

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9030

ORDER ADOPTING AMENDMENTS TO TEXAS DISCIPLINARY RULE OF PROFESSIONAL CONDUCT 8.03

ORDERED that:

1. To comply with the Act of May 28, 2017, 85th Leg., R.S., ch. 531 (SB 302, codified at TEX. GOV'T CODE § 81.024), the Court approves these amendments to Texas Disciplinary Rule of Professional Conduct 8.03.
2. The amendments take effect June 1, 2018.
3. The amendments may be changed before June 1 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by April 30, 2018.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

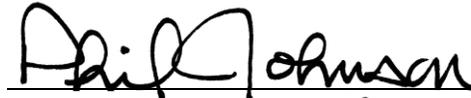
Dated: March 1, 2018.



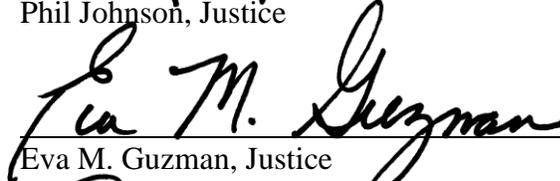
Nathan L. Hecht, Chief Justice



Paul W. Green, Justice



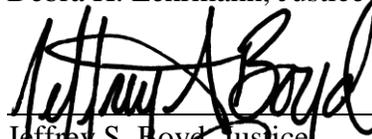
Phil Johnson, Justice



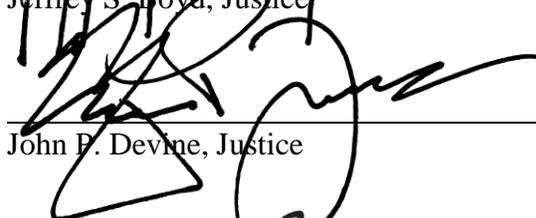
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Rule 8.03. Reporting Professional Misconduct

- (a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge that another lawyer has committed a violation of applicable 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 disciplinary authority.
- (b) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge 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 appropriate authority.
- (c) A lawyer having knowledge or suspecting that another lawyer or judge whose conduct the lawyer is required to report pursuant to paragraphs (a) or (b) of this Rule is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer's report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in paragraphs (a) and (b).
- (d) This rule does not require disclosure of knowledge or information otherwise protected as confidential information:
 - (1) by Rule 1.05 or
 - (2) by any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.
- (e) A lawyer who has been convicted or placed on probation, with or without an adjudication of guilt, by any court for barratry, any felony, or for a misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property—including a conviction or sentence of probation for attempt, conspiracy, or solicitation—must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment.
- (f) A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment.

Comment:

1. Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigations when they have knowledge not protected by Rule 1.05 that a

violation of these rules has occurred. Lawyers have a similar obligation with respect to judicial misconduct. Frequently, the existence of a violation cannot be established with certainty until a disciplinary investigation has been undertaken. Similarly, an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Consequently, a lawyer should not fail to report an apparent disciplinary violation merely because he cannot determine its existence or scope with absolute certainty. Reporting a violation is especially important where the victim is unlikely to discover the offense.

2. It should be noted that this Rule describes only those disciplinary violations that must be revealed by the disclosing lawyer in order to avoid violating these rules himself. It is not intended to, nor does it, limit those actual or suspected violations that a lawyer may report. However, if a lawyer were obliged to report every violation of these rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. Similar considerations apply to the reporting of judicial misconduct. The term “substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. The term “fitness” has the meanings ascribed to it in the Terminology provisions of these Rules.
3. A report of professional misconduct by a lawyer should be made and processed in accordance with Article X of the State Bar Rules. A lawyer need not report misconduct where the report would involve a violation of Rule 1.05. However, a lawyer should encourage a client to consent to disclosure where prosecution of the violation would not substantially prejudice the client's interests. Likewise, the duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose past professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.
4. Paragraphs (e) and (f) are added under section 81.081 of the Government Code.