## RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS

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### Note:

[1] 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 procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for 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 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.

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[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 conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.
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 in the public interest.

[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 approval 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 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.

[17] 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.

[18] 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 such authority of tribal governments.

[19] 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.
extenuating factors and whether there have been previous violations.

[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, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. 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 a means of opposing parties 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 authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Nevertheless, since the rules do establish standards of conduct by lawyers, 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 illustrates 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.

While 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 contemplation 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).

(ar) “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 corporation 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 representation. 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 lawyer 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 about the material risks of and reasonably available alternatives to the proposed course of conduct.

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

(h) “Misrepresentation” denotes communication of an untruth, 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 connection 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 constitute 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 participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances 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 arbitration 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 capacity 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 matter.

(q) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, 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.

The purpose of screening is to assure the affected parties that confidential information will not be disclosed to the screened lawyer. State v. Maloney, 2004 WI App 1, 247 Wis. 2d 557, 685 N.W.2d 620, 03−C−216.

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.”

Wisconsin Comment. The definition of flat fee specifies that flat fees “become the property of the lawyer upon receipt.” Notwithstanding, the lawyer must either deposit the advance flat fee in trust until earned, or comply with the alternative in SCR 20.1.5 (g). In addition, as specified in the definition, flat fees are subject to the requirements of all rules to which advanced fees are subject.

SUBCHAPTER I
CLIENT CARE AND RESPONSIBILITY

SCR 20.1.1 Competence. A lawyer shall provide competent representation to a client. Competent representation requires the lawyer to provide legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

The purpose of screening is to assure the affected parties that confidential information will not be disclosed to the screened lawyer. Wisconsin’s New Rules of Professional Conduct for Attorneys. Pierce & Dietrich, Wis. Law. Feb. 2007.


Wisconsin Committee Comment: The Committee has added definitions of “consent,” and “prosecution.” In order to be part of the Model Rule, the definition of “firm,” the phrase “including a government entity” is added to make the description of the organization more specific. Because the provisions of the rule are remarkably similar to the Michigan model rule, this committee followed 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 the meaning of the Rules of Professional Conduct. There can be uncertainty as to whether two or more lawyers constitute a firm. For example, it may not be clear whether the law department of an organization, the government, or 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 client. Consent may also be inferred from the conduct of a client or other person who has reasonably adequate information about the matter. Written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other 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.

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


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 1, 247 Wis. 2d 557, 685 N.W.2d 620, 03−C−216.

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Note: Sup. Ct. Order No. 14−07 states that “the Comments to SCRs 20.1.0, 20.1.5, 20.1.15, and 22.39 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

Wisconsin Comment. The definition of flat fee specifies that flat fees “become the property of the lawyer upon receipt.” Notwithstanding, the lawyer must either deposit the advance flat fee in trust until earned, or comply with the alternative in SCR 20.1.5 (g). In addition, as specified in the definition, flat fees are subject to the requirements of all rules to which advanced fees are subject.
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 representation responsibilities. See Rule 1.2. (b) 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 should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in 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, 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 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 (e) (2014): With respect to subparagraph (e), a lawyer providing limited scope representation in an action 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. 13–10 states that “the Comments to SCRs 11.02, 20:1.1, 20:1.2 (c), and 20:1.6 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

(c.m) 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 (em) (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.” 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 (c), and 20:1.6 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 in which 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 an insured 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 been retained by the insurer to provide.


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). 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 not entitled to the principal if he or she violates this duty. A defendant, in 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 insufficiently prepared for complying with the ethical obligation to follow the advice of the court-appointed counsel.

Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (cm) (2014): The Committee has removed from the application of the duties stated to “any proceeding that could result in deprivation of liberty.” The Model Rule does not include this language.


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 from the application of the duties stated to “any proceeding that could result in deprivation of liberty.” The Model Rule does not include this language.

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 v. Vondtc, 2006 WI App 196, 296 Wis. 2d 580, 724 N.W.2d 692, 04–1192.

[2] 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 the 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 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).

[3] A lawyer may not represent a client to the extent that the interest of the client is adverse to an existing client or to a future client. SCR 1.9 (c) (1) and SCR 1.9 (c) (2).

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer’s duty to abide by the client’s decisions is to be guided by reference to Rule 1.14.

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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 before a court, 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 nature of the 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, a 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 further 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 proposed 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 to the client the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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

Case Note: [What to Do After Making a Serious Error. Pierce & Anderson. Wis. Law. Feb 2007.]

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client. [2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a) (1) requires that the lawyer promptly consult with and secure the client’s consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or reject the offer. See Rule 1.2 (a).

[3] Paragraph (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client’s objectives. In some situations depending on both the importance of the decision and the client’s ability of consulting with the client — this duty will require consultation prior to taking action in other circumstances, such as during a trial, when consultation must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably in light of the client’s actions the lawyer has taken on the client’s behalf. Additionally, paragraph (a) (3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the scope of the representation.

[4] A lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a) (4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer’s staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters. [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance. Before proceeding to an agreement. In litigation a lawyer should explain the general state of the case and the prospects of success or failure for each alternative course of action. Cf. Model Rules of Professional Conduct R. 1.4 (d), Model Rules of Professional Conduct R. 1.4 (e), Model Rules of Professional Conduct R. 1.4 (f), for a lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

[6] Ordinarily, the information to be provided is that appropriate for a client who reasonably requests it. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance. Before proceeding to an agreement. In litigation a lawyer should explain the general state of the case and the prospects of success or failure for each alternative course of action. Cf. Model Rules of Professional Conduct R. 1.4 (d), Model Rules of Professional Conduct R. 1.4 (e), Model Rules of Professional Conduct R. 1.4 (f), for a lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, reasonable consultation must be provided to the client. When, for example, a client’s objective is limited to securing general information about the law the lawyer should need to handle a common and typically uncomplicated legal problem, it may be required that the lawyer and client agree to the lawyer’s services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent, or as a lawyer acting reasonably the client regards as competent, or as the lawyer regards as repugnant or improper.


Criminal, Fraudulent and Prohibited Transactions. [9] Paragraph (d) prohibits a lawyer from having a financial interest in a transaction with a client or representing a client in a transaction involving a transaction for the benefit of the lawyer or a third person that is fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In certain cases the withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

Non-fraudulent acts of omission. [10] When the client’s course of action has already begun and is continuing, the lawyer’s responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not represent a client who intends to act contrary to the client’s instructions, the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In certain cases the withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

Conflict with the Rules. [11] A lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6. However, fully informing the client that the lawyer promptly consult with and secure the client’s consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or reject the offer. See Rule 1.2 (a).

[3] Paragraph (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client’s objectives. In some situations depending on both the importance of the decision and the client’s ability of consulting with the client — this duty will require consultation prior to taking action in other circumstances, such as during a trial, when consultation must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably in light of the client’s actions the lawyer has taken on the client’s behalf. Additionally, paragraph (a) (3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the scope of the representation.

[4] A lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a) (4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer’s staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters. [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance. Before proceeding to an agreement. In litigation a lawyer should explain the general state of the case and the prospects of success or failure for each alternative course of action. Cf. Model Rules of Professional Conduct R. 1.4 (d), Model Rules of Professional Conduct R. 1.4 (e), Model Rules of Professional Conduct R. 1.4 (f), for a lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
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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 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(c) 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 for 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 retainee 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.

(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.

(4) 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.

(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.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Report errors at 608.504.5801 or lrbl.legal@legis.wisconsin.gov.
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(4) Upon receipt of an opinion rendering fee 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 1, 685 N.W.2d 58, 02−1915.

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. Gull 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 in paragraph (f) to provide an objective basis on which to make an initial estimate of the value of a lawyer’s services and to allow the lawyer to adjust this figure up or down to account for any other factors not embodied in the lodestar calculation. Kolupar v. Wilde Pontiac Cadil- lac, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58, 02−1915.

ABA Comment: Reasonableness of Fee and Expenses. [1] Paragraph (a) requires that lawyers charged fees that are reasonable under the circumstances. The fee is not necessarily fixed. Nor will the client necessarily be informed of the lawyer’s estimate 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 it has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee. [2] When the lawyer has regularly represented a client, other factors may have an unwarranting concern the basis or rate of the fee and the expenses for which the client will be responsible. In a new−client−lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer’s customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and the expenses for which the client will be responsible. The more explicit statement of limitations on contingent fee arrangements is adopted in paragraph (e) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. The lawyer may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law may apply to situations where a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment. [4] A lawyer may require advance payment of a fee, but otherwise return any unearned portion. See Rule 1.16 (d). A lawyer should give the client a full explanation of the basis for any fee or expense that will be charged and the client should be given an itemized statement of the services performed and expenses incurred.

3.1 Rule (3) (j) (f) (1) (b) (ii) (I) (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z)
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.

