

LEGAL ETHICS OPINION 977

DUTY TO REPORT MISCONDUCT –
SUBSTANCE ABUSE.

A prosecutor inquired as to whether he has an obligation under DR:1-103(A) to report attorney misconduct involving attorneys who have admitted using or possessing cocaine to authorities outside the grand jury and in some cases under a grant of immunity.

DR:1-102(A)(3) states that “a lawyer shall not commit a crime or other deliberately wrongful act that reflects adversely on a lawyer's fitness to practice law.” Attorneys who have admitted, in the course of a criminal investigation or under a grant of immunity, to either the use or possession of cocaine have admitted to criminal conduct whether at the state or federal level which may constitute a misdemeanor or felony. The committee believes that an attorney who admits to such criminal conduct while licensed to practice law in the State of Virginia has admitted to “a crime or other deliberately wrongful act.” The committee further believes under the factual circumstances presented to the committee that the admission to the use or possession of cocaine while a licensed attorney reflects adversely on a lawyer's fitness to practice law. Thus, the two prong test of DR:1-102(A)(3) has been satisfied.

Once DR:1-102(A)(3) is satisfied, the lawyer must then turn to DR:1-103(A). DR:1-103(A) states: “A lawyer having information indicating that another lawyer has committed a violation of a disciplinary rule that raises a substantial question as to the lawyer's fitness to practice law in other respects, shall report such information to the appropriate professional authority, except as provided in DR:4-101.” A two prong test is established. First, it must be determined whether the conduct of a lawyer violated one of the disciplinary rules under the Virginia Code of Professional Responsibility. Since it has been determined that DR:1-102(A)(3) has been violated, it must then be determined whether the violation of that disciplinary rule “raises a substantial question as to that lawyer's fitness to practice law in other respects.” This is a subjective determination to be made by the lawyer who will report the misconduct. Under the factual circumstances presented, the committee opines that there is a substantial question as to a lawyer's fitness to practice law who has violated DR:1-102(A)(3) for having admitted to the use or possession of cocaine while licensed to practice law in the state of Virginia. Since the tests of DR:1-102(A)(3) and DR:1-103(A) are answered in the affirmative, the committee believes the misconduct of the attorney should be reported to the State Bar.

The Committee feels strongly that when considering granting immunity to a lawyer who is part of an investigation, the U.S. Attorney's office should advise that the grant of immunity in no way extends to possible administrative actions which may be brought against the attorney for any admissions of crimes or other deliberately wrongful acts which adversely reflect on that lawyer's fitness to practice law.

The Committee also advises that the Lawyers Helping Lawyers program jointly sponsored by the Virginia State Bar and the Virginia Bar Association exists to combat

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substance abuse within the profession by assisting the lawyers and correcting any related professional impairment. [DR:1-102(A)(3); DR:1-103(A)]

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Legal Ethics Committee Notes. – If information about the ethics violation is a client confidence, a lawyer may report the other lawyer’s misconduct only if the client consents under Rule 1.6(c)(3); the lawyer considering whether to report must consult with the client under that Rule.

Editor’s Note. – See also L E Op. No. 1004. Overruled in part by L E Op. No. 1528. See footnote 1 of the opinion for scope.