CHAPTER SCR 20
RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS

PREAMBLE: A LAWYER’S RESPONSIBILITIES

SCR 20:1.0 Terminology.

SUBCHAPTER I
CLIENT-LAWYER RELATIONSHIP

SCR 20:1.1 Competence.
SCR 20:1.2 Scope of representation and allocation of authority between lawyer and client.
SCR 20:1.3 Diligence.
SCR 20:1.4 Communication.
SCR 20:1.5 Fees.
SCR 20:1.6 Confidentiality.
SCR 20:1.7 Conflicts of interest current clients.
SCR 20:1.8 Conflict of interest: prohibited transactions.
SCR 20:1.9 Duties to former clients.
SCR 20:1.10 Imputed disqualification: general rule.
SCR 20:1.11 Special conflicts of interest for former and current government officers and employees.
SCR 20:1.12 Former judge, arbitrator, mediator or other 3rd-party neutral.
SCR 20:1.13 Organization as client.
SCR 20:1.14 Client with diminished capacity.
SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts.
SCR 20:1.16 Declining or terminating representation.
SCR 20:1.17 Sale of law practice.
SCR 20:1.18 Duties to prospective client.

SUBCHAPTER II
COUNSELOR

SCR 20:2.1 Advisor.
SCR 20:2.2 Omitted.
SCR 20:2.3 Evaluation for use by 3rd persons.
SCR 20:2.4 Lawyer serving as 3rd-party neutral.

SUBCHAPTER III
ADVOCATE

SCR 20:3.1 Meritorious claims and contentions.
SCR 20:3.2 Expediting litigation.
SCR 20:3.3 Candor toward the tribunal.
SCR 20:3.4 Fairness to opposing party and counsel.
SCR 20:3.5 Impartiality and decorum of the tribunal.
SCR 20:3.6 Trial publicity.
SCR 20:3.7 Lawyer as witness.
SCR 20:3.8 Special responsibilities of a prosecutor.
SCR 20:3.9 Advocate in nonjudicative proceedings.

SCR 20:3.10 Omitted.

SUBCHAPTER IV
TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

SCR 20:4.1 Truthfulness in statements to others.
SCR 20:4.2 Communication with person represented by counsel.
SCR 20:4.3 Dealing with unrepresented person.
SCR 20:4.4 Respect for rights of 3rd persons.
SCR 20:4.5 Guardians ad litem.

SUBCHAPTER V
LAW FIRMS AND ASSOCIATIONS

SCR 20:5.1 Responsibilities of partners, managers, and supervisory lawyers.
SCR 20:5.2 Responsibilities of a subordinate lawyer.
SCR 20:5.3 Responsibilities regarding nonlawyer assistants.
SCR 20:5.4 Professional independence of a lawyer.
SCR 20:5.5 Unauthorized practice of law; multijurisdictional practice of law.
SCR 20:5.6 Restrictions on right to practice.
SCR 20:5.7 Limited liability legal practice.
SCR 20:5.8 Responsibilities regarding law-related services.

SUBCHAPTER VI
PUBLIC SERVICE

SCR 20:6.1 Voluntary pro bono publico service.
SCR 20:6.2 Accepting appointments.
SCR 20:6.3 Membership in legal services organization.
SCR 20:6.4 Law reform activities affecting client interests.
SCR 20:6.5 Nonprofit and court–annexed limited legal services programs.

SUBCHAPTER VII
INFORMATION ABOUT LEGAL SERVICES

SCR 20:7.1 Communications concerning a lawyer’s services.
SCR 20:7.2 Advertising.
SCR 20:7.3 Solicitation of clients.
SCR 20:7.4 Communication of fields of practice.
SCR 20:7.5 Firm names and letterheads.
SCR 20:7.6 Political contributions to obtain government legal engagements or appointments by judges.

SUBCHAPTER VIII
MAINTAINING THE INTEGRITY OF THE PROFESSION

SCR 20:8.1 Bar admission and disciplinary matters.
SCR 20:8.2 Judicial and legal officials.
SCR 20:8.3 Reporting professional misconduct.
SCR 20:8.4 Misconduct.
SCR 20:8.5 Disciplinary authority; choice of law.


PREAMBLE: A LAWYER’S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.

[3] In addition to these representational functions, a lawyer may serve as a 3rd-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as 3rd-party neutrals. See, e.g., Rule 1.12 and Rule 2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because...
legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself to maintain the profession.

[7] Many of a lawyer’s professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.

[8] A lawyer’s responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical person while earning a satisfying living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession’s independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession’s relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms “shall” or “shall not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role. Many of the Comments use the term “should.” Comments do not add obligations to the rules but provide guidance for practicing in compliance with the rules.

[15] The rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[17] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state’s attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These rules do not abrogate any such authority. Similarly, there are federally recognized Indian tribes with tribal governments in the State of Wisconsin and these tribes have rights of self-government and self-determination. It is not the intent of these rules to abrogate any tribal authority or tribal governments.

[18] Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer’s conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation,
3  Updated 17–18 Wis. Stats.

extenuating factors and whether there have been previous viola-
tions.

[20] Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, viola-
tion of a rule does not necessarily warrant any other nondisciplin-
ary remedy, such as disqualification of a lawyer in pending litiga-
tion. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are used as procedural weapons as procedural weapons. The fact that a rule is a just basis for a lawyer’s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary author-
ity, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Never-
theless, since the rules do establish standards of conduct for law-
yers, a lawyer’s violation of a rule may be evidence of breach of the applicable standard of conduct.

[21] The comment accompanying each rule explains and illustra-
tes the meaning and purpose of the rule. The Preamble and this note on Scope provide general orientation. The Comments are
intended as guides to interpretation, but the text of each rule is authoritative.

Wisconsin Comment: In addition to the ABA Comments, SCR Chapter 20
includes Wisconsin Committee Comments, which were proposed by the Wisconsin Ethics 2000 Committee, and Wisconsin Comments added by the Wisconsin Supreme Court where the court deemed additional guidance appropriate. These comments are not adopted, but will be published and may be consulted for guidance in interpreting and applying the Rules of Professional Conduct for Attorneys.

Despite the Supreme Court rules may guide courts in determining required standards of care generally, they may not be employed as an absolute defense in a civil action involving an attorney. Sands v. Menard, 2017 WI 110, 379 Wis. 2d 1, 904 N.W.2d 789, 12–2377.

SCR 20:1.0 Terminology. (ag) “Advanced fee” denotes an amount paid to a lawyer in contemplation of future services, which will be earned at an agreed-upon basis, whether hourly, flat, or another basis. Any amount paid to a lawyer in contempla-
tion of future services whether on an hourly, flat, or other basis, is an advanced fee regardless of whether that fee is characterized as an “advanced fee,” “minimum fee,” “nonrefundable fee,” or any other characterization. Advanced fees are subject to the requirements of SCR 20:1.5, including SCR 20:1.5 (f) or (g) and SCR 20:1.5 (h), SCR 20:1.15 (f) (3) b. 4., and SCR 20:1.16 (d).

(b) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(c) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See par. (f) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(d) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corpora-
tion or other organization, including a government entity.

(dm) “Flat fee” denotes a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the repre-
sentation. A flat fee, sometimes referred to as “unit billing,” is not an advance against the lawyer’s hourly rate and may not be billed against at an hourly rate. Flat fees become the property of the law-
yer upon receipt and are subject to the requirements of SCR 20:1.5, including SCR 20:1.5 (f) or (g) and SCR 20:1.5 (h), SCR 20:1.15 (f) (3) b. 4., and SCR 20:1.16 (d).

(e) “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation to the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) “Knowingly,” “known,” or “knows” denotes actual knowl-
edge of the fact in question. A person’s knowledge may be inferred from circumstances.

(h) “Misrepresentation” denotes communication of an un-
true, either knowingly or with reckless disregard, whether by statement or omission, which if accepted would lead another to believe a condition exists that does not actually exist.

(i) “Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(j) A “prosecutor” includes a government attorney or special prosecutor (i) in a criminal case, delinquency action, or proceeding that could result in a deprivation of liberty or (ii) acting in con-
nection with the protection of a child or a termination of parental rights proceeding or (iii) acting as a municipal prosecutor.

(k) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(l) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(m) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(mm) “Retainer” denotes an amount paid specifically and solely to secure the availability of a lawyer to perform services on behalf of a client, whether designated a “retainer,” “general retainer,” “engagement retainer,” “reservation fee,” “availability fee,” or any other characterization. This amount does not consti-
tute payment for any specific legal services, whether past, present, or future and may not be billed against for fees or costs at any point. A retainer becomes the property of the lawyer upon receipt, but is subject to the requirements of SCR 20:1.5 and SCR 20:1.16 (d).

(n) “Screened” denotes the isolation of a lawyer from any par-
ticipation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circum-
stances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

(o) “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(p) “Tribunal” denotes a court, an arbitrator in a binding arbi-
tration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capac-
ity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular mat-
ter.

(q) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

RULES OF PROFESSIONAL CONDUCT

4−16, eff. 7−1−16; Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.

Case Note: Suppression of evidence is not a remedy available for an ethical violation. State v. Maloney, 2004 WI App 141, 275 Wis. 2d 357, 685 N.W.2d 620, 03−1282−CP.

Note: The above annotation cites to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.


Wisconsin Committee Comment: The Committee has added definitions of “competence,” “conflict of interest,” and “prosecution” as those not part of the Model Rule. In the definition of “firm,” the phrase “including a government entity” is added to make the provision clear that because the provisions of the rule are remedial, they should not serve the alphabetical arrangement, caution should be used when referring to the ABA Comment.

ABA Comment: Confirmed in Writing. [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client’s informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm. [2] Whether two or more lawyers constitute a firm within paragraph (c) depends on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule if the firm is managed as a single entity and the same lawyer should not represent opposing parties in litigation involving the client. However, it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

In this respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertain identity of the client, however. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal service organizations. Depending upon the structure of the organization, an entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud. [5] When used in these Rules, the terms “fraud” or “fraudulent” refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent breaches or negligent failures to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent. [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation of a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.17(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. In some situations, as in Rule 1.2, the lawyer must inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to inform a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include, whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, successions need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client’s or other persons words or actions. Consent may be inferred, however, from the circumstances or where the client or other person who has reasonably adequate information about the matter. A number of states have held that a client’s consent is, in writing. See Rules 1.7(b) and 1.9(a). For a definition of “writing” and confirmed in writing,” see paragraphs (a) and (b). Other Rules require that a client’s consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of “signed,” see paragraph (n).

Screened. [8] This definition applies to situations where screening of a personally disqualified lawyer is required to prevent imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the loyalty to the client of any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and monitor the effect of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm file or information containing information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

Editor’s Note: Section 7 of Supreme Court Order No. 06−04 states: “The following Comment to SCR 20.1.0 (dm) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the Wisconsin Rules of Professional Conduct.”

SCRR 20.1.0 (dm) Consent may be inferred, however, from the conduct of a lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2 (c), 1.6 (a) and 1.17 (b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. In some situations, as in Rule 1.2, the lawyer must inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to inform a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include, whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, successions need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

In this respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertain identity of the client, however. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal service organizations. Depending upon the structure of the organization, an entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud. [5] When used in these Rules, the terms “fraud” or “fraudulent” refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent breaches or negligent failures to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent. [6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation of a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.17(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. In some situations, as in Rule 1.2, the lawyer must inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client’s or other person’s options and alternatives. In some circumstances it may be appropriate for a lawyer to inform a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include, whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, successions need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client’s or other persons words or actions. Consent may be inferred, however, from the circumstances or where the client or other person who has reasonably adequate information about the matter. A number of states have held that a client’s consent is, in writing. See Rules 1.7(b) and 1.9(a). For a definition of “writing” and confirmed in writing,” see paragraphs (a) and (b). Other Rules require that a client’s consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of “signed,” see paragraph (n).

Screened. [8] This definition applies to situations where screening of a personally disqualified lawyer is required to prevent imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the loyalty to the client of any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is
ments of the jurisdictions in which the services will be performed, particularly relating to confidential information. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibilities. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

Maintaining Competence. [8] To maintain the requisite knowledge and skill, a lawyer shall keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

SCR 20:1.2 Scope of representation and allocation of authority between lawyer and client. (a) Subject to pars. (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, if a lawyer proceeding that could result in deprivation of liberty, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client’s informed consent must be in writing except as set forth in sub. (1).

(1) The client’s informed consent need not be given in writing if:
   a. the representation of the client consists solely of telephone consultation;
   b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms;
   c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order;
   d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private duty public defender pursuant to an appointment by the state public defender; or
   e. the representation is provided to an existing client pursuant to an existing lawyer−client relationship.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:
   a. the representation is limited to the lawyer and the services described in the writing, and
   b. the lawyer does not represent the client generally or in matters other than those identified in the writing.

Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (c) (2014): With respect to subparagraph (c), a lawyer providing limited scope representation in an effort before a court should consult s. 802.045, stats., regarding notice and withdrawal requirements.

The requirements of subparagraph (c) that require the client’s informed consent, in writing, to the limited scope representation do not supplant or replace the requirements of SCR 20:1.5 (b).

Note: Sup Ct. Order No. 11−10 states that “the Comments to SCRs 11.02, 20:1.1, 20:1.2 (c), and 20:1.16 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

(c) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that “This document was prepared with the assistance of a lawyer.” A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (cm) (2014): A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are “prepared with the assistance of a lawyer.” In both cases the actions by the lawyer shall not be deemed an appearance by the lawyer in the case.

Note: Sup Ct. Order No. 13−10 states that “the Comments to SCRs 11.02, 20:1.1, 20:1.2, and 20:1.2 (cm) are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer has been retained by an insurer to represent and proceed pursuant to the terms of an agreement or policy requiring the insurer to retain counsel on the client’s behalf, the representation may be limited to matters related to the defense of claims made against the insured. In such cases, the lawyer shall, within a reasonable time after being retained, inform the client in writing of the terms and scope of the representation the lawyer has retained by the insurer to provide.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv; Sup. Ct. Order No. 15−10, 2014 WI 45, filed 6−27−14, eff. 1−1−15.

Case Notes: The formation and termination of an agreement to provide representation is discussed. Gustafson v. Physicians Insurance Co. 223 Wis. 2d 164, 588 N.W.2d 366 (App. 1998).

The attorney−client relationship is one of agent to principal, and as an agent, the attorney must act in conformity with his or her authority and instructions and is responsible to the principal if he or she violates this duty. A defendant who insists on making a decision that is the defendant’s alone to make in a manner contrary to the advice given by the attorney cannot subsequently complain that the attorney was ineffective for complying with the ethical obligation to follow the defendant’s undirected decision. Van Hout v. Endicott, 2006 WI App 196, 296 Wis. 2d 580, 724 N.W.2d 692, 04−1192.

A defendant who has been informed of his or her options by counsel bears the burden to exercise one of those options and to inform counsel. A defendant cannot remain mute in the face of a request from counsel for direction or when the defendant rights to appeal and to counsel are at stake. A defendant must accept responsibility for remaining mute, particularly when that defendant has not exhibited any prior difficulty making his or her views known to counsel and the court. Van Hout v. Endicott, 2006 WI App 196, 296 Wis. 2d 580, 724 N.W.2d 692, 04−1192.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.


Wisconsin Comment: The Model Rule does not include paragraph (e). Paragraph (e) was added to clarify the obligations of counsel for an insurer, in conjunction with the decision to retain Wisconsin’s “insurance defense” exception in SCR 20:1.8 (f). Wisconsin Committee Comment: The Committee has removed the application of the duties stated to “any proceeding that could result in deprivation of liberty.” The Model Rule does not include this language.

Comment: Allocation of Authority Between Client and Lawyer. [1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer’s professional obligations. The decisions specified in paragraph (a), as whether to settle a civil matter, must also be made by the client. See Rule 1.4 (a) (1) for the lawyer’s duty to communicate with the client about such decisions. With respect to the means by which the client’s objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4 (a) (2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client’s objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client may disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b) (4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a) (3).
Independence from Client’s Views or Activities. [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client’s adversary, or even assisting an appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4 (a) (2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the limitations placed on the scope of representation the lawyer has agreed to provide to the client. See Rule 1.2. [5] To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the lawyer may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for formal representation. RULES FOR LAWYER DISCIPLINARY ENFORCEMENT R. 28 (2002) (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan provided by the lawyer to protect the interests of the clients of a deceased or disabled lawyer).

SCR 20:1.4 Communication. (a) A lawyer shall:

1. Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in SCR 20:1.0 (f), is required by these rules;

2. reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

3. keep the client reasonably informed about the status of the matter;

4. promptly comply with reasonable requests by the client for information; and

5. consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

SCR 20:1.3 Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

ABA Comment: [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever reasonable steps are necessary to accomplish the purpose of the representation. Although an agreement for a limited representation does not exempt the lawyer from the duty of diligence, may not continue assisting a client in conduct that the lawyer originally supposed was lawful or ethical measures are required to vindicate a client’s cause or endeavor. [2] A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. [3] A lawyer’s work load must be controlled so that each matter can be handled competently.

[5] To prevent neglect of client matters in the event of a sole practitioner’s death or disability, the lawyer may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for formal representation. RULES FOR LAWYER DISCIPLINARY ENFORCEMENT R. 28 (2002) (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan provided by the lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or rlb.legal@legis.wisconsin.gov.
child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information. [7] In some circumstances, a lawyer may be justified in delaying the transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer’s own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(e) directs compliance with such rules or orders.

SCR 20:1.5 Fees. (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

(b) (1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney’s fees, will be $1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney’s fees, is more than $1000, the purpose and effect of any retaining or advance fee that is paid to the lawyer shall be communicated in writing.

(3) A lawyer shall promptly respond to a client’s request for information concerning fees and expenses.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par. (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:

1. in any action affecting the family, including but not limited to divorce, legal separation, annulment, determination of paternity, setting of support and maintenance, setting of custody and physical placement, property division, partition of marital property, termination of parental rights and adoption, provided that nothing herein shall prohibit a contingent fee for the collection of past due amounts of support or maintenance or property division.