Disputes over Fees, [9] If a procedure has been established for resolution of fee disputes and mediation or arbitration procedure established by the bar or the administra-
tion of the lawyer or the lawyer who are competent to make the determination of the fees must comply with the procedure when it is mandatory, and, even when it is volun-
tary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for resolving a lawyer’s fee, for example, in representation of a pro-
testor or administrator, a class or a person entitled to a reasonable fee as part of the mea-
sure of damages. The lawyer entitled to such a fee and a lawyer representing another party in the proceeding must comply with the prescribed procedure.

Note: Sup. Ct. Order No. 14−07 states that “the Comments to SCRs 20:1.0, 20:1.5, 20:1.15, and 22:39 are not adopted, but may be published and may be con-
sulted for guidance in interpreting and applying the rule.”

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SCR 20:1.5 (f) Advances 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(aq). Sometimes the lawyer may receive advanced fee payments from 3rd parties. In such cases, the lawyer must follow the require-
ments 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 with 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 applicable trust account rule, SCR 20:50(1), specifically excluded such advances from the funds that the supreme court required lawyers to hold in trust accounts. However, by order dated March 15, 2016, the supreme court amended SCR 20:50(1) as follows: “All funds credited to accounts paid by 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 office of the lawyer or law firm may be located. The proceeds of such trust account or account except as follows . . . “ This requirement is specifically addressed in SCR 20:1.5.

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 cases 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 fees are subject to review, 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 reason-
ableness under SCR 20:1.5 (a) as well as the requirement that unearned fees be refunded upon termination of the representation under SCR 20:1.16 (d). A lawyer must comply either with SCR 20:1.5 (f) or SCR 20:1.5 (g), a lawyer’s failure to do so is professional misconduct and grounds for discipline. The writing required under SCR 20:1.5 (g) (i) 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 will provide any dispute regarding any amount due to the lawyer to the bar association, and that the lawyer will file an action to recover, and that the lawyer is obligated to comply with an arbitration award within 30 days of the award. The client is not oblig-
ated to arbitrate the fee dispute and may elect another forum in which to resolve the dispute. The lawyer must also inform the client of the opportunity to retain another lawyer if the event an unearned advanced fee is not refunded, and should provide the address of the Wisconsin Lawyers’ Fund for Client Protection. If these fees are paid by one or more than one client, then the lawyer’s responsibilities are governed by SCR 20:1.8(b). If there is a dispute as to the owner-
ship 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 sub-
section 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, debit card, prepaid or other types of payment cards, or an electronic transfer of funds under this subsection. Cost advances must be subject to SCR 20:1.15 (b) (1) or SCR 20:1.15 (f) (3) b.

SCR 20:1.5(b) Withdrawal of non−contingent fees from trust account. SCR 20:1.5(b) applies to attorneys who hold non−contingent fees. It does not apply to filing fees, expert witness fees, subpoena fees, and other costs and expenses that a lawyer may incur on behalf of a client in the course of a representation. In addition, this rule does not apply to a fee agreement with a 3rd party to remain in the trust account until returned to the trust account if a client objects to the disbursement of the contingent fee, provided that the contingent fee arrangement is documented by a written fee agreement that will allow the client to dispute the contingent nature of the lawyer’s contingent fee, such disputes are subject to SCR 20:1.5 (a), not to this subsection. A client’s objection under SCR 20:1.5 (b) (3) must offer a specific and reasonable objection that will trigger the lawyer’s obligation to keep funds in the lawyer’s trust account or return funds to the lawyer’s trust account. A generalized objection to the overall amount of the fees or a client’s unilaterally desire to pay all fees is not a sufficient objection to disbursement. SCR 20:1.5(b) requires that in certain circumstances, lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest. ABA Comment [13] provides

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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, this limited disclosure should ordinarly include no more than information necessary to enable the lawyer to determine the existence 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 attorney-client privilege or otherwise prejudice the client. Paragraph (c)(13) provides examples of when the disclosure of information would prejudice the client. Lawyers should err on the side of protecting confidentiality.

(3) This Rule governs the lawyer’s duty to refrain from disclosing information relating to the representation of a client by the lawyer’s prior representation of a former client and Rules 1.8 (b) and 1.9 (c) (1) for the lawyer’s duties with respect to the use of such information in the future representation of clients and former clients.

(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 the client to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their investment in the dealings with the client. A lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

(4) The attorney-client privilege is given effect by recognized bodies of law: the attorney–client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney–client privilege and work product protection are derived from the lawyer's representation of a client. There is a rule that information relating to the representation to the client prior to the commencement of conflict is not privileged, unless the client's informed consent, that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

(5) To the extent that the client’s instructions or special circumstances limit authority, a lawyer is impliedly authorized to make disclosures by paragraph (c)(6) that the client does not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer’s use of a hypothetical to discuss issues relating to the representation of a client, or that a person who is reasonably likely to be able to ascertain the identity of the client or the situation involved.

(6) Paragraphs (b) (2) and (7) Except to the extent that the client’s instructions or special circumstances limit authority, a lawyer is impliedly authorized to make disclosures by paragraph (c)(6) that the client does not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer’s use of a hypothetical to discuss issues relating to the representation of a client, or that a person who is reasonably likely to be able to ascertain the identity of the client or the situation involved.

(7) Paragraph (b) (2) is a limitation to the rule of confidentiality. Ordinarily a lawyer may not disclose the identity of a client, or the fact that the lawyer is representing the client, unless the client has instructed that particular information be confined to specified lawyers. When disclosure of information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client or other factors, the lawyer should not disclose the information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure.

(8) Paragraph (b) (3) addresses the situation in which the lawyer does not learn the identity of the client’s crime or fraud until after it has been consummated. Although the client is not the client’s crime, the lawyer does not have the duty to disclose to the client. Paragraph (b) (3) states that disclosure by the client may be limited to the extent necessary to prevent reasonable apprehensions of death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer death or substantial bodily harm.

(9) A lawyer’s confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer’s personal responsibilities to comply with the requirements of clients and disclosing information to secure such advice. A lawyer is impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b) (4) permits such disclosure because of the importance of a lawyer’s compliance with the Rules of Professional Conduct.

(10) Although a legal claim or disciplinary charge alleges complicity of the lawyer in the conduct of the lawyer involving the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct of the lawyer involving the client. Such a claim may be compromised by the lawyer against the client or on a wrong alleged by a third person, for example, ABA Rule 1.8(b) and 1.9(c)(1). The lawyer’s right to respond arises when an assertion of such complicity has been made.

(11) Paragraph (b) (5) does not require the lawyer to await the commencement of proceedings. Paragraph (b) (5) requires the lawyer to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily be limited to more than the identity of the lawyer, the terms of the new relationship, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the client reasonably necessary to the representation, unless it is authorized or required by the Rules of Professional Conduct or other law. See also Scope.

(12) Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b) (6) permits the lawyer to make such disclosures as are necessary to comply with the law.

(13) Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

(14) Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a law firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation. Comment [Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

(15) Paragraph (c) requires a lawyer instructing a client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

(16) Paragraph (c) permits disclosure only to the extent the lawyer reasonably believes necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client’s interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to having a need to know or a protective orders or arrangements should be sought by the lawyer to the fullest extent practicable.
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 effective assistance of counsel. The view that such disqualification is the preferable course of action, particularly in the context of multiple defendants and the legal system had conspired against him or her. State v. Demmerly, 600 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 harmed the client.

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


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 certain 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 (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken; (4) inform the client or clients of the existence of the conflict, i.e., whether the conflict is consentable; and (5) if so, consult with the clients affected paragraph (a) and obtain their informed consent, confirmed in writing. The client affected paragraph (a) include both (1) and the one or more clients whose representation might be materially limited under paragraph (a) (2).

[3] A conflict of interest may exist even if representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, such as the size and type of firm and practice, to determine in both litigation and non−litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance resulting from a failure to institute reasonable procedures in determining the existence of this Rule. As to whether a client−lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] A conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of each client under the conditions of paragraph (b). See Rule 1.16. If more than one is involved, whether the lawyer may withdraw if any of the clients is determined both by the lawyer’s ability to comply with duties owed to the former client and by the lawyer’s ability to represent adequately the remaining client or clients, given the lawyer’s duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated case. Depending on the circumstances, the lawyer may be required to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval whenever necessary and take steps to minimize harm to the client who is represented in the lawsuit. The lawyer may continue to protect the interests of the client from whose representation the lawyer has withdrawn. See Rule 1.9 (c).

Identifying Conflicts of Interest: Directly Adverse. [6] Loyalty to a current client’s interests in undertaking representation directly adverse to that client with the consent of that client’s informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. On the other hand, the lawyer may represent the same client as to whom the case is a different client, i.e., a conflict of interest is not automatically a conflict of interest, if the lawyer represents the same client as to whom the representation may be undertaken, at the reasonable time, the lawyer must withdraw from the representation. See Rule 1.16.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer, the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each of the respective clients. Wisconsin Supreme Court Rule differs from the Model Rules in requiring informed consent to be confirmed in a writing “signed by the client.”

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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 or by the lawyer’s responsibilities to other persons, such as fiduciary duties arising from a lawyer’s service as a trustee, executor, or corporate director.

