

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105  
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

## **OPINION 86-001**

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

*[Not Current-subsequent rule amendments to Gov. Bar R. V § 42, renumbered as Gov. Bar R. VII(D), eff. Jul. 1, 1992.]*

**SYLLABUS:** The Certified Grievance Committee of a local bar association has a duty to inform law enforcement officials of criminal activity by an attorney being investigated, when such evidence is uncovered during the course of an investigation.

**TO:** Keith Bartlett, Columbus Bar Association

**FROM:** The Board of Commissioners on Grievances and Discipline of the Bar

**DATE:** May 5, 1987

We have before us your request for our opinion concerning the duty to report evidence of criminal activity uncovered during a disciplinary investigation of an attorney. In your request letter you state:

1. Does the Grievance Committee have a duty to report to law enforcement officials its belief that criminal acts have been committed by the respondent attorney?
2. If the committee does not have a duty or obligation to report such conduct, may it nonetheless report the conduct without violating the rules of confidentiality of the Rules for the Government of the Bar?
3. Does the person who conducted the investigation, who is an attorney subject to the Code of Professional Responsibility, have a duty under Disciplinary Rule 1-103 to disclose his evidence of alleged criminal activity by another lawyer to the appropriate law enforcement personnel?

Your first question, regarding a duty to report, is not addressed in the Rules for the Government of the Bar. However, under EC 1-4 of the Code of Professional Responsibility (the "Code"), there is a duty imposed on the investigating body to inform law enforcement officials of possible criminal activity by the attorney being investigated. Ethical Consideration 1-4 of the Code states:

. . . If in the course of an investigation by a grievance or ethics committee of a bar association or by the office of disciplinary counsel it is found that persons involved in the investigation may have violated federal or state criminal statutes, it is the duty of the investigatory agency to notify the appropriate law enforcement or prosecutorial authority of such alleged criminal violation . . . EC 1-4, Code of Professional Responsibility (1970).

The framers of the Code intended the ethical considerations to be "aspirational in character and represent the objectives toward which every member of the profession should strive." Code of Professional Responsibility, Preface (1970). Therefore, as a Certified Grievance Committee of the local bar association, you should notify the appropriate authorities upon discovering any alleged criminal violation by the attorney under investigation.

Your second question addresses Gov. Bar R. V, Section 23. This rule requires that all proceedings and documents shall remain private during an investigation of a complaint unless the respondent, by voluntary act, waives his or her right to privacy or requests in writing that the proceedings be public. Thus, the privacy requirement under Gov. Bar R. V, Section 23 is in conflict with the duty to report under EC 1-4 of the Code. The question then becomes, how is this apparent conflict resolved?

Under Ohio Rev. Code Section 2921.22, all persons knowing a felony has been or is being committed, are required to report such to law enforcement authorities. O.R.C., 2921.22 (1986). "The rationale for requiring that serious crimes be reported is that effective crime prevention and law enforcement depend significantly on the cooperation of the public." Commentary, O.R.C., 2921.22 (1986).

We believe that in most situations, the reporting of crimes, allegedly committed by attorneys, outweighs any privacy rights that an attorney might have regarding a disciplinary investigation. However, there are several factors which must be considered when determining which rule should take precedence. For instance, the more severe the crime, coupled with the degree of certainty that a crime was committed weigh heavily in favor of reporting the crime to the proper authorities.

Furthermore, although an attorney under investigation for an alleged disciplinary violation has a privacy interest during the investigation, Gov. Bar R. V, Section 42 states: "[n]o investigation or procedure shall be held to be invalid by reason of any non-prejudicial irregularity or for any error not resulting in a miscarriage of justice." Gov. Bar R. V, Section 42 (1986). The rule also states that all the rules relating to investigations shall be liberally construed for the protection of the public. *Id.* In light of that rule, we believe the reporting of alleged crimes to law enforcement officials is necessary to protect the public and would not amount to prejudicial error in the disciplinary case.

Your third question deals with an attorney's affirmative duty under DR 1-103 to report any unprivileged knowledge of another attorney's misconduct to the proper authorities. Unlike the Ethical Considerations in the Code, all of the Disciplinary Rules are mandatory in character. Code of Professional Responsibility, Preface (1970). Therefore, if during an investigation of a complaint, the investigating attorney uncovers evidence of illegal activity by the attorney named in the complaint, this information must be disclosed to the proper authorities.

Based on the foregoing, it is our opinion, and you are so advised, that a Certified Grievance Committee has an obligation to inform criminal authorities regarding illegal acts of an attorney which were discovered during a disciplinary investigation.

**This opinion is advisory in nature, is based upon the facts as presented and is limited to questions arising under the Code of Professional Responsibility, Gov. Bar R. V and Section 2921.22 of the Ohio Revised Code.**

JAMES W. Mason, Esq.  
Secretary, Board of Commissioners  
on Grievances and Discipline  
of the Judiciary of  
The Supreme Court of Ohio