CHAPTER SCR 20
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PREAMBLE: A LAWYER’S RESPONSIBILITIES
[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal rights, duties and confidence in the rule of law and the justice system because of reform of the law and work to strengthen legal education. In addition, there are rules apply directly to lawyers who are or have served as 3rd−party neutrals. See, e.g., Rule 1.12 and Rule 2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

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

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

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

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

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

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

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

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

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

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

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

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

[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,
3 Updated 17–18 Wis. Stats.

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) and (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 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, 2013 WI 110, 379 Wis. 2d 1, 904 N.W.2d 789, 12–2377.

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SCR 20:1.5, including SCR 20:1.5 (f) or (g) and 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 in a criminal case, delinquency action, or proceeding that could result in a deprivation of liberty or 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, photographs, audiotapes, video recordings, 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.

In place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and maintain the effectiveness of the screening, it is important for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm file or other information, including information in electronic form, relating to 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.

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.”

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 to Comment. The definition of flat fee specifies that flat fees “become the property of the lawyer upon receipt.” Notwithstanding, the lawyer must either adopt the flat fee in its entirety or use an 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 responsibilities. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

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

SCR 20:1.2 Scope of representation and allocation of authority between lawyer and client. (a) Subject to pars. (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. (b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities. (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client’s informed consent must be in writing except as set forth in sub. (1).

(1) The client’s informed consent need not be given in writing if:

a. the representation of the client consists solely of telephone consultation;
b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer’s representation consists solely of providing information and advice or the preparation of court−approved legal forms;
c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order;
d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private retainer 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 (c), 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) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that “This document was prepared with the assistance of a lawyer.” A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (cm) (2014): A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are “prepared with the assistance of a lawyer.” 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 that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer has been retained by an insurer to represent and defended 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.

History: Sup. Ct. Order No. 04−07, 2007 WI 1, 293 Wis. 2d 2d xv; Sup. Ct. Order No. 15−10, 2016 WI 45, filed 6−27−14, eff. 1−1−15.

Case Notes: The formation and termination of an agreement to provide representation is discussed. Gustafson v. Physicians Insurance Co. 223 Wis. 2d 164, 588 N.W.2d 366 (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 liable to the principal if he or she violates this duty. A defendant is entitled to make a decision that is the defendant’s alone to make in a manner contrary to the advice given by the attorney cannot subsequently complain that the attorney was ineffective for complying with the ethical obligation to follow the defendant’s unen- erged decision. Van Hout v. Endicott, 2006 WI App 196, 296 Wis. 2d 580, 724 N.W.2d 692, 04−1192.

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

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


Wisconsin Comment: The Model Rule does not include paragraph (e). Paragraph (e) was added to clarify the obligations of counsel for an insurer, in conjunction with the decision to retain Wisconsin’s “insurance defense” exception in SCR 20:1.8 (f).

Wisconsin Committee Comment to Supreme Court Rule 20:1.16 (c) (2013): The Committee has revised the application of the duties stated to “any proceeding that could result in deprivation of liberty.” The Model Rule does not include this language.

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

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client’s objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish specific tasks, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense and risk of litigation and the best means to achieve the client’s objectives.

[2] However, lawyers usually defer to the client regarding such questions as the expense and risk of litigation and the best means to achieve the client’s objectives.

[3] 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.
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 people who consistently give rise to appeals, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4 (a) (2).

Agreements Limiting Scope of Representation. [6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are available to the client. Where a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has articulated objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client’s objectives. Such an exclusion may occur if the client thinks that the lawyer is too costly or if the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, such limitation must be reasonable under the circumstances. If, for example, a client’s objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer’s services are not limited to those services necessary to reach that objective. The duty of the lawyer to carry through to conclusion all matters undertaken for a client's benefit and to otherwise represent the client vigorously and competently, 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 continue assisting a client in conduct that the lawyer originally supposed was lawful and ethical measures are required to vindicate a client's cause or endeavor. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.


Criminal, Fraudulent and Prohibited Transactions. [9] Paragraph (d) prohibits a lawyer from representing or counseling a client to commit a crime or fraudulent act. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client’s conduct. Nor does the fact that a client uses advice in a course of action that the lawyer knows is fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[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 continue assisting a client in conduct that 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 some situations withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to dis affirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. A lawyer may not participate in a transaction to effectuate a fraud on another person, or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last phrase of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer must consult with the client regarding the limitations on the lawyer’s conduct. See Rule 1.4 (a) (5).

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; and
2. reasonably consult with the client about the means by which the client’s objectives are to be accomplished; and
3. keep the client reasonably informed about the status of the matter; and
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.

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 to 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 objectives to the client and the complexity of the situation, the lawyer must consult with the client regarding the limitations on the lawyer’s conduct. See Rule 1.4 (a) (5).
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 shall 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 and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney’s fees, will be $1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney’s fees, is more than $1000, the purpose and effect of any retainer 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 before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination.

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

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

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

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

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

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

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

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

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

(1) Upon accepting any advanced payment of fees pursuant to this subsection, the lawyer shall deliver to the client a notice in writing containing all of the following information:

a. The amount of the advanced payment.

b. The basis or rate of the lawyer’s fee.

c. Any expenses for which the client will be responsible.

d. The lawyer’s obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation.

e. The lawyer’s obligation to submit any unresolved dispute about the fee to binding arbitration within 30 days of receiving written notice of the dispute.

f. The ability of the client to file a claim with the Wisconsin Lawyers’ Fund for Client Protection if the lawyer fails to provide a refund of unearned advanced fees.

(2) Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:

a. A final accounting, or an accounting from the date of the lawyer’s most recent statement to the end of the representation, regarding the client’s advanced fee payment.

b. A refund of any unearned advanced fees and costs.

c. Notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting.

d. Notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.

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

[citation]

(a) [paragraph is not legible]

(b) [paragraph is not legible]

(c) [paragraph is not legible]

(d) [paragraph is not legible]

(e) [paragraph is not legible]

(f) [paragraph is not legible]

(g) [paragraph is not legible]

(h) [paragraph is not legible]

(i) [paragraph is not legible]

(j) [paragraph is not legible]

(k) [paragraph is not legible]

(l) [paragraph is not legible]

(m) [paragraph is not legible]

(n) [paragraph is not legible]

(o) [paragraph is not legible]

(p) [paragraph is not legible]

(q) [paragraph is not legible]

(r) [paragraph is not legible]

(s) [paragraph is not legible]

[tabel]

[diagram]
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 entitles financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paraphrase the prohibition or regulation of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees. [9] If a procedure has been established for resolution of fee disputes, the lawyer must follow the procedure established by the bar association. A lawyer may comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of a party who is not a party or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party or the law firm may complete 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 will be published and may be consulted for guidance in interpreting and applying the rule."