Personal Interest Conflicts. [10] The lawyer’s own interests should not be permitted to affect the lawyer’s judgment concerning possible conflicts with the interests of a client. Whether a possible conflict exists or is permissible depends on the interests of the lawyer, the client, and all others who may be materially affected by the lawyer’s conduct. Thus, the lawyer should not base the decision whether a client can give informed consent: (1) on the lawyer’s personal interest in the outcome of a transaction, including the likelihood of benefiting from it; (2) on whether the client is in a direct or indirect relationship with the lawyer; or (3) on the likelihood of a conflict with other current clients.

Rule 1.0 (e) (informed consent).  The information required depends on the nature of the conflict, including the nature of the conflict, the lawyer’s relationship to the client, and whether the lawyer has to make an informed consent to the client’s reasonable expectations in retaining the lawyer. If there is a significant risk that the lawyer’s representation will not be consistent with the client’s interests, then the lawyer must advise the client of the circumstances and of the material and reasonably foreseeable consequences of the representation, including the nature of the conflict, whether the representation will be consistent with the client’s interests, and whether the lawyer has to make an informed consent to 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 detailed and comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood 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. Whether revoking consent is proper depends on the circumstances. See Rule 1.10 (termination of representation).

Consent to Future Conflict. [22] Whether a lawyer may properly request a client to give future consent to conflicts that might arise is subject to the future circumstances. See also Rule 1.10 (termination of 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 detailed and comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding.

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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, the lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Occasionally, 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 a common representation of clients where contentions litigation or negotiations 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 relationship between the parties 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 eventually 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 require the lawyer to segregate if one client asks the lawyer not to disclose to the other 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 be informed of the facts of representation that might affect the client’s interests 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 each client of the potential conflict of interest and that the lawyer will have to withdraw if one client decides that some material matter to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation if the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client’s trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[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 paternalism 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 part (such as an officer, director or subsidiary. See Rule 1.11). Rather, the lawyer represents the corporation or other organization. Thus, as between the parties, the lawyer can make or accept a commitment of the corporation or organization that the lawyer will not represent to the clients’ interests. The lawyer may represent the corporation or organization subject to the limitations required by the organization. The lawyer may not, by virtue of the representation of the corporation or organization, be required to disclose a fact known to the lawyer with respect to the corporation or organization to any 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 and duties of such positions are unlawful in any way. If the law so requires, the lawyer should not act in such interest. The lawyer may be called on to advise the corporation 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 prejudice 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 on such 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.**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

2. 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

3. 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.

(b) 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.

(c) 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.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) 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.

(f) 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 not to be relied upon by the client;

2. the representation does not be reconciled, the result can be additional cost, embarrassment and recrimination.

3. information relating to representation of a client is protected as required by SCR 20:1.6.

(g) 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.

(h) 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 that person is advised 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.

Updated through August 1, 2019.

**RULES OF PROFESSIONAL CONDUCT**

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
RULES OF PROFESSIONAL CONDUCT

(i) 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:

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

(2) contract with a client for a reasonable contingency fee in a civil case.

(j) A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the client–lawyer relationship commenced.

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.

(k) When the client is an organization, a lawyer for the organization (whether inside counsel or outside counsel) shall not have sexual relations with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paras. (a) through (j) applies to any one of them shall apply to all of them.

Wisconsin Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Updated 17−18 Wis. Stats.
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 representation of the third-party payer (for example, when the lawyer is the third-party payer in a co-client). Under Rule 1.7 (b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is non-consensually determined 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 may make it difficult to predict to what extent client confidences will be exhibited. Issues relating to the exploitation of the fiduciary relationship and client confidences may make it difficult to predict to what extent client confidences will be exhibited. The law of each jurisdiction determines whether a lawyer who recurrently will receive or pay if the settlement or plea offer is in a matter in which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by sub. (c) and SCR 20.1:6 that is material to the matter; unless the former client gives informed consent, confirmed in a writing signed by the client.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly associated had previously represented a client:

(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by sub. (c) and SCR 20.1:6 that is material to the matter; unless the former client gives informed consent, confirmed in a writing signed by the client.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.


Case Notes: Estate planning reasonably contemporaneous with the initiation of divorce proceedings is substantially related to issues which arise in the divorce and may preclude the representation of either spouse in the divorce. In case of a substantial relationship between two representations, it is presumed that conflicts of interest information is disclosed in the initial representation. Mathias v. Mathias, 188 Wis. 2d 280, 525 N.W.2d 81 (Ct. App. 1994).

If a defense attorney knowingly fails to disclose to a client or the circuit court his or her former role in representing the client, the attorney is subject to discipline from BAPR. State v. Love, 227 Wis. 2d 394, 594 N.W.2d 806 (1999).

When defense counsel has appeared for and represented the state in the same case in which he or she later represents the defendant, and no objection was made at trial, to prove a violation of the right to effective counsel, the defendant must show that counsel converted a potential conflict of interest into an actual conflict by knowingly failing to disclose the attorney’s former prosecution of the defendant or representing the defendant in a manner that adversely affected the defendant’s interests. State v. Raymond, 230 Wis. 2d 594, 630, 654 N.W.2d 37 (2002). See also State v. Kalk, 2000 WI App 62, 234 Wis. 2d 98, 608 N.W.2d 98.

When an attorney represents a party in a matter in which the adverse party is that attorney’s former client, the attorney is subject to discipline on the second. This test applies in a criminal serial representation case when the defendant raises the issue prior to trial. The actual prejudice standard in Love applies when a defendant raises a conflict of interest objection after trial. State v. Tkacz, 2002 WI App 281, 258 Wis. 2d 611, 654 N.W.2d 97.

Note: The above annotations cite to SCR 20.1 as it existed prior to its adoption by Sup. Ct. Order No. 04–07.


ABA Comment: [1] After termination of a client–lawyer relationship, a lawyer has continued duties with respect to confidential information acquired during the representation, and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of a former client, and thus could not properly seek to rescind an agreement that was made for the benefit of the former client to the extent of the client’s responsibilities to the third−party payer (for example, when the third−party payer is a co−client). Under Rule 1.7 (b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is non-consensually determined under that paragraph. Under Rule 1.7 (b), the informed consent must be confirmed in writing.

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Agreements prospectively limiting a lawyer’s liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to underm eет the duty to the client of a diligent representation. Although many clients are unable to estimate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer 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 terms of the agreement are fair and adequate. Rule 1.0 (e) defines the concept of fair and 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 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 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 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 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 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 required by law, such as provisions requiring client notification or maintenance of adequate liability insurance.

Acquiring Proprietary Interest in Litigation.

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 concepts of the fiduciary relationship and client confidences, and is designed to avoid the lawyer too great an interest in 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 the litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions authorized by law to secure the lawyer’s fees for services rendered 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 acquired in the course of the litigation, and liens acquired by contract with the client. The lawyer acquires by contract a security interest in property other than that recovered through the lawyer’s efforts in the litigation, such an acquisition is a business or financial transaction between the client and is governed by the consideration of the agreement. Paragraph (g) provides that a lawyer who has previously represented a client in a matter shall not thereafter repre-
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 a related matter even though the interests of the two clients conflict. See ABA Model Rule 1.9 and ABA Model Commentary (1980).

(ii) the person so disqualified by 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 formerly 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. 04-47, 2007 WI 4, 293 Wis. 2d xv.

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client to enable the affected client to ascertain compliance with the provisions of this rule.

[7] Where a lawyer has joined a private firm after having represented the government in a matter in which the lawyer is no longer interested, the government is not debarred from retaining another lawyer to represent the government in the matter. See Rule 1.0 (c).

[5] Rule 1.10 (b) operates to permit a law firm, under certain circumstances, to represent adverse clients in a matter. See Rule 1.0 (b) and 1.0 (b).

[3] The Rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are present. 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 previously represented a client in the same or related matter even though the interests of the two clients conflict. See Rule 1.10 (b) for the restrictions on a firm once a lawyer has terminated association with the firm.

(6) Application of paragraph (d) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in decisions of their affairs; it should be inferred that such a lawyer is in fact privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in the former situation was materially served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0 (e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

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

(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 lawyer 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, other 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 participation in a matter in a nongovernmental setting, the lawyer shall be timely screened from any participation in the matter to which the conflict applies.

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


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.

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ABA Comment: [1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and governmental rules regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.7 and the definition of informed consent.

[2] Paragraphs (a) (1), (a) (2), and (d) (1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government officer or private client. Rule 1.10 is not applicable to the disqualification of interest addressed by this paragraph, because paragraph (d) does not impose the imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impose the imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impose the imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impose the imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency.

[3] Paragraphs (a) (2) and (d) (2) apply regardless of whether a lawyer has a conflict that would lead to imputation in a nongovernment setting, the lawyer may be subject to statutes and government regulations that prohibit or otherwise restrict the lawyer from representing a client in a conflict situation.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where such a conflict might affect performance of the lawyer’s professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of confidential government information about the client’s adversary obtainable only through the lawyer’s government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. A lawyer has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from representation in matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. In contrast, limitations of disqualification in paragraphs (a) (2) and (d) (2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule. When a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [9].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0 (k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from sharing a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer’s compensation to the fee in the matter in which the lawyer is disqualified.