2. for representing a defendant in a criminal case or any proceeding that could result in deprivation of liberty.

(e) A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

1. the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or

2. the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them;

3. pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client.

(f) Except as provided in SCR 20:1.5(g), unearned fees and funds advanced by a client or 3rd party for payment of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to SCR 20:1.5(h). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

(g) A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer’s business account, provided that review of the lawyer’s fee by a court of competent jurisdiction is available in the proceeding to which the fee relates, or provided that the lawyer complies with each of the following requirements:

1. Upon accepting any advanced payment of fees pursuant to this subsection, the lawyer shall deliver to the client a notice in writing containing all of the following information:
   a. The amount of the advanced payment.
   b. The basis or rate of the lawyer’s fee.
   c. Any expenses for which the client will be responsible.
   d. The lawyer’s obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation.
   e. The lawyer’s obligation to submit any unresolved dispute about the fee to binding arbitration within 30 days of receiving written notice of the dispute.
   f. The ability of the client to file a claim with the Wisconsin Lawyers’ Fund for Client Protection if the lawyer fails to provide a refund of unearned advanced fees.

2. Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:
   a. A final accounting, or an accounting from the date of the lawyer’s most recent statement to the end of the representation, regarding the client’s advanced fee payment.
   b. A refund of any unearned advanced fees and costs.
   c. Notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting.
   d. Notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.

3. Upon timely receipt of written notice of a dispute from the client, the lawyer shall attempt to resolve that dispute with the client, and if the dispute is not resolved, the lawyer shall submit the dispute to binding arbitration with the State Bar Fee Arbitration Program or a similar local bar association program within 30 days of the lawyer’s receipt of the written notice of dispute from the client.
RULES OF PROFESSIONAL CONDUCT

(4) Upon receipt of an arbitration award requiring a lawyer to make a payment to the client, the lawyer shall pay the arbitration award within 30 days, unless the client fails to agree to be bound by the award of the arbitrator.

(h) (1) At least 5 business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, a lawyer shall transmit to the client in writing all of the following:
   a. An itemized bill or other accounting showing the services rendered.
   b. Notice of the amount owed and the anticipated date of the withdrawal.
   c. A statement of the balance of the client’s funds in the lawyer’s trust account after the withdrawal.

(2) The lawyer may withdraw earned fees on the date that the invoice is transmitted to the client, provided that the lawyer has given prior notice to the client in writing that earned fees will be withdrawn on the date that the invoice is transmitted. The invoice shall include each of the elements required under SCR 20:1.5(h) (1).

(3) If a client makes a personalized and reasonable objection to the disbursement described in SCR 20:1.5(h) (1), the disputed portion shall remain in the trust account until the dispute is resolved. If the client makes a personalized and reasonable objection to a disbursement described in SCR 20:1.5(h) (1) or (2) within 30 days after the funds have been withdrawn, the disputed portion shall be returned to the trust account until the dispute is resolved, unless the lawyer reasonably believes that the client’s objections do not present a basis to hold funds in trust or return funds to the trust account under SCR 20:1.5(h).

The lawyer will be presumed to have a reasonable basis for declining to return funds to trust if the disbursement was made with the client’s informed consent, in writing. The lawyer shall promptly advise the client in writing of the lawyer’s position regarding the fee and make reasonable efforts to clarify and address the client’s objection.

History:
Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d 3d xv; Sup. Ct. Order No. 14−07, 2016 WI 21, filed 4−14−16, eff. 7−1−16.

Case Notes: Section 20:1.5(e) does not apply to division of fees in concluding the affairs of a partnership because until that process is complete the lawyers remain in the same firm. Gaul v. Van Epps, 185 Wis. 2d 609, 517 N.W.2d 531 (Cl. App. 1994).

A “lodestar” methodology to determine what constitutes reasonable compensation is adopted as the “lodestar” figure is the number of hours reasonably expended in the course of the representation multiplied by a reasonable hourly rate, which provides an objective basis on which to make an initial estimate of the value of a lawyer’s services in that a lawyer may adjust this lodestar figure up or down to account for any remaining factors not embodied in the lodestar calculation. Kolupar v. Wilde Pontiac Cadillac, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58, 02−1915.


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Wis. Stats. 2004−07.

Not all of the SCR 20:1.5(a) factors must be considered when a court reviews a contingent fee agreement as long as the court reviews all the circumstances of the case to determine whether the contingency fee amount is a just and reasonable figure. In this case only review of (1) the time and labor involved, (2) the amount of money involved, and (3) the attendant risks involved was necessary. Maynard Steel Casting Co. v. Sheedy, 2008 WI App 27, 307 Wis. 2d 653, 766 N.W.2d 816, 06−1490


Wisconsin Committee Comment: Paragraph (b) differs from the Model Rule in requiring that fee and expense information usually must be communicated to the client in writing, unless the entire cost of representation will be $1000 or less. When a lawyer has regularly represented a client, any changes in the basis or rate of the fee or expenses that will be charged to the client are to be provided only upon a statement of the basis or rate of the fee or expenses that will be charged to the client. In addition, paragraph (b) differs from the Model Rule in requiring that the purpose and effect of any retainee or advance fee paid to the lawyer shall be communicated in writing and that a lawyer shall promptly respond to a client’s request for information concerning fees and expenses. The lawyer should inform the client of the purpose and effect of any retainer or advance fee. Specifically, the lawyer should identify what portion, if any, of the fee is a retainer. Additionally, the lawyer should ensure that a lawyer charges the client not for specific services to be performed but to ensure the lawyer’s availability whenever the client may need legal services. These fees need not be represented by the property of the lawyer, and any offset of the lawyer’s trust account. In addition, they are subject to SCR 20:1.15 and SCR 20:1.16. Retainers are to be distinguished from an “advanced fee” which is paid for future services. In instances in which a lawyer has earned only services which are not compensable under SCR 20:1.5, SCR 20:1.15, and SCR 20:1.16. See also State Bar of Wis. Comm. on Prof’l Ethics, Formal Op. E−93−4 (1993).

The paragraph (d) preserves the more explicit statement of limitations on contingent fees that has been part of Wisconsin law since the original adoption of the Rules of Professional Conduct in the state.

Fee Estimates. Compliance with the following guidelines is a desirable practice: (a) The lawyer providing the client, no later than a reasonable time after commencement of the representation, a written estimate of the fees that the lawyer will charge as a result of representation, (b) if, at any time and from time to time during the course of the representation, the fee estimate originally provided becomes substantially inaccurate, the lawyer shall promptly provide a revised written estimate to the client; (c) the client accepting the representation following provision of the estimate or estimates; and (d) the lawyer charging fees reasonably consistent with the estimated fees.

ABA Comment: Reasonableness of Fee and Expenses. Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The fee estimate is not to be exclusive. No written fee estimate is required in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in−house, such as copying, or for other expenses incurred in−house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee. When the lawyer has regularly represented a client, the lawyer may usually have a reasonable basis for declining to return funds to trust if the disbursement was made with the client’s informed consent, in writing. The lawyer shall promptly advise the client in writing of the lawyer’s position regarding the fee and make reasonable efforts to clarify and address the client’s objection.


Updated 17−18 Wis. Stats. 8
and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in the same firm. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1. [8] Paragraph (e) prohibits or regulates diversion of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees, [9] If a procedure has been established for resolution of fee disputes, a lawyer should abide by the procedure established by the bar association. A lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for resolving a fee dispute, for example, in representation of a custodian or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Note: Sup. Ct. Order No. 14-07 states that “the Comments to SCR 20:1.0, 20:1.5, 20:1.15, and 22.39 are not adopted, but may be published and may be consulted for guidance in interpreting and applying the rule.”

Wiscons, 2016

SCR 20:1.5 (f) Advantages for fees and costs. Lawyers are obligated to hold advanced fee payments in trust until earned, or use the alternative protection for advanced fees as set forth in SCR 20:1.5(g). Additional requirements for advanced fees are identified in SCR 20:1.0(a). Sometimes the lawyer may receive advanced fee payments from 3rd parties. In such cases, the lawyer must follow the requirements of SCR 20:1.8(f). In addition, the lawyer should establish, upon receipt or prior to receipt of the advanced fee payment from a 3rd party, whether any potential refund of unearned fees will be paid to the client or 3rd-party payor. This may be done through agreement of the parties or by the lawyer informing the client and 3rd-party payor of the lawyer’s policy regarding such refunds. Lawyers also receive cost advances from clients or 3rd parties. Since January 1, 1987, the supreme court has required cost advances to be held in trust. Prior to that date, the application of the SCR 20:5.0(1), specifically excluded such advances from the funds that the supreme court required lawyers to hold in trust accounts. However, by order dated March 11, 2014, SCR 20:5.0(1) as follows: "All costs advances to clients paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts as provided in sub. (3) maintained in the state in which the law office is situated in which no funds belong in such an account except as follows . . . .” This requirement is specifically addressed in SCR 20:1.5(f).

SCR 20:1.5 (g) Alternative protection for advanced fees. SCR 20:1.5 (g) allows lawyers to deposit advanced fees into the lawyer’s business account, as an alternative to SCR 20:1.5 (f). The provision regarding court review applies to a lawyer’s fees in circumstances in which the lawyer’s fee is subject to review at the request of the parties or the court, such as bankruptcy, formal probate, and proceedings in which a guardian ad litem’s fee may be subject to judicial review. In any proceeding in which the lawyer’s fee is subject to review at the request of the client or the court, the lawyer must either deposit advanced fees in trust or use the alternative protections for advanced fees in this subsection. The lawyer’s fees remain subject to the requirement of reasonableness under SCR 20:1.5 (a) as well as the requirement that unearned fees be refunded upon termination of the representation under SCR 20:1.6 (d). A lawyer must comply with either SCR 20:1.5 (f) or SCR 20:1.5 (g), and a lawyer’s failure to do so is professional misconduct and grounds for discipline. The writing required under SCR 20:1.5 (g) (1) must contain language informing the client that the lawyer is obligated to refund any unearned advanced fee at the end of the representation, that the lawyer has the right to recover any dispute regarding a fee and to binding arbitration if the program runs by the State Bar of Wisconsin and the Milwaukee Bar Association, with the lawyer’s fees subject to arbitration for refund, and that the lawyer is obligated to comply with an arbitration award within 30 days of the award. The client is not obligated to arbitrate the fee dispute and may elect another forum in which to resolve the dispute. The client must also inform the client of the opportunity to seek, and that the event an unearned advanced fee is not refunded, and should provide the address of the Wisconsin Lawyers’ Fund for Client Protection. If fees are paid by one of the client, then the lawyer’s responsibilities are governed by SCR 20:1.8 (f). If there is a dispute as to the ownership of any refund of unearned advanced fees paid by one other than the client, the unearned fees should be treated as trust property pursuant to SCR 20:1.15 (c) (3).

SCR 20:1.5 (g) applies only to advanced fees for legal services. Cost advances must be deposited into the lawyer’s trust account. Advanced fees deposited into the lawyer’s business account pursuant to this subsection may be paid by credit card, debit card, prepaid or other types of payment cards, or an electronic transfer of funds. A cost advance cannot be paid by credit card, prepaid or other types of payment cards, or an electronic transfer of funds. A cost advance cannot be paid by credit card, prepaid or other types of payment cards, or an electronic transfer of funds. A cost advance may or may not be pending or that services are completed. Thiery v. Bye, 263 Wis. 2d 12, 658 N.W.2d 81, 01−227.

Note: The above annotations cite to SCR 20:3 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lb.legal@legis.wisconsin.gov.
examples of those circumstances. Paragraph (c)(6), unlike its counterpart, also recognizes that in certain circumstances, lawyers may need to disclose limited information to clients and former clients to detect and resolve conflict of interests. Under those circumstances, disclosure would otherwise include no more information than is reasonably necessary to protect the interests of the clients or former clients. The disclosure of any information, to either lawyers in different firms or to other clients or former clients, is prohibited if it would compromise the client−attorney privilege or otherwise prejudice the client. Comment [13] provides examples of when the disclosure of any information would prejudice the client. Lawyers should err on the side of protecting confidentiality.

[2] A fundamental principle in the client−lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation of a client to the extent necessary to enable the affected person to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. The client has the duty to prevent or mitigate losses to the extent reasonably necessary to detect and resolve conflicts of interest that might arise in the representation of a client during the lawyer’s representation of the client. See Rule 1.17. Paragraph (b)(7) permits disclosure to each other information relating to a client of the firm, unless the client has so limited the representation in limited circumstances. Paragraph (c)(6), unlike its counterpart, also recognizes that in certain circumstances, lawyers may need to disclose limited information to clients and former clients to detect and resolve conflict of interests. Under those circumstances, disclosure would otherwise include no more information than is reasonably necessary to protect the interests of the clients or former clients. The disclosure of any information, to either lawyers in different firms or to other clients or former clients, is prohibited if it would compromise the client−attorney privilege or otherwise prejudice the client. Comment [13] provides examples of when the disclosure of any information would prejudice the client. Lawyers should err on the side of protecting confidentiality.

[3] If, after the lawyer has made a reasonable attempt to obviate the need for disclosure, the lawyer reasonably believes that the client's interest demands disclosure, the lawyer may respond to the extent necessary to detect and resolve conflicts of interest that might arise in the representation of a client during the lawyer’s representation of the client. See Rule 1.17. Paragraph (b)(7) permits disclosure to each other information relating to a client of the firm, unless the client has so limited the representation in limited circumstances. Paragraph (c)(6), unlike its counterpart, also recognizes that in certain circumstances, lawyers may need to disclose limited information to clients and former clients to detect and resolve conflict of interests. Under those circumstances, disclosure would otherwise include no more information than is reasonably necessary to protect the interests of the clients or former clients. The disclosure of any information, to either lawyers in different firms or to other clients or former clients, is prohibited if it would compromise the client−attorney privilege or otherwise prejudice the client. Comment [13] provides examples of when the disclosure of any information would prejudice the client. Lawyers should err on the side of protecting confidentiality.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of another lawyer to that lawyer's former client or former clients. This prohibition also applies to disclosures by a lawyer to any person other than the former client or former clients of the lawyer in whose confidence the information was obtained, or to any person other than the former clients of the lawyer in whose confidence the information was obtained, or to any third person, whether for the purpose of enabling the former client or former clients to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. The client has the duty to prevent or mitigate losses to the extent reasonably necessary to detect and resolve conflicts of interest that might arise in the representation of a client during the lawyer’s representation of the client. See Rule 1.17. Paragraph (b)(7) permits disclosure to each other information relating to a client of the firm, unless the client has so limited the representation in limited circumstances. Paragraph (c)(6), unlike its counterpart, also recognizes that in certain circumstances, lawyers may need to disclose limited information to clients and former clients to detect and resolve conflict of interests. Under those circumstances, disclosure would otherwise include no more information than is reasonably necessary to protect the interests of the clients or former clients. The disclosure of any information, to either lawyers in different firms or to other clients or former clients, is prohibited if it would compromise the client−attorney privilege or otherwise prejudice the client. Comment [13] provides examples of when the disclosure of any information would prejudice the client. Lawyers should err on the side of protecting confidentiality.
While courts sometimes can override a defendant’s choice of counsel when deemed necessary, nothing requires them to do so. Requiring a court to disqualify an attorney because of a conflict of interest would infringe upon the defendant’s right to counsel of his choice and violate the defendant’s Sixth Amendment rights. It would also be a plain violation of the law. The court must therefore ensure that the legal system has not conspired against him or her.

State v. Demmerly, 2006 WI App 181, 296 Wis. 2d 153, 724 N.W.2d 692, 05-0181

Similarly, a defendant who validly waives the right to conflict-free representation also waives the right to claim ineffective assistance of counsel based on the conflict, although there may be instances in which counsel’s performance is deficient and may arise even in light of the waiver of conflict of interest.

State v. Demmerly, 2006 WI App 181, 296 Wis. 2d 580, 724 N.W.2d 692, 05-0181.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20.05 No. 04-07.


Wisconsin Comment: The Wisconsin Supreme Court Rule differs from the Model Rule in requiring informed consent to be confirmed in a writing “signed by the client.”

ABA Comment: General Principles. [1] Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests. For specific Rules regarding concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of “informed consent” and “confirmed in writing,” see Rule 1.0(e) and (d).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists, and decide whether the representation may be undertaken or whether it may be undertaken only if a client consents in writing; (3) if a conflict of interest exists, determine whether the representation can be undertaken if the lawyer obtains the informed consent of the client under the conditions of paragraph (b); (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (5) fully disclose the information to the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (6) fully disclose the information to the one or more clients whose representation might be materially limited under paragraph (a) (2).

SCR 20.17 Conflicts of interest current clients. (a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or

2. there is a significant risk that the representation of one or more clients will materially limit the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

2. the representation is not prohibited by law;

3. the representation does not involve the assertion of a claim against any of the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing;

4. each affected client gives informed consent, confirmed in writing signed by the client.


Case Notes: An attorney who prosecutes the father of nonmarital children for paternity and owes a duty of loyalty to the county in child support actions may not represent the mother in a suit for support of the children.

Medina v. Demmerly, 2006 WI App 05-0181, 298 Wis. 2d 580, 724 N.W.2d 692, 05-0181.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20.05 No. 04-07.


Wisconsin Comment: The Wisconsin Supreme Court Rule differs from the Model Rule in requiring informed consent to be confirmed in a writing “signed by the client.”

ABA Comment: General Principles. [1] Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests. For specific Rules regarding concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of “informed consent” and “confirmed in writing,” see Rule 1.0(e) and (d).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists, and decide whether the representation may be undertaken or whether it may be undertaken only if a client consents in writing; (3) if a conflict of interest exists, determine whether the representation can be undertaken if the lawyer obtains the informed consent of the client under the conditions of paragraph (b); (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (5) fully disclose the information to the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (6) fully disclose the information to the one or more clients whose representation might be materially limited under paragraph (a) (2).

