposition in which his client was not involved, and must do so even if his client requests that he not, and must do so even if the conduct has already been reported to the Bar Disciplinary Authority in the jurisdiction in which the deposition was taken.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion on the following facts:

Attorney A has received information which, if true, would indicate that one or more attorneys (attorney B) have committed acts of professional misconduct which possibly would require a disciplinary complaint to the Bar pursuant to M.R.P.C. 8.3. Attorney B is either licensed in this State or was admitted pro hac vice in litigation pending in this State. The possible misconduct related to and occurred in litigation which occurred in the State of Mississippi.

The information relating to the misconduct of attorney B was disclosed in a deposition taken in a case pending in another state. Attorney B denies the allegations of misconduct.

Attorney A did not attend the deposition and has no basis on which to determine the credibility of either the deponent or Attorney B. Attorney A's client does not want Attorney A to report the misconduct unless required by ethic rules, fearing that the report may lead to additional litigation involving the client.

The questions presented to the Ethics Committee are as follows:

1. Is the reporting obligation under M.R.P.C. 8.3 superceded by M.R.P.C. 1.6 which prohibits an attorney from revealing information relating to the representation of a client?

2. Is Attorney B's denial sufficient to remove the reporting obligation, if any, of Attorney A?

3. Does the fact that the misconduct of Attorney B was reported to the appropriate disciplinary authority in a foreign jurisdiction remove the obligation, if any, of Attorney A to report the misconduct to the appropriate disciplinary authority?

The Rule requiring reporting attorney misconduct is M.R.P.C. 8.3, the portions of which are relevant to this request are as follows:

M.R.P.C. 8.3: (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.

M.R.P.C. 8.3 requires an attorney having knowledge that another attorney has committed a violation of the Rules of Professional Conduct which "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects . . ." has a duty to report that conduct. If the Mississippi attorney has knowledge of such conduct as defined by *Miss. Bar v. Attorney U*, 678 So. 2d 963 (Miss. 1996), and the out of state deposition raises those questions, then it is Attorney A's responsibility to report that misconduct to the "appropriate authority". Since the nature of attorney B's conduct is not disclosed in the request, this Committee is unable to opine as to whether that conduct rises to the level required by M.R.P.C. 8.3. However, the Committee would point out that the Comment to M.R.P.C. 8.3 states that "A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware".

With regard to the question as to whether M.R.P.C. 1.6 supersedes M. R. P. C. 8.3, that question need not be addressed since M.R.P.C. 8.3 was amended in 1994 deleting the M.R.P.C. 1.6 prohibition. Therefore, M.R.P.C. 1.6 is not relevant to the question presented and thus the desire of Attorney A's client is immaterial. *See also* Ethics Opinion 205.

With regard to Attorney B's denial of misconduct, while Attorney B's admission of misconduct would be conclusive, his denial of misconduct is not. The question is

whether the information received by Attorney A meets the criteria set forth in M.R.P.C. 8.3 and the *Attorney U* decision.

With regard to whether the reporting of misconduct in a foreign jurisdiction is sufficient so that Attorney A need not report the misconduct, one must again look at the clear language of M.R.P.C. 8.3. M.R.P.C. 8.3 states that attorney misconduct shall be reported to "the appropriate professional authority". If the conduct occurred in the State of Mississippi, then the conduct must be reported to The Mississippi Bar. See M.R.P.C. 8.5. Reporting attorney misconduct which occurred in the State of Mississippi to a foreign disciplinary authority is not sufficient. However, if Attorney B is also licensed in other jurisdictions, the conduct must also be reported to those jurisdictions.

Therefore, it is the opinion of this Committee that if the Mississippi attorney has the requisite knowledge of misconduct by Attorney B and the subject deposition raises substantial questions as to Attorney B's honesty, trustworthiness or fitness as an attorney in other respects, then that conduct must be reported, and, if the conduct occurred in the State of Mississippi, must be reported to The Mississippi Bar, and to any other jurisdiction in which Attorney B is licensed. Further, the alleged offending attorney's denials are not sufficient to overcome Attorney A's obligations under M.R.P.C. 8.3, nor does the fact that Attorney B's misconduct may have been reported to a foreign jurisdictional authority overcome Attorney A's obligation to report such misconduct to the appropriate disciplinary authorities.

FN 1. - The Court in *Attorney U* defined "knowledge" as follows: The supporting evidence must be such that a reasonable attorney under the circumstances would have formed a firm opinion that the conduct in question had more likely than not occurred and that the conduct, if it did occur, raises a substantial question as to the purported offender's honesty, trustworthiness or fitness to practice law in other respects. *Attorney U* at 972.