[7] Hence, if the lawyer, including 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.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private client and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a “matter” may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

SCR 20:1.12 Former judge, arbitrator, mediator or other 3rd−party neutral.  (a) Except as stated in par. (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other 3rd−party neutral.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other 3rd−party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.
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.

An arbitrator selected as a partisan of a party in a multi-member arbitration panel is 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 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 that did not prevent 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 “adjudicative officer” includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canon 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 (c) 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 protected under SCR 20:1.6, they typically owe the party seeking screening 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] When describing the selection of a 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. Unless the lawyer reasonably believes that it is not necessary 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 act 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 shareholder or member holding the shares or membership in question.

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

**Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.**
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 paragraph (b), the lawyer is not 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 4, 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. 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 what is best for the client’s welfare, even if the client does not have the ability to handle routine financial matters or to make decisions about medical treatment. The lawyer should assist the client in making decisions about important matters. The lawyer should take reasonable steps to ensure that the client’s welfare remains the primary concern.

[2] The client may be a minor, a person with mental illness or developmental disability, a person who is being exploited or abused, or a person whose decision-making ability is impaired for any other reason. When representing a client with diminished capacity, the lawyer should act in a manner that is reasonably calculated to protect the client’s interests, taking into account the nature and extent of the client’s impairment. The lawyer should consult with other persons knowledgeable about the client’s condition. The lawyer should take reasonable steps to protect the client’s interests when action is necessary to prevent or remedy adversity of interest and should be especially careful to protect the client’s interests when the client is a minor, an elderly person, a person with a mental illness or developmental disability, or a person who has experienced exploitation or abuse.

[3] In representing a client with a diminished capacity, the lawyer should act as if the client’s interests were the lawyer’s own interests, taking into account the nature and extent of the client’s impairment. The lawyer should act in a manner that is reasonably calculated to protect the client’s interests, taking into account the nature and extent of the client’s impairment. The lawyer should consult with other persons knowledgeable about the client’s condition. The lawyer should take reasonable steps to protect the client’s interests when action is necessary to prevent or remedy adversity of interest and should be especially careful to protect the client’s interests when the client is a minor, an elderly person, a person with a mental illness or developmental disability, or a person who has experienced exploitation or abuse.

[4] The lawyer should not take advantage of the client’s diminished capacity. The lawyer should avoid actions that would cause the client to 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 what is best for the client’s welfare, even if the client does not have the ability to handle routine financial matters or to make decisions about medical treatment. The lawyer should assist the client in making decisions about important matters. The lawyer should take reasonable steps to ensure that the client’s welfare remains the primary concern.

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[6] In representing a client with diminished capacity, the lawyer should act as if the client’s interests were the lawyer’s own interests, taking into account the nature and extent of the client’s impairment. The lawyer should act in a manner that is reasonably calculated to protect the client’s interests, taking into account the nature and extent of the client’s impairment. The lawyer should consult with other persons knowledgeable about the client’s condition. The lawyer should take reasonable steps to protect the client’s interests when action is necessary to prevent or remedy adversity of interest and should be especially careful to protect the client’s interests when the client is a minor, an elderly person, a person with a mental illness or developmental disability, or a person who has experienced exploitation or abuse.

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[10] In representing a client with diminished capacity, the lawyer should act as if the client’s interests were the lawyer’s own interests, taking into account the nature and extent of the client’s impairment. The lawyer should act in a manner that is reasonably calculated to protect the client’s interests, taking into account the nature and extent of the client’s impairment. The lawyer should consult with other persons knowledgeable about the client’s condition. The lawyer should take reasonable steps to protect the client’s interests when action is necessary to prevent or remedy adversity of interest and should be especially careful to protect the client’s interests when the client is a minor, an elderly person, a person with a mental illness or developmental disability, or a person who has experienced exploitation or abuse.

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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 consultation 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,[9] In an emergency where 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 or 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 maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such 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 his or her relationship with the person. The lawyer should take 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 transactions 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 third 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 third 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, registered domestic partner, child, stepchild, grandchild, sibling, parent, stepparent, grandparent, aunt, uncle, niece, or nephew.

8. “Interest on Lawyer Trust Account or IOLTA account” means a pooled interest-bearing or dividend-paying draft 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 earned monies, 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 institution that voluntarily offers IOLTA accounts and certifies to WisTAF 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 third parties, which is not fiduciary property, that is in a lawyer’s possession 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 third parties that is in the lawyer’s possession in connection with a representation. All funds of clients and third 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,” a “Trust Account,” or words of similar import. The account shall be identified 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 business in Wisconsin. The safe deposit box shall be clearly designated as a “Client Account” or “Trust Account.” The lawyer shall clearly identify and appropriately safeguard other property of a client or third 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 provided 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 eligible for insurance.

(c) Types of trust accounts. (1) IOLTA accounts. A lawyer or law firm who receives client or third-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 third 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 third-party funds that the lawyer or law firm determines to be capable of earning income for the benefit of the client or third party shall maintain an interest-bearing or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall be established as any of the following:
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:

a. 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.

b. 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.

c. 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.

d. 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) (2) 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) d.

(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 in a fund that holds itself out as a money market fund as 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.
c. ‘IOLTA account.’ 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.

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.

d. ‘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.

e. ‘Paying rates above comparable rates.’ An IOLTA participating institution may pay a 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.
b. ‘Telephone transfers.’ 1. Except as provided in SCR 20.1:15 (f) (2) b. 2., no deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds. 2. Wire transfers may be initiated by telephone, and telephone transfers may be made between non-pooled trust accounts that a lawyer maintains for a particular client.

c. ‘Electronic transfers by 3rd parties.’ 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 for 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.

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 for 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. ‘Standard for trust account transactions.’ 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 no 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.
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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.

8. '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.

9. '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.

10. 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 3rd 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 that 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 forwarded 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 reporting and production requirements of this subsection, including filing of an overdraft notification agreement for each IOLTA account, each draft-type trust account and each draft-type fiduciary account that is not subject to an alternative protection under sub. (k) (10).

(8) Service charges. A financial institution may charge a lawyer or law firm for the reasonable costs of producing the reports and records required by this rule.

(9) Immunity of financial institution. This subsection does not create a claim against a financial institution or its officers, directors, employees, or agents for failure to provide a trust account overdraft report or for compliance with this subsection.

(i) TRUST ACCOUNT CERTIFICATE AND ACKNOWLEDGEMENTS. (1) Annual requirement. A member of the state bar of Wisconsin shall file with the state bar of Wisconsin annually, with payment of the member’s state 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

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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) (10), 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 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.

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. 54.501, 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 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 statements must be reviewed by a court, timely file those annual financial statements 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 the 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 lawyer’s employment is not ancillary to the lawyer’s practice of law.


**Note:** Sup. Ct. Order No. 14–07 states that “the Comments to SCR 20:1.15, 20:1.5, 20:1.15, and 22:39 are not adopted, but will be published and may be considered for interpretation and applying the rule.”

**Wisconsin Comment, 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 third parties, except money received from a lawyer’s business and personal accounts, 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 property.


- **SCR 20:1.15 (b) (5) Insurance and safeguarding requirements.** Pursuant to SCR 20:1.15 (b) (5), trust accounts are required to be held in an insured IOLTA or IOTA account. Participating institutions that are insured by the FDIC, the NCUSIF, the SIPC or any other investment institution financial guaranty insurance. However, since federal law dictates the amount of 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, it is impossible to determine in advance if all funds will be guaranteed.

- **SCR 20:1.15 (d) (4) Income requirements.** Pursuant to SCR 20:1.15 (d) (4), IOLTA accounts 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, but in no case shall the proceeds from the IOLTA account of a client be disbursed to a lawyer.

- **SCR 20:1.15 (e) Prompt notice and delivery of property.** Third parties, such as a client’s creditors, may have just claims against funds or other property in a lawyer’s custody. A lawyer may have a duty under applicable law, including SCR 20:1.15 (e), to protect such 3rd–party claims against wrongful interference by the client, and accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume that the dispute is between the lawyer and the client. If a lawyer holds property belonging to one and a second person has a contractual or similar claim against that person but does not claim to own the property, or has a security interest in it, the lawyer is free to deliver the property to the person to whom it belongs.

- **SCR 20:1.15 (e) (4) Burden of proof.** A lawyer’s failure to comply with the debt collection requirements of SCR 20:1.15 (e) (1) to (3) may result in a presumption that the lawyer has failed to hold property in trust, contrary to SCR 20:1.15 (b) (1). This presumption can be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

- **SCR 20:1.15 (f) (2) c. Electronic transfers by 3rd parties.** Many forms of electronic deposit allow the lawyer to remove the deposit from the account of a non-IOLTA customer at the lawyer’s option to effect a dishornmancy. However, a lawyer must not utilize multiple types of electronic transactions, making the lawyer subject to an E-Banking IOLTA account that is subject to the requirements of this subsection.