SCR 20.17 Conflicts of interest current clients. (a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or

2. there is a significant risk that the representation of one or more clients will materially limit the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

2. the representation is not prohibited by law;

3. the representation does not involve the assertion of a claim against any of the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing;

4. each affected client gives informed consent, confirmed in writing signed by the client.


Case Notes: An attorney who prosecutes the father of nonmarital children for paternity and owes a duty of loyalty to the county in child support actions may not represent the mother in a suit for support of the children.

Medina v. Demmerly, 2006 WI App 05-0181, 298 Wis. 2d 580, 724 N.W.2d 692, 05-0181.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20.05 No. 04-07.


Wisconsin Comment: The Wisconsin Supreme Court Rule differs from the Model Rule in requiring informed consent to be confirmed in a writing “signed by the client.”

ABA Comment: General Principles. [1] Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests. For specific Rules regarding concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of “informed consent” and “confirmed in writing,” see Rule 1.0(e) and (d).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists, and decide whether the representation may be undertaken or whether it may be undertaken only if a client consents in writing; (3) if a conflict of interest exists, determine whether the representation can be undertaken if the lawyer obtains the informed consent of the client under the conditions of paragraph (b); (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (5) fully disclose the information to the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing; (6) fully disclose the information to the one or more clients whose representation might be materially limited under paragraph (a) (2).

SCR 20.17 Conflicts of interest current clients. (a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or

2. there is a significant risk that the representation of one or more clients will materially limit the lawyer’s responsibilities to another client, a former client or a third person or from the lawyer’s own interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

2. the representation is not prohibited by law;

3. the representation does not involve the assertion of a claim against any of the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing;

4. each affected client gives informed consent, confirmed in writing signed by the client.


Case Notes: An attorney who prosecutes the father of nonmarital children for paternity and owes a duty of loyalty to the county in child support actions may not represent the mother in a suit for support of the children.

Medina v. Demmerly, 2006 WI App 05-0181, 298 Wis. 2d 580, 724 N.W.2d 692, 05-0181.
fere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons. [9] In addition to conflicts with other current clients, a lawyer’s duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9. Examples include: counsel to a client in a business or other firm with whom the lawyer is associated; a lawyer’s client in a business or other firm with whom the lawyer is associated; a lawyer’s client in a business or other firm with whom the lawyer is associated; a lawyer’s client in a business or other firm with whom the lawyer is associated; a lawyer’s client in a business or other firm with whom the lawyer is associated.

Personal Interest Conflicts. [10] The lawyer’s own interests should not be permitted to influence the attorney-client relationship. Instead, the lawyer should always strive to maintain the highest level of professional conduct and integrity. Any conflict of interest that is reasonably likely to impede the lawyer’s representation of the client may result in a violation of the lawyer’s duty of loyalty and independence. In some cases, the alternative to common representation can be that each party may have to obtain separate representation with the possibility of later seeking the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of later seeking the latter to consent. See Rule 1.0 for specific rules pertaining to a number of personal interest conflicts, including conflicts under Rule 1.7. See also Rule 1.0 for the requirements of paragraph (b) under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm.

[11] When lawyers representing different clients in the same matter or in substantially related matters. When closely related by blood or marriage against each other within a single matter is undertaken, the information must include the implications of the lawyer’s own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client an adequate representation. Similarly, when a lawyer is the only person in a firm with the ability to provide representation for one of the clients, whether from an opposing party, each client gives informed consent. The disqualification arising from a conflict of interest that is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

A lawyer is prohibited from engaging in sexual relationships with a client unless the lawyer's own representation preceding the formation of the client-lawyer relationship. See Rule 1.8 (j).

Interest of Person Paying for a Lawyer's Services. [13] A lawyer may be paid from any source, including agreements for the payment of referral fees, for example, that fact and consents to the arrangement. The determination of the lawyer’s duty of loyalty or independence is governed by paragraph (a) (2). The lawyer shall not represent the client unless the lawyer reasonably understands the material risks that the waiver entails. The acquisition or disposition of interests in, or arrangements with, a client or a client's property involves a material limitation on the lawyer's representation of the client. See also Rule 1.1 (competence) and Rule 1.3 (diligence).

Prohibited Representations. [14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts may arise, meaning that the lawyer is involved in multiple representation, or such an arrangement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be discussed with each client. Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation. Consentability is not a factor in determining whether the lawyer’s representation of the client will be materially limited by the lawyer’s own interests in accommodating the person paying the lawyer’s fee or by the lawyer’s responsibilities to a payer who is also a co-client, and the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the representation.

[15] Paragraph (b) (3) describes conflicts that are not consentable because the representation is prohibited by applicable law. For example, in some states substantive law may bar a lawyer from representing a client in a conflict of interest. Thus, under paragraph (b) (1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence). For example, if a lawyer represents an estate, it is a conflict of interest for the lawyer to represent also the beneficiaries of the estate.

[16] Paragraph (b) (2) describes conflicts that are not consentable because the representation is prohibited by applicable law. For example, in some states substantive law may bar a lawyer from representing a client in a conflict of interest. Thus, under paragraph (b) (1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[17] Paragraph (b) (3) prohibits representation of opposing parties in the same litigation, regardless of the clients’ consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a) (2). A conflict may arise, such as consent is likely to be effective, particularly if, e.g., the parties have a significant common interest or the lawyer’s representation is materially limited in one of the actions. The possibility of material limitation, then absent informed consent of the affected clients, the lawyer’s representation would result in the conflict. The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more the lawyer’s representation is subject to a material limitation, the more likely that the client will have the requisite understanding.

Revoking Consent. [21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer’s representation at any time. This right may be limited to the extent permitted by paragraph (b) (3) of this rule. In such cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of later seeking the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of later seeking the latter to consent. See also Rule 1.10 (personal and ordinary). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more the lawyer’s representation is subject to a material limitation, the more likely that the client will have the requisite understanding.

Consent to Future Conflicts. [22] Whether a lawyer may properly request a client to consent to future conflicts that might arise depends on the circumstances. The question is often one of proximity and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. The more the lawyer’s representation is subject to a material limitation, the more likely that the client will have the requisite understanding.

The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more the lawyer’s representation is subject to a material limitation, the more likely that the client will have the requisite understanding. If the lawyer’s representation is materially limited by the lawyer’s own interests in accommodating the person paying the lawyer’s fee or by the lawyer’s responsibilities to a payer who is also a co-client, and the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the representation.

The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more the lawyer’s representation is subject to a material limitation, the more likely that the client will have the requisite understanding.
lawyer seeks to resolve potentially adverse interests by developing the parties’ mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

**Special Considerations in Common Representation.** [29] In considering whether to represent multiple clients in the same matter, a lawyer should be more likely to withdraw from representing all of the clients if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiation between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the lawyer has already assumed antagonism, the possibility that the clients’ interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client–lawyer confidentiality and the attorney–client privilege. With regard to the attorney–client privilege, the prevailing Rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation events between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost always impair or preclude a lawyer from retaining client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to information and advice of the lawyer that might affect the other’s interest and the right to expect that the lawyer will use that information to that client’s benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client’s informed consent, advise the client of what information about the client the lawyer will have to disclose to the other client.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer’s role is not that of partisan normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.19 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

**Organizational Clients.** [34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the lawyer’s ability to represent the client of the lawyer, the lawyer is an undividedinterest between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client’s affiliates, or the lawyer’s obligations to the organizational client or the new client are likely to limit materially the lawyer’s representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer’s resignation from the board and the possibility of the corporation’s obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will cause the lawyer’s independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation’s lawyer when conflicts of interest arise. The lawyer should advise the other members of the board of some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney–client privilege and that conflict of interest considerations might require the lawyer’s recusal as a director or might require the lawyer and the lawyer’s firm to decline representation of the corporation in a matter.

### SCR 20:1.8 Conflict of interest: prohibited transactions.

**Rules of Professional Conduct**

1. The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
2. The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.
3. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.
4. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, nor prepare an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, except where (1) the client is related to the donee, (2) the donee is a natural object of the bounty of the client, (3) there is no reasonable ground to anticipate a contest, or a claim of undue influence or for the public to lose confidence in the integrity of the bar, and (4) the amount of the gift or bequest is reasonable and natural under the circumstances. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
5. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
   1. A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
   2. A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
6. A lawyer shall not accept compensation for representing a client from one other than the client unless:
   1. The client gives informed consent or the attorney is appointed at government expense; provided that no further consent or consultation need be given if the client has given consent or consultation for the representation of the party or entity that is the beneficiary of the lawyer’s compensation.
   2. There is no interference with the lawyer’s independence of professional judgment or with the client–lawyer relationship; and
   3. The information relating to representation of a client is protected as required by SCR 20:1.6.
7. A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
8. A lawyer shall not:
   1. Make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless the client is independently represented in making the agreement; or
   2. Settle a claim or potential claim for such liability with an unrepresented client or former client unless it is advisable in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith; or
   3. Make an agreement limiting the client’s right to report the lawyer’s conduct to disciplinary authorities.

### Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
RULES OF PROFESSIONAL CONDUCT

(1) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(i) acquire a lien authorized by law to secure the lawyer’s fee or expenses; and

(ii) contract with a client for a reasonable contingent fee in a civil case.

(2) When the client is an organization, a lawyer for the organization (whether inside counsel or outside counsel) shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the client–lawyer relationship commenced.

(1) In this paragraph, “sexual relations” means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.

(c) If the client is independently represented in the transaction, paragraph (a) (2) of this Rule is inapplicable, and the paragraph (a) (1) requirement for full disclosure is, but may be either by a written disclosure by the lawyer involved in the transaction and by the client’s independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a) (1) further requires.

Use of Information Related to Representation.

5. Use of information relating to the representation to the disadvantage of the client violates the lawyer’s duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns that a government agency is considering the construction of a highway may disclose the information to the client and the government agency to alert the government agency to the existence of reasonably available alternatives and should explain why the advice of the independent legal counsel is desirable. See Rule 1.0 (c) (definition of informed consent).

6. The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer’s financial interest otherwise poses a significant risk that the lawyer will not act in the best interests of the client, as limited by the lawyer’s financial interest in the transaction. Here the lawyer’s role requires that the lawyer must comply, not only with the requirements of paragraph (a) (2), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer’s dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that will benefit the lawyer’s interest and not the client. Moreover, the lawyer must obtain the client’s informed consent. In some cases, the lawyer’s interest may be such that Rule 1.7 will preclude the lawyer from serving the client’s consent to the transaction.

7. If effectuation of a substantial gift requires preparing a legal instrument such as a will, the lawyer shall request in writing the client’s informed consent to the gift. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or the lawyer’s benefit, except where the lawyer is related to the client as set forth in paragraph (c).

8. This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7. When there is a significant risk that the lawyer’s interest in obtaining the appointment will materially limit the lawyer’s independent professional judgment in advising the client concerning the choice of an executor or other fiduciary, in obtaining the client’s informed consent to the conflict, the lawyer should consider whether the potential conflict of interest can be eliminated or whether the lawyer should withdraw from representation of the client. Such arrangements are also subject to the additional safeguards imposed by sub. (a) (3), if a lawyer learns that the client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns that a government agency is considering the construction of a highway may disclose the information to the client and the government agency to alert the government agency to the existence of reasonably available alternatives and should explain why the advice of the independent legal counsel is desirable. See Rule 1.0 (c) (definition of informed consent).

9. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the lawyer and the client when the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer’s fee shall include a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance.

10. Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, because the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to advance court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer’s Services.

11. Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer or the lawyer’s firm in whole or in part. Because this person is relatively unknown, the lawyer may be asked to represent a relative or friend (such as a liability insurance company) or a co−client (such as a corporation used along with one or more of its employees). Because third−party payers frequently lack the knowledge and resources that differ from those of the lawyer, including an understanding of the law, the amount spent on the representation and in learning how the representation is progressing, the lawyers are prohibited from billing the lawyer’s fee directly to third−party payers unless the lawyer determines that there will be no interference with the lawyer’s independent professional judgment and there is informed consent from the client. See Rule 1.7 (a) and (d) (4) and Rule 1.8 (d) (6) (prohibiting co−clients from using a lawyer’s fee to compensate the co−client). If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the require-
ments of Rule 1.6 concerning confidentiality. Under Rule 1.7 (a), a conflict of interest exists if there is significant risk that the lawyer’s representation of the client will be materially limited by the lawyer’s own interest in the fee arrangement or by the lawyer’s relationship to the third-party payer (for example, when the lawyer is the third-party payer or a co-counsel). Under Rule 1.7 (b), the lawyer may accept or continue the repre-
sentation with the informed consent of each affected client, unless the conflict is non-
consensually limited under that paragraph. Under Rule 1.7 (b), the informed consent must be confirmed in writing.

Aggregate Settlements. [13] Differences in willingness to make or accept an offer of settlement or the risk of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients’ informed consent. Rule 1.2 (c) requires each client’s right to be informed in the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The Rule stated in the majority of these Rule 1.7 cases provides that, before an offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is rejected. See also Rule 1.0 (e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivativey, may not have a full client–lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims. [14] Agreements prospec-
tively limiting a lawyer’s liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to under-
mine the client’s ability to make an independent decision. Agreements that many clients are unable to make an informed decision to enter into such agreements because of the desirability of making such an agreement before a dispute has arisen, particu-
larly in a matter in which the client is an organization, are not rendered permissible by seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the arbitrator is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited−liability entity, where permitted by law, provided that each lawyer remains personally liable to the extent required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability. [15] Agreements settling a claim or a potential claim for malpractice are not pro-
hibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of a represented or former client, the lawyer must first ascertain that the client is adequately represented in any addition to that with which the lawyer is involved. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Confidential Investigation. [16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champ-
ions, in which an attorney can be directly enriched and is designed to avoid creating a lawyer too great an interest in the subject of the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (c). In addition, paragraph (i) sets forth exceptions authorized by law to acquire or share the lawyer’s fees and expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens created by the legal system, and liens acquired by contract with the client. A lawyer acquires by contract a security interest in property other than that recovered through the lawyer’s efforts in the litigation, such as an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5. Client−Lawyer Sexual Relationships. [17] The relationship between lawyer and client may create a conflict of interest. A lawyer’s involvement in a matter can also be a conflict of interest when a lawyer has a sexual relationship with the client. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer’s fiduciary role, in violation of the lawyer’s basic ethical obligation not to use the trust of the client to the client’s disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer’s emotional involvement, the lawyer will be unable to represent the client without impairing the exercise of independent profes-
sional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be exposed, and a client may not be able to obtain legal representation from the same lawyer if such an interest is removed. See also paragraph (j) (prohibition on breeches of confidentiality resulting from sexual relationship between lawyer and client). A lawyer who has a sexual relationship with the client’s own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual rela-
tionships, regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client. [18] Sexual relationships that predate the client–lawyer relationship are not pro-
hibited. Issues relating to the exploitation of the fiduciary relationship and client dependence exist even when the sexual relationship exists prior to the begin-
ing of the client−lawyer relationship. However, before proceeding with the representation of the client, the lawyer should consider whether the client is intended by the client’s ability to represent the client will be materially limited by the relationship. See Rule 1.7 (a) (2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer from representing a client (whether inside counsel or outside counsel) with whom the lawyer has a sexual relationship with a consultant of the organization who supervises, directs or regularly consults with the lawyer concerning the organization’s legal matters. Recognizing the PROHIBITION OF PROSECUTION OF JURISDICTIONS. Each lawyer must be permitted to practice law in a jurisdiction by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associ-
ated in a firm with the personally prohibited lawyer. For example, one lawyer in a

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through All Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or tbl.regal@legis.wisconsin.gov.

the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are “substantially related” for purposes of this Rule if they involve the same or substantially the same or related matters. When there is a substantial risk that confidential information as would normally have been obtained in the prior representation would be used to the disadvantage of the client in the future representation, information protected by Rules 1.6 and 1.9 (c) may be revealed.

[4] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not be revealed by the lawyer to others in the firm, unless:

(i) the lawyer previously represented the client in a matter in which the information was created or obtained by the lawyer in such a way that the information is protected by Rules 1.6 and 1.9 (c).

(ii) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written notice is promptly given to any affected former client to enable the affected client to ascertain compliance with the provisions of this rule.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the former associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by SCR 20:1.6 and SCR 20:1.9 (c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in SCR 20:1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by SCR 20:1.11.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

Wisconsin Committee Comment: Paragraph (a) differs from the Model Rule in not imputing conflicts of interest in limited circumstances where the personally disqualified lawyer is timely screened from the matter.

ABA Comment: Definition of “Firm.” [1] For purposes of the Rules of Professional Conduct, the term “firm” denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law, or lawyers employed in a legal services organization or in a legal department of a governmental agency or other organization. See Rule 1.0 (c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comment 4.

Principles of Imputed Disqualification. [2] The Rule of imputed disqualification is stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.19 (b) and 1.10 (b).

[3] The Rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case was owned by a lawyer who had represented the opponent in the past, the representation could be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

SCR 20:1.10 Imputed disqualification: general rule. (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by SCR 20:1.7 or SCR 20:1.9 unless:

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition arises under SCR 20:1.9, and

(i) the personally disqualified lawyer performed no more than minor and isolated services in the disqualifying representation and did so only at a firm with which the lawyer is no longer associated;
SCR 20:1.11 Special conflicts of interest for former and current government officers and employees. (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to SCR 20:1.9 (c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under par. (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to SCR 20:1.7 and SCR 20:1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, another adjudicative officer or arbitrator may negotiate for private employment as permitted by SCR 20:1.12 (b) and subject to the conditions stated in SCR 20:1.12 (b).

