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MEMORANDUM

To: Judicial Ethics Committee

Re: Request for advice by
file no. 2827-1

Date: November 10, 1997

This memorandum has been prepared at the request of the Judicial Ethics Committee. The Committee received a request for advice from

Background

and his spouse are currently plaintiffs in a trespass case. At some point in the past, one of the defendants had worked as caretaker to his wife's grandmother, now deceased. As caretaker, the defendant had access to the grandmother's bank accounts and was authorized to access the accounts to pay the grandmother's expenses.

Following the grandmother's death, the family entertained suspicions that the caretaker had misused the grandmother's funds. Subsequently,

investigated these suspicions by contacting a payee of one of the checks issued from the grandmother's account by the caretaker. The outcome of these efforts confirmed his suspicions. never confronted the caretaker with the allegations, nor did he report these allegations to law enforcement officials.

Analysis

The duty to report a crime arises in only a limited number of circumstances. One example is suspected child abuse and neglect. A Vermont statute creates an affirmative duty for certain persons to report such abuse if they have "reasonable cause to believe" that child abuse has occurred. 33 V.S.A. S 4913(a). Significantly, however, this duty is only imposed upon persons within a specified list of occupational titles (including "physician", "psychologist", "school teacher", "school librarian", "police officer", and "camp counselor").

Id. The list of occupational titles does not include judges or attorneys. Those persons not fitting into the specified list of professionals "may report" child

abuse, but they have no duty to do so. 33 V.S.A. § 4913(b). The duty to report **is** tied to a professional relationship between specific **occupations and specific** types of persons, here children.

Similarly, attorneys have a duty to report misdeeds by other professionals in the legal field. That is, lawyers must report the misdeeds of other lawyers. Code of Professional Responsibility DR 1-103 ("A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge") Once again, the duty to report **is tied** to a professional relationship between specific occupations and specific types **of** persons, here lawyers, in relation to other lawyers. There is no requirement that lawyers report the misdeeds of other types of persons.

Conclusion

The duty to report a crime is statutorily or professionally imposed upon specific types of occupations in.. relation to **specific categories** of persons. There is no general responsibility upon persons to report **any and** all crimes that they may be aware of, or that they merely suspect. In particular, no such general responsibility, **or duty, to** report **crimes is imposed upon judges or attorney**5 under either the Code of Professional **Responsibility or the Code of** Judicial Conduct. ~~Example: Hilmer~~ has violated no statute or code by not reporting his suspicions regarding the caretaker.