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TO REPORT OR NOT TO REPORT is Not the Question; The Question is WHETHER TO SAVE A LIFE

THIS ARTICLE IS PROVIDED BY THE STATE BAR OF NEVADA LAWYER ASSISTANCE PROGRAM

We've all been there. Opposing counsel is doing something we think is improper, unethical or worse. Rule of Professional Conduct 8.3 makes reporting of ethical violations clear – an attorney who knows that another lawyer has violated ethics rules that raise a substantial question regarding that lawyer's honesty, trustworthiness or fitness as a lawyer shall inform the appropriate professional authority. In most cases, here in Nevada that authority is the State Bar of Nevada's Office of Bar Counsel.

But what if the issue isn't particularly clear? What if you suspect another attorney has a drug or alcohol problem? What if you suspect that impairment is affecting the attorney's practice and client representation? Are you still required to report under Rule 8.3?

The short answer is "no."

Rule 8.3 does not require the reporting of an attorney's substance abuse problem to the state bar. This is true even if the attorney has a severe problem that others believe is endangering his or her life.

However, the longer answer is "no, but perhaps you should."

Nobody wants to be perceived as an informant, a busybody or a troublemaker. But what if reporting a fellow attorney suspected of having a drug or alcohol problem could save his or her life? What if a report about excessive gambling averted client theft? What if reporting an attorney who hasn't seemed like him- or herself ended up helping that attorney cope with depression?

While conjecture, a hunch or a "feeling" about another attorney probably isn't enough to justify reporting that lawyer to the Office of Bar Counsel for an ethical violation, it may be just what is needed to seek help for a lawyer in crisis – and possibly to save a life.

Though reporting an attorney with substance abuse or other problems isn't required, it isn't prohibited either. The state bar has programs in place to assist troubled attorneys with such issues.

Lawyers Concerned for Lawyers

The Lawyers Concerned for Lawyers (LCL) program is a good place to start. Since 1985, this group, comprised of Nevada attorneys in recovery, has provided confidential assistance to lawyers in need of support to get, and/or stay, in recovery. Lawyers in the LCL program host closed-door 12-Step meetings throughout the state; they do not police, discipline, or otherwise threaten the career or reputation of attorneys

or judges seeking help. A list of some weekly 12-Step meetings in Nevada can be found at www.nvbar.org/LCL.

There is also a new member benefit that offers therapist referrals through LCL. If an attorney wants assistance in dealing with a difficult life situation, such as divorce, depression, stress, the death of a loved one, a traumatic case or any other stressful incident/situation, he or she can contact LCL in order to get the name of a therapist. The first three sessions are provided at no charge. The inquiry and subsequent three sessions are completely confidential. When the therapist bills the state bar, there are no ICD-9 billing codes and no identification of the attorney/patient on the invoice.

A call to the LCL hotline at (866) 828-0022 will put you in direct contact with an attorney in recovery. This number may be accessed by those seeking help or by concerned friends, coworkers and fellow attorneys.

Any report made about another attorney suspected of having drug, alcohol or mental health issues will remain confidential. The LCL representative will contact the lawyer in question and ask if that lawyer needs help and/or resources. The name of the person who made the initial report will never be revealed. And, once contact is made, the decision to get assistance is completely voluntary. No report will be made to the state bar or the Office of Bar Counsel.

Confidentiality is the cornerstone of this program, and reporting is protected by Supreme Court Rule 106.5. The rule states that individuals who make a good faith report to LCL shall be absolutely immune from civil liability for any action related to the program. All information obtained by the LCL program is also confidential and is not admissible in any disciplinary, admission, administrative or other state bar proceeding.

The Nevada Lawyer Assistance Program and How it Differs from LCL

The Nevada Lawyer Assistance Program (NLAP) was established in 2013, and it provides clinical services to attorneys suffering from abuse, addiction and/or mental health issues. The program is staffed by medical professionals. When

sought out voluntarily by an attorney, the program is confidential and separate from the state bar.

Nevada attorneys can contact NLAP to speak with a professional and get treatment if deemed necessary. The initial evaluation is conducted by a medical professional and is provided at no charge to the attorney; all bills for those seeking a voluntary assessment are remitted to the state bar with a unique identifier known only to the medical provider. Should the attorney elect to seek treatment or therapy, any expenses are worked out directly between the provider and the attorney.

Attorneys seeking a clinical assessment may contact Larry Espadero at Strategic Behavioral Health by calling (702) 251-1377. Although located in Las Vegas, Espadero and his team can make referrals to attorneys who reside in northern and rural Nevada.

More information about NLAP can be found online at www.nvbar.org/NLAP.

The Velvet Hammer

So, what happens when referrals to LCL or NLAP aren't successful – or are never made? What happens when a client files a grievance with the state bar?

In these instances, NLAP can be used as a "velvet hammer," compelling lawyers to submit themselves for an assessment, treatment and supervised recovery. For the state bar's Office of Bar Counsel, this tool is used when complaints arise about ethical violations connected to issues of impairment.

Once a complaint has been filed, the matter may proceed down one of two avenues:

1. Participation in a confidential diversion program; or
2. A formal hearing that can result in public discipline and mandatory participation in an NLAP monitoring program.

Diversion can be offered confidentially by a screening panel as an alternative to, or in conjunction with, disciplinary sanctions. Supreme Court Rule 105.5 makes participation in diversion available in cases where there is little likelihood that the attorney will harm the public during the period of participation. And, depending on the

circumstances, the underlying grievance may be dismissed and remain confidential.

For some, diversion cannot be offered as an option. For others, diversion is not the option they choose. In those instances, the Office of Bar Counsel will file a formal complaint, which is a public document. Any resulting court orders compelling attorneys to report for evaluations are printed in *Nevada Lawyer* and posted online; in such cases, participation in NLAP, often with corresponding probation monitoring, may be long term.

The Bottom Line

Be a friend to a fellow lawyer in need. The law can, at times, be a hard, stressful business, one that thrives on adversity. No matter how zealously we advocate for our clients, no matter the pressures to get ahead, in the end we are all fellow attorneys with shared experiences and challenges.

Not sure whether or not to report? Here are 10 signs that may indicate help is needed:

1. Routinely late for office/client meetings, court appearances or work functions – with or without excuses.
2. Claims of illness that prevent keeping commitments.
3. Unexplained need for money or unspecified financial problems.
4. Lack of motivation or focus.
5. Decline in productivity and/or billable hours.
6. Changes in appearance, hygiene or dress; sudden weight loss or gain.
7. Appearance of bloodshot eyes or enlarged/small pupils.
8. Overreaction to criticism/ shifting of blame to others.
9. Commingling or borrowing from clients' trusts.
10. Engaging in secretive or suspicious behaviors. **NL**