Wisconsin, 2016

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(a). Sometimes the lawyer may receive advanced fee payments from 3rd parties. In such cases, the lawyer must follow the requirements of SCR 20:1.8(f). In addition, the lawyer should establish, upon receipt or prior to receipt of the advanced fee payment from a 3rd party, whether any potential refund of unearned fees will be paid to the client or 3rd−party payor. This may be done through agreement with the payor 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 that some new procedures be hold in trust. Prior to that date, the applicable 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 10, 2006, the supreme court amended SCR 20.50(1) as follows: "All amounts that may be paid by a client to a lawyer or law firm shall be deposited in one or more identifiable trust accounts as provided in sub. (3) maintained in the state in which the law office is situated. The writing must inform the client of the opportunity to file a claim in the supreme court for review of the payment if the client indicates that any amounts paid to the lawyer or law firm may be deposited in trust except as follows. . . ." This requirement is specifically addressed in SCR 20:1.5(g).

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 that are held in trust in which the lawyer's fees are 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 fees may be subject to judicial review. In any proceeding in which the lawyer's fee is challenged, the lawyer must either deposit advanced fees in trust or use the alternative protections for advanced fees in this subsection. The lawyer's fee remains subject to the requirement of reasonableness under SCR 20:1.5 (a) as well as the requirement that unearned fees be returned to the trust account if a client objects to the disbursement of the contingent fees in this subsection. The lawyer's fee remains subject to the requirement of reasonableness under SCR 20:1.5 (f) as SCR 20:1.5 (a) as well as the requirement that unearned fees be returned to the trust account if a client objects to the disbursement of the contingent fees. The lawyer's fee remains subject to the requirement of reasonableness under SCR 20:1.5 (a) as well as the requirement that unearned fees be returned to the trust account if a client objects to the disbursement of the contingent fees.

(a) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act or to mitigate or rectify substantial injury to the financial interest or property of another.

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(d) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(e) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(f) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(g) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(h) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(i) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(j) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(k) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(l) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(m) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(n) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(o) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(p) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(q) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(r) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(s) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(t) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(u) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(v) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(w) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(x) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(y) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

(z) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial harm or to mitigate or rectify substantial injury to the financial interest or property of another.

{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: The rule retains in paragraph (b) the mandatory disclosure requirements that were a part of the Wisconsin Supreme Court Rules since their initial adoption. Paragraph (c) differs from its counterpart, Model Rule 1.6 (b), as necessary to take account of the mandatory disclosure requirements in Wisconsin. The language in paragraph (c) (1) was changed from "reasonably certain" to "reasonably likely" to comport with sub. (b). Due to substantive and numbering differences, special care should be taken in consulting the ABA Comment.

Wisconsin Committee Comment:

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."
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, the disclosure should ordinarily include no more information than is necessary to establish the existence of the conflict and its likely consequences. Comment 2 provides examples of situations where the disclosure of information would prejudice the client. Lawyers should err on the side of protecting confidentiality.

Paragraph (a) of Rule 1.6 (c) (2) does not require the lawyer to reveal the client’s misconduct, the lawyer’s or the client’s sons or appropriate authorities to prevent the client from committing a crime or fraud, but to refer to the wrongful conduct. Although paragraph (c) (2) has been deleted, paragraph (a) of Rule 1.6 (c) (2) permits such disclosure by refraining from the wrongful conduct. If, however, the other law supersedes this Rule and requires disclosure, paragraph (a) (b) permits the lawyer to make such disclosures as are necessary to comply with the law.

Paragraph 2A of the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer may not reveal information regarding the representation to the client’s representation by the client and the lawyer. The client’s right to represent one of the matters of the client’s representation to the extent reasonably necessary to detect and resolve conflicts of interest that might arise in connection with undertaking a new representation. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

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 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. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

Paragraph (b) (7) does not affect the use of information acquired by means independent of any disclosure pursuant to paragraph (b) (7). Paragraph (b) (7) 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 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. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, effective. 1−1−17.]

Paragraph (b) permits disclosure only to the extent necessary to accomplish the purposes specified in paragraphs (b) (1) through (b) (7). In exercising the discretion conferred by this Rule, the lawyer should consider such factors as the importance of the information to the successful representation of the client, the interest of third parties in the information, the client’s right to privacy, the legal, moral, or ethical duties owed to the client, the existence of an investigative authority, the unauthorized access to, or the inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation to accomplish the purposes specified. Where practicable, the lawyer should first 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 therefor to protect the investigation, or other government interests. Where practicable, the lawyer should first seek to persuade the client to take suitable action. Paragraph (b) permits disclosure only to the extent necessary to accomplish the purposes specified. Where practicable, the lawyer should first 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 therefor to protect the investigation, or other government interests. Where practicable, the lawyer should first seek to persuade the client to take suitable action.

Acting Competently to Preserve Confidentiality. Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation to a client’s representation to the extent necessary to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation. Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation to a client’s representation to the extent necessary to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.
sure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the severity of the violation, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as the federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's fees when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comment [5]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the interception or access of the information by persons not entitled to receive it. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

[20] Former Client. [21] The duty of confidentiality continues after the client–lawyer relationship has terminated. See Rule 1.9 (c) (2). See Rule 1.9 (c) (1) for the prohibition against using such information to the disadvantage of the former client.

SCR 20:17 Conflicts of interest current clients. (a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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

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

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) a writing signed by the client.

History: Sup. Ct. Order No. 04−07, 2007 WI 1, 293 Wis. 2d xv.

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


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

ABA Comment: General Principles. [1] Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Concurrent conflicts of interest can arise from the lawyer’s responsibilities to another client, a former client or 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) clearly identify the clients; or

(2) determine whether a conflict of interest may be undertaken may be decided on the basis of a representation of one client or the other. Where more than one client is involved, whether the lawyer may continue to represent all clients is determined both by the lawyer's ability to comply with duties to each client and by the lawyer's ability to represent adequately the clients, given the lawyer's duties to the former client. See Rule 1.9. Also see Comments [5] and [29].

[3] 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 lawsuit. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The court may require the lawyer to withdraw from the representation, unless the lawyer has obtained 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 for determining the reasonableness of the conflict, i.e., whether the conflict is consensual; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both (1) the one or more clients whose representation might be materially limited under paragraph (a) (2).

[4] A conflict of interest may exist when representation is undertaken, in which the 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 for determining the reasonableness of the conflict, i.e., whether the conflict is consensual; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both (1) the one or more clients whose representation might be materially limited under paragraph (a) (2).

