



Ohio Board of Professional Conduct

OPINION 2017-02

Issued February 10, 2017

Withdraws Opinion 89-32

Duty of Judge to Report Misconduct

SYLLABUS: A judge who has knowledge that another judge has committed a violation of the Code of Judicial Conduct that raises a question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects is required to report it to the appropriate disciplinary authority. Jud.Cond.R. 2.15(A). Likewise, a judge who has knowledge of a lawyer's violation of the Rules of Professional Conduct has an ethical duty to report it to the disciplinary counsel or a local certified grievance committee. Jud.Cond.R. 2.15(B). A report of misconduct by a judge should be made within a reasonable time after the judge becomes aware of the violation.

If a judge does not have actual knowledge, but receives information indicating a substantial likelihood that another judge or lawyer has committed reportable misconduct, then the judge should take appropriate action, which may include communicating directly with the judge or lawyer involved, communicating with a supervisor, partner, or colleague, or reporting the suspected violation to the appropriate disciplinary authority. Jud.Cond.R. 2.15, cmt. [2].

Additionally, a judge who reports a lawyer's misconduct to the proper disciplinary authority is not presumptively disqualified from presiding over cases in which that lawyer appears.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.supremecourt.ohio.gov/boards/boc

DAVID L. DINGWELL

CHAIR

SANFORD E. WATSON II

VICE- CHAIR

RICHARD A. DOVE

DIRECTOR

D. ALLAN ASBURY

SENIOR COUNSEL

HEIDI WAGNER DORN

COUNSEL

OPINION 2017-02

Issued February 10, 2017

Withdraws Opinion 89-32

Duty of Judge to Report Misconduct

SYLLABUS: A judge who has knowledge that another judge has committed a violation of the Code of Judicial Conduct that raises a question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects is required to report it to the appropriate disciplinary authority. Jud.Cond.R. 2.15(A). Likewise, a judge who has knowledge of a lawyer's violation of the Rules of Professional Conduct has an ethical duty to report it to the disciplinary counsel or a local certified grievance committee. Jud.Cond.R. 2.15(B). A report of misconduct by a judge should be made within a reasonable time after the judge becomes aware of the violation.

If a judge does not have actual knowledge, but receives information indicating a substantial likelihood that another judge or lawyer has committed reportable misconduct, then the judge should take appropriate action, which may include communicating directly with the judge or lawyer involved, communicating with a supervisor, partner, or colleague, or reporting the suspected violation to the appropriate disciplinary authority. Jud.Cond.R. 2.15, cmt. [2].

Additionally, a judge who reports a lawyer's misconduct to the proper disciplinary authority is not presumptively disqualified from presiding over cases in which that lawyer appears.

QUESTIONS PRESENTED: 1) What is a judge's duty under the Code of Judicial Conduct to report another judge's or lawyer's misconduct?; and 2) If a judge reports a lawyer's violation of the Code of Professional Responsibility, is the judge disqualified from hearing any cases involving that lawyer?¹

APPLICABLE RULES: Jud.Cond.R. 2.15, Prof.Cond.R. 8.3

OPINION:

QUESTION 1: A judge is obligated to take action to address known misconduct of another judge or lawyer. A judge who has knowledge that another judge has committed a violation of the Code of Judicial Conduct that raises a question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects has an ethical duty to inform the appropriate authority. Jud.Cond.R. 2.15(A). The appropriate authority to which judicial misconduct must be reported is either the Office of Disciplinary Counsel or the Ohio State Bar Association.

Similarly, if a judge has knowledge that any lawyer has violated the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects is required to inform the appropriate authority, which is the Ohio Office of Disciplinary Counsel or a local certified grievance committee. Jud.Cond.R. 2.15(B). Since a judge is also a lawyer, a judge must self-report a violation of the Rules of Professional Conduct that satisfies this standard. *See also*, Prof.Cond.R. 8.3(a); Adv.Op. 2007-1.