(e) As used in this rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(f) The conflicts of a lawyer currently serving as an officer or employee of the government are not imputed to the other lawyers in the agency. However, where such a lawyer has a conflict that would lead to disqualification in a nongovernmental setting, the lawyer shall be timely screened from any participation in the matter to which the conflict applies.


Wisconsin Committee Comment: Paragraph (f) has no counterpart in the Model Rules, although it is based on statements made in paragraph [2] of the ABA Comment.
(c) If a lawyer is disqualified by par. (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party in the matter, provided that all parties to the proceeding give informed consent, confirmed in writing.

Wisconsin Committee Comment: Paragraph (a) differs from the Model Rule in that the conflict is identified is not subject to waiver by consent of the parties involved. As such, paragraph (2) of the ABA Comment should be read with caution. Paragraph (d) differs in that written consent of the parties is required.

ABA Comment: [1] This Rule generally parallels Rule 1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility by preventing the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term “adjudication” includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time referees. Compliance Annals A (2), B (2), and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not “act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto.” Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0 (e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information that is protected under SCR 20:1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0 (k). Paragraph (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] In requiring a description of the screened lawyer’s prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

SCR 20:1.13 Organization as client. (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized representatives.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Under certain circumstances it may reasonably be better that it is not necessary to act in the best interest of the organization to do so, the lawyer shall refer the matter to a higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) Except as provided in par. (d), if:

(1) despite the lawyer’s efforts in accordance with par. (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not SCR 20:1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer’s representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer’s actions taken pursuant to pars. (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization’s highest authority is informed of the lawyer’s discharge or withdrawal.

(f) In dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of SCR 20:1.7. If the organization’s consent to the dual representation is required by SCR 20:1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented or by the shuchholder.

(h) Notwithstanding other provisions of this rule, a lawyer shall comply with the disclosure requirements of SCR 20:1.6 (b).

History: Sup. Ct. Order No. 04−07, 2007 Wis. 2d 207.

Wisconsin Committee Comment: Paragraph (b) differs from the Model Rule and calls attention to the mandatory disclosure procedures contained in Wisconsin Supreme Court Rule 20:1.6 (b).
RULES OF PROFESSIONAL CONDUCT

SCR 20:1.14 Client with diminished capacity. (a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client–lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by SCR 20:1.6. When taking protective action pursuant to par. (b), the lawyer is authorized under SCR 20:1.6 (a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

History: Sup. Ct. Order No. 04-07, 2007 WI 14, 293 Wis. 2d xv.

ABA Comment: [1] The normal client–lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client–lawyer relationship may not be possible in all respects. Given the reality that children, in particular those of young age, and certain those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their person, the lawyer may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s person and property. For example, a minor who has been informed that he or she is old enough to marry, to drive a automobile, and to join the armed forces, and has the ability to make legally binding decisions, is permitted to make decisions about marriage or driving and military service. In such circumstances, the lawyer may prescribe that under certain conditions the highest authority reposes elsewhere, where, for example, in the independent directors of a corporation.

RULING ON SCR 20:1.14. (a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client–lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by SCR 20:1.6. When taking protective action pursuant to par. (b), the lawyer is authorized under SCR 20:1.6 (a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

History: Sup. Ct. Order No. 04-07, 2007 WI 14, 293 Wis. 2d xv.

ABA Comment: [1] The normal client–lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client–lawyer relationship may not be possible in all respects. Given the reality that children, in particular those of young age, and certain those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their person, the lawyer may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s person and property. For example, a minor who has been informed that he or she is old enough to marry, to drive a automobile, and to join the armed forces, and has the ability to make legally binding decisions, is permitted to make decisions about marriage or driving and military service. In such circumstances, the lawyer may prescribe that under certain conditions the highest authority reposes elsewhere, where, for example, in the independent directors of a corporation.
impliedly authorized to make the necessary disclosures, even when the client directs
the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c)
limits what the lawyer may disclose in consulting with other individuals or entities or
seeking the appointment of a legal representative. At the very least, the lawyer
should determine whether it is likely that the person or entity consulted with will act
adversely to the client's interests before discussing matters related to the client. The
lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance. In an emergency wherein the health, safety or a
financial interest of a person with seriously diminished capacity is threatened with
imminent and irreparable harm, a lawyer may take legal action on behalf of such a
person even though the person is unable to establish a client–lawyer relationship or
to make express considered judgments about the matter, when the person or
another acting in good faith on that person's behalf has consulted with the lawyer.
Even in such an emergency, however, the lawyer should not act unless the lawyer
reasonably believes that the person has no other lawyer, agent or other representative
available. The lawyer should take legal action on behalf of the person only to the
extent reasonably necessary to accomplish the intended protective action.

A lawyer who acts on behalf of a person with seriously diminished capacity
in an emergency should keep the confidences of the person as if dealing with a client,
disclosing them only to the extent necessary to accomplish the intended protective
action. The lawyer should disclose to any tribunal involved and to any other counsel
involved the nature of the lawyer's relationship with the person. The lawyer should take
two steps to regularize the relationship or implement other protective solutions as soon
as possible. Normally, a lawyer would not seek compensation for such emergency actions
taken.

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts. (a) Definitions. In this section:

(1) "Draft account" means an account from which funds are
withdrawn through a properly payable instrument or an electronic
transaction.

(2) "Electronic transaction" means a paperless transfer of
funds to or from a trust or fiduciary account. Electronic transac-
tions do not include transfers initiated by voice or automated teller
or cash dispensing machines.

(3) "Fiduciary" means an agent, attorney-in-fact, conservator,
guardian, personal representative, special administrator, trustee,
or other position requiring the lawyer to safeguard the property of
a client or 3rd party.

(4) "Fiduciary account" means an account in which a lawyer
deposits fiduciary property.

(5) "Fiduciary property" means funds or property of a client or 3rd party that is in a lawyer's possession in a fiduciary capacity. Fiduciary property includes, but is not limited to, property held as agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, or trustee, subject to the exceptions identified in sub. (m).

(6) "Financial institution" means a bank, savings bank, trust
company, credit union, savings and loan association, or investment
institution, including a brokerage house.

(7) "Immediate family member" means a lawyer's spouse, reg-
istered domestic partner, child, stepchild, grandchild, sibling, par-
ent, stepparent, grandparent, aunt, uncle, niece, or nephew.

(8) "Interest on Lawyer Trust Account or 'IOLTA account'" means a pooled interest-bearing or dividend-paying trust account, separate from a lawyer's business and personal accounts, which is maintained at an IOLTA participating institution. Typical funds that would be placed in an IOLTA account include earnest money, loan proceeds, settlement proceeds, collection proceeds, cost advances, and advanced payments of fees that have not yet been earned. An IOLTA account is subject to the provisions of SCR Chapter 13 and the trust account provisions of subs. (a) to (i), including the IOLTA account provisions of subs. (c) and (d).

(9) "IOLTA participating institution" means a financial institu-
tion that voluntarily offers IOLTA accounts and certifies to Wis-
tAF annually that it meets the IOLTA account requirements of sub. (d).

(10) "Properly payable instrument" means an instrument that,
if presented in the normal course of business, is in a form requiring
payment pursuant to the laws of this state.

(11) "Trust account" means an account in which a lawyer deposits trust property.

(12) "Trust property" means funds or property of clients or 3rd parties, which is not fiduciary property, that is in a lawyer's pos-
session in connection with a representation.

(13) "WisTAF" means the Wisconsin Trust Account Foundation,
Inc.

(b) Segregation and safekeeping of trust property. (1) Separate account. A lawyer shall hold in trust, separate from the
lawyer's own property, that property of clients and 3rd parties that
is in the lawyer's possession in connection with a representation.
All funds of clients and 3rd parties paid to a lawyer or law firm in
connection with a representation shall be deposited in one or more
identifiable trust accounts.

(2) Identification and location of account. Each trust account
shall be clearly designated as a "Client Account," or "Trust
Account," or words of similar import. The account shall be identi-
fied as such on all account records, including signature cards,
monthly statements, checks, and deposit slips. An acronym, such
as "IOLTA," "IOTA," or "LTAB," without further elaboration,
does not clearly designate the account as a client account or trust
account. Each trust account shall be maintained in a financial
institution that is authorized by federal or state law to do business
in Wisconsin and that is located in Wisconsin or has a branch
office located in Wisconsin and which agrees to comply with the
overdraft notice requirements of sub. (h). A trust account may be
maintained at a financial institution located in the jurisdiction
where the lawyer principally practices law if that jurisdiction has
an overdraft notification requirement.

(3) Lawyer funds. No funds belonging to a lawyer or law firm,
except funds reasonably sufficient to pay monthly account service
charges, may be deposited or retained in a trust account. Each
lawyer or law firm that receives trust funds shall maintain at least
one draft account, other than the trust account, for funds received
and disbursed other than in a trust capacity, which shall be entitled
"Business Account," "Office Account," "Operating Account," or
words of similar import.

(4) Trust property other than funds. Unless a client otherwise
directs in writing, a lawyer shall keep securities in bearer form in
a safe deposit box at a financial institution authorized to do busi-
ness in Wisconsin. The safe deposit box shall be clearly design-
nated as a "Client Account" or "Trust Account." The lawyer shall
clearly identify and appropriately safeguard other property of a
client or 3rd party.

(5) Insurance and safekeeping requirements. Each trust
account shall be maintained at a financial institution that is insured
by the Federal Deposit Insurance Corporation (FDIC), the
National Credit Union Share Insurance Fund (NCUSIF), the
Securities Investor Protection Corporation (SIPC), or any other
investment institution financial guaranty insurance. IOLTA
accounts shall also comply with the requirements of sub. (d) (3).
Lawyers using the alternative to the E-Banking Trust Account
shall comply with the requirements of sub. (f) (3) c. Except as pro-
vided in subs. (b) (4) and (d) (3) b. and c., trust property shall be
held in an account in which each individual owner's funds are eli-
gible for insurance.

(c) Types of trust accounts. (1) IOLTA accounts. A lawyer
or law firm who receives client or 3rd-party funds that the lawyer
or law firm determines to be nominal in amount or that are
expected to be held for a short period of time such that the funds
cannot earn income for the benefit of the client or 3rd party in
excess of the costs to secure that income, shall maintain a pooled
interest-bearing or dividend-paying draft trust account in an
IOLTA participating institution.

(2) Non-IOLTA accounts. A lawyer or law firm who receives
client or 3rd-party funds that the lawyer or law firm determines
to be capable of earning income for the benefit of the client or 3rd
party shall maintain an interest-bearing or dividend-paying non-
IOLTA trust account. A non-IOLTA trust account shall be estab-
lished as any of the following:

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
21 Updated 17–18 Wis. Stats.

a. A separate interest–bearing or dividend–paying trust account maintained for the particular client or 3rd party, the interest or dividends on which shall be paid to the client or 3rd party, less any transaction costs.

b. A pooled interest–bearing or dividend–paying trust account with sub–accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each client’s or 3rd party’s funds and the payment of the interest or dividends to the client or 3rd party, less any transaction costs.

c. An income–generating investment vehicle selected by the client and designated in specific written instructions from the client or authorized by a court or other tribunal, on which income shall be paid to the client or 3rd party or as directed by the court or other tribunal, less any transaction costs.

d. An income–generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the bankruptcy trustee or by a bankruptcy court order, or otherwise consistent with 11 U.S.C. § 345.

e. A draft account or other account that does not bear interest or pay dividends because it holds funds the lawyer has determined are not eligible for deposit in an IOLTA account because they are neither nominal in amount nor expected to be held for a short term such that the funds cannot earn income for the client or 3rd party in excess of the costs to secure the income, provided that the account has been designated in specific written instructions from the client or 3rd party.

(3) Selection of account. In deciding whether to use the account specified in par. (1) or an account or investment vehicle specified in par. (2), a lawyer shall determine, at the time of the deposit, whether the client or 3rd–party funds could be utilized to provide a positive net return to the client or 3rd party by taking into consideration all of the following:

- The amount of interest, dividends, or other income that the funds would earn or pay during the period the funds are expected to be on deposit.
- The cost of establishing and administering a non–IOLTA trust account, including the cost of the lawyer’s services and the cost of preparing any tax reports required for income accruing to a client’s or 3rd party’s benefit.
- The capability of the financial institution, lawyer, or law firm to calculate and pay interest, dividends, or other income to individual clients or 3rd parties.

- Any other circumstance that affects the ability of the client’s or 3rd party’s funds to earn income in excess of the costs to secure that income for the client or 3rd party.

(4) Professional judgment. The determination whether funds to be invested could be utilized to provide a positive net return to the client or 3rd party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct.

(d) INTEREST ON LAWYER TRUST ACCOUNT (IOLTA) REQUIREMENTS. (1) Location. An IOLTA account shall be maintained only at an IOLTA participating institution.

(2) Certification by IOLTA participating institutions. a. Each IOLTA participating institution shall certify to WisTAF annually that the financial institution meets the requirements of sub. (d) (3) to (6) for IOLTA accounts and that it reports overdrafts on draft trust accounts and draft fiduciary accounts of lawyers and law firms to the office of lawyer regulation, pursuant to the institution’s agreements with those lawyers and law firms. WisTAF shall by rule adopted under SCR 13.03 (1) establish the date by which IOLTA participating institutions shall certify their compliance.

b. WisTAF shall confirm annually, by a date established by WisTAF by rule adopted under SCR 13.03 (1), the accuracy of a financial institution’s certification under sub. (d) (a) by reviewing one or more of the following:

1. The IOLTA comparability rate information form submitted by the financial institution to WisTAF.

2. Rate and product information published by the financial institution.

3. Other publicly or commercially available information regarding products and interest rates available at the financial institution.

c. WisTAF shall publish annually, no later than the date on which the state bar mails annual dues statements to members of the bar, a list of all financial institutions that have certified, and have been confirmed by WisTAF as IOLTA participating institutions. WisTAF shall update the published list located on its website to add newly confirmed IOLTA participating institutions and to remove financial institutions that WisTAF cannot confirm as IOLTA participating institutions.

d. Prior to removing any financial institution from the list of IOLTA participating institutions or failing to include any financial institution on the list of IOLTA participating institutions, WisTAF shall first provide the financial institution with notice and sufficient time to respond. In the event a financial institution is removed from the list of IOLTA participating institutions, WisTAF shall notify the office of lawyer regulation and provide that office with a list of the lawyers and law firms maintaining IOLTA accounts at that financial institution. The office of lawyer regulation shall notify those lawyers and law firms of the removal of the financial institution from the list, and provide time for those lawyers and law firms to move their IOLTA accounts to an IOLTA participating institution.

e. Lawyers and law firms may rely on the most recently published list of IOLTA participating institutions for purposes of compliance with sub. (c) (1), except when the office of lawyer regulation notifies the lawyer or law firm of removal, in accordance with sub. (d) (2).

(3) Safekeeping requirements. a. An IOLTA participating institution shall comply with the insurance and safety requirements of sub. (b) (5).

b. A repurchase agreement utilized for an IOLTA account may be established only at an IOLTA participating institution deemed to be “well–capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations.

c. An open–end money market fund utilized for an IOLTA account may be established only at an IOLTA participating institution defined under the Investment Act of 1940 and, at the time of investment, has total assets of at least $250,000,000.

(4) Income requirements. a. ‘Beneficial owner.’ The interest or dividends accruing on an IOLTA account, less any allowable reasonable fees, as allowed under par. (5), shall be paid to WisTAF, which shall be considered the beneficial owner of the earned interest or dividends, pursuant to SCR Chapter 13.

b. ‘Interest and dividend requirements.’ An IOLTA account shall bear the highest non–promotional interest rate or dividend that is generally available to non–IOLTA customers at the same branch or main office location when the IOLTA account meets or exceeds the same eligibility qualifications, if any, including a minimum balance, required at that same branch or main office location.

In determining the highest rate or dividend available, the IOLTA participating institution may consider factors in addition to the IOLTA account balance that are customarily considered by the institution at that branch or main office location when setting interest rates or dividends for its customers, provided the institution does not discriminate between IOLTA accounts and accounts of non–IOLTA customers and that these factors do not include that the account is an IOLTA account. However, IOLTA participating institutions may voluntarily choose to pay higher rates.
RULES OF PROFESSIONAL CONDUCT

RULES OF PROFESSIONAL CONDUCT

AN IOLTA PARTICIPATING INSTITUTION MAY ESTABLISH AN IOLTA ACCOUNT AS, OR CONVERT AN IOLTA ACCOUNT TO, ANY OF THE FOLLOWING TYPES OF ACCOUNTS, ASSUMING THE PARTICULAR FINANCIAL INSTITUTION AT THAT BRANCH OR MAIN OFFICE LOCATION OFFERS THESE ACCOUNT TYPES TO ITS NON–IOLTA CUSTOMERS, AND THE PARTICULAR IOLTA ACCOUNT MEETS THE ELIGIBILITY QUALIFICATIONS TO BE ESTABLISHED AS THIS TYPE OF ACCOUNT AT THE PARTICULAR BRANCH OR MAIN OFFICE LOCATION:

1. A business checking account with an automated or other automatic investment sweep feature into a daily financial institution repurchase agreement or open–end money market fund. A daily financial institution repurchase agreement must be invested in United States government securities. An open–end money market fund must consist solely of United States government securities or repurchase agreements fully collateralized by United States government securities, or both. In this para. c.1., “United States government securities” include securities of government–sponsored entities, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation;

2. A checking account paying preferred interest rates, such as money market or indexed rates;

3. An interest–bearing checking account such as a negotiable order of withdrawal (NOW) account or business checking account with interest; and

4. Any other suitable interest–bearing or dividend–paying account offered by the institution to its non–IOLTA customers.

‘Options for compliance.’ An IOLTA participating institution may:

1. Establish the comparable product for qualifying IOLTA accounts, subject to the direction of the lawyer or law firm; or

2. Pay the highest non–promotional interest rate or dividend, as defined in sub. (d) (4) b., less any allowable reasonable fees charged in connection with the comparable highest interest rate or dividend product, on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product.

