

Wednesday, January 10 at 2:00pm

# GIBSON DUNN 2024 CA MCLE BLITZ

We're All Snitches Now: The New State Bar  
Reporting Rule

**GIBSON DUNN**

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# AGENDA

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- 01** What is Rule 8.3?

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  - 02** Why Did This Take So Long?

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  - 03** Girardi and the CA State Bar

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  - 04** A Compromise Is Struck...

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  - 05** Rule 8.3: Limitations and Exceptions

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  - 06** Scenarios Enumerated by the Bar

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  - 07** Additional Considerations

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  - 08** Outside of California

# What is Rule 8.3?

The “Snitch Rule”:

Reporting Professional Misconduct

## Rule 8.3: Background

- Rule of Professional Conduct 8.3 requires lawyers to report certain types of misconduct committed [by other lawyers](#).
- The rule was proposed on June 2, 2023, approved by the CA Supreme Court on June 21, 2023, and went into effect on [August 1, 2023](#).

“Lawyers are often in the best position to know if another lawyer is not fulfilling their ethical obligations and violating the Rules of Professional Conduct. Reporting another lawyer’s possible misconduct assists the State Bar to protect the public, the courts, and the legal profession from lawyer harm; helps to maintain the integrity of the legal system; and furthers public trust in the legal profession.”

- CA State Bar on why Rule 8.3 is important

## Rule 8.3: The Text

- (a) A lawyer shall, **without undue delay**, inform the State Bar, or a tribunal with jurisdiction to investigate or act upon such misconduct, when the lawyer knows of **credible evidence** that another lawyer has committed a **criminal act** or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a **substantial question** as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.
- (b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.



# Why Now?

*A Brief History of  
Failed Attempts at  
Reform*



# Rumblings of Reform...

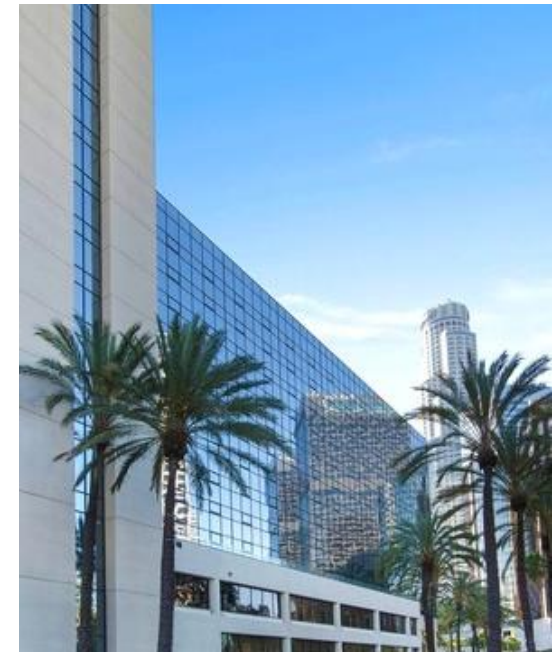
1983



2010



2016



# Then Came Girardi . . .



**Los Angeles Times**

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# Girardi's Downfall

- ✓ Disbarred in California (July 2022)
- ✓ Sued by hundreds of former clients
- ✓ Former law firm owes \$517 million to creditors
- ✓ Indicted on federal criminal charges in Los Angeles and Chicago
  - ✓ Prosecutors allege he routinely misappropriated settlement funds meant for his clients
- ✓ Sued by former co-counsel for operating “the largest criminal racketeering enterprise in the history of plaintiffs’ law”



NEWS

## Former Girardi Clients File Class Action Against State Bar

"Had the State Bar carried out its mission of protecting the public, this complaint, and many others like it, would not be necessary," said the complaint filed by two former clients of disgraced plaintiffs lawyer Tom Girardi.

September 11, 2023 at 07:34 PM

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TOM LAYTON, LEFT, AND JOHN NOONEN.  
(STATE BAR OF CALIFORNIA)

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*“Many attorneys noticed Girardi’s egregious ethical violations, including those in his own law firm. However, these attorneys had no duty to report his misconduct. The lack of a mandatory reporting statute resulted in a substantial delay in justice to the victims...”*

California State Sen. Thomas Umberg,  
May 2, 2023 Senate Judiciary Hearing

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“Another legacy for  
Tom Girardi: Tighter  
Regulation Of  
California Lawyers”

**Los Angeles Times**

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# Rule 8.3: A Delicate Compromise

Limitations, Exceptions, and Other Guidance From the Bar



## Rule 8.3: The Text

- (a) A lawyer shall, **without undue delay**, inform the State Bar, or a tribunal with jurisdiction to investigate or act upon such misconduct, when the lawyer knows of **credible evidence** that another lawyer has committed a **criminal act** or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a **substantial question** as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.
- (b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.

# Rule 8.3: What is Required of Whom?

- **Who** has to report under the Rule?
- **What** types of misconduct have to be reported? **What** types of misconduct *may* be reported?
- **To whom** do I report? **When**?
- Do I have to report my **own conduct**?



The State Bar  
*of California*

[Online Complaint Form](#)

# A Compromise is Struck

After receiving over 200 public comments, the State Bar changed several provisions from its original recommendation:

- ✓ Reporting to “a tribunal”
- ✓ Reports used as evidence in future proceedings
- ✓ Consequences for a false report



## RPC Rule 8.3: Exceptions to Mandatory Reporting

(d) This rule does not require or authorize disclosure of information gained by a lawyer while participating in a [substance use or mental health program](#), or require disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.8.2; mediation confidentiality; the [lawyer-client privilege](#); other applicable privileges; or by other rules or laws, including information that is confidential under Business and Professions Code section 6234.

*Effective August 1, 2023*



# Rule 8.3 in Practice

## Scenario 1: Larry and Tom

Plaintiff accuses Larry's client of failing to make his settlement payment even though payment had been sent to plaintiff's attorney. Larry calls the plaintiff's attorney, Tom, to ask about this issue.

Tom admits that he received the defendant's check two months earlier. Tom reveals that he deposited the settlement check into his firm's operating account in order to cover the firm's rent for two months, and that he planned to distribute the plaintiff's share of the settlement funds after the rent crunch.

Is Larry required to report Tom?

*Example Inspired by CA Bar Materials*

## Scenario 2: Barbara and Dan

Barbara (plaintiff) and Dan (defendant) are opposing counsel. Dan believes his client is telling the truth when his client says that the contract that was signed in 2020 was rescinded by later agreement between the parties. Nonetheless, the plaintiff's complaint seeks to enforce the 2020 contract. At a hearing on a demurrer to the complaint, Barbara argues that the 2020 contract, which is attached as an exhibit to the complaint, is in full force and effect between the plaintiff and defendant.

Should Dan report Barbara?

*Example taken from CA Bar*

## Scenario 3: Jill and Darrell

Jill and Darrell are at a party. Jill asks Darrell if he has heard anything about their old law school friend, Jack. Darrell tells Jill that he heard through the grapevine that Jack had been running a Ponzi scheme for years and is now hiding from investors who are angry at the loss of their money. He thinks Jack must have hidden investor money in an offshore account and believes Jack is living outside the country somewhere.

Is Jill required to report Jack?



*Example taken from CA Bar*



# Additional Considerations

- Beware of **gamesmanship** under Rule 3.10 (although reporting on opposing counsel may be required under the Rule)
- Duties of **confidentiality and loyalty**
- **Retroactive** Reporting
- Judicial **Misconduct**
- Considerations for the **Private Sector**



# California in Context

- All 50 states now have some mandatory reporting scheme, but not all are created equal
- Challenges for enforcement persist



# Questions?



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