[5] Identifying Conflicts of Interest: Directly Adverse. [6] Loyalty to a current client imposes an obligation to a disinterested third person that the lawyer must not neglect. Where the lawyer is also an advocate for a client with a direct adverse conflict, the lawyer must act as an advocate in a manner consistent with the lawyer's duties to the client. Such a lawyer is ethically required to act as an advocate for the client in the representation of interests of the lawyer that are directly adverse to those interests of the client. When representing clients in different capacities, the lawyer must not neglect the interests of the lawyer that are directly adverse to those interests of the client. Where a lawyer is also an advocate for a client with a direct adverse conflict, the lawyer must act as an advocate in a manner consistent with the lawyer's duties to the client. Such a lawyer is ethically required to act as an advocate for the client in the representation of interests of the lawyer that are directly adverse to those interests of the client. Where a lawyer is also an advocate for a client with a direct adverse conflict, the lawyer must act as an advocate in a manner consistent with the lawyer's duties to the client. Such a lawyer is ethically required to act as an advocate for the client in the representation of interests of the lawyer that are directly adverse to those interests of the client.
fere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer’s Responsibilities to Former Clients and Other Third Persons. [9] In addition to conflicts with other current clients, a lawyer’s duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9(c) and to other persons under other Rules. Thus, 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 conflict with or be substantially outweighed by the interests of a client. Whether a conflict of interest exists depends on the circumstances and requires the lawyer to determine whether the lawyer’s own interests are substantially outweighed by the interests of the client. The lawyer should consult with another lawyer if the lawyer is uncertain whether a conflict of interest exists.

Informed Consent. [11] The lawyer’s own interests should not be permitted to conflict with or be substantially outweighed by the interests of a client. Whether a conflict of interest exists depends on the circumstances and requires the lawyer to determine whether the lawyer’s own interests are substantially outweighed by the interests of the client. The lawyer should consult with another lawyer if the lawyer is uncertain whether a conflict of interest exists.

Conflict to Future Conflict. [22] Whether a lawyer may properly request a client to consent to future conflicts that might arise in the future is governed by also Rule 1.10 (personal interest conflicts). 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 serious the conflict or the more subjective 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. See also Rule 1.16 (termination of representation).

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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, a 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. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake multiple representation of clients where contentious litigation or negotiation between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the lawyer has assumed the position that the parties have already assumed antagonism, the possibility that the clients’ interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

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

[31] As to the duty of confidentiality, continued common representation will almost always require the lawyer to agree 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 representation that might affect that client’s interests and the right to expect that the lawyer will use that information to 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 that the client’s information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation only 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 partisanship 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 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients. [34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13 (a).

Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the lawyer should be considered a client of both. In such a situation, the lawyer, there is an unusual conflict between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client’s affiliates, or the lawyer’s obligations to either the organizational client or the new client are likely to limit materially the lawyer’s representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two positions will create an unacceptable level of potential conflict. 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 of the existence of 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;
RULES OF PROFESSIONAL CONDUCT

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

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

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

(3) 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.

(4) Paragraph (a) “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.

(5) 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.

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

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RULES OF PROFESSIONAL CONDUCT

mements 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 interest in the third-party payer (for example, when the client is the third-party payer and a co-client). Under Rule 1.7 (b), the lawyer may accept or continue the repre-

client’s own emotional involvement renders it unlikely that the client could give

relationships may make it difficult to predict to what extent client confidences will

ations with a client regardless of whether the relationship is consensual and regardless

dependency are diminished when the sexual relationship existed prior to the com-

hibited. Issues relating to the exploitation of the fiduciary relationship and client

Contracts for contingent fees in civil cases are governed by Rule 1.5.

such a person in writing of the appropriateness of independent representation in con-

nection with such a settlement. In addition, the lawyer must give the client or former

 Aggregate Settlements. [13] Differences in willingness to make or accept an offer of settle-


Agreements settling a claim or a potential claim for malpractice are not pro-

the law of each jurisdiction determines

mine competent and diligent representation. Also, many clients are unable to evalu-

through the lawyer’s efforts in the litigation, such an acquisition is a business or finan-

lawyer acquires by contract a security interest in property other than that recovered

contracts for reasonable contingent fees. The law of each jurisdiction determines

such a settlement. In addition, the lawyer must give the client or former

limited the ability of lawyers to practice in the form of a limited−liability

tions with a client regardless of whether the relationship is consensual and regardless

of the absence of prejudice to the client.

Sexual relationships that predate the client−lawyer relationship are not pro-

Issues relating to the exploitation of the fiduciary relationship and client dependencies exist when the sexual relationship is not to the use of the trust of the cli-

The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer’s fiduciary role and an appearance of conflict of interest with such a settlement. In addition, the lawyer must give the client or former

dult representation with the informed consent of each affected client, unless the conflict is non-

The lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7 (a) (2).

[18] Sexual relationships that predate the client–lawyer relationship are not pro-

Issues relating to the exploitation of the fiduciary relationship and client dependencies exist when the sexual relationship is not to the use of the trust of the cli-

plea offer or plea bargain is made or accepted on behalf of multiple clients, the law-

must inform each of them about all the material terms of the settlement, including

whether to receive or pay the settlement or plea offer is foreclosed by the term of

See also Rule 1.0 (e) (definition of informed consent). Lawyers representing a class of

client−lawyer relationship with each member of the class; nevertheless, such lawyers

in this paragraph is a corollary of both these Rules and provides that, before a

against the others in the same or a substantially related matter after a dispute arose

is not, however, prohibited a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the

parolee's consent, confirmed in a writing signed by the client.

The prohibition set forth in paragraph (j) could not be satisfied if a lawyer who has pre-

The underlying question is whether a lawyer who has represented an accused person could not properly represent the accused in a subsequent

two representations are substantially related such that if the lawyer could have obtained confidential information in the first representation that would have been rele-

This test applies in a criminal serial representation case when the lawyer’s representation of one client at a time is not materially limited by the 

The lawyer’s representation of one client at a time is not materially limited by the relationship. See Rule 1.7 (a) (2).

The underlying question is whether a lawyer who has represented an accused person could not properly represent the accused in a subsequent

[15] Agreements settling a claim or a potential claim for malpractice are not pro-

The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth specific standards authorized by law to assure that the lawyer is compensated for the time spent and that 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 organized or unorganized, liens in law and liens acquired by contract with the client's 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 interest of the lawyer and is governed by Rule 1.7 (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

15 Updated 17–18 Wis. Stats.

with respect to a client, or when the information has become generally known; or

(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.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter repre-

sent another person in the same or a substantially related matter in which a lawyer

who formerly was associated had previously represented a 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 substan-

tial relationship between two representations, it is presumed that conflicts of interest

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 prosecuting the client, the attorney is subject to discipline from BAPR. State v. Love, 227 Wis. 2d 360, 394 N.W.2d 806 (1999).

When defense counsel has appeared for and represented the state in the same 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. Love, 227 Wis. 2d 360, 394 N.W.2d 806 (1999).

See also State v. Kalk, 2003 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's interest in the former client's success in the case is not to the use of the trust of the client to the client’s disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairing the exercise of an independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the lawyer-client relationship. Although client confidences are protected by privilege only when they are imparted in the context of the client–lawyer relationship, the client’s own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with the client without the client’s consent, confirmed in writing signed by the client.

A lawyer who has represented a party in a matter in which the adverse party is that

A lawyer who has represented a defendant in a criminal matter in which the defendant has been convicted or has entered a guilty or nolo contendere plea may not represent another defendant in a subsequent matter involving a substantially related matter, unless the defendant gives informed consent, confirmed in writing signed by the defendant.

