

If You See Something, SAY SOMETHING?

CARL IS A SOLO PRACTITIONER WHO DECIDES TO HIRE AN ASSOCIATE, SONIA, TO HELP WITH HIS CASELOAD. Sonia is a recent law school graduate who is excited to work with and learn from Carl, a well-known litigator. Carl quickly begins to give her increasing responsibility, asking her to help cover hearings and meet with clients.

After a year, Sonia begins to observe increasingly erratic behavior by Carl, including working odd hours and disappearing without letting Sonia or their legal assistant know his whereabouts. She has had to step in for him at the last minute, including attending hearings where he was supposed to appear as lead counsel as well as handle client meetings he was supposed to attend.

Eventually, Sonia begins to suspect that Carl has a substance use problem. She has seen him sneaking drinks during office hours, and he often appears intoxicated after disappearing from the office during the day. To protect the clients' interests, she has had to remind him numerous times about hearings or deadlines that he has forgotten. She also finds that court papers he has prepared have numerous errors that she has had to correct before filing them.

Sonia has become increasingly concerned about Carl's fitness to practice law and knows that his clients are likely unaware of his substance use issues and his inability to handle their matters competently. She has been able to cover for him thus far so that no client's interests have been jeopardized, but she believes that she needs to take action.

She is considering whether she should report Carl to either the Office of Chief Disciplinary Counsel or the Texas Lawyers' Assistance Program.

Which of the following is the most accurate?

- A. Sonia must report Carl's behavior to the Office of Chief Disciplinary Counsel.
- B. Sonia must report Carl's behavior to the Texas Lawyers' Assistance Program.
- C. Sonia must report Carl's behavior to both the Office of Chief Disciplinary Counsel and the Texas Lawyers' Assistance Program.
- D. Sonia must report Carl's behavior to either the Office of Chief Disciplinary Counsel or the Texas Lawyers' Assistance Program.
- E. Sonia is not required to report to either the Office of Chief Disciplinary Counsel or the Texas Lawyers' Assistance Program because Sonia's corrective actions have thus far prevented any harm to the clients' interests.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: Rule 8.03(a) of the Texas Disciplinary Rules of Professional Conduct requires that “a lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.”

Carl's behavior clearly violates Rule 1.01(b), which states that a lawyer shall not “frequently fail to carry out completely the obligations that the lawyer owes to a client or clients,” which is sufficient to raise a “substantial question” about Carl's “fitness as a lawyer.” Sonia must report Carl's behavior.

The “the appropriate disciplinary authority” for rules violations is the Office of Chief Disciplinary Counsel. However, Rule 8.03(c) permits those violations to be reported to “an approved peer assistance program rather than to an appropriate disciplinary authority” when chemical dependency or mental illness are involved. Therefore, Rule 8.03(c) allows Sonia to report Carl's unfitness to practice law to either the Office of Chief Disciplinary Counsel or the Texas Lawyers' Assistance Program. The correct answer is D. For more analysis, go to legalethictexas.com/ethics-question-of-the-month.

EDITORS' NOTE: The State Bar of Texas created the Texas Lawyers' Assistance Program in 1989 to provide attorneys help with substance use and mental health issues. Texas attorneys, judges, and law students can contact the Texas Lawyers' Assistance Program 24/7 to seek help for themselves or a colleague. By law, all calls are confidential. To reach the Texas Lawyers' Assistance Program, call or text 800-343-TLAP (8527).