- **SCR 20:1.15 (f) (3) a. Remote deposit.** A lawyer may obtain an electronic deposit of a check from a lawyer’s trust account for deposit in an IOLTA account of a lawyer who does not utilize multiple types of electronic transactions, making the lawyer subject to an E-Banking IOLTA account that is subject to the requirements of this subsection.

- **SCR 20:1.15 (f) (3) b. Alternative E-Banking Trust Account.** An alternative to establishing an E-Banking Trust Account for the purpose of making electronic deposits and disbursements, a lawyer may make electronic deposits and disbursements from an IOLTA account when additional protections are in place. This alternative requires that the lawyer prevent the electronic withdrawal of funds from the IOLTA account that could occur through chargebacks or reversals against a credit card, chargeback, or other electronic withdrawals. Specifically, the lawyer must either establish agreements with the lawyer’s financial institution and with payment providers to deduct fees, surcharges, and chargebacks from the lawyer’s firm account or reimburse the account for such withdrawals. In addition, the lawyer must establish an agreement with the financial institution to block debits from the IOLTA account.

- **SCR 20:1.15 (f) (4) b. Exception: Real estate transactions.** SCR 20:1.15 (f) (4) b. establishes an exception to the requirement that a lawyer only disburse funds that are due and dischargeable for the purposes of an escrow, insurance deposits and disbursements, a lawyer may make electronic deposits and disbursements from an IOLTA account when additional protections are in place. This alternative requires that the lawyer prevent the electronic withdrawal of funds from the IOLTA account that could occur through chargebacks or reversals against a credit card, chargeback, or other electronic withdrawals. Specifically, the lawyer must either establish agreements with the lawyer’s financial institution and with payment providers to reimburse the account for such withdrawals. In addition, the lawyer must establish an agreement with the financial institution to block debits from the IOLTA account.

- **SCR 20:1.15 (g) (2) Record production.** The duty of the lawyer to produce client trust account records for inspection under SCR 20:1.15 (g) (2) is a specific exception to the lawyer’s responsibility to maintain the confidentiality of the client’s information required by SCR 20:1.15 (g) (2) also applies to the production of records or an accounting that overcomes the presumption of the lawyer’s failure to hold property in trust, contrary to SCR 20:1.15 (b) (1). This presumption can be rebutted by the lawyer’s production of records or an accounting that overcomes this presumption.
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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 justifiable 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, where representation has been concluded. See Rules 1.2 (c) and 6.5. See also Rule 1.3, to completion. Ordinarily, a representation in a matter is completed when the agreed−

the representation will result in violation of the Rules of Professional Conduct or other law;  
(2) the client'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 warning 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) other 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 and to avoid a material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action in which 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 materially prejudiced in the past even if that prejudice is not present at the time the client requests withdrawal. Withdrawal is also permitted where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.  
(e) A lawyer may withdraw if the client refuses to abide by the terms of an agreement authorizing by a court having jurisdiction. The seller may dis-  
(2) the client's right to retain other counsel or to take possession of the file; and  
(3) the fact that 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 dis-  
(d) The fees charged clients shall not be increased by reason of the sale.  
History: Sup Ct. Order No. 04–07, 2007 W1 4, 293 Wis. 2d x.
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 judiciary 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 lawyer's desire to sell the practice on the occasion 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 also require the lawyer to consummate the sale of the practice before the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).

[5] If the sale of a law firm or a law office is to be made in the normal course of the practice of law and is not in contemplation of retirement, the Rule permits the sale of the practice, except to the extent otherwise required by law or a local rule.

[6] The Rule requires that if the lawyer, who seeks to sell the law office or a State of the practice, acts in good faith, the Rule permits the sale of the practice, subject to obtaining the informed consent of the clients that the lawyer would like to represent the purchasers are required to undertake all matters in the practice of law that are subject to client consent. If the Rule requires informed consent, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

[7] Once a lawyer, consent and notice. Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possibility of adding another lawyer or merging with a different practice.

[8] The 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 the identity of the purchaser, and must be told that 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.

[9] If the sale ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot consent to the sale or withdraw any property that has been transferred to the purchaser, the practice can be sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or as legal manager, if assuming joint responsibility for a matter in connection with the practice.

[10] A person 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.

[11] A lawyer subject to (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).

[12] 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).

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

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

(ii) 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

[14] The disqualifying information is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and


(a) A person who consults with a lawyer about the possibility of forming a client−lawyer relationship with respect to a 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 (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) When the lawyer has received disqualifying information as defined in par. (c), representation is permissible if:

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

(ii) 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

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

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

[16] 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 with respect to a 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 (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).

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

(ii) 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

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

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


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

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

(ii) 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

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

(iv) written notice is promptly given to the prospective client.
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 obtaining a salary or partnership share established by a prior 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] Performance of a screening of a matter to a prospective client. See Rule 1.1. For a lawyer’s duties when a prospective client entrusts valuable or papers to the lawyer’s care, see Rule 1.15.

SUBCHAPTER II
COUNSELOR

SCR 20:2.1 Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.

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

ABA Comment: Scope of Advice. [1] A client is entitled to straightforward advice expressing the lawyer’s honest assessment. Legal advice often involves impelling a client to act in a manner that the lawyer may find personally disagreeable, yet the lawyer must be disciplined to conform to such advice. In representing a client, a lawyer endeavors to sustain the client’s morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially in the case of nonlegal considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] Lawyers may expressly or implicitly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer’s responsibilities to other parties may indicate that the lawyer may be more involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters may involve problems within the professional competence of accounting, business or financial counseling. Where such expertise is needed, the lawyer should refer the client to an appropriately qualified person.

[5] A lawyer may provide advice concerning the evaluation of a matter affecting a client for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or to create an appearance of partiality or bias and that the lawyer maintains his or her neutrality throughout the process and both parties give their informed consent.

[6] When a question concerning the legal situation of a client arises at the instance of the client’s financial auditor and the question is referred to the lawyer, the lawyer’s response may be made in accord-ance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information, adopted in 1975.

SCR 20:2.2 Omitted.

SCR 20:2.3 Evaluation for use by 3rd persons. (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer’s relationship with the client.

(b) 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 not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by SCR 20:1.6.

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

ABA Comment: Definition. [1] An evaluation may be performed at the client’s direction or when implicitly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser. The lawyer may provide an evaluation for the information of a prospective lender. 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.

[2] 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 the government, 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 a 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 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.

Duties Owed to Third Person and Client. [3] When the evaluation is intended for third persons, a lawyer’s duty to the client is limited to the extent necessary to avoid conflicts with duties to third persons. 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 evaluation, particularly the lawyer’s responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information. [4] 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. However, a lawyer must often restrict the evaluation on the client’s behalf. The quality of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the non-availability of persons having relevant information. Any such limitation of the scope of the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was undertaken, the evaluation was to have the power of a legal evaluation, the lawyer should not have the power of a legal evaluation.

Rule 1.4 to inform the client of 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 disclose information to carry out the representation. See Rule 1.6 (6). Where, however, it is reasonably likely that providing the evaluation will affect the client’s interests materially and adversely, the lawyer must first obtain the client’s consent after the client has been adequately informed concerning the important possible effects on the client’s interests. See Rules 1.6 (a) and 1.0 (e).

Financial Auditors’ Requests for Information. [5] When a question concerning the legal situation of a client arises at the instance of the client’s financial auditor and the question is referred to the lawyer, the lawyer’s response may be made in accord-ance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information, adopted in 1975.

SCR 20:2.4 Lawyer serving as 3rd−party neutral. (a) A lawyer serves as a 3rd−party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a 3rd−party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a 3rd−party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer’s role in the matter, the lawyer shall explain the difference between the lawyer’s role as a 3rd−party neutral and a lawyer’s role as one who represents a client.

(c) (1) A lawyer serving as 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 all of the following to each of the parties:

a. The limits of the lawyer’s role.
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 the mediation.

(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 other law that applies to third-party neutrals and generally to or by lawyers that are not 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 committee 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 lawyer and that of a third-party neutral. For some parties, particularly parties who are represented by a lawyer or other 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-neutral is not an advocate for, or lawyer for, either party. For some parties, particularly third-party neutrals who use 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. Paragraph (b) also requires the lawyer-neutral to inform unrepresented parties of 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 to the extent of disclosure required under this paragraph. This information 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 asked 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 Rule 1.12.

[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 1.10. See State Bar of Wisconsin: Wisconsin Supreme Court Rule 20:2.3(a).  

Wisconsin Supreme Court Rule 20:2.4(a) 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 Comment, 2017: Mediation is a process designed to resolve disputes between two or more parties through agreement facilitated by a neutral person. Although many lawyers routinely act as mediators, there has been some concern about the applicability of the SCR s to lawyers acting as mediators. However, the selection, drafting, completion, modification, or filing of legal documents or agreements to memorialize or implement a mediated settlement does constitute the practice of law when it is not within the scope of Rule 3.4. The comment (c) is to clarify that a lawyer serving as mediator in a Chapter 767 proceeding may, while acting in that capacity, memorialize the outcome of the mediation, if it can be done without impairing his or her neutrality and that, by doing so, the lawyer does not assume a client–lawyer relationship with either party. The lawyer serving as mediator may not at any stage of the process attempt to advance the interests of one party against or to any other party.