Variant rules in requiring informed consent to be confirmed in a writing “signed by the client.”

ABA Comment: [1] After termination of a client–lawyer relationship, a lawyer has been continuing duties with respect to the confidence, as well as work product, that were the subject of 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 reschedule on behalf of a new client a contract drafted on behalf of the former client. So, a lawyer who has represented an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter, a resent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and for the time being government lawyers must comply with this Rule to the extent required by Rule 1.11.

The scope of a “matter” for purposes of this Rule depends on the facts of a par-

In one regard, however, Rule 1.7 (b) protects a lawyer’s right to the particular use by the lawyer concerning the organization’s legal matters.

Protection of Prohibitions

Paragraph (k), a prohibition on sexual relationships with a client, may be interpreted to apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether

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

[3] Matters are “substantially related” for purposes of this Rule if they involve the same or substantially the same legal dispute or if there otherwise is a substantial risk that the lawyer’s knowledge of confidential information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter. For example, if a lawyer who has previously represented a client obtaining environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded from participating in a substantial relationship from advising a developer who may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client’s policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter currently will preclude such a representation. A former lawyer is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

[4] Lawyers Moving Between Firms. [4] Whenever lawyers have been associated in a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations, and the preferable one is that the former lawyer must be required to assure that the principle of loyalty to the client is not compromised. Second, the Rule should not be so broadly cast as to preclude others from having reasonable access to information necessary to the representation of clients. Third, the Rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers are members of partnerships, that many lawyers have no degree limit their professional practice, and that a client in one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has had access to information protected by Rules 1.6 and 1.9. If the information was known to the lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a 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 (b) 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 discussions of their affairs; it should be inferred that such a lawyer has access 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 has access to information that is relevant to those clients but not to other clients. In such an inquiry, the breach of promise must rest upon the firm whose disqualification is sought.

[7] Of independent disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9 (c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of his or her employment may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a client has once served a client does not preclude the lawyer from using generally known information about that client to enable the affected client to ascertain compliance with the provisions of this rule.

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

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

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

(i) the personally disqualified lawyer performed no more than minor and isolated services in the disqualifying representation and did so only at a firm with which the lawyer is no longer associated; and

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

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

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


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

[11] Wisconsin Committee Comment: Definition of “Firm.” [11] For purposes of the Rules of Professional Conduct, the term “firm” denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal service plan for not-for-profit legal aid corporation or other organization. See Rule 1.0 (c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comment 1.[12] Principles of Imputed Disqualification. [2] The Rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9 (b) and (1) and 1.10 (b).

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

[14] Rule 2 in paragraph (a) applies only to lawyers who have been adequately screened from the matter in question ordinarily will preclude such a representation. A former lawyer who has once served a client may not subsequently be used or revealed by the lawyer to others in the firm or have a material relationship with a person with interests materially adverse to those of a client represented by a lawyer who formerly associated with the firm. The Rule applies regardless of when the former lawyer represented the client. However, the law firm may not represent a person with interests directly adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the lawyer is no longer associated to represent the client or former client under the conditions stated in Rule 1.7.

[15] Rule 1.10 (b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly associated with the firm. However, the firm law firm may not represent a person with interests directly adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the lawyer is no longer associated to represent the client or former client under the conditions stated in Rule 1.7.

[16] The Rule in paragraph (a) removes imputation of the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 Comment [22]. For a definition of informed consent, see Rule 1.0 (c).

[17] The Rule applies to an attorney after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11 (d), where a lawyer represents the government after having served clients in private practice or in another governmental capacity, former client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[18] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

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

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

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

(2) shall not:

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

(ii) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, 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 imputation in a nongovernment 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 Wis. 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.
(c) If a lawyer is disqualified by par. (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

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

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

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

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

ABA Comment: [1] This Rule generally parallels Rule 1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility that might 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 Canons A (2), B (2), and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not “act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto.” Although phrased differently from this Rule, those Rules correspond in meaning.

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

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

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

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

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

(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 higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

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

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

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

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

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

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

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

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

Wisconsin Committee Comment: Paragraph (h) differs from the Model Rule and calls attention to the mandatory disclosure provisions contained in Wisconsin Supreme Court Rule 20:1.6 (b).

ABA Comment: The Entity as the Client. [1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees, shareholders and other constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents or other persons any information relating to the representation except for disclosures expressly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[2] When one of the constituents of an organizational client communicates with the organization’s lawyer in that person’s organizational capacity, the communication is protected under Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client’s employees or other constituents are covered by Rule 1.6. This does not mean, however, that these communications are the clients of the lawyer. The lawyer may not disclose to such constitu
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SCR 20:1.14 Client with diminished capacity. (a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client–lawyer relationship with the client.

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

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

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to January 23, 2020. Report errors at 608.504.5801 or tbl.legal@legis.wisconsin.gov.
impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the advice of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client’s interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance. In an emergency where the health, safety or 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 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 earnest money, loan proceeds, settlement proceeds, collection proceeds, cost advances, and advanced payments of fees that have not yet been earned. An IOLTA account is subject to the provisions of SCR Chapter 13 and the trust account provisions of subs. (a) to (i), including the IOLTA account provisions of subs. (c) and (d).

9. “IOLTA participating institution” means a financial 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,” or 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:
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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 lawyer of any overdrafts or 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.
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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. In this par. c.1., “United States government securities” include securities of government–sponsored entities, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation;

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

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

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

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, 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 set rate above its comparable rates on the IOLTA checking account negotiated with WisTAF that is fixed over a period of time set by WisTAF, such as 12 months.

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

1. Per check charges.

2. Per deposit charges.

3. Fees in lieu of minimum balance.

4. Sweep fees.

5. An IOLTA administrative fee approved by WisTAF.

6. Federal deposit insurance fees.

b. Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that the fees are calculated in accordance with an IOLTA participating institution’s standard practice for non–IOLTA customers. Fees in excess of the interest earned or dividends paid on the IOLTA account for any month or quarter shall not be taken from interest or dividends of any other IOLTA accounts. No fees that are authorized under SCR 20.1.15 (d) (5) shall be assessed against or deducted from the principal of any IOLTA account. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. IOLTA participating institutions may elect to waive any or all fees on IOLTA accounts.

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

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

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

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

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

(e) PROMPT NOTICE AND DELIVERY OF PROPERTY. (1) Notice and delivery. Upon receiving funds or other property in which a client has an interest, or in which a lawyer has received notice that a third party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or third 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 third party any funds or other property that the client or third party is entitled to receive.