The rule distinguishes between a judge who possesses actual knowledge of misconduct, and one who receives information indicating a "substantial likelihood" that misconduct was committed. If a judge lacks actual knowledge of misconduct by another judge or a lawyer, but receives information indicating a substantial likelihood of the reportable misconduct, the judge should take "appropriate action." Jud.Cond.R. 2.15, cmt. [2]. Appropriate action may include, but is not limited to, communicating directly with the judge or lawyer involved, communicating with a supervisor, partner, or

¹ The question presented in this advisory opinion is the same or substantially similar to the question presented in Adv.Op. 89-32.

colleague, or reporting the suspected violation to the appropriate disciplinary authority. Jud.Cond.R. 2.15, cmt. [2]. A judge should make a case-by-case assessment as to what corrective action is appropriate in the situation. See, e.g. Wash. Ethics Adv. Comm. Op. 02-15 (2002).

A judge has a responsibility to participate in efforts to ensure public respect for the judicial system, and therefore, should not ignore or deny known misconduct among judicial colleagues or lawyers. Jud.Cond.R. 2.15, cmt. [1]. Jud.Cond.R. 2.15 limits a judge's reporting obligation to misconduct that an "independent judiciary must vigorously endeavor to prevent." Jud.Cond.R. 2.15, cmt. [1].

Although Jud.Cond.R. 2.15 does not provide a timeframe in which a judge is required to report misconduct, a "reasonable" time after the judge becomes aware of the violation may be inferred from case law. In *Disciplinary Counsel v. Bozanich*, 95 Ohio St.3d 109, 2002-Ohio-1939, the Supreme Court found that a seven-year delay was not a "reasonable" time in which to report a judge's misconduct to investigatory authorities under DR 1-103 (now Prof.Cond.R. 8.3).

Additionally, the Code of Judicial Conduct does not impose a duty for judges to report misconduct by those who are not judges or lawyers. See, e.g. Ariz. Sup. Ct. Jud. Ethics Adv. Comm. Op. 92-15 (1992) (judge must weigh severity of criminal activity and is not required to report every witness who admits to smoking marijuana, but is clearly obligated to notify the police of a witness who, in court, admits to committing recent, unsolved serial murders). However, the Board advises that a judge should expose obvious and egregious illegal activity where the failure to do so could undermine confidence in the integrity of the judiciary. See, Pa. Adv. Op. 95-1 (1995).

QUESTION 2: A judge who reports to the proper disciplinary authority that a lawyer violated the Rules of Professional Conduct, is not automatically required to recuse himself or herself from cases involving that lawyer, even if the judge is the chief complaining witness. *In re Disqualification of Lynch*, 135 Ohio St.3d 1277, 1278, 2013-Ohio-910, citing *In re Disqualification of Belskis* (1993), 74 Ohio St.3d 1252. In some situations, a combination of unique factors may create an appearance of impropriety that may require a judge to recuse himself or herself from a matter. See, e.g. *In re Disqualification of O'Neill*,

100 Ohio St.3d 1226, 2002-Ohio-7476; *In re Disqualification of Maschari* (1999), 88 Ohio St.3d 1212.

A judge's duty to report another judge's or lawyer's misconduct does not create the appearance of impropriety. Rather, an objective test is used to determine whether a judge's participation in a case presents an appearance of impropriety. A judge should recuse himself or herself if " 'a reasonable and objective observer would harbor serious doubts about the judge's impartiality.'" *Lynch*, 2013-Ohio-910, at ¶ 8, citing *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359 ¶ 8. Moreover, a judge is presumed to be impartial and comply with the law. Jud. Cond.R. 1.1, 2.2. As a result, a judge fulfilling his or her professional duty by reporting a lawyer's violation of the Rules of Professional Conduct does not alone disqualify the judge from hearing cases involving that lawyer.

CONCLUSION: A judge with knowledge that another judge or lawyer has committed misconduct that raises a question as to the other judge's or lawyer's honesty, trustworthiness, or fitness as a judge or lawyer in other respects is required to report it to the appropriate disciplinary authority. If a judge does not possess actual knowledge, but receives information indicating a substantial likelihood that another judge or lawyer has committed reportable misconduct, then the judge must take appropriate action, which may include communicating with the judge or lawyer, communicating with a supervisor, or reporting it to the appropriate disciplinary authority. A report of misconduct by a judge should be made within a reasonable time after the judge becomes aware of the violation. Additionally, a judge who reports a lawyer's misconduct to the proper disciplinary authority is not automatically disqualified from hearing cases in which that lawyer appears.