Although a lawyer acting as mediator should strive to anticipate the issues and resolve them prior to documenting the outcome of the mediation, the process of documenting itself may illuminate or create previously unforeseen issues. For this reason, the mediator should make it clear to the parties that the process of documentation is part of the mediation and the mediator must maintain neutrality throughout that process.

Likewise, even after documents confirming, memorializing, or implementing the resolution of issues have been finalized, other previously-unidentified or unresolved issues may arise. The mediator may continue in a neutral capacity to assist the parties in resolving and memorializing those issues. While this rule does not require the mediator to resolve or memorialize all issues, the prudent mediator may not want to consider identifying any issues the parties have intentionally left unresolved.

Documents drafted, selected, or modified by a mediator can have consequences for an unrepresented party that might not perceive. Although an attorney acting as neutral mediator may attempt to explain those consequences to the parties in mediation, he or she does not stand in a client–lawyer relationship with either party and may not give legal advice to either party while acting in that neutral capacity. Moreover, because the line between discussing consequences and dispensing advice is not always clear, a lawyer acting as mediator who chooses to explain those consequences should take care to avoid offering or appearing to offer legal advice. For these reasons, and to emphasize to the parties that the lawyer acting as mediator does not represent the parties, subsection (c) (1) d. requires an attorney who has mediated a dispute between unrepresented parties to recommend that each seek independent legal advice before executing the documents that attorney has drafted, selected, completed, or modified.

Notwithstanding that no client–lawyer relationship is created when a lawyer–mediator drafts documents pursuant to this rule, subsection (c) (3) imposes duties of competence and diligence in connection with the drafting of such documents. A lawyer who fails to fulfill such duties violates SCR 20:2.4 (c) (4).

Filing documents prepared pursuant to this subsection in court can often be accomplished most efficiently by a lawyer familiar with the documents and, as long as done in a manner consistent with the parties to the mediation, may be accomplished without impairing his or her neutrality. However, any appearance by a lawyer in court on behalf of one or more parties is so closely associated with that lawyer that it could compromise the appearance of neutrality and/or provide an occasion to depart from it. For this reason, although a lawyer who has served as a mediator may file documents with the court, such a lawyer need not be an expert of the original mediation, counsel to the parties. A lawyer who has served as a third party neutral, such as a mediator in a matter, may not thereafter represent any party at any stage of the matter. See SCR 20:1.12. Because the lawyer–mediator does not have a client-lawyer relationship with any of the parties, SCR 20:1.2 (c) does not apply. Subsection (5) makes it clear that the lawyer–mediator must make an equivalent disclosure. Filing of documents by a lawyer–mediator pursuant to this rule does not constitute an appearance in the matter.

SUBCHAPTER III

ADVOCATE

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; or

(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.

(AM) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented 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 as to require that every element of the case be established.

Wisconsin Supreme Court Rule 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; or

(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.

(AM) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented 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 as to require that every element of the case be established.

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

(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.

(AM) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented 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 as to require that every element of the case be established.
and the applicable law and determine that they can make good faith arguments in support of their clients’ positions. Such action is not frivolous even though the lawyer believes that the client’s position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument to the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

(3) The obligations under SCR 20:3.3 are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

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 1, 293 Wis. 2d xv.

ABA Comment: [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 repose. 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 fact to a law or a tribunal or fail to correct 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 in the controlling jurisdiction known to the lawyer to be directly adverse to the lawyer’s position or to the client’s position;

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, is engaging, 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) A lawyer who represents a client in an adjudicative proceeding and who knows that a person has the ad

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all 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 1, 293 Wis. 2d xv.

Case Notes: An attorney may not substitute narrative questions 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, 02−1203.

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 risks of self−incrimination 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, 02−1203.

Wisconsin Committee Comment: Unlike its Model Rule counterpart, paragraph (c) applies not only to the fees a lawyer charges to the client but also to any requests by a client to pay the lawyer, offers testimony the lawyer knows to be false, either during the lawyer ’s direct examination or in response to cross−examination by the opposing lawyer. In other jurisdictions or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate’s proper course is to remove from the court’s presence the client who is unwilling to testify and seek the cooperation of the witness with respect to the withdrawal or correction of the false statements or evidence. If that fail, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effects of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information protected by Rule 1.6. It is not possible to determine what should be done — making a statement about the matter to the trial of fact, ordering a mistrial or perhaps nothing.

The disclosure of a client’s falsehood can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in conducting a cause, thereby subverting the truth−finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client’s confidence will be impaired.

(a) The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement based on information that the testimony will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

(8) Whether offering false evidence results in perjury has no bearing on whether the lawyer’s action is otherwise proper. If the presentation is the equivalent of an affirmative misrepresentation of fact, the lawyer’s action is improper.

(b) The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer’s reasonable belief that evidence is false does not preclude its presentation to the trial of fact. A lawyer’s knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0 (f).

(2) The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement based on information that the testimony will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

(8) The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer’s reasonable belief that evidence is false does not preclude its presentation to the trial of fact. A lawyer’s knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0 (f).

(2) This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case fairly and with integrity. A lawyer representing the client, however, is qualified by the advocate’s duty of candor to the tribunal.

Consequently, although a lawyer in an adversary proceeding is not required to present material evidence that the lawyer knows to be false, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer. [3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present an accurate version of the client’s beliefs. The lawyer may not, however, present the client’s beliefs to the tribunal in a way that is false. Thus, for example, a lawyer in an adversary proceeding has an obligation to present the case fairly and with integrity. A lawyer representing the client, however, is qualified by the advocate’s duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present material evidence that the lawyer knows to be false, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Legal Argument. [4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a), (2), an advocate has a duty to disclose directly adverse authorities in the controlling jurisdiction that have not been disclosed to the opposing party.

Consequently, an assertion must be true and not matter of opinion, hypothesis, or inference. In order to be true, an assertion must be based on knowledge of the facts. It is perilous to make an assertion that is not true.

The representations are not subject to rule of evidence objections of relevance or admissibility. The representations are not subject to the privilege of the lawyer, but may be rebutted by the other side. A lawyer may take an adverse position on the law or facts of the case, whether or not he has an interest in the outcome, so long as the representations are true.

The advocate may present evidence that is false, but the advocate must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.
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 related 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 compliance with this Rule. 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) falsely 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 objection 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.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.
Case Note: The violation of the lawyer's code of ethics for a lawyer to tell a jury what he or she believes is the truth of the case, unless it is clear that the lawyer's belief is mistaken, is within the evidence before the jury. State v. Jackson, 2007 WI App 145, 302 Wis. 2d 766, 735 N.W.2d 178, 06−1240.

ABA Comment: [1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibiting or concealing from the other side, improper influencing witnesses, obstructive tactics in discovery procedure, and the like.
[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding. In some cases, the commission can be forsworn. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common−law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party unless the employees may identify their interests with those of the client. See also Rule 4.2.

SCR 20:3.5 Impartiality and decorum of the tribunal. A lawyer shall not:
(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order or for scheduling purposes if permitted by the court. If communication between a lawyer and judge has occurred in order to schedule the matter, the lawyer involved shall promptly notify the lawyer for the other party or the other party, if unrepresented, of such communication;
(c) communicate with a juror or prospective juror after discharge of the jury if:
(1) the communication is prohibited by law or court order;
(2) the juror has made known to the lawyer a desire not to communicate; or
(3) the communication involves disreputable conduct, coercion, duress or harassment; or
(d) engage in conduct intended to disrupt a tribunal.

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv.
Case Note: The violation of the rules under chs. 20 and 62 can be the basis for a court to impose a sanction for ineffectiveness during litigation although the authority to do so is not dependent on chs. 20 and 62, but rather the court's inherent authority. Aspen Services, Inc. v. IT Corp. 220 Wis. 2d 491, 583 N.W.2d 849 (Ct. App. 1998).
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: Paragraph (b) differs from the Model Rule in that it expressly imposes a duty promptly to notify other parties in the event of an ex parte communication with a judge concerning scheduling.

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 communication is 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 obstructive conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand against abuse by a judge but should avoid reciprocating; 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 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-
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[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 confessions, admissions, or statements by the 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 incarceration; (5) information that 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.

[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 would 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 in substantial and relevant detail 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, responsive statements may have the twin effect of lessening any residual 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 20:3.7 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 SCR 20:1.9.


Case Note: When a prosecutor elicits testimony that can be only contradicted by defense counsel or defend, defense counsel or defense counsel could not reasonably foresee the defense, but the defense counsel or defense counsel must be permitted to testify. State v. Foy, 206 Wis. 2d 629, 597 N.W.2d 494 (Ct. App. 1996).