‘Paying rates above comparable rates.’ An IOLTA participating institution may pay a set rate above its comparable rates on the IOLTA checking account negotiated with WisTAF that is fixed over a period of time set by WisTAF, such as 12 months.

(5) Allowable reasonable fees on IOLTA accounts. a. Allowable reasonable fees on an IOLTA account are as follows:

1. Per check charges.

2. Per deposit charges.

3. Fees in lieu of minimum balance.

4. Sweep fees.

5. An IOLTA administrative fee approved by WisTAF.

6. Federal deposit insurance fees.

b. Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that the fees are calculated in accordance with an IOLTA participating institution’s standard practice for non–IOLTA customers. Fees in excess of the interest earned or dividends paid on the IOLTA account for any month or quarter shall not be taken from interest or dividends of any other IOLTA accounts. No fees that are authorized under SCR 20:1.15 (d) (5) shall be assessed against or deducted from the principal of any IOLTA account. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. IOLTA participating institutions may elect to waive any or all fees on IOLTA accounts.

(6) Remittance and reporting requirements. A lawyer or law firm shall direct the IOLTA participating institution at which the lawyer or law firm’s IOLTA account is located to do all of the following, on at least a quarterly basis:

a. Remit to WisTAF the interest or dividends, less allowable reasonable fees as allowed under par. (5), if any, on the average monthly balance in the account or as otherwise computed in accordance with the IOLTA participating institution’s standard accounting practice.

b. Provide to WisTAF a remittance report showing for each IOLTA account the name of the lawyer or law firm for whose IOLTA account the remittance is sent, the rate and type of interest or dividend applied, the amount of allowable reasonable fees deducted, if any, the average account balance for the period for which the report is made, and the amount of remittance attributable to each IOLTA account.

c. Provide to the depositing lawyer or law firm a remittance report in accordance with the participating institution’s normal procedures for reporting account activity to depositors.

d. Respond to reasonable requests from WisTAF for information needed for purposes of confirming the accuracy of an IOLTA participating institution’s certification.

(e) PROMPT NOTICE AND DELIVERY OF PROPERTY. (1) Notice and delivery. Upon receiving funds or other property in which a client has an interest, or in which a lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive.

(2) Accounting. Upon final distribution of any trust property or upon request by the client or a 3rd party having an ownership interest in the property, a lawyer shall promptly render a full written accounting regarding the property.

(3) Disputes regarding trust property. When a lawyer and another person or a client and another person claim an ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. Disputes between the lawyer and a client are subject to the provisions of SCR 20:1.5 (h).

(4) Burden of proof. A lawyer’s failure to promptly deliver trust property to a client or 3rd party entitled to the trust property, promptly submit trust account records to the office of lawyer regulation or promptly provide an accounting of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15 (b) (1). This presumption may be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence.

(f) SECURITY REQUIREMENTS AND RESTRICTED TRANSACTIONS. (1) Security of transactions. A lawyer is responsible for the security of each transaction in the lawyer’s trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account.

(2) Prohibited transactions. a. ‘Cash.’ No withdrawal of cash shall be made from a trust account or from a deposit to a trust account. No check shall be made payable to “Cash.” No withdrawal shall be made from a trust account by automated teller or cash dispensing machine.
shall be entitled: "E−Banking Trust Account." A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer’s trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds without the permission of the lawyer.

(3) Electronic transactions. A lawyer shall not make deposits to or disbursements from a trust account by way of an electronic transaction, except as provided in SCR 20:1.15 (f) (3) a. through c.

a. ‘Remote deposit.’ A lawyer may make remote deposits to a trust account, provided that the lawyer keeps a record of the client or matter to which each remote deposit relates, and that the lawyer’s financial institution maintains an image of the front and reverse of each remote deposit for a period of at least six years.

b. ‘E−banking trust account.’ A lawyer may accept funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits, and may disburse funds by electronic transactions that are not prohibited by sub. (f) (2) c., provided that the lawyer does all of the following:

1. Maintains an IOLTA account, which shall be the primary IOLTA account, in which no electronic transactions shall be conducted other than those transferring funds from the primary IOLTA to the E−Banking Trust Account for purposes of making an electronic disbursement, or those transactions authorized by SCR 20:1.15 (f) (3) a., (3) b. 4. a., and (3) b. 4. d.

2. Maintains a separate IOLTA account with commercially reasonable account security for electronic transactions, which shall be entitled: “E−Banking Trust Account.”

3. Holds lawyer or law firm funds in the E−Banking Trust Account reasonably sufficient to cover monthly account fees and fees deducted from deposits and maintains a ledger for those account fees.

4. Transfers the gross amount of each deposit within 3 business days after the deposit is available for disbursement, and if necessary, adds funds belonging to the lawyer or law firm to cover any deduction of fees and surcharges relating to the deposit, in accordance with all of the following:

a. All advanced costs and advanced fees held in trust under SCR 20:1.5 (f) shall be transferred to the primary IOLTA account by check or electronic transaction.

b. Earned fees, cost reimbursements, and advanced fees that are subject to the requirements of SCR 20:1.5 (g) shall be transferred to the business account by check or by electronic transaction.

c. Any funds that the client has directed be disbursed by electronic transfer shall be promptly disbursed from the E−Banking Trust Account by electronic transaction.

d. All funds received in trust other than funds identified in SCR 20:1.15 (f) (3) a., b., and c. shall be transferred to the primary IOLTA account by check or by electronic transaction.

e. Except for funds identified in SCR 20:1.15 (f) (3) a. and b., a lawyer or law firm shall not be prohibited from deducting electronic transfer fees or surcharges from the client’s funds, provided the client has agreed in writing to accept the electronic payment after being advised of the anticipated fees and surcharges.

5. Identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution’s electronic payment system the date, amount, payee, client matter, and reason for the disbursement in the financial institution’s electronic payment system.

6. Replaces any and all funds that have been withdrawn from the E−Banking Trust Account by the financial institution or card issuer, and reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the E−Banking Trust Account; and reimburses the E−Banking Trust Account for any chargeback, surcharge, or ACH reversal prior to authorizing a new electronic deposit or transferring funds from the primary IOLTA to the E−Banking Trust Account for purposes of making an electronic disbursement.

c. ‘Alternative to E−Banking Trust Account.’ A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f) (2) c., without establishing a separate E−Banking Trust Account, provided that all of the following conditions are met:

1. The lawyer or law firm maintains commercially reasonable account security for electronic transactions.

2. The lawyer or law firm maintains a bond or crime insurance policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.

3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer’s or law firm’s business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account.

4. The lawyer or law firm identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution’s electronic payment system the date, amount, payee, client matter, and reason for the disbursement in each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution’s electronic payment system.

(4) Availability of funds for disbursement. A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement.

b. ‘Exception: Real estate transactions.’ In closing a real estate transaction, a lawyer’s disbursement of closing proceeds from funds that are received on the date of the closing, but that have not yet cleared, shall not violate sub. (f) (4) a. provided that the lawyer complies with sub. (f) (4) c., and that the closing proceeds are deposited not later than the first business day following the closing and are comprised of any of the following types of funds:

1. A cashier’s check, teller’s check, money order, official check or electronic transfer of funds, issued or transferred by a financial institution insured by the FDIC or a comparable agency of the federal or state government.

2. A check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state.
RULES OF PROFESSIONAL CONDUCT

3. A check issued by the state of Wisconsin, the United States, or a political subdivision of the state of Wisconsin or the United States.

4. A check drawn on the account of or issued by a lender approved by the Federal Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2.

5. A check from a title insurance company licensed in Wisconsin, or from a title insurance agent of the title insurance company, if the title insurance company has guaranteed the funds of that title insurance agent.

6. A non-profit organization check in an amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account.

7. A personal check or checks in an aggregate amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account.

c. ‘Uncollected funds.’ Without limiting the rights of the lawyer against any person, it is the responsibility of the disbursing lawyer to reimburse the trust account for any funds described in sub. (f) (4) b. that are not collected and for any fees, charges, and interest assessed by the financial institution on account of the funds being disbursed before the related deposit has cleared and the funds are available for disbursement. The lawyer shall maintain a subsidiary ledger for funds of the lawyer that are deposited in the trust account to reimburse the account for uncollected funds and to accommodate any fees, charges, and interest.

d. ‘Exception: Collection trust accounts.’ When handling collection work for a client and maintaining a separate trust account to hold funds collected on behalf of that client, a lawyer’s disbursement to the client of collection proceeds that have not yet cleared does not violate sub. (f) (4) a. so long as those collection proceeds have been deposited prior to the disbursement.

(g) RECORD−KEEPING REQUIREMENTS FOR ALL TRUST ACCOUNTS. (1) Record retention. A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account record−keeping.

(2) Record production. All trust account records have public aspects related to a lawyer’s fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material.

(3) Burden of proof. A lawyer’s failure to promptly deliver trust property to a client or third party entitled to that trust property, promptly submit trust account records to the office of lawyer regulation, or promptly provide an accounting of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15 (1) (h) (1). This presumption may be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence.

(h) DISHONORED PAYMENT NOTIFICATION (OVERDRAFT NOTICES). All draft trust accounts, and any draft fiduciary account that is not subject to an alternative protection under sub. (k) (10), are subject to the following provisions on dishonored payment notification:

(1) Overdraft reporting agreement. A lawyer shall maintain draft trust and fiduciary accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under par. (2). A lawyer or law firm shall notify the financial institution at the time a trust account or fiduciary account is established that the account is subject to this subsection.

(2) Overdraft report. In the event any properly payable instrument or electronic transaction is presented against or made from a lawyer trust or fiduciary account containing insufficient funds, whether or not the instrument or electronic transaction is honored, the financial institution shall report the overdraft to the office of lawyer regulation.

(3) Content of report. All reports made by a financial institution under this subsection shall be substantially in the following form:

a. In the case of a dishonored instrument or electronic transaction, the report shall be identical to an overdraft notice customarily furnished to the depositor or investor, accompanied by the dishonored instrument or electronic transaction, if a copy is normally provided to the depositor or investor.

b. In the case of instruments or electronic transactions that are presented against insufficient funds and are honored, the report shall identify the financial institution involved, the lawyer or law firm, the account, the date on which the instrument or electronic transaction is paid, and the amount of overdraft created by the payment.

(4) Timing of report. A report made under this subsection shall be made simultaneously with the overdraft notice given to the depositor or investor.

(5) Confidentiality of report. A report made by a financial institution under this subsection shall be subject to SCR 22.40, Confidentiality.

(6) Withdrawal of report by financial institution. The office of lawyer regulation shall hold each overdraft report for 10 business days to enable the financial institution to withdraw a report provided by inadvertence or mistake. The deposit of additional funds by the lawyer or law firm shall not constitute reason for withdrawing an overdraft report.

(7) Lawyer compliance. Every lawyer shall comply with the requirements of this rule. The state bar may require that each lawyer file with the state bar of Wisconsin annually, with payment of the member’s bar dues or upon any other date approved by the supreme court, a certificate as to whether the member is engaged in the practice of law in Wisconsin. If the member is practicing law, the member shall certify the name, address, and telephone number of each financial institution in which the member maintains a trust account, a fiduciary account, or a safe deposit box. The state bar shall supply to each member, with the annual dues statement, or at any other time directed by the supreme court, a form on which this certification shall be made.

(2) Certification by law firm. A law firm shall file one certificate of accounts on behalf of the lawyers in the firm who are required to file a certificate under par. (1).

(3) Compliance with SCR 20:1.15. Each state bar member shall acknowledge on the annual dues statement, or another form approved by the supreme court, that the member is aware of all of the following requirements of this rule:

a. That SCR 20:1.15 establishes fiduciary obligations for trust and fiduciary property that comes into the member’s possession, including the duty to hold that property in trust separate
from the member’s own property, to safeguard that property, to maintain complete records of that property, to account fully for that property, and to promptly deliver that property to the owner.  

b. That SCR 20:1.15 requires a member to maintain each IOLTA account in an IOLTA participating institution, to file an overdraft agreement with the office of lawyer regulation for each account that is subject to SCR 20:1.15 (h) and (k), and to annually report all trust and fiduciary accounts to the state bar of Wisconsin that are not subject to an exception under SCR 20:1.15 (m).

(4) Suspension for non−compliance. A state bar member who fails to file the acknowledgements required by sub. (3) or a trust account report, unless a certificate of accounts is filed by the law firm, is subject to the automatic suspension of the member’s membership in the state bar in the same manner provided in SCR 10.03 (6) for nonpayment of dues.

(j) Multi−jurisdictional practice. If a lawyer also licensed in another state is entrusted with funds or property in connection with a representation in the other state, the provisions of this rule shall not supersede the applicable rules of the other state.

(k) Fiduciary property. (1) Segregation of fiduciary property. A lawyer shall hold in trust, separate from the lawyer’s own funds or property, those funds or that property of clients or 3rd parties that are in the lawyer’s possession when acting in a fiduciary capacity.

(2) Accounting. Upon final distribution of any fiduciary property or upon request by a client or a 3rd party having an ownership interest in the property, a lawyer shall promptly render a full written accounting of all fiduciary funds and property for prior years during which the lawyer served as a fiduciary and shall preserve at a minimum, a summary of the account records to the office of lawyer regulation or its successor, for a period of 6 years and 90 days. 

(3) Fiduciary accounts. A lawyer shall deposit all fiduciary funds specified in par. (1) in any of the following:

a. A separate interest−bearing or dividend−paying fiduciary account on which interest or dividends shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any taxes and expenses of the fiduciary entity.

b. A pooled interest−bearing or dividend−paying fiduciary account with sub−accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each fiduciary entity’s funds and the proportionate allocation of the interest or dividends to each of the fiduciary entities, less any taxes and expenses of the fiduciary entity.

c. An income−generating investment vehicle, on which income shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any taxes and expenses of the fiduciary entity.

d. An income−generating investment vehicle selected by the lawyer and approved by a court for guardianship funds if the lawyer serves as guardian for a ward under Ch. 54 and subject to Ch. 881, Wis. Stats.

e. An income−generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the bankruptcy trustee, by a bankruptcy court order, or otherwise consistent with 11 U.S.C. § 345.

f. A draft account or other account that does not bear interest or pay dividends when, in the lawyer’s professional judgment, placement in the account is consistent with the needs and purposes of the fiduciary entity or its beneficiary or beneficiaries.

(4) Location. Each fiduciary account shall be maintained in a financial institution as provided by the written authorization of the client, the governing trust instrument, organizational by−laws, an order of a court, or, absent such direction, in a financial institution that, in the lawyer’s professional judgment, will best serve the needs and purposes of the client or 3rd party for whom the lawyer serves as a fiduciary. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct. When the fiduciary property is held in a draft account and the account is at a financial institution that is not located in Wisconsin or authorized by state or federal law to do business in Wisconsin, the lawyer shall comply with the requirements of sub. (k) (10) b., c., d., e., or f.

(5) Prohibited transactions. a. ‘Cash.’ No withdrawal of cash shall be made from a fiduciary account or from a deposit to a fiduciary account. No check shall be made payable to “Cash.” No withdrawal shall be made from a fiduciary account by automated teller or cash dispensing machine.

b. ‘Card transactions.’ A lawyer shall not authorize transactions by way of credit, debit, prepaid or other types of payment cards to or from a fiduciary account.

(6) Availability of funds for disbursement. A lawyer shall not disburse funds from a fiduciary account unless the deposit from which those funds will be disbursed has cleared and the funds are available for disbursement. The exception for real estate transactions in sub. (f) (4) b. shall apply to fiduciary accounts.

(7) Record retention. A lawyer shall maintain and preserve complete records of fiduciary account funds, all deposits and disbursements, and other fiduciary property and shall preserve those records for the 6 most recent years during which the lawyer served as a fiduciary and shall preserve at a minimum, a summary accounting of all fiduciary funds and property for prior years during which the lawyer served as a fiduciary. After the termination of the fiduciary relationship, the lawyer shall preserve the records required by this paragraph for at least 6 years. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for fiduciary account record−keeping.

(8) Record production. All fiduciary account records have public aspects related to a lawyer’s fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material.

(9) Burden of proof. A lawyer’s failure to promptly submit fiduciary account records to the office of lawyer regulation or promptly provide an accounting of fiduciary property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold fiduciary property in trust, contrary to SCR 20:1.15 (k) (1). This presumption may be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence.

(10) Dishonored payment notification or alternative protection. A lawyer who holds fiduciary property in a draft account from which funds are disbursed through a properly payable instrument or electronic transaction shall take any of the following actions:

a. Comply with the requirements of sub. (h) relating to dishonored payment notification (overdraft notices).

b. Have the account independently audited by a certified public accountant on at least an annual basis.

c. Hold the funds in a draft account, which requires the approval of a co−trustee, co−agent, co−guardian, or co−personal representative before funds may be disbursed from the account.

d. Require and document the approval of two people from a group consisting of a lawyer or a member or employee of the lawyer’s law firm before funds may be disbursed from the account.

e. In the case of an estate or trust, provide an accounting of the administration at least annually to all beneficiaries currently eligible to receive income distributions.

f. In the case of a guardianship proceeding in which annual financial accountings must be reviewed by a court, timely file those annual financial accountings with the court.

(11) Fiduciary account certificate and acknowledgements. Funds held by a lawyer in a fiduciary account are subject to the requirements of sub. (i).
m) EXCEPTIONS TO THIS SECTION. This rule does not apply in any of the following instances in which a lawyer is acting in a fiduciary capacity:  

(1) The lawyer is serving as a bankruptcy trustee, subject to the oversight and accounting requirements of the bankruptcy court or the office of U.S. Trustee.  

(2) The lawyer is serving as an assignee or receiver under the provisions of Ch. 128, Wis. Stats.  

(3) The property held by the lawyer when acting in a fiduciary capacity is property held for the benefit of an immediate family member of the lawyer.  

(4) The lawyer is serving in a fiduciary capacity for a civic, fraternal, or non-profit organization that is not a client and has other officers or directors participating in the governance of the organization.  

