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Ethics Advisory Opinions

Ethics Advisory Opinion 03-11

Upon the request of a member of the South Carolina Bar, the Ethics Advisory Committee has rendered this opinion on the ethical propriety of the inquirer's contemplated conduct. This Committee has no disciplinary authority. Lawyer discipline is administered solely by the South Carolina Supreme Court through its Commission on Lawyer Conduct.

Full Text

Facts

Officers A and B with a local police agency are questioned by an internal affairs officer regarding a complaint made by fellow Officer C who alleges harassment on the part of Officers A and B. Officer C also files a criminal complaint against Officers A and B in the form of an incident report with local police.

In response to the internal affairs investigation, Officers A and B provide written statements denying any involvement in the incident alleged by Officer C. The next day, both Officers A and B contact the internal affairs officer and amend their written statements by admitting to certain wrongdoings alleged by Officer C. Thereafter, upon questioning by the internal affairs officer, each Officer adds yet additional facts of their wrongdoing not contained in either previous statement. None of the statements, written or oral, are made under oath, nor are they notarized or otherwise sworn. Officers A and B are never questioned by the city law enforcement agency with whom the criminal complaint is filed, and no criminal charges are filed against them.

Question

Does a prosecutor's knowledge that an officer failed to disclose the truth to his superior officer during an official department investigation require that prosecutor to reveal the same information to each and every criminal defendant in cases in which that officer will be a witness during trial, thereby placing the officer's credibility at issue?

Summary

Pursuant to Rule 3.8(d), SCRPC, a prosecutor is required to reveal that an officer has failed to disclose the truth to his superior officer during an official department investigation.

Opinion

Rule 3.8, SCRPC, provides: "The prosecutor in a criminal case shall: . . . (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense...."¹ This particular inquiry involves several acts of serious misconduct by the officers. Given these facts, a prosecutor is required to disclose an officer's failure to reveal the truth.

¹The South Carolina Supreme Court has never specifically addressed what ethical standard should apply when determining a prosecutor's Rule 3.8(d) disclosure requirements.

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