The party seeking disqualification based on SCR 20.3.7 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, 11–1259.

Note: The above annotation cites to SCR 20.7 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 likely to be 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 present 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 with 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.

[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-
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SCR 20:3.8 Special responsibilities of a prosecutor. (a) A prosecutor in a criminal case or a proceeding that could result in deprivation of liberty shall not prosecute a charge that the prosecutor knows is not supported by probable cause.

(b) When communicating with an unrepresented person in the context of an investigation or proceeding, a prosecutor shall inform the person of the prosecutor’s role and interest in the matter.

c) When communicating with an unrepresented person, a prosecutor may discuss the matter, provide information regarding settlement, and negotiate a resolution which may include a waiver of constitutional and statutory rights, but a prosecutor, other than a municipal prosecutor, shall not:

(1) otherwise provide legal advice to the person, including, but not limited to whether to obtain counsel, whether to accept or reject a settlement offer, whether to waive important procedural rights or how the tribunal is likely to rule in the case, or

(2) assist the witness in the completion of (i) guilty plea forms (ii) forms for the waiver of a preliminary hearing or (iii) forms for the waiver of a jury trial.

(e) A prosecutor shall not subpoena a lawyer in a grand jury or other proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information.

(f) A prosecutor, other than a municipal prosecutor, in a criminal case or a proceeding that could result in deprivation of liberty shall:

(1) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(2) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under SCR 20:3.6.

(g) When a prosecutor knows of, new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall do all of the following:

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the prosecutor’s jurisdiction:

(i) promptly make reasonable efforts to disclose that evidence to the defendant unless a court authorizes delay; and

(ii) make reasonable efforts to undertake an investigation or cause an investigation to be undertaken, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Updated 17–18 Wis. Stats.
A lawyer representing a client before a legislative body of administrative agency in a nonadjudicative proceeding shall disclose the client's interests and such additional information relating to the representation as is necessary to avoid assisting a criminal or fraudulent act by the client. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is not required to do so, unless the disclosure is prohibited by Rule 1.6.

SCR 20:4.2 Communication with person represented by counsel. (a) In representing a client, a lawyer shall not communicate about the subject of the representation with the person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(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 other party that the lawyer is providing limited scope representation.

History: Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv. SCR 20:1.2(d), SCR 20:4.1(b) and SCR 20:4.2(a) are amended, eff. 1–1–15.

ABA Comment: [1] This Rule contributes to the proper functioning of the legal system by protecting a person who has been chosen to represent a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the unconflicted disclosure of information relating to the representation.

[2] This Rule applies even though the represented person initiates or consents to the communication. A lawyer must inquire and communicate with a represented person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[3] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person if the communication is not otherwise protected by privilege or is otherwise permitted by these Rules. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4 (a). Parties to a matter may communicate directly with each other or with a lawyer who is not otherwise represented by a lawyer and who is not otherwise prohibited from advising the client concerning a communication. The party is not thereby waiving the attorney-client privilege.

[4] The communication may be the initial communication or a subsequent communication. In determining whether the communication is protected, the lawyer must consider the nature of the communication and the circumstances of its making.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communica-
caye 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 this Rule, or who also seeks to comply with a court order, may seek a court order 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 concerning the matter or has authority to order or direct the organization with respect to the matter with the assistance or without the assistance of the lawyer's client. A lawyer may also seek a court order to avoid reasonably certain injury.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of representation but such actual knowledge may not be inferred from the circumstances. See Rule 1.0 (f). Thus, the lawyer cannot evade the requirement of obtaining the consent of the lawyer by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to and cannot be represented by counsel in the matter, 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, filed 7−21−16, eff. 1−1−17.


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: 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 inform or clarify the lawyer’s 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 lawyer’s role 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, where necessary, explain that the lawyer’s interests may be adverse to those of the client. This is necessary to advise the unrepresented person that the lawyer's interests are not in conflict with the client’s. For purposes of this Rule, “communication” means the giving of any advice, oral or written. The communication by a lawyer to another lawyer 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 immediately terminate or use of the documents or electronically stored information, promptly notify the person or the lawyer's client 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.

Wisconsin Committee Comment, 2016

Note: Sup. Ct. Order No. 15−03 states that the Comments “are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rules.”

This Rule, unlike its Model Rule counterpart, contains paragraph (c), which specifically applies to information protected by the lawyer–client privilege and the work product rule. If a lawyer knows that the document or electronically stored information 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 immediately terminate or use of the document or electronically stored information, promptly notify the person or the lawyer's client 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.

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 mistakenly sent or produced by opposing parties or their lawyers. A lawyer who receives a document or electronically stored information may be required to take additional steps, such as returning the original document or electronically stored information to its owner, in a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that contains information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, “document or electronically stored information” includes, in addition to paper documents and electronic media, other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is subject to being read or put into readable form. Metadata in electronic documents creates a chain of obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[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 Conduct.
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 xx.

**Wisconsin Comment:** The Model Rules do not contain a counterpart provision. This new paragraph reflects the existing law as a guardian ad litem in Wisconsin. See also Paige K.B. v. Molepske, 219 Wis. 2d 418, 580 N.W.2d 289 (1998); In re Steven R.A., 196 Wis. 2d 171, 537 N.W.2d 142 (Ct. App. 1995), Supreme Court Rules, Chapters 35-36, governing eligibility for appointment as guardian ad litem in certain situations.

This rule expressly recognizes that a lawyer who represents the best interests of the individual does not have a client in the traditional sense but must comply with the Rules of Professional Conduct to the extent the rules apply.

**SUBCHAPTER V**

**LAW FIRMS AND ASSOCIATIONS**

SCR 20:5.1 Responsibilities of partners, managers, and supervisory lawyers. (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 xx.

**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 service organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial 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 will 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) can depend on the firm’s structure and the nature of its practice. In 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 can 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 partnerships 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 another. See also Rule 8.4 (a).

[5] Paragraph (c) (2) 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 should be taken in the immediacy 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 misrepresentation.
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 image scanning, and 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 client confidences; and the legal and ethical environments of the jurisdictions in 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). When 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. 15−06, 2016 WI 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 WI 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.

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

Note: The above annotations cite to SCR 20 as it existed prior to the adoption of SCR 20:1.17, 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 interfere with 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 (l) (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) (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.

History: Sup. Ct. Order No. 04−07, 2007 WI 14, 293 Wis. 2d xv; Sup. Ct. Order No. 06−06, 2008 WI 109, filed 7−30−08, eff. 1−1−09; Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04−07.
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[12] 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 alterative dispute resolution proceeding involving the attorney and the category of work that was reasonably expected to be admitted pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c) (4) permits a lawyer admitted in another jurisdiction to provide certain legal services in this jurisdiction if those services are 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) (5). These services include both the practice of law when performed by lawyers.

[14] 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, and that the entitlement to such services is based upon a significant connection with another jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client’s activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation have potential legal issues in several jurisdictions, or where a lawyer is assessing the relative merits of each. In addition, the services may draw on the lawyer’s recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two categories of lawyers who are admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuing presence in this jurisdiction for the purpose of rendering legal services to clients. As provided in paragraphs (d) (1) and (d) (2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuing presence in this jurisdiction must become admitted to practice generally in this jurisdiction.

[16] 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 other employees. The paragraph applies as well to in-house corporate lawyers 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 is that in a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis, or in matters involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer’s work might be conducted in this jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.

[17] An employer or employer's office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d) (2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or state law, or when admission is statutorily required. The lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) (d) (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.3.

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) (d) (d) (d) (d) or (d) may have to inform the client that the lawyer is not licensed in this jurisdiction, that the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4 (b).

[21] Paragraphs (c) (d) (d) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

**SCR 20:5.6 Restrictions on right to practice.** A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.

**History:** Sup. Ct. Order No. 04−07, 2007 Wis. 2d 2592, Section 14 (b).
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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 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 outside 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 outside Wisconsin.

(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 deductible. 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.

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 nonlaxer.

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 understand that the services may not carry with them the protections normally afforded as 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 the law−related services is subject to those Rules that are 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. A
latterly contribute financial support to organizations that provide legal services to persons of limited means.

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

ABA Comment: [1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay for reasons of personal involvement in the practice of law. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. Each lawyer may decide to choose a higher or lower number of pro bono service (which may be expressed as a percentage of a lawyer’s professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer than the average of 50 hours of pro bono service, but during the course of his or her legal career, each lawyer should render on average, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi−criminal matters for which there is no government obligation to provide funds for legal representation, such as post−conviction death penalty appeal cases.

[2] Paragraphs (a) (1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee.