(5) The lawyer is acting in the course of the lawyer’s employment by an employer not itself engaged in the practice of law, provided that the employer’s employment is not ancillary to the lawyer’s practice of law.  

History: Sup. Ct. Order No. 02−06, 2004 Wis. 49, 269 Wis. 2d xiii; Sup. Ct. Order No. 04−07, 2007 Wis. 1, 291 Wis. 2d xviii; Sup. Ct. Order No. 06−04, 2007 Wis. 1, 297 Wis. 2d xv; Sup. Ct. Order No. 08−03, 2009 Wis. 62, filed 7−1−09, eff. 1−1−10; Sup. Ct. Order No. 10−05, 2010 Wis. 127, 329 Wis. 2d xxxii; Sup. Ct. Order No. 14−07, 2016 Wis. 21, filed 4−16−16, eff. 7−1−16; Sup. Ct. Order No. 14−07A, 2016 Wis. 97, filed eff. 12−7−16.  


Note: Sup. Ct. Order No. 14−07 states that “the Comments to SCRs 2.10, 20.15, 20.15, and 22.39 are not adopted, but will be published and may be considered for guidance in interpreting and applying the rule.”  

Wisconsin, 2016: A lawyer must hold the property of others with the care required of a professional fiduciary. All property that is the property of clients or 3rd parties must be separated from the lawyer’s business and personal funds and, if monies, in one or more trust or fiduciary accounts. Lawyers have duties to keep clear, distinct, and accurate records of all trust transactions, and to be able always to account for the same. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).  

SCR 20.15(1) (a) (2) Electronic transaction. The types of electronic transactions that are permitted under SCR 20.15 (a) (2) of electronic transactions see the record−keeping guidelines published by the office of lawyer regulation.  

SCR 20.15(1) (b) (1) Separate accounts. With respect to probate matters, a lawyer’s role may be to serve in a fiduciary capacity as the personal representative, to represent an estate’s personal representative, or to act as both personal representative and attorney for an estate. SCR 20.15 (k) applies to funds and property which a lawyer holds in trust, or distributes while serving in the fiduciary role of personal representative. Such funds and property may include, but are not limited to, bank and investment accounts, stocks, and bonds. SCR 20.15 (b)−(i) apply to funds and property the lawyer receives, holds, and distributes while serving in the fiduciary role of personal representative. Such funds and property may include, but are not limited to, advanced legal fees and advanced costs. If a lawyer acts in good faith and in accordance with the rules and the trust account records for inspection under SCR 20.15 (g) (2) is a specific exception was created in recognition of the fact that real estate transactions in Wisconsin are a common occurrence, and accordingly, may refuse to surrender the property to the person to whom it belongs.  

SCR 20.15 (e) (4) Burden of proof. A lawyer’s failure to comply with the debt requirements of SCR 20.15 (e) (1) (a) (1) is subject to SCR 20.15 (e) (4) (2) will result in a presumption that the lawyer has failed to hold property in trust, contrary to SCR 20.15 (b) (1). This presumption can be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).  

SCR 20.15(2) (b) (1) Remote deposit. A remote deposit is an electronic deposit of a paper check to a lawyer’s trust account. Subject to a lawyer’s compliance with the requirements of this subsection, such transactions are permitted in an IOLTA account to violate this type of requirement may constitute conduct involving dishonesty, fraud, deceit, or misrepresentation. Does the credit card issuer prohibit a lawyer’s withdrawal from requiring the customer to pay the charge? If a lawyer intends to credit the check for anything other than the full amount of the credit card payment, the lawyer needs to assure that this practice is not prohibited by the credit card issuer’s regulations and/or by the agreement between the lawyer and the card issuer. Electronic deposits to an IOLTA account of a lawyer who does not utilize multiple types of electronic transactions, remote deposits may be traced to images of the front and reverse of the deposited check, which are retained for at least 6 years by the lawyer’s financial institution and the SIPC, funds in excess of those limits are not insured. Rather, it is to assure that trust funds are held in reputable financial or IOLTA investment accounts, stocks, and bonds. SCR 20.15 (d) (4) Income requirements. Pursuant to SCR 20.15 (d) (4), IOLTA accounts shall bear the highest non-promotional interest rate or dividend that is generally available non−IOLTA customers at the same branch or main office location when the IOLTA account meets or exceeds the same eligibility requirements. Income from exceptions to the SCR 20.15 (d) (5) requirement relate to trust property that overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).  

SCR 20.15(2) (b) (3) Remote deposit. A remote deposit is an electronic deposit of a paper check to a lawyer’s trust account. Subject to a lawyer’s compliance with the requirements of this subsection, such transactions are permitted in an IOLTA account to violate this type of requirement may constitute conduct involving dishonesty, fraud, deceit, or misrepresentation. Does the credit card issuer prohibit a lawyer’s withdrawal from requiring the customer to pay the charge? If a lawyer intends to credit the check for anything other than the full amount of the credit card payment, the lawyer needs to assure that this practice is not prohibited by the credit card issuer’s regulations and/or by the agreement between the lawyer and the card issuer. Electronic deposits to an IOLTA account of a lawyer who does not utilize multiple types of electronic transactions, remote deposits may be traced to images of the front and reverse of the deposited check, which are retained for at least 6 years by the lawyer’s financial institution and the SIPC, funds in excess of those limits are not insured. Rather, it is to assure that trust funds are held in reputable financial or IOLTA investment accounts, stocks, and bonds. SCR 20.15 (d) (4) Income requirements. Pursuant to SCR 20.15 (d) (4), IOLTA accounts shall bear the highest non-promotional interest rate or dividend that is generally available non−IOLTA customers at the same branch or main office location when the IOLTA account meets or exceeds the same eligibility requirements. Income from exceptions to the SCR 20.15 (d) (5) requirement relate to trust property that overcomes this presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).  

SCR 20.15(2) (b) (1) Separate accounts. With respect to probate matters, a lawyer’s role may be to serve in a fiduciary capacity as the personal representative, to represent an estate’s personal representative, or to act as both personal representative and attorney for an estate. SCR 20.15 (k) applies to funds and property which a lawyer holds in trust, or distributes while serving in the fiduciary role of personal representative. Such funds and property may include, but are not limited to, bank and investment accounts, stocks, and bonds. SCR 20.15 (b)−(i) apply to funds and property the lawyer receives, holds, and distributes while serving in the fiduciary role of personal representative. Such funds and property may include, but are not limited to, advanced legal fees and advanced costs. If a lawyer acts in good faith and in accordance with the rules and the trust account records for inspection under SCR 20.15 (g) (2) is a specific exception was created in recognition of the fact that real estate transactions in Wisconsin are a common occurrence, and accordingly, may refuse to surrender the property to the person to whom it belongs.
clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

SCR 20:1.15 (k) 1 Segregation of fiduciary property. See comment to SCR 20:1.15 (b).

SCR 20:1.15 (k) 9 Burden of proof. A lawyer’s failure to comply with the record production requirements of SCR 20:1.15 (k) 8 or to provide an accounting for fiduciary property will result in the presumption that the lawyer has failed to hold fiduciary property in trust, contrary to SCR 20:1.15 (k) 1. This presumption can be rebutted by the lawyer’s production of records or an accounting that overcomes such presumption by clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

SCR 20:1.16 Declining or terminating representation. (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, with respect to representation from the representation of a client: (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; or (3) the lawyer is discharged.

(b) Except as stated in par. (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer’s services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warnings that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) another good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.


Note: Sup Ct. Order No. 13–10 states that “the Comments to SCRs 11.02, 20:1.1, 20:1.2 (c), 20:1.2 (cm), and 20:1.6 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

Wisconsin Committee Comment to Supreme Court Rule 20:1.16, Declination or terminating representation (2014): With respect to subparagraph (c), a lawyer providing limited scope representation in a matter before a court should consult s 802.045, stats., regarding notice and termination requirements.

Case Notes: The formation and termination of an agreement to provide representation is discussed. Gustafson v. Physicians Insurance Co. 223 Wis. 2d 164, 588 N.W.2d 366 (Ct. App. 1998).

Note: The above annotation cites to SCR 20 as it existed prior to the adoption of SCR 20:1.15 (k) 9 and SCR 20:1.6, 20:1.2 (cm), and 20:1.16 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

ABA Comment: [1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may third parties, partners of law firms. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

Termination of Practice by the Seller. [2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith fulfills the requirements for the sale of the practice as contained in the Model Rules. The fact that a number of the seller’s clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. By the same reasoning, an unpaid balance due to a lawyer for legal services does not necessarily result in a violation. For example, a lawyer who holds the practice to accept an appointment to judicial office does not violate the requirement that the lawyer may accept such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is requested by a lawyer engaged in unrepresented litigation. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer’s statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge. [4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer’s services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. The consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client’s interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal. [7] A lawyer may withdraw from representation in some circumstances. The lawyer therefore must ensure that withdrawal will not have a material adverse effect on the client’s interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer’s services were misused in the past even if that would materially prejudice the client. Withdrawal is also permitted where the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement limiting the lawyer’s fees or-court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal. [9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

SCR 20:1.17 Sale of law practice. A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or in the jurisdiction in which the practice has been conducted;
(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms; and
(c) The seller gives written notice to each of the seller’s affected clients regarding:

(1) the proposed sale;
(2) the client’s right to retain other counsel or to take possession of the file; and
(3) that the fact of the client’s consent to the transfer of the client’s files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of the client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

The fees charged clients shall not be increased by reason of the sale.


Wisconsin Committee Comment: Paragraph (c) requires notice only to ‘‘affected’’ clients, which is a limitation not contained in the Model Rule.

ABA Comment: [1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may third parties, partners of law firms. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

Termination of Practice by the Seller. [2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith fulfills the requirements for the sale of the practice as contained in the Model Rules. The fact that a number of the seller’s clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. By the same reasoning, an unpaid balance due to a lawyer for legal services does not necessarily result in a violation. For example, a lawyer who holds the practice to accept an appointment to judicial office does not violate the requirement that the
sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judicial position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the practice of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To avoid the inadvertent sale of the practice to another lawyer when the sale of the practice is not a division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer’s right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice. [6] The Rule requires that the seller’s entire practice, or an entire area of practice, be sold. The prohibition against sales of a particular practice area protects those clients whose matters are not as lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all matters in the practice or area of practice subject to client consent and the requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Confidentiality; Consent and Notice. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representative of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possibility of sale of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(7). Providing the purchaser access to information relating to the representation, such as the client's files, however, requires client consent. Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including conditions under which the decision to sell or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

In instances in which a lawyer having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable ethical reasons to locate the client have been exhausted, and whether the client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the requirement for a court order be considered in context. (A procedure for obtaining an order can be obtained needs to be established in jurisdictions in which it presently does not exist). [9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser. [10] The sale may not be financed in fees charged the client for the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards. [11] Lawyers participating in the sale of a law practice or an area of practice area subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client’s informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.6(c) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval may be obtained notwithstanding the matter can be included in the sale (see Rule 1.9(c)).

Applicability of the Rule. [13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-representative testator or decedent's representative under the rules. Since, however, the surviving practice may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to observe the provisions of this Rule.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice are subject to the rules. Rules. [15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

SCR 20.1.18 Duties to prospective client. (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship, even as a preparatory matter, is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information learned in the consultation, except as SCR 20.1.9 would permit with respect to information of a former client.

(c) A lawyer subject to par. (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in par. (d).

(d) If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in par. (d).

(d) When the lawyer has received disqualifying information as defined in par. (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(3) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

---

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
tions of paragraph (d) (2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0 (k) (requirements for screening procedures). Paragraph (d) (2) (i) does not prohibit the screened lawyer from screening a salary or partnership share established by a pre−independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] The competence of a lawyer may provide an evaluation of a matter affecting a client for the benefit of other specialists. Where consultation with a professional in another field is itself something that a competent lawyer would recommend, the lawyer should make such a recommendation.

[10] In general, a lawyer is not expected to give advice until the client gives informed consent. However, when a lawyer knows that a client proposes a course of action that may result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is in litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

[11] An evaluation may be performed at the client's request or at the behest of a vendor for the information of a prospective purchaser. Lawyers retained by a purchaser to analyze a vendor's title to property does not have the difference between the lawyer's role as a third−party neutral and the lawyer's role as one who represents a client.

[12] A lawyer serving as a third−party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall provide the evaluation unless the client gives informed consent.

[13] Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is subject to SCR 20.11.

[14] An evaluation may be performed at the client's request or at the behest of a vendor for the information of a prospective purchaser. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[15] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client−lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client−lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by a government lawyer, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the true person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

[16] Duties Owed to Third Person and Client. When the evaluation is intended for information or use of a third person, a legal duty to that third person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client−lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

[17] Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Where screening is required, for example, the lawyer's role as a third−party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to cooperate of persons having relevant information. Any such limitations that are imposed or to create an appearance of partiality or bias and that the lawyer is retained by someone else. For this reason, it is essential to identify the true person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

[18] Duties Owed to Third Person and Client. When the evaluation is intended for information or use of a third person, a legal duty to that third person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client−lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

[19] Access to and Disclosure of Information. The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Where screening is required, for example, the lawyer's role as a third−party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to cooperate of persons having relevant information. Any such limitations that are imposed or to create an appearance of partiality or bias and that the lawyer is retained by someone else. For this reason, it is essential to identify the true person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

[20] Obtaining Client's Informed Consent. Information relating to an evaluation is protected by Rule 1.6. In many instances, provision of an opinion concerning the legality of securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[21] A lawyer serving as a mediator in a case arising under ch. 767, stats., in which the parties have resolved one or more issues being mediated may draft, select, complete, modify, or file documents confirming, memorializing, or implementing such resolution, as long as the lawyer maintains his or her neutrality throughout the process and both parties give their informed consent, confirmed in a writing signed by the parties to the mediation. For purposes of this subsection, informed consent requires, at a minimum, the lawyer to disclose to each party any interest or relationship that is likely to affect the lawyer's impartiality in the case or to create an appearance of partiality or bias and that the lawyer explains to each of the following parties:

a. The limits of the lawyer's role.
RULES OF PROFESSIONAL CONDUCT

b. That the lawyer does not represent either party to the mediation,

c. That the lawyer cannot give legal advice or advocate on behalf of either party to the mediation.

d. The desirability of seeking independent legal advice before executing any documents prepared by the lawyer–mediator.

(2) The drafting, selection, completion, modification, and filing of documents pursuant to par. (1) does not create a client–lawyer relationship between the lawyer and a party.

(3) Notwithstanding par. (2), in drafting, selecting, completing or modifying the documents referred to in par. (1), a lawyer serving as mediator shall exercise the same degree of competence and shall act with the same degree of diligence as SCR 20:1.1 and 20:1.3 would require if the lawyer were representing the parties to execute the documents.

(4) A lawyer serving as mediator who has prepared documents pursuant to par. (1) may, with the informed consent of all parties to the mediation, file such documents with the court. However, a lawyer who has served as a mediator may not appear in court on behalf of either or both of the parties in mediation.

(5) Any document prepared pursuant to this subsection that is filed with the court shall clearly indicate on the document that it was “prepared with the assistance of a lawyer acting as mediator.”

ABA Comment: [1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute–resolution processes, lawyers often serve as third–party neutrals. A third–party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third–party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third–party neutral is not unique to lawyers, although, in some court–connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or to ethical rules that apply to either third–party neutrals generally or to lawyers specifically serving as third–party neutrals. Lawyer– neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint panel of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third–party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third–party neutral and a lawyer’s service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer–neutral to inform unrepresented parties that the lawyer is not their lawyer. For some parties, particularly parties who have used dispute–resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. For represented parties who have not previously worked with third–party neutrals, the important differences between the lawyer’s role as third–party neutral and a lawyer’s role as a client representative, including the inapplicability of the attorney–client privilege, need to be explained. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute–resolution process selected.

[4] A lawyer who serves as a third–party neutral subsequently may be selected to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer’s law firm are addressed in SCR 20:1.2 (cm) and SCR 20:1.3.

[5] Lawyers who represent clients in alternative dispute–resolution processes are governed by the Rules of Professional Conduct. When the dispute–resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0 (m)), the lawyer’s duty of candor is governed by Rule 3.3. Otherwise, the lawyer’s duty of candor toward both the third–party neutral and other parties is governed by Rule 1.1.

Notwithstanding par. (1), Supp. Clr. Order No. 16–04 states that the Comment to SCR 20:2.4 (c) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

Wisconsin Supreme Court Rule: SCR 20:3.1 Meritorious claims and contentions. (a) In representing a client, a lawyer shall not:

1. knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;

2. knowingly advance a factual position unless there is a basis for doing so that is not frivolous;

3. file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

(a) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self–referred person’s representation of facts, unless the lawyer has reason to believe that such representations are false, or materially insufficient, in which instance the lawyer shall make an independent reasonable inquiry into the facts.

(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in deprivation of liberty, may nevertheless so proceed on the assumption that every element of the case be established.

Wisconsin Supreme Court Rule: SCR 20:2.4 (c) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

Wisconsin Supreme Court Commentary: This Wisconsin Supreme Court Rule differs from the Model Rule in expressly establishing a subjective test for an ethical violation.

ABA Comment: [1] The advocate has a duty to use legal procedure for the fullest benefit of the client’s case, but a lawyer is not required to file a motion or petition to compel an opposing party to provide discovery. Where a lawyer reasonably believes that it is not in the best interest of the client to engage in such activity, the lawyer shall not represent the client before that tribunal.

[2] The filing of an action or defense or similar action taken for a client is not frivolous: (a) if it is timely filed; (b) if it is not manifestly groundless; (c) if it is not filed for the purpose of harass or maliciously injure another.
RULES OF PROFESSIONAL CONDUCT

SCR 20:3.2 Expediting litigation. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

Case Notes:

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party’s attempt to obtain rightful redress or repossession. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

SCR 20:3.3 Candor toward the tribunal. (a) A lawyer shall not knowingly:

1. Make a false statement of material fact or law previously made to the tribunal by the lawyer;

2. Fail to disclose to the tribunal legal authority that the lawyer is aware of that the tribunal is not made to the lawyer by the client;

3. Offer evidence that the lawyer knows to be false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, or has engaged in criminal or fraudulent conduct related to the proceeding, shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.