(2) Accounting. Upon final distribution of any trust property or upon request by the client or a third 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 third 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 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 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 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.
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 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.
11. ‘Burdens of proof.’ A lawyer’s failure to promptly deliver trust property to a client or third party entitled to that trust property, promptly submit trust account records to the office of lawyer regulation, or promptly provide an accounting of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15 (8). 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.
12. ‘Dishonesty 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.
   (10) Trust and fiduciary certificate and acknowledgments. (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 from any of that lawyer’s or law firm’s own property.
from the member’s own property, to safeguard that property, to maintain complete records of that property, to account fully for that property, and to promptly deliver that property to the owner.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Location. Each fiduciary account shall be maintained in a financial institution as provided by the written authorization of the client, the governing trust instrument, organizational by−laws, an order of a court, or absent such direction, in a financial institution that, in the lawyer’s professional judgment, will best serve the needs and purposes of the client or third 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−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 accounting must be reviewed by a court, timely file those annual financial Accounting under the court.

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

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

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

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

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

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

History: Sup. Ct. Order No. 02−06, 2004 Wis. 49, 269 Wis. 2d xiii; Sup. Ct. Order No. 04−07, 2007 WI 1, 293 Wis. 2d xv; Sup. Ct. Order No. 06−04, 2007 WI 48, 297 Wis. 2d xv; Sup. Ct. Order No. 08−03, 2009 WI 62, filed 7−1−09, eff. 1−1−10; Sup. Ct. Order No. 18−04, 2016 WI 97, 333 Wis. 2d 632, filed 2−23−16, eff. 4−16−16, filed 7−1−16; Sup. Ct. Order No. 14−07, 2016 WI 21, filed 4−16−16, eff. 7−1−16; Sup. Ct. Order No. 14−07A, 2016 WI 97, filed and eff. 12−7−16.


Note: Sup. Ct. Order No. 14−07 states that "the Comments to SCRs 20.10, 20.15, and 22.39 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.”

Wisconsin, 2016: A lawyer must hold the property of others with the care required of a professional fiduciary. All property that is the property of clients or 3rd persons that a lawyer holds, keeps separate from the lawyer's business and personal property 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. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

SCR 20.11 (a) (2) Electronic transaction. The types of electronic transactions that are required to be kept separate from the record−keeping guidelines published by the office of lawyer regulation.

SCR 20.11 (b) (1) Separate accounts. With respect to probate matters, a lawyer may be expected to serve in a fiduciary capacity as the personal representative, to represent an estate's personal representative, or to act as both personal representative and attorney for an estate. SCR 20.11 (k) applies to funds and property which a lawyer holds in his or her capacity as the personal representative of a client or as the personal representative or 3rd parties must be kept separate from the lawyer's business and personal property 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. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).

3. By requiring clients to pay the credit card charges, is the lawyer required to give certain specific disclosures to such clients and offer cash discounts to all clients? If a lawyer intends to require clients to pay credit card charges, the lawyer needs to assure that the lawyer complies with all state and federal laws relating to such disclosures, including, but not limited to, Regulation Z of the Truth in Lending Act, 12 C.F.R. § 226.

4. Does the credit card issuer require services to be rendered before a credit card payment for legal fees is accepted? If a lawyer intends to accept credit card payments for legal fees, the lawyer needs to assure that the lawyer complies with all state and federal laws relating to such disclosures, including, but not limited to, Regulation Z of the Truth in Lending Act, 12 C.F.R. § 226.

5. A lawyer's failure to comply with the credit card issuers' and/or the bank's requirements that a lawyer only disburse funds that are available for disbursement, i.e., funds that have been credited to the account. 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, credit card issuer, 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 deductions with funds belonging to the lawyer or lawyer firm within 3 business days after receiving notice of the deductions. In addition, the lawyer must establish an agreement with the financial institution to block debts from the IOLTA account.

6. SCR 20.11 (f) (4) b. Exception: Real estate transactions. SCR 20.11 (f) (4) b. establishes an exception to the requirement that a lawyer only disburse funds that are available for disbursement, i.e., funds that have been credited to the account. This exception was created in recognition of the fact that real estate transactions in Wisconsin require a simultaneous exchange of funds. However, even under this exception, the funds from which a lawyer disburse the proceeds of a real estate transaction, i.e., the lender’s check, draft, wire transfer, etc., must be deposited no later than the first business day following the date of the closing. In refinancing transactions, the lender’s funds must be deposited as soon as possible, but no later than the first business day after the loan proceeds are distributed. Proceeds are generally distributed within two business days after the closing date.

7. Record production. The duty of the lawyer to produce client trust account records for inspection under SCR 20.11 (g) (2) is a specific exception to the lawyer’s responsibility to maintain the confidentiality of the client’s information required by SCR 20.11 (d) (4) b.

8. SCR 20.11 (g) (3) Burden of proof. A lawyer’s failure to comply with the record production requirements of SCR 20.11 (g) (2) or to provide an accounting to the bank that the lawyer property will result in a presumption that the lawyer has not maintained the property in trust, contrary to SCR 20.11 (b) (1). This presumption can be rebutted by the lawyer’s production of records or an accounting that overcomes the clear, satisfactory, and convincing evidence. See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d 660 (1968).
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) Segregation of fiduciary property. See comment to SCR 20:1.15 (b).

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

SCR 20:1.16 Declining or terminating representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has been commenced, withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (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, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

History: Sup. Ct. Order No. 04−07, 2007 Wis. 1, 293 Wis. 2d xv.

Note: Sup. Ct. Order No. 13−10 states that “[the Comments to SCRs 11.02, 20:1.1, 20:1.2 (e), 20:1.2 (cm), and 20:1.6 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule].” Wisconsin Committee Comment to Supreme Court Rule 20:1.16, Declining or terminating representation (2014): With respect to subparagraph (c), a lawyer providing limited scope representation in a matter before a court should consult Wis. Stat. Ann. § 802.045, Stats., regarding notice and termination requirements.

Case Notes: The formation and termination of an agreement to provide representation is discussed. Gustafson v. Physicians Insurance Co. 223 Wis. 2d 164, 588 N.W.2d 360 (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: With respect to the last sentence of paragraph (d), it should be noted that a state bar ethics opinion suggests that lawyers in Wisconsin do not have a retaining lien with respect to client papers. See State Bar of Wis. Comm., on Prof’l Ethics, Formal Op. E−49−5−4−95 (April 1998).

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed−upon assistance has been concluded. See Rules 20.1.2 (c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal. [2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct, a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is requested in circumstances where the lawyer is not expected to engage in the practice of law over a long period of time. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer’s statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

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

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

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

Optional Withdrawal. [7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client’s interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer’s services were rendered in the past even if that conduct previously prejudiced the client. Within two years of withdrawal, the lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement. The required protection may include the ascertainment of fees or court costs or an agreement limiting the objectives of the representation.

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

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

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or in the jurisdiction in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller’s affected clients regarding:

(1) the proposed sale;

(2) the client’s right to retain other counsel or to take possession of the file; and

(3) 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 disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

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

History: Sup. Ct. Order No. 04−07, 2007 Wis. 1, 293 Wis. 2d xv.

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

ABA Comment: [1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.5 and 5.4.

