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**E-85-11     Reporting lawyer misconduct and  
disclosure to clients**

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**Facts**

Law firm A represents law firm B. After an internal audit, law firm B discovered that a former associate of the firm has been reimbursed for travel and entertainment expenses that were never actually incurred. Law firm B had billed the fictitious travel expenses to clients who paid the firm for those expenses. Law firm B is now reimbursing those clients together with interest.

**Questions**

1. Does law firm B have a duty to report the former associate's professional misconduct? If so, should the matter be reported to the District Attorney or any other law enforcement agency?
2. Does law firm B have a duty to disclose to those clients who were overcharged, the name of the former associate and the basis for the overcharge?
3. May the misconduct of the former associate be imputed to any other member of law firm B?

**Opinion**

1. Wisconsin Supreme Court Rule (hereinafter SCR) 20.05 places an affirmative duty upon a lawyer to report unprivileged knowledge of violations of SCR 20.04 to the proper authority. *See* ABA Informal Opinion 1203 (Feb. 9, 1972) (SCR 20.05 requires a lawyer to report the violations of associates in the same firm). Failure to report such knowledge to the proper authority is itself a disciplinary violation. *See* SCR 20.05.

The rationale underlying this duty stems from the self-policing nature of the legal profession and the goal of the legal profession to maintain its integrity. SCR 20.02(4).

Accordingly, law firm B has a duty to report the professional misconduct of the former associate to an authority empowered to investigate or act upon such

violation, i.e., the Board of Attorneys Professional Responsibility. SCR 20.05(1) clearly does not preclude a lawyer from reporting a violation of SCR 20.04 to the district attorney, however, customarily, a report is made to the bar disciplinary authority unless some other agency is more appropriate under the circumstances. Such a determination is left to the sound discretion of the reporting attorney.

2. A lawyer has a duty to report to a client any claims and rights the client may have against the lawyer. Formal Opinion E-82-12, 57 Wis. Bar Bull. 78 (June 1984). Such a failure to report such information has been held to be a violation of an attorney's duty not to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." SCR 20.04(4). However, provided that law firm B reimburses those clients that were overcharged together with interest, those clients have been made whole, eliminating a civil claim for damages.

Accordingly, law firm B has a duty upon request to disclose the name of the former associate to those clients who were over charged and the basis for the overcharge.

3. All of the shareholders in a service corporation may be held jointly and severally liable for any legal liability arising out of the conduct by one of the firm's members. Wis. Stat. sec. 180.99(8) (1983-84). The same would hold true of partners in a law firm. *Husted v. Givin*, 446 N.E.2d 1361 (Ind. App. 1983). Whether such liability exists in the present case is a question of law in which the Committee is not authorized to comment upon.

However, in general, a lawyer is not liable in a disciplinary proceeding for the misconduct of a partner, associate or employee on the basis of imputed liability. *In re Corace*, 390 Mich. 419, 213 N.W.2d 124 (1973); see Annotated Model Rules of Professional Conduct Rule 5.1 (Comment) (1984).