(c) The duties stated in paragraphs (a) and (b) apply even if compliance requires disclosure of information otherwise protected by SCR 20:1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

Case Notes:

An attorney may not substitute narrative questioning for the traditional question and answer format unless counsel knows that the client intends to testify falsely. Absent the most extraordinary circumstances, such knowledge must be based on the client’s expressed admission of intent to testify untruthfully. While the defendant’s admission need not be phrased in magic words, it must be unambiguous and directly made to the attorney. State v. McDowell, 2004 WI 70, 272 Wis. 2d 488, 681 N.W.2d 500, 2004−1203.

When a defendant informs counsel of the intention to testify falsely, the attorney’s first duty shall be to attempt to dissuade the client from the unlawful course of conduct. The attorney should then consider moving to withdraw from the case. If the motion to withdraw is denied and the defendant persists in committing perjury, counsel should proceed with the narrative form of questioning, advising the defendant beforehand of the trial and informing opposing counsel and the circuit court of the change of questioning style prior to use of the narrative. State v. McDowell, 2004 WI 70, 272 Wis. 2d 488, 681 N.W.2d 500, 2003−1203.

When the defendant informs counsel of the intention to testify falsely, the attorney’s first duty shall be to attempt to dissuade the client from the unlawful course of conduct. The attorney should then consider moving to withdraw from the case. If the motion to withdraw is denied and the defendant persists in committing perjury, counsel should proceed with the narrative form of questioning, advising the defendant beforehand of the trial and informing opposing counsel and the circuit court of the change of questioning style prior to use of the narrative. State v. McDowell, 2004 WI 70, 272 Wis. 2d 488, 681 N.W.2d 500, 2003−1203.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
RULES OF PROFESSIONAL CONDUCT

paraphrase (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer’s client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct relating to the proceeding.

Duration of Obligation. [13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings. [14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal. [15] Normally, a lawyer’s compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer’s disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer’s compliance with this Rule’s duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal’s permission to withdraw.

In connection with a request for permission to withdraw that is premised on a client’s misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

SCR 20:3.4 Fairness to opposing party and counsel. A lawyer shall not:

(a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and
(2) the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.

Case Note: Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communications are prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstructuous conduct is a corollary of the advocate’s right to speak on behalf of litigants. A lawyer may stand accused of abuse by a judge but should avoid recrimination; the judge’s default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0 (m).

SCR 20:3.6 Trial publicity. (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) A statement referred to in par. (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in deprivation of liberty, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
(2) in a criminal case or proceeding that could result in deprivation of liberty, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or state-
RULES OF PROFESSIONAL CONDUCT

33 Updated 17–18 Wis. Stats.

ment given by a defendant or suspect or that person’s refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in deprivation of liberty;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(e) Notwithstanding pars. (a) and (b) (1) through (5), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subs. (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(d) Notwithstanding par. (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial likelihood of undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(e) No lawyer associated in a firm or government agency with a lawyer subject to par. (a) shall make a statement prohibited by par. (a).

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv;
Wisconsin Committee Comment: Paragraph (b) contains provisions found in ABA Comment [5] but not contained in the Model Rule. Because of the addition of paragraph (b), this rule and the Model Rule have differing numbering, so that care should be used in consulting the ABA Comment.

ABA Comment: [1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of evidence. Forensic decorum and the rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of public concern. Furthermore, the subject matter of legal proceedings is of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4 (c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer’s making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by a lawyer who is not involved in the examination is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer’s statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement made by a defendant or suspect or that person’s refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure to allow a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials will be less sensitive. Non−jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party’s lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer’s client. When prejudicial statements have been publicly made by others, reasonable statements may have the secondary effect of lessening any resultant adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8 (f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

SCR 20:3 Lawyer as witness. (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness unless prohibited from doing so by SCR 20:1.7 or 20:1.9.

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv;

Case Note: When a prosecutor elicits testimony that can only be contradicted by defense counsel or the defendant, if defense counsel could not reasonably foresee the defense and if the defendant has not been notified not to testify, defense counsel must be permitted to testify. State v. Foyo, 206 Wis. 2d 629, 557 N.W.2d 494 (Ct. App. 1996).

The party seeking disqualification based on SCR 20:3 has the burden of proving the necessity for disqualification. Whether disqualification of an attorney is required in a particular case involves an exercise of the circuit court’s discretion. State v. Gonzalez−Villarreal, 2012 WI App 110, 2012 WI App 110, 11−1299.

Note: The above annotation cites to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04–07.

ABA Comment: [1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate−Witness Rule. [2] The tribunal has proper objection when the trier of fact is confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate−witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a) (1) through (a) (5). Paragraph (a) (1) recognizes that if the testimony was uncontested, the ambiguity arising from the dual role are purely theoretical. Paragraph (a) (2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a separate trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony in the proceeding is accomplished.

[4] Apart from these two exceptions, paragraph (a) (3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the oppos-
RULES OF PROFESSIONAL CONDUCT


Updated 17-18 Wis. Stats.
may be consulted for guidance in interpreting and applying the Wisconsin Rules of Professional Conduct for Attorneys:’

**Wisconsin Comment:** Wisconsin prosecutors have long embraced the notion that the prosecutor exercises both holding office accountability and the interest in protecting the innocent. New Rule 20.3.8(b) and (h) reinforces this notion. The Wisconsin rule differs slightly from the new ABA rule to recognize limits in the investigative resources of Wisconsin prosecutors.

This rule was not designed to address significant changes in the law that may affect the incarcarnation status of a number of prisoners, such as where a statute is declared unconstitutional.

**ABA Comment:** When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor’s jurisdiction is the true defendant of a crime that the person desires to pursue, the rule requires the prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained using perjured testimony or affirming a statement knowing the statement to be false, the rule requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to do so, the necessary investigation to determine whether the defendant is in fact innocent, or take other appropriate action.

[1] A lawyer is required to make reasonable efforts to cause another appropriate authority to investigate and take appropriate action when new evidence suggests the defendant is innocent, though the evidence is not of such nature as to trigger the obligations of sections (g) and (h), though new evidence of that nature does not amount to an obligation under the rule to prompt disclosure to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[2] Under paragraph (h), once the prosecutor knows of new, credible and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must take reasonable steps to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, regardless of whether the defendant has counsel, to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[3] Under paragraph (h), once the prosecutor knows of new, credible and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must take reasonable steps to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, regardless of whether the defendant has counsel, to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[1] A lawyer is required to make reasonable efforts to cause another appropriate authority to investigate and take appropriate action when new evidence suggests the defendant is innocent, though the evidence is not of such nature as to trigger the obligations of sections (g) and (h), though new evidence of that nature does not amount to an obligation under the rule to prompt disclosure to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

**Wisconsin Committee Comment:** Paragraph (b) has no counterpart in the Model Rule. As a general matter, a lawyer may advise a client concerning whether proposed conduct is lawful. See SCR 20.1.2 (d). This is allowed even in circumstances in which the conduct involves some form of deception, for example, to be used with a deceiver to investigate unlawful discrimination or the use of undercover detectives to investigate theft in the workplace. When the lawyer personally participates in the deception, Wisconsin Committee Comment, paragraph (g) requires the lawyer to take reasonable steps to ensure that the deceived is not a client. But where the lawyer is not a client, the lawyer may act even if the deceived is a client, unless disclosure is prohibited by SCR 20.1.6.

The need for investigative activity may involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

**ABA Comment:** Misrepresentation is required to be made within the context of the representation. Paragraph (g) requires the lawyer to make disclosure of the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[1] A lawyer is required to make reasonable efforts to cause another appropriate authority to investigate and take appropriate action when new evidence suggests the defendant is innocent, though the evidence is not of such nature as to trigger the obligations of sections (g) and (h), though new evidence of that nature does not amount to an obligation under the rule to prompt disclosure to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

**ABA Comment:** When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor’s jurisdiction is the true defendant of a crime that the person desires to pursue, the rule requires the prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained using perjured testimony or affirming a statement knowing the statement to be false, the rule requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to do so, the necessary investigation to determine whether the defendant is in fact innocent, or take other appropriate action.

[1] A lawyer is required to make reasonable efforts to cause another appropriate authority to investigate and take appropriate action when new evidence suggests the defendant is innocent, though the evidence is not of such nature as to trigger the obligations of sections (g) and (h), though new evidence of that nature does not amount to an obligation under the rule to prompt disclosure to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[2] Under paragraph (h), once the prosecutor knows of new, credible and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must take reasonable steps to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, regardless of whether the defendant has counsel, to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant’s counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.
cates with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is proper under court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Communication of the lawyer’s organization is not required to be communicated to a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient to bring the person within this Rule.

[8] A lawyer who is uncertain whether a communication with a represented person is proper under court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel, the lawyer’s communications are subject to Rule 4.3.

SCR 20:4.3 Dealing with unrepresented person. (a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall inform such person of the lawyer’s role in the matter. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20:1.2 (c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv; Sup. Ct. Order No. 15−03, 2016 WI 76, 356 Wis. 2d 1, 850 N.W. 2d 171 (eff. 7−24−16).


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.

Wisconsin Comment: A municipal prosecutor’s obligations under this rule should be read in conjunction with SCR 20:3.8 (d) and (f).

Wisconsin Committee Comment: This Wisconsin Supreme Court Rule differs from the Model Rule in requiring lawyers to inform unrepresented persons of the lawyer’s role in the matter, whereas the Model Rule requires only that the lawyer not state or imply that the lawyer is disinterested. A similar obligation to clarify the role is expressed in SCR 20:1.13 (f), SCR 20:2.4, SCR 20:3.8 (b), and SCR 20:4.1.

ABA Comment: [1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in the legal rights of the client or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer’s client and, when necessary, explain that the lawyer is not in a disinterested role.

[2] The prohibition on communications with a person who is not represented by counsel applies to information protected by the lawyer−client privilege and the work product rule and has been disclosed to the lawyer inadvertently, then this Rule requires the lawyer to promptly review or use the document of electronically stored information that contains information protected by the lawyer−client privilege or the work product rule and has been disclosed to the lawyer inadvertently, then this Rule requires the lawyer to promptly review or use the document of electronically stored information, promptly notify the person or the person’s lawyer if communication with the person is prohibited by SCR 20:4.2 of the inadvertent disclosure, and abide by that person’s or lawyer’s instructions with respect to disposition of the document or electronically stored information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction.

[3] Due to substantive and numbering differences, special care should be taken in consulting the ABA Comment.

ABA Comment: [1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client−lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was inadvertently sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly review or use the document of electronically stored information, promptly notify the person or the person’s lawyer if communicating with the person is prohibited by SCR 20:4.2 of the inadvertent disclosure, and abide by that person’s or lawyer’s instructions with respect to disposition of the document or electronically stored information until obtaining a definitive ruling on the proper disposition from a court with appropriate jurisdiction.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.


SCR 20:4.5 Guardians ad litem. A lawyer appointed to act as a guardian ad litem or as an attorney for the best interests of an individual represents, and shall act in, the individual’s best interests, even if doing so is contrary to the individual’s wishes. A lawyer so appointed shall comply with the Rules of Professional Con-
duties that are consistent with the lawyer’s role in representing the best interests of the individual rather than the individual personally.

**History:** Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

**Wisconsin Comment:** The Model Rules do not contain a counterpart provision. This paragraph requires a lawyer who represents the interests of another within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**History:** Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

**ABA Comment:** [1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document’s frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a conflict of duty or a confluence of duties may be created. Section 5.2 of the ABA Model Rules of Professional Conduct provides that a supervisory lawyer is responsible for the conduct of a partner, associate or subordinate, whether the conduct is by or associated with a lawyer:

(a) a partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**History:** Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

**ABA Comment:** [1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable authority in a legal services organization or a law department of a governmental or enterprise agency; and lawyers who have intermediate managerial authority in a law firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) may depend on the firm’s structure and the nature of its practice. In some small firms of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers must make confidential referrals of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of others. See also Rule 8.4(a).

[5] Paragraph (c) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer, or the immediate authority of that lawyer’s involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

**Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.**
RULES OF PROFESSIONAL CONDUCT

vising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or copying, using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of the lawyer's professional judgment in rendering such legal services for which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). Where retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer. [Created by Sup. Ct. Order No. 15–2016 Wl 76, effective 1–1–17.]

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. [Created by Sup. Ct. Order No. 15–03, 2016 Wl 76, effective 1–1–17.]

SCR 20:5.4 Professional independence of a lawyer. (a)

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of SCR 20:1.17, pay to the estate or other representatives of that lawyer the agreed upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a non-profit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20:04–07.

ABA Comment: [1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not impair the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8 (f) (lawyer may accept compensation from a third party

as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

SCR 20:5.5 Unauthorized practice of law; multijurisdictional practice of law. (a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction except that a lawyer admitted to practice in Wisconsin does not violate this rule by conduct in another jurisdiction that is permitted in Wisconsin under SCR 20:5.5 (c) and (d) for lawyers not admitted in Wisconsin; or

(2) assist another in practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by this rule or other law, establish an office or maintain a systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction.

(c) Except as authorized by this rule, a lawyer who is not admitted to practice in this jurisdiction but who is admitted to practice in another jurisdiction of the United States and not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or for medical incapacity, may not provide legal services in this jurisdiction except when providing services on an occasional basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; or

(2) are in, or reasonably related to, a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; or

(3) are in, or reasonably related to, a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c) (2) or (c) (3) and arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction, who is not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or medical incapacity, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates after compliance with SCR 10.03(4)(f), and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law or other rule of this jurisdiction.

(e) A lawyer admitted to practice in another jurisdiction of the United States or a foreign jurisdiction who provides legal services in this jurisdiction pursuant to sub. (c) and (d) above shall consent to the appointment of the Clerk of the Wisconsin Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction.


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04–07.
RULERS OF PROFESSIONAL CONDUCT

[1] Paragraph (c) (3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative procedures in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in any such jurisdiction in which the court rules or law require so to do.

[2] Paragraph (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services in this jurisdiction if the lawyer is reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c) (2) or (c) (3). These services include both personal legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[3] Paragraphs (c) (3) and (c) (4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. Paragraphs (c) (3) and (c) (4) also require that the lawyer is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction. To the extent that a court rule or other similar type of agreement that restricts the right of a lawyer to practice law in another jurisdiction involves unreasonable restrictions on the ability of a lawyer admitted to practice law in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction. Paragraphs (c) (3) and (c) (4) also require that the lawyer is admitted to practice law in another United States jurisdiction and is not disbarred or suspended from practice in any jurisdiction. To the extent that a court rule or other similar type of agreement that restricts the right of a lawyer to practice law in another jurisdiction involves unreasonable restrictions on the ability of a lawyer admitted to practice law in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction.

[4] Paragraph (d) (1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer’s officers or employees. Paragraph (d) (2) applies to a lawyer employed by in–house corporate counsel and others who are employed to render legal services to the employer. The lawyer’s ability to represent the employer outside the jurisdiction in which the lawyer is admitted to practice law shall be determined by reference to state law other than the lawyer’s governing jurisdiction law. Paragraph (d) (2) authorizes an employer who is a corporation to offer a lawyer in another jurisdiction for the purpose of rendering legal services to the employer, the employer may be subject to regulation or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[5] Wisconsin Comment: See also SCR 10.03 (4) (requirements for admission pro hac vice and registration of in–house counsel).

This Wisconsin Supreme Court Rule differs from the Model Rule in that an attorney may not engage in dispute resolution proceedings to which the attorney is a party. Due to substantive purpose and numbering differences, special care should be taken in consulting the ABA Comment. [Re Order No. 06–06, effective January 1, 2009]

Wisconsin Supreme Court Rule 2012: Lawyers desiring to provide pro bono legal services on a temporary basis in the State of Wisconsin when it has been affected by a major disaster, when they are not otherwise authorized to practice law in the State of Wisconsin from a jurisdiction admitted by a major disaster, or to practice law temporarily in this jurisdiction, but who are not otherwise authorized to practice law in the State of Wisconsin, should consult Supreme Court Rule 23.03. Paragraphs (a) (1) and (a) (2) permit conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the tribunal or agency pursuant to such authority. To the extent that a court or other similar type of agreement that restricts the right of a lawyer to practice law in another jurisdiction involves unreasonable restrictions on the ability of a lawyer admitted to practice law in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction. Paragraph (a) (1) also recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer admitted to practice in this jurisdiction who is reasonably expected to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is reasonably expected to be authorized to appear, including taking depositions in this jurisdiction.

[6] Presence may be systematic and continuous even if the lawyer is not admitted to practice generally in this jurisdiction.

[7] Paragraph (a) (2) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer admitted to practice in this jurisdiction who is reasonably expected to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is reasonably expected to be authorized to appear, including taking depositions in this jurisdiction.

[8] Paragraph (c) (1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer admitted to practice in this jurisdiction who is reasonably expected to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is reasonably expected to be authorized to appear, including taking depositions in this jurisdiction.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized if a lawyer admitted only in another jurisdiction associates with a lawyer admitted to practice in this jurisdiction who is reasonably expected to be admitted pro hac vice and registration of in–house counsel).
RULES OF PROFESSIONAL CONDUCT

restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

SCR 20:5.7 Limited liability legal practice. (a) (1) A lawyer may be a member of a law firm that is organized as a limited liability organization solely to render professional legal services under the laws of this state, including chs. 178 and 183 and subch. XIX of ch. 180. The lawyer may practice in or as a limited liability organization if the lawyer is otherwise authorized to practice law in this state and the organization is registered under sub. (b).