Termination of Practice by the Seller. [2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith markets the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller’s clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. An unexpected change of circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the
sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a 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, accommodates the sale of a lawyer's entire practice, which results from retirement, but does not permit the sale of the practice of another lawyer who 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).

(b) A lawyer who is a lawyer or law firm may sell an area of practice. If an area of practice is 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 a consultant. (c) A lawyer who has previously assumed joint responsibility for a matter in connection with the practice of the other lawyer, which matters are not a part of the practice which the lawyer remains in the active practice of law by concentrating on probe administration; however, that practitioner may not thereafter accept any estate planning matters where the lawyer acts as a consultant to an estate planning lawyer and the lawyer will not use the office of the estate planning lawyer as a channel for business.

Sale of Entire Practice or Entire Area of Practice, [6] The Rule requires that the seller’s entire practice, or an entire area of practice, be sold. The prohibition against sale of an entire practice area protects those clients whose dealings are based on the nature of the lawyer's practice and not merely on the personal character and judgement of the lawyer. If an area of practice is sold, the buyer’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to inform the client of the possibility of forming a client-lawyer relationship because of a conflict of interest.

Other Applicable Ethical Standards, [11] Lawyers participating in the sale of a law practice or an area of practice are subject to the ethical standards applicable to: (a) a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter in which the lawyer 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. (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information learned in the consultation, except as SCR 20.1.9 would permit with respect to information of a former client. (c) A lawyer subject to par. (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in par. (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in par. (d).

(d) When the lawyer has received disqualifying information as defined in par. (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (ii) written notice is promptly given to the prospective client.

ABA Comment: [1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer’s custody, or rely on the lawyer’s advice. A lawyer’s consultation with a prospective client may be limited in time and depth and leave both the prospective client and the lawyer (and sometimes required) to proceed no further. Hence, prospective clients should receive some of the protection available to their clients. [2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer’s advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer’s obligations, and a person provides information in response. See also Comment [4]. Whether a consultation occurs depends on the circumstances. For example, a consultation may be deemed to have occurred if a person provides information to a lawyer in response to advertising that merely describes the lawyer’s education, experience, areas of practice, and contact information. Such a communication may constitute a consultation if the lawyer provides legal information or advice to the individual, or the information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a “prospective client.” Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a “prospective client.”

[3] It is often necessary for a prospective client to reveal information to the lawyer during the initial consultation prior to the decision about formation of a client—lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should also conduct a consultation as reasonably appears necessary for the purpose. Where the information indicates that a conflict of interest or other reason for disqualification exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person’s consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. Rule 1.9(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer’s subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or in a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d), information from a prospective client is not imputed to other lawyers if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the con-
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 4, 293 Wis. 2d 2x.

ABA Comment: Scope of Advice. [1] A client is entitled to straightforward advice expressing the lawyer’s honest assessment. Legal advice often involves implications of alternatives that a client may not be able to discern by himself or herself. In giving advice, 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 practical considerations, such as cost or effects on other people, are preeminent. 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] A client 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 responsibility as a lawyer may include indicating that more may be 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 can involve problems within the competence of the accounting profession or of financial specialists. Where counsel with a professional in another field is itself something of a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer’s advice at its best often consists of recommending a course of action that will enable the client to exercise a face of conflicting recommendations of experts.

Offering Advice. [5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client’s interest, the lawyer’s duty to the client under Rule 1.4 may require that the lawyer offer advice if the client’s course of action is related to the representation. Similarly, when a matter is in litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investments or to give advice to the client that has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client’s interest.

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 subject to SCR 20:1.6.

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

ABA Comment: Definition. [1] An evaluation may be performed at the client’s direction or when impliedly 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, or 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 interests are being examined. Where the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify a lawyer 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 information or use of a third person, a legal duty to the third person necessarily follows. It is the equivalent of a lawyer’s duty to a client’s fiduciary in the American Bar Association Statement of Policy Regarding Lawyers’ Responses to Requests for Information. The lawyer must be satisfied that the third person is competent to accept any unfavorable findings. The lawyer should make clear to the third person what the lawyer’s role is as one who represents a client.

[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 lawyer of professional judgment. The lawyer should have such latitude of investigation unless 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 that would significantly impair 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 be made, the lawyer should so inform the client and may determine by law, having reference to the terms of the client’s agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client’s Informed Consent. [5] Information relating to an evaluation is protected by Rule 1.6. In many instances, providing an evaluation to a third party poses a significant risk to the lawyer; thus, the lawyer may be impliedly or expressly required not to disclose information to carry out the representation. See Rule 1.6(a). Where, however, the lawyer 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. [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 accordance with the professional procedures recognized 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.

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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." [4]

ABA Comment: [1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court. [2] The role of a third-party neutral is not unique to lawyers, although, in some court—connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or to rules that apply to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer—neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint 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 third-party neutral and a lawyer’s service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer—neutral to inform unrepresented parties that the lawyer acting as mediator is not representing them. For some parties, particularly parties who have used dispute—resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. The lawyer—neutral should 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 their communication. As a result, the extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute—resolution process selected.

(6) 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 1.3.

Notwithstanding SCR 20:1.2 (cm) or SCR 20:1.3 does not apply when the lawyer is a mediator who has served as a mediator to the mediation, file such documents with the court. However, any appearance by a lawyer in court on behalf of one or more parties is closely associated with the duty that 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 may not appear in court on behalf of one or more 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 (cm) 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.

SUBSECTION 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;

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.

(b) 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.

(c) 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 SCR 20:1.2 (b) requires that where the court finds that the lawyer-advocate does not assume a client-lawyer relationship with any party other than the client, and where the lawyer represents the client, the lawyer may not appear in court on behalf of one or more parties 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 1.3.

Notwithstanding SCR 20:1.2 (cm) or SCR 20:1.3 does not apply when the lawyer is a mediator who has served as a mediator to the mediation, file such documents with the court. However, any appearance by a lawyer in court on behalf of one or more parties is closely associated with the duty that 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 may not appear in court on behalf of one or more 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 (cm) 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.

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 without compromising 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 closely associated with the duty that 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 may not appear in court on behalf of one or more 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 (cm) 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.

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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 or to act reasonably in the interest of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[7] The duties stated in paragraphs (a), (b), (c) and (d) apply even if competent counsel requires disclosure of information otherwise protected by SCR 20:1.6.

[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 trier of fact. A lawyer’s knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0 (f).

[9] Although paragraph (a) (3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer’s ability to discipline the quality of evidence otherwise offered by the lawyer. It is for the trier of fact to weigh the lawyer’s effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to offer false evidence that the lawyer reasonably believes to be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer’s client, or another witness called by the lawyer, testifies falsely. Absent the most extraordinary circumstances, such knowledge must be based on the client’s expressed admission of intent to testify untruthfully. Performance of the duty when the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows that the testimony will be false, the lawyer must honor the client’s decision to testify. See also Comment [7].