[3] Persons eligible for legal services under paragraphs (a) (1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines for such programs but nevertheless can afford no other legal services. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women’s centers and food pantries that do not provide the type of “in−kind assistance programs” included, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided on a non−financial or non−expectation of fee, the intent of the lawyer to render free legal service is essential for the work performed to fall within the meaning of paragraphs (a) (1) and (2). Accordingly, services rendered can be considered pro bono if an attorney is not entitled to or unable to receive a substantial lawyer’s fee, whether or not any actual fees are charged.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a) (1) and (2), to the extent that any hours of service remained unfulfilled in any year, the commitment can be met in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b) (1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept compensation for services rendered to clients whose income and resources are substantially higher than those that permit participation in the pro bono program. In such cases, clients may be charged for services rendered. Whether or not a lawyer is compensated in these instances, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b) (2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicial care programs and acceptance of court appointments in which the fee is substantially less than the lawyer’s usual rate are encouraged under this section. In any event, the fee charged should be substantially lower than the usual fee charged for comparable services otherwise rendered.

[8] Paragraph (b) (3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are all examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono service. At such times, a lawyer may discharges the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent in value to the number of hours of the lawyer’s time that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as a firm’s aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible or advisable.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] Law firms should set forth lower hours than the annual standard as comforted through firm discipline.

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:

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

(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.

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

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 afford to 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.

[1] 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.

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

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 organization in the course of the lawyer’s representation of the organization serves 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 the lawyer from being a member of the organization, the disqualification of the lawyer’s involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to require a lawyer to represent the organization that the representation will not be affected by conflicting loyalties of the organization. See Rule 1.7 and SCR 20:7.1.

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.

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

ABA Comment: [1] 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(b). 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 and scope of participation 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 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.

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

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

ABA Comment: [1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short−term limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal−advice hotlines, advice−only clinics or pro se counseling programs, a client−lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short−term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2 (c). If a short−term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9 (c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 and 1.9 (a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer’s firm is disqualified by Rules 1.7 and 1.9 (a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer’s firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a) (2). Paragraph (a) (2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer’s firm is disqualified by Rules 1.7 and 1.9 (a). By virtue of paragraph (b), however, a lawyer’s participation in a short−term limited legal services program will not preclude the lawyer from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program’s auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short−term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 (a) and 1.10 become applicable.

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 that the fact payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.

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

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 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 address of at least one lawyer or law firm responsible for its content.

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

Updated through August 1, 2019.

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 formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no reasonable factual foundation. An advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to an unjustified expectation. An advertisement that truthfully reports the lawyer’s credentials, abilities, competence, character, or other professional qualities may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] This Rule does not restrict referrals or divisions of revenues or net income among 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.

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3. pay for a law practice in accordance with SCR 20:1.17; and

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[3] This Rule does not restrict referrals or divisions of revenues or net income among lawyers.

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:
(a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include provision of legal services to their members or clients.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of any defined benefit or arrangement which the lawyer or lawyer’s firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.1.

[8] The requirement in Rule 7.3(c) that certain communications be marked “Advertising Material” does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements in newspapers, including change in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services in a particular matter covered by the plan. See 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 xx; Sup. Ct. Order No. 15-03, 2016 WI 76, filed 7-21-16, eff. 1-1-17.

(a) Except as permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents such as wills, trusts and instruments resulting in the lawyer’s pecuniary gain. Nor is there a serious potential for abuse when the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may be shared with others who know the lawyer. This potential for informal persuasion permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed or contested. In contrast, the contents of direct and live telephone or real-time electronic contact can be disputed and may not be shared with others who know the lawyer. This Rule is intended to prevent the contents of communications and solicitations from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter from being functionally similar to and serving the same purpose as advertising permitted under Rule 7.1.

(a) 15-03 also, paragraph (c) and all of paragraph (e). These provisions are carried forward from the prior Wisconsin Supreme Court Rule.

(1) If a lawyer knows or reasonably should know that the physician, 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 a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment. 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 of (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. See SCR 20:7.4 Communication of fields of practice.

(2) The Wisconsin Supreme Court Rule differs from the Model Rule 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.

(1) A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably 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 through an Internet search. [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 the person to the private immediate presence of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with required judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being heard spontaneously. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

(3) This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers are not the only alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person’s judgment.

(4) The content of any general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows more freely. The contents of announcements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal persuasion of the type permitted by the rule can be functionally similar to and serve the same purpose as advertising permitted under Rule 7.1. These communications may be shared with others who know the lawyer. This potential for informal persuasion permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed or contested. In contrast, the contents of direct and live telephone or real-time electronic contact can be disputed and may not be shared with others who know the lawyer.

(5) The likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Nor is there a serious potential for abuse when the lawyer is motivated by considerations other than the lawyer’s pecuniary gain.

(6) But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of 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, a lawyer may not be an owner of 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 is to be designed to inform potential plan members generally of the nature of services that can be provided by the plan. 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).

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
and experience in the specialty area greater than is suggested by general licensure 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 meaningful. In order to assure that consumers can obtain adequate 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 jurisdictions in which those not licensed to practice in the jurisdiction where the office is located.

(c) 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, by any member or by any of the members of deceased members where there has been a continued succession in the firm’s identity or by a trade name such as the “ABC Legal Clinic.” A lawyer may also be designated by a trade name or a distinctive website address of a recognizable 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 trade names 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 explicit disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm naming itself 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 for any firm or law firm 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 denote themselves as, 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] Lawyers have 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 to obtain an engagement in legal work awarded by a government agency or to obtain an appointment by a judge, the public may legitimately question whether the lawyer 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” describes any engagement 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 a rotational basis for services or expertise, profession or personal fitness of persons being considered for election or appointment to judicial or other public office.

[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 to be made by a judge if, but for the desire to be appointed, 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 example, contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment if the contributions are made to influence the judgment of a judge and not for any other purpose as to which the judge has no disqualification known by the person to have arisen in the matter, or knowingly fail to respond to a request for proposal or other process that is free from influence based on a government legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. Neither those factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made without any expectation of influence or benefit to the contributor or solicitor, that the contributions were not made in a manner that was not open to the public or to avoid the appearance of impropriety or that the contributions were not made to influence the judgment of a judge.

[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 request 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 material 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 misinformation in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding 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 only if the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer advising 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 or other public 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.
(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, termination 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. 04−07, 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 the adoption of the language used in the ABA 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. Paragraphs (d) and (e) differ slightly from the Model Rule. It deletes reference to confidential lawyers’ assistance programs. The reference to confidential lawyers’ assistance programs includes programs such as the state bar sponsored Wisconsin Lawyers’ Assistance Program (WISLAP), 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 1.6. 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 obliged 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 the terms of 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 represent a lawyer whose adoption of the law is questioned. Such a situation 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 (1) differs slightly from the Model Rule. It deletes reference to confidential information received by a lawyer or judge participating in an approved lawyers’ assistance program; such an obligation, however, may be imposed by the rules of the program or other law.  

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 Rules of Professional Conduct or other law;  

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or  

(f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;  

(g) violate the attorney’s oath;  

(h) 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  

(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer’s professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).  

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

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

Wisconsin Comment: Intentional violation of tax laws, including failure to file tax returns or failure to pay taxes may violate SCR 20.8-4 (i), absent a showing of intent to defraud. In re Disciplinary Proceedings Against Curandy, 172 Wis. 2d 600, 493 N.W.2d 362 (1992).  

Wisconsin Committee Comment: Failure to cooperate, paragraph (b), was previously enforced as a violation of SCR 20.8-4 (i). Paragraphs (f) through (i) do not have counterparts in the Model Rule. What constitutes harassment under paragraph (i) may be determined with reference to anti−discrimination legislation and interpretations of the definition of “sexual harassment.” The reference to confidential lawyers’ assistance programs includes programs such as the state bar sponsored Wisconsin Lawyers’ Assistance Program (WISLAP), the Law Office Management Assistance Program (LOMAP), or the Ethics Hotline.

2013 Wisconsin Comment: In addition to the obligations in this rule, Wisconsin attorneys should note the obligations concerning notification set forth in SCR 21.15(5) and SCR 22.22(1). [Sup. Ct. Order No. 10−09]  

Note: Sup. Ct. Order No. 10−09 states that “the comment to SCR 20.8-4(b) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

ABA Comment: [1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer’s behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take. [2] Many kinds of illegal conduct are covered under various law practice laws, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the question was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal moral integrity, such as adultery and comparable offenses, that have no specific connection to the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. Paragraph (c) reflects adversely on the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.  

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2 (d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulations of the practice of law.  

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

SCR 20:8.5 Disciplinary authority; choice of law. (a) Disciplinary Authority. A lawyer admitted to the bar of this state is subject to the disciplinary authority of this state regardless of where the lawyer’s conduct occurs. A lawyer not admitted to the bar of this state is also subject to the disciplinary authority of this state if the lawyer provides or offers to provide any legal services in this state. A lawyer may be subject to the disciplinary authority of both this state and another jurisdiction for the same conduct.  

(b) Choice of Law. In the exercise of the disciplinary authority of this state, the Rules of Professional Conduct to be applied shall be as follows:  

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and  

(2) for any other conduct,
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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 both 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. Sands v. Menard, 2017 WI 110, 379 Wis. 2d 1, 904 N.W.2d 789, 12–2377.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to August 1, 2019. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.