

**ANSWER TO QUESTION NO. 4**

The legal profession is a self-governing profession. MRPC 8.3 requires lawyers to report certain lawyer misconduct to the Michigan Attorney Grievance Commission.

"A lawyer having knowledge that another lawyer has committed a significant violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the Attorney Grievance Commission."

Rule 8.3 has three thresholds that must be met before reporting is required: (1) knowledge; (2) significant violation(s) of the rules; (3) substantial question as to another lawyer's honesty, trustworthiness, or fitness.

Rule 8.3 does not require a lawyer to report every violation of a Rule of Professional Conduct; it is meant to be limited to violations which go to the heart of the profession. Thus, a lawyer who is contemplating whether he or she is under an obligation to report suspected misconduct must make reasonable value judgments about the significance of the other lawyer's suspected misconduct and whether it is required to be reported.

(1) Knowledge: Both Daniel and Marcus have knowledge of Charles' conduct. Marcus was asked to clean up the mess, and thus had to review the case file and research the legal support for the setting aside of the default. Daniel, the managing partner of the firm, was put on notice of Charles' conduct by Marcus, who was concerned about the manner in which the file was handled by Charles.

(2) Significant Violation: Charles has violated MRPC 1.1:

"A lawyer shall provide competent representation to a client. A lawyer shall not:

"(a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;

"(b) handle a legal matter without preparation adequate in the circumstances; or

"(c) neglect a legal matter entrusted to the lawyer."

The stated facts do not raise any issue involving subpart (a),

but they do show violations of subparts (b) and (c). Charles did not adequately prepare to respond (or object) to the interrogatories in compliance with applicable discovery deadlines; indeed, he did not prepare at all. His multiple failures to respond and to appear in court also evidence neglect of the matter entrusted to him. Neglect involves indifference and a lawyer's consistent failure to carry out the obligations assumed to the client or a conscious disregard for the responsibility to the client. (ABA Informal Ethics Opinion 1273 [1973].) Appearance for a hearing is required by court rule, and a violation is arguably within MRPC 8.4(c), conduct prejudicial to the administration of justice. Failure to appear may also be a violation of MRPC 1.3, requiring a lawyer to act with reasonable diligence in representing a client.

(3) Substantial question of honesty, trustworthiness or fitness: There is no indication that Charles lied, withheld information from the client, or tried to cover up what had occurred. However, any lawyer knows that ignoring interrogatories is potentially prejudicial to a client, and that failure to show up at a court hearing is an egregious error. Charles failed to do this on three occasions, plus he did not tell the firm of a problem or seek support on the case from others in the firm before the court hearings were missed and the problem had exacerbated. Even then, instead of informing firm management, he assigned to an associate the responsibility of fixing the problem. It does not appear that Charles discussed with the client the nature of discovery obligations or gave advance notice of his intent not to appear for the hearings. Taken together, these failures show a glaring lack of appreciation for his duties to the client and to his firm. Charles' conduct also inconvenienced the opposing party and the opposing counsel, who had to prepare for and attend hearings that otherwise would not have been required.

The Comment to MRPC 8.3 defines "substantial" as follows:

"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. The term 'substantial' refers to the seriousness of the possible offense and not to the quantum of evidence of which the lawyer is aware."

Charles' conduct was "serious"--a default was entered against Brenda because of his repeated neglect to take action and appear for hearings. Whether it raises a substantial question as to his "honesty, trustworthiness or fitness" to practice can be debated, but on these facts doubts should be resolved in favor of reporting

such flagrant indifference to a lawyer's professional obligations to client and firm. No mitigating reasons for the conduct have been offered, and Charles' failure to inform the firm in a timely fashion is an exacerbating circumstance that reflects poorly on his trustworthiness.

Daniel and the firm should also take immediate action to remedy the consequences of Charles' neglectful conduct. MRPC 5.1(c)(2), provides in pertinent part that a:

"lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if . . . the lawyer is a partner in the law firm in which the other lawyer practices . . . and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take responsible remedial action."

The facts indicate that a default was entered against Brenda, but at the time the firm became aware of Charles' conduct a default judgment had not yet entered. The firm must take swift action to remove Charles from the file; fully inform Brenda regarding the status of her case; and move to set aside the default that was entered against Brenda due to Charles' neglect. Additionally, the firm should investigate whether Charles' conduct in Brenda's case represents an isolated instance or a pattern of neglect and indifference. The firm should, at a minimum, establish internal procedures to monitor Charles' calendar and prevent recurrences.