(2) Nothing in this rule or the laws under which the lawyer or law firm is organized shall relieve a lawyer from personal liability for any acts, errors or omissions of the lawyer arising out of the performance of professional services.

(b) A lawyer or law firm that is organized as a limited liability organization shall file an annual registration with the state bar of Wisconsin in a form and with a filing fee that shall be determined by the state bar. The annual registration shall be signed by a lawyer who is licensed to practice law in this state and who holds an ownership interest in the organization seeking to register under this rule. The annual registration shall include all of the following:

(1) The name and address of the organization.

(2) The names, residence addresses, states or jurisdictions where licensed to practice law, and attorney registration numbers of all the lawyers in the organization and their ownership interest in the organization.

(3) A representation that at the time of the filing each lawyer in the organization is in good standing in this state or, if licensed to practice law elsewhere, in the states or jurisdictions in which he or she is licensed.

(4) A certificate of insurance issued by an insurance carrier certifying that it has issued to the organization a professional liability policy to the organization as provided in sub. (bm).

(5) Such other information as may be required from time to time by the state bar of Wisconsin.

(bm) The professional liability policy under sub. (b) (4) shall identify the name of the professional liability carrier, the policy number, the expiration date and the limits and deductibles. Such professional liability insurance shall provide not less than the following limits of liability:

(1) For a firm composed of 1 to 3 lawyers, $100,000 of combined indemnity and defense cost coverage per claim, with a $300,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(2) For a firm composed of 4 to 6 lawyers, $250,000 of combined indemnity and defense cost coverage per claim, with $750,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(3) For a firm composed of 7 to 14 lawyers, $500,000 of combined indemnity and defense cost coverage per claim, with $1,000,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(4) For a firm composed of 15 to 30 lawyers, $1,000,000 of combined indemnity and defense cost coverage per claim, with $2,000,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(5) For a firm composed of 31 to 50 lawyers, $4,000,000 of combined indemnity and defense cost coverage per claim, with $4,000,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(6) For a firm composed of 51 or more lawyers, $10,000,000 of combined indemnity and defense cost coverage per claim, with $10,000,000 aggregate combined indemnity and defense cost coverage amount per policy period.

(c) Nothing in this rule or the laws under which a lawyer or law firm is organized shall diminish a lawyer’s or law firm’s obligations or responsibilities under any provisions of this chapter.

(d) A law firm that is organized as a limited liability organization under the laws of any other state or jurisdiction or of the United States solely for the purpose of rendering professional legal services that is authorized to do business in Wisconsin and who also has an ownership interest in the firm may register under this rule by complying with the provisions of sub. (b).

(e) A lawyer or law firm that is organized as a limited liability organization shall do all of the following:

(1) Include a written designation of the limited liability structure as part of its name.

(2) Provide to clients and potential clients in writing a plain−English summary of the features of the limited liability law under which it is organized and the applicable provisions of this chapter.

[History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d 23; Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.

Case Note: LLCs, LLPs and S.C.s: The Rules for Lawyers Have Changed. Wis. L. May 1997.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.

Wisconsin Committee Comment: This Wisconsin Supreme Court Rule has no counterpart in the Model Rules. Model Rule 5.7, concerning law−related services, is not part of these rules.

SCR 20:5.8 Responsibilities regarding law−related services. (a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law−related services, as defined in paragraph (b), if the law−related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law−related services knows that the services are not legal services and that the protections of the client−lawyer relationship do not exist.

(b) The term “law−related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

[History: Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.

ABA Comments

[1] When a lawyer performs law−related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law−related services are performed fails to recognize that the services may not carry with them the protections normally afforded part of the client−lawyer relationship. The recipient of the law−related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law−related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law−related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law−related services are performed and whether the law−related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law−related services. Even when those circumstances do not exist, however, the conduct of a lawyer in the provision of law−related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law−related services are provided by a lawyer under circumstances that are not distinct from the lawyer’s provision of legal services to clients, the lawyer in providing the law−related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law−related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law−related services knows that the services are not legal services and that the protections of the client−lawyer relationship do not apply.

[4] Law−related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity’s operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client−lawyer relationship do not apply.


Updated 17−18 Wis. Stats.

Updated 17−18 Wis. Stats. 40
lawyer’s control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case. [5] When a client–lawyer relationship exists with a person who is referred by a lawyer to a separate law−related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law−related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law−related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client−lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law−related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a lawyer may not rely on user of law−related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law−related services, such as an individual seeking tax advice from a lawyer−accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law−related services, a lawyer should take special care to keep separate the provision of law−related and legal services in order to minimize the risk that the recipient will assume that the law−related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law−related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer’s conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law−related services. Examples of law−related services include title insurance, financial planning, accounting, trust administration, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting. Where the services are rendered at no cost or without expectation of fee, the intent of the lawyer to render free legal services is essential for the work to be performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered can only be considered pro bono if an anticipated fee is not expected. Expenditures from professional advisors’ fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute appropriate portions of such fees to organizations or projects that benefit persons of limited means.

[10] While it is possible for a lawyer to fulfill the annual responsibility to provide pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment may be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where such restrictions apply, government and public sector lawyers and judges must still fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[11] ABA Comment: [11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law−related services, principles of law external to the Rules, and those whose incomes and financial resources are slightly above the guidelines who qualify for participation in programs funded by the Legal Services Corporation, the American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. Because a lawyer’s professional responsibility to provide legal services to persons of limited means does not end when one is no longer in the full protections of the Rules of Professional Conduct, the American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.

[12] In that regard, lawyers should take special care to heed the proscriptions of the Rules addressing conflict of interest and those whose incomes and financial resources are significantly above the guidelines who qualify for participation in programs funded by the Legal Services Corporation. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.

[13] ABA Comment: [13] When a lawyer is obliged to accord the recipients of such services the protections of all the Rules of Professional Conduct do not apply to the provision of law−related services, principles of law external to the Rules, and those whose incomes and financial resources are significantly deplete the organization’s economic resources or would be otherwise inappropriate; (2) delivery of legal services at a substantially reduced fee to persons of limited means; or (3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.


SCR 20:6.2 Accepting appointments. A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause such as:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

[15] ABA Comment: [15] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay for the legal services of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. Because a lawyer’s professional responsibility to provide legal services to those unable to pay for the legal services of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xx.

SCR 20:6.2 Accepting appointments. A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause such as:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.
RULES OF PROFESSIONAL CONDUCT

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law; or

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client–lawyer relationship or the lawyer’s ability to represent the client.


ABA Comment: [1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer’s freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel. [2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client–lawyer relationship or the lawyer’s ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client–lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

SCR 20:6.3 Membership in legal services organization. A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer’s obligations to a client under SCR 20:1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.


ABA Comment: [1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client–lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer’s clients. If the possibility of such conflict disqualifies a lawyer from serving on the board of a legal services organization, the professional involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

SCR 20:6.4 Law reform activities affecting client interests. A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.


ABA Comment: Lawyers involved in organizations seeking law reform generally do not have a client–lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might affect a client. See also Rule 1.2 (a). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature of a lawyer’s involvement in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

SCR 20:6.5 Nonprofit and court–annexed limited legal services programs. (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

1) is subject to SCR 20:1.7 and SCR 20:1.9 (a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9 (a) with respect to the matter.

(b) Except as provided in par. (a) (2), SCR 20:1.10 is inapplicable to a representation governed by this rule.


Wisconsin Committee Comment: Unlike the Model Rule, paragraph (a) expressly provides coverage for programs sponsored by bar associations and accredited law schools.

SCR 20:1.2(b) [1] Personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program. [2] A lawyer who is representing a client in the circumstances addressed by Rule 1.7 or 1.9 may, in good faith, participate in activities organized for the purpose of improving the administration of justice. A lawyer who participates in a bar association law reform program that might indirectly affect a client. [3] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

SUBCHAPTER VII
INFORMATION ABOUT LEGAL SERVICES

SCR 20:7.1 Communications concerning a lawyer’s services. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated; or

(d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.


Wisconsin Committee Comment: Paragraphs (b) through (d) of the Wisconsin Supreme Court Rule are not contained in the Model Rule.


Updated 17–18 Wis. Stats. 42

Updated through 2020 Sup. Ct. Order No. 04–07. Wisconsin Committee Comment: Paragraphs (b) through (d) of the Wisconsin Supreme Court Rule are not contained in the Model Rule.
ABA Comment: [1] This Rule governs all communications about a lawyer’s services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer’s services, statements about them must be truthful.

[2] Statements that are misleading or otherwise prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to conclude that a fact material to the communication is incorrect or misleading.

[3] An advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations about the lawyer’s services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations about the lawyer’s services or fees with the services or fees of other lawyers.

SCR 20:7.2 Advertising. (a) Subject to the requirements of SCR 20:7.1 and SCR 20:7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may:

1. pay the reasonable cost of advertisements or communications permitted by this rule;
2. pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
3. pay for a law practice in accordance with SCR 20:1.17; and
4. refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the lawyer, if
   (i) the reciprocal referral arrangement is not exclusive;
   (ii) the client gives informed consent;
   (iii) there is no interference with the lawyer’s independence of professional judgment or with the client–lawyer relationship; and
   (iv) information relating to representation of a client is protected as required by SCR 20:1.6.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Wisconsin Comment: Paragraph (b) (4) differs from the Model Rule by requiring additional safeguards consistent with those found in SCR 20:1.8 (c).

Lawyers should consider the “fee-splitting” provisions contained in SCR 20:5.4 when considering their obligations under this provision.

ABA Comment: [1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising is an active positive quality for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public’s need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons that may need extensive use of legal services. This interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer’s name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer’s fees are determined, including prices for specific services and payment and credit arrangements; a lawyer’s foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and judgment. Without reference to specific facts and legal circumstances of any one lawyer, the adjectives used to describe a lawyer’s qualifications, credentials, abilities, competence, character, or other professional qualities.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

SCR 20:7.3 Solicitation of clients. (a) A lawyer shall not by in-person or live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:

1. is a lawyer; or
2. has a family, close personal or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by par. (a), if:
(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(2) the target of solicitation has made known to the lawyer the desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any printed, recorded, or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a) 1) or a(2), and a copy of it shall be filed with the office of lawyer regulation within five days of its dissemination.

(d) Notwithstanding the prohibitions in par. (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

[3] Unless permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents such as wills, trusts, instruments creating rights, which require the lawyer’s services be used in relation to that document.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv; Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.

[4] Wisconsin Committee Comment: The Wisconsin Supreme Court Rule differs from the Model in that paragraph (b) 1) has been added, as have the last clause of paragraph (c) and all of paragraph (e). These provisions are carried forward from the prior Wisconsin Supreme Court Rule.

[5] When a lawyer sends standard form solicitations that are mailed to many prospective clients, the lawyer satisfies the filing obligation in subparagraph (c) by filing one copy of each version of the solicitation form with the office of lawyer regulation, and by maintaining in the lawyer’s files the names and addresses to which the solicitation was mailed.

Because of differences in content and numbers between the Wisconsin Supreme Court Rule and the Model Rule, care should be used in consulting the ABA Comment.

ABA Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers, or can provide, or reasonably can be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.]

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of lawyers, rather than direct in-person, live telephone or real-time electronic contact justifies its prohibition, particularly since lawyers have the ability to communicate with potential clients who are not known to need legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but to be designed to inform potential plan members generally of means of affordable legal services. Participation in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (b). See Rule 8.4 (a).

SCR 20:7.4 Communication of fields of practice. (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to practice in patent practice before the United States Patent and Trademark Office may use the designation “patent attorney” or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation “admiralty,” “proctor in admiralty” or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

1. the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association, and

2. the name of the certifying organization is clearly identified in the communication.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

Case Note: An attorney whose practice is concentrated in one particular area and who represents himself as a specialist should be held to a higher standard of care than a generalist. The enforceability of this section insofar as it prohibits statements that are truthful and not misleading is questionable. Duffey Law Office v. Tank Transport,, 535 N.W.2d 91 (Neb. App. 1995).


Notes: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20: 11.47 on October 15, 2007.

ABA Comment: [1] Paragraph (a) of this Rule permits a lawyer to indicate areas of specialization in practice in communications about the lawyer’s services. If a lawyer practices only in one or two fields, or if not accepted by others in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a “specialist,” practices a “specialty,” or specializes in “particular fields, but such communications are subject to the ‘false and misleading’ standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[2] Paragraph (b) recognizes the long-established relationship of the Patent and Trademark Office as an appropriate office practicing in a particular field of law, in that the word “practicing” is used in the phrase “Patent and Trademark Office.” Paragraph (c) recognizes that designation of “Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that he or she is a specialist in a particular field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another appropriate association, that has been approved by the state authority to certify organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge.
and experience in the specialty area greater than is suggested by general license to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to assure that a lawyer’s recognition as a specialist is reasonable. In order to insure that consumers can obtain accurate and useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

SCR 20:7.5 Firm names and letterheads. (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates SCR 20:7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of SCR 20:7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

de The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] A firm may be designated by the names of all or some of its members or by any other combination that has been a continuing success in the firm’s identity or by a trade name such as the “ABC Legal Clinic.” A lawyer in private practice may also be designated by a distinctive website address or a cost−reimbursable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such distinctive designations is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.

SCR 20:7.6 Political contributions to obtain government legal engagements or appointments by judges. A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] A lawyer has a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain an appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term “political contribution” denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other public office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term “political contribution” does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term “government legal engagement” denotes any arrangement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term “appointment by a judge” denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost−following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis compiled without regard to political contributions.

[4] The term “lawyer or law firm” includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the designation, would not be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For examplification, or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer’s firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4 (b) is implicated.

SUBCHAPTER VIII
MAINTAINING THE INTEGRITY OF THE PROFESSION

SCR 20:8.1 Bar admission and disciplinary matters. An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by SCR 20:1.6.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer’s own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer’s own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any mis−understanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client−lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

SCR 20:8.2 Judicial and legal officials. (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the code of judicial conduct.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal office, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

SCR 20:8.3 Reporting professional misconduct. (a) A lawyer who knows that another lawyer has committed a violation of the 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 professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to March 3, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
(c) If the information revealing misconduct under subs. (a) or (b) is confidential under SCR 20:1.6, the lawyer shall consult with the client about the matter and abide by the client’s wishes to the extent required by SCR 20:1.6.

(d) This rule does not require disclosure of any of the following:

1. Information gained by a lawyer while participating in a confidential lawyers’ assistance program.
2. Information acquired by any person selected to mediate or arbitrate disputes between lawyers arising out of a professional or economic dispute involving law firm dissolutions, terminations or departure of one or more lawyers from a law firm where such information is acquired in the course of mediating or arbitrating the dispute between lawyers.

History: Sup. Ct. Order No. 44−04, 2007 WI 4, 293 Wis. 2d xv.


Wisconsin Comment: The change from “having knowledge” to “who knows” in SCR 20:8.3 (a) and (b) reflects a change from the Model Rule. See also SCR 20:1.0 (g) defining “knows.” The requirement under paragraph (c) that the lawyer consult with the client is not expressly included in the Model Rule. Paragraph (c) differs slightly from the Model Rule. It deletes reference to federal judges. The reference to confidential lawyers’ assistance programs includes programs such as the state bar sponsored Wisconsin Lawyers’ Assistance Program (WLAP), the Law Office Management Assistance Program (LOMAP), or the Ethics Hotline.

ABA Comment: [1] Self-regulation of the legal profession requires that members of the profession institute disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 8.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client’s interests.

[3] If a lawyer were required to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with this Rule. The term “substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to present a lawyer on the client’s behalf and who, in the course of representing the client, is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer’s or judge’s misconduct or fitness may be received by a lawyer (a) or (d) differs slightly from the Model Rule. It deletes reference to federal judges and adds reference to state judges. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the public and the client. The same is true of abuse of public office. A lawyer may be subject to the disciplinary authority of this state regardless of where the lawyer’s conduct occurs.

SCR 20:8.4 Misconduct. It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the attorney’s oath; or

(e) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(f) harass a person on the basis of sex, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer’s professional activities. Legitimi- mate advocacy respecting the foregoing factors does not violate par. (i);

(g) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15 (4), SCR 22.001 (9) (b), SCR 22.03 (2), SCR 22.03 (6), or SCR 22.04 (1); or

(h) violate the attorney’s oath;

(1) for any other conduct,
(i) if the lawyer is admitted to the bar of only this state, the rules to be applied shall be the rules of this state.

(ii) if the lawyer is admitted to the bars of this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices, except that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is admitted to the bar, the rules of that jurisdiction shall be applied to that conduct.

(iii) if the lawyer is admitted to the bar in another jurisdiction and is providing legal services in this state as allowed under these rules, the rules to be applied shall be the rules of this state.

(c) A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv; Sup. Ct. Order No. 06−06, 2008 WI 109, filed 7−30−08, eff. 1−1−09.

Case Note: SCR 20:8.5 authorizes the OLR to proceed with a complaint alleging violations of another state’s rules of professional conduct for alleged misconduct that occurred in a proceeding before a court in the other state. OLR v. Marks, 2003 WI 114, 265 Wis. 2d 1, 665 N.W.2d 836, 61−2284.

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.

Wisconsin Comment: SCR 20:8.5 differs from the ABA Model Rule 8.5. Due to substantive and numbering differences, special care should be taken in consulting the ABA Comment. [Re Order No. 06−06, effective January 1, 2009]

ABA Comment: Disciplinary Authority. [1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction’s disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5 (a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law. [2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer’s conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b) (1) provides that as to a lawyer’s conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b) (2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer’s conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer’s conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise. [Re Order No. 06−06, effective January 1, 2009]

An attorney licensed outside of Wisconsin acting as in-house counsel in this state is not practicing law for the purposes of bar admission under Mostkoff v. Board of Bar Examiners, 2005 WI 33, 265 Wis. 2d 1, 665 N.W.2d 836, 61−2284.