[11] This Rule envisions the definition of “tribunal.” It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal’s adjudicative authority, such as a deposition. The lawyer knows that the client is being examined in a deposition. Failure to act reasonably in the interest of the client constitutes an affirmative misrepresentation. The obligation prescribed in Rule 1.2 (d) to not counsel a client to commit misconduct does not apply. 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.

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise obstructing the true-finding process. Consequently, although a lawyer in an adversary proceeding is not required to present all material evidence for the evidence that the lawyer does not know that the lawyer knows to be false.

[13] This Rule governs the conduct of a lawyer who is representing a client in an ancillary proceeding. The duties stated in paragraphs (a), (b), (c) and (d) apply even if the duties expire. For this reason, ABA Comment [13] is inapplicable.

ABA Comment [1] This Rule governs the conduct of a lawyer who is representing a client in a deposition. The duties stated in paragraphs (a), (b), (c) and (d) apply even if the duties expire. For this reason, ABA Comment [13] is inapplicable.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to January 23, 2020. Report errors at 608.504.5801 or lrb.legal@legis.wisconsin.gov.
SCR 20:3.4 Fairness to opposing party and counsel. A lawyer shall not:

(a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.

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

Case Note: It is a 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 not based on the evidence before the jury. State v. Jackson, 2007 WI App 149, 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 competently by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly 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 process privilege. Right of that right cannot 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 or to impede the progress of discovery or commeasurment can be punished. 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 steps to prevent the loss 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 (g) permits a lawyer to advise employees of a client to refrain from giving information to another party if 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 misrepresentation, 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 incapacity 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.

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ment given by a defendant or suspect or that person’s refusal or failure to make a statement;
(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in depri-

vocation of liberty;
(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if dis-
closed create a substantial risk of prejudicing an impartial trial; or
(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(e) Notwithstanding pars. (a) and (b) (1) through (5), a lawyer may state:
(1) the claim, offense or defense involved, and, except when prohibited by law, the identity of the persons involved;
(2) information contained in a public record;
(3) that an investigation of a matter is in progress;
(4) the scheduling or result of any step in litigation;
(5) a request for assistance in obtaining evidence and information necessary thereto;
(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the like-

hood of substantial harm to an individual or to the public interest; and
(7) in a criminal case, in addition to subs. (1) through (6):
(i) the identity, residence, occupation and family status of the accused;
(ii) if the accused has not been apprehended, information nec-

essary to aid in apprehension of that person;
(iii) the fact, time, and place of arrest; and
(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(d) Notwithstanding par. (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a cli-

cent from the substantial likelihood of undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client.
A statement made pursuant to this paragraph shall be subject to such information as is necessary to mitigate the recent adverse publicity.

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

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

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 the firm refused to do so by SCR 20:1.7 (c).

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

Case Note: When a prosecutor elicits testimony that can only be contradicted by defense counsel or the defendant, if defense counsel cannot reasonably foresee the defense, and the defendant has declined not to testify, defense counsel must be per-


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

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

Advocate−Witness Rule. [2] The tribunal has proper objection when the trier of fact may 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 preju-
dice that party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evi-
dence given by others. It may not be clear whether a statement by an advocate−wit-

ness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a) (1) through (a) (5).

Paragraph (a) (1) recognizes that if the testimony was not contemporaneous, the ambiguity in the dual role are purely theoretical. Paragraph (a) (2) recognizes that where the testimony concerns the extent and value of legal ser-

vices rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second 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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ing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer’s testimony, and the probability that the lawyer’s testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, disqualifying the lawyer who might be a witness is not necessarily a conflict of interest principles stated in Rules 1.7, 1.9, and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer’s firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest. [6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest, the lawyer must also be disqualified under Rule 1.7. Thus this would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer’s disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a) (3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client’s informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client’s consent. See Rule 1.7. See Rule 1.0 (b) for the definition of “informed consent.”

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from serving as advocate. If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

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 who has a legal or statutory right to counsel, the prosecutor shall inform the person of the right to counsel and the procedures to obtain counsel and shall give that person a reasonable opportunity to obtain counsel.

(d) 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. 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 person 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 unpri-
SCR 20:3.9 Advocate in nonadjudicative proceedings. A lawyer representing a client before a legislative body of an administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representational capacity and shall conform to the provisions of SCR 20:3.3 (a) through (c), SCR 20:3.4 (a) through (c), and SCR 20:3.5.

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

**ABA Comment:**[1] This Rule applies to communications before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule−making or advisory capacity, or a legislative body or its committee, in which the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

**Case Notes:** Defendant’s attorney’s negotiation with plaintiff’s divorce attorney in regard to the settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

**Case:** [1] Winstar Corp. v. City of Milwaukee, 23 Wis. 2d 1, 89 N.W.2d 86 (Wis. 1959). See also SCR 20:4.1, 20:4.2, 20:4.8 and 20:8.4; Sup. Ct. Order No. 04−07, 2007 WI 14, 293 Wis. 2d xv.

**Updated through January 23, 2020.**

**A B A Comment:**[1] This Rule applies to communications before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule−making or advisory capacity, or a legislative body or its committee, in which the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

**Case Notes:** Defendant’s attorney’s negotiation with plaintiff’s divorce attorney in regard to the settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

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**Updated through January 23, 2020.**

**A B A Comment:**[1] This Rule applies to communications before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule−making or advisory capacity, or a legislative body or its committee, in which the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.
cating 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 permitted or required by the court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Counsel of the organization’s lawyer is not required to communicate with a current or former constituent if a constituent of the organization is represented by the lawyer by his or her own counsel, the consent by that counsel to a communication will be sufficient. See Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[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 be inferred from the circumstances. See Rule 1.0 (f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In communicating with a person whom the lawyer communicates is not known to 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 party otherwise. See Rule 4.3.

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 SCR 15-03 and SCR 20:1.2 (c).

SCR 20:4.4 Respect for rights of 3rd persons. (a) In representing a client, a lawyer shall not use means that have substantial purpose other than to embarrass, delay, or burden a 3rd person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

(c) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information contains information protected by the lawyer-client privilege or the work product rule and has been directed to the lawyer inadvertently shall:

1) immediately terminate review or use of the document or electronically stored information;

2) promptly notify the person or the person’s lawyer if communication with the person is prohibited by SCR 20:4.2 of the inadvertent disclosure; and

3) 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.

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.

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 review or use of the document or electronically stored information, promptly notify the person or the person’s lawyer if communication with the person is prohibited by SCR 20:4.2 of the inadvertent disclosure, and abide by the person’s or lawyer’s instructions with respect to the 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 misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit the person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document or electronically stored information, is 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 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, email or 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 substantial obligation under this Rule 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.
dult that are consistent with the lawyer’s role in representing the best interests of the individual rather than the individual personally.

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

**Wisconsin Comment:** The Model Rules do not contain a counterpart provision. This provision should be read as a guide to ad litem law that a guardian ad litem in Wisconsin who represents the best interests of an individual, not the individual personally. See Paige K.B. v. Molepske, 219 Wis. 2d 418, 580 N.W.2d 289 (1998); In re Stevenon R.A., 196 Wis. 2d 171, 537 N.W.2d 142 (Ct. App. 1995); Supreme Court Rules, Chapters 35–36; govern 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 xv.

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

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a conferring of authority position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor’s reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

**SCR 20:5.3 Responsibilities regarding nonlawyer assistance.**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, 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 the person’s conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

1. the lawyer orders or, with the 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 person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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

**ABA Comment:** [1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.

[2] Lawyers generally employ assistants in their practice, including secretaries, paralegals, and other employees or independent contractors, act for the lawyer in rendition of the lawyer’s professional services. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer’s professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment and, except as provided in Rule 8.4, may be responsible for the assistance of a subordinate who, because of lack of reasonable assurance of ethical conduct, violates the obligation to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in super-

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[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervising lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4 (a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer’s conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2 (a).
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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 para-professional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or copying, 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 responsibility), 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. 15−2016 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 4, 293 Wis. 2d xv.


Note: The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 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. When 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 (f) (a 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 rule of this jurisdiction.

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

History: Sup. Ct. Order No. 04−07, 2007 WI 4, 293 Wis. 2d xv. Sup. Ct. Order No. 06−06, 2008 WI 109, filed 7−30−08, eff. 1−1−09; 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.
who are associated with that lawyer in the matter, but who do not expect to appear pro hac vice. Examples of such conduct include meetings with the client, interviews of the lawyer responsible for the litigation before the court or administrative agency. For example, subordinate lawyers may provide legal services on a temporary basis in this jurisdiction, and may therefore be permissible under the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer must hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[3] A lawyer who is employed by a client to provide legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice, may establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here. [6] There is no single test to determine whether a lawyer’s services are provided within the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer practicing in this jurisdiction to violate a court-annexed arbitration or mediation or otherwise if court rules or law so require. [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any other similar type of agreement that restricts the right of a lawyer to practice law as well as provide legal services on a temporary basis in this jurisdiction that arise out of or 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)(3). These services include both current or potential clients of the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person’s jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of para-professionals and delegating functions to them, so long as the lawyer supervises the delegations and retains ultimate responsibility for the work. See Rule 5.3.

[1] Wisconsin Supreme Court Rule differs from the Model Rule in that an attorney who is not admitted in a state or jurisdiction may nonetheless represent a client with respect to proceedings before an administrative agency. For example, subordinate lawyers, workers, accountants and others employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide legal services to clients. In other cases, significant aspects of the lawyer’s work might be conducted in another jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before a court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[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 litigation, mediation, or other adversarial proceeding in this or another jurisdiction, at the attorney is reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in 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 on a temporary basis in this jurisdiction if those services are in or reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice, but are not within paragraphs (c)(2) or (c)(3). These services include both services that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice or are reasonably related to the lawyer’s practice in another jurisdiction.

[14] Paragraphs (c)(3) and (c)(4) require that 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 or are reasonably related to the lawyer’s practice in another jurisdiction.

[15] 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 judicial decision. For example, paragraph (d)(2), this Rule does not authorize a lawyer admitted to practice law in another jurisdiction and who establishes an office or other systematic and continuous presence in this jurisdiction must become admitted to practice law 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 employees. The paragraph applies to in-house corporate lawyers who assist or are under common control with the employer. The lawyer’s assignment is to represent the employer outside the jurisdiction in which the lawyer is admitted to practice in that jurisdiction. The lawyer must be admitted to practice law in that jurisdiction or otherwise be qualified to practice law in that jurisdiction. Paragraph (d)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is admitted but does not then have the right or power to practice law law in such jurisdiction on a temporary basis, if the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction.

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 agreement, 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.

Wisconsin Supreme Court Rules updated by the Legislative Reference Bureau. Current through all Supreme Court Orders filed prior to January 23, 2020. Report errors at 608.504.5801 or Irb.legal@legis.wisconsin.gov.
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restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing 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) A lawyer or 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 to practice law elsewhere, in the states or jurisdictions in which he or she is licensed.

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

(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 $8,000,000 aggregate combined indemnity and defense cost coverage amount per policy period.

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

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

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

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

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

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

History: Sup. Ct. Order No. 04−07, 2007 WI 4; 293 Wis. 2d 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 Supreme Court Rule 20 has no counterpart in the Model Rules. Model Rule 5.7, concerning law−related services, is not part of these rules.

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

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

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

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

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

ABA Comments
[1] When a lawyer performs law−related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law−related services are performed fails to 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 involved in the provision of 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
lawyer’s control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case. [5] When a client–lawyer relationship exists with a person who is referred by a lawyer, any law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

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

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, an individual user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer–accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law-related services. Examples of law-related services are title insurance, financial planning, accounting, trusts, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obligated to accord the recipients of such services the protections of those Rules that apply to the client–lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially 1.7(a) and 1.8(a), (b), and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to confidentiality of information. The promotion of the law-related services must also be in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction’s decisional law.

[11] Paragraphs (a) (1) and (2) recognize the critical need for legal services that are financed by governmental organizations in matters that are designed primarily for individuals whose incomes and financial resources are slightly above the guidelines established by programs of the Legal Services Corporation. Persons eligible for legal services under paragraphs (a) (1) and (2) are those whose incomes and financial resources are slightly above the guidelines established by programs of the Legal Services Corporation. Persons eligible for legal services under paragraphs (a) (1) and (2) are those whose incomes and financial resources are slightly above the guidelines established by programs of the Legal Services Corporation.

[12] Paragraph (b) recognizes that a lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility the lawyer should:

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

(1) persons of limited means or

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

(b) provide any additional services through:

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

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

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


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 whose problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. However, a lawyer may decide to choose a higher or lower number of hours of 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 for fewer hours of the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, 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 or 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 established by programs of the Legal Services Corporation. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women’s centers and food pantries that provide essential services to clients who qualify for participation in programs funded by the Legal Services Corporation. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women’s centers and food pantries that provide essential services to clients who qualify for participation in programs funded by the Legal Services Corporation.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a) (1) and (2). Accordingly, services rendered cannot be considered pro bono if an attorney is acting out of a desire to collect fees from lucrative trust, estate and tax advice from a lawyer–accountant or investigative services in connection with a lawsuit.

[5] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a) (1) and (2). Accordingly, services rendered cannot be considered pro bono if an attorney is acting out of a desire to collect fees from lucrative trust, estate and tax advice from a lawyer–accountant or investigative services in connection with a lawsuit.

[6] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a) (1) and (2). Accordingly, services rendered cannot be considered pro bono if an attorney is acting out of a desire to collect fees from lucrative trust, estate and tax advice from a lawyer–accountant or investigative services in connection with a lawsuit.

[7] Paragraph (b) (2) covers instances in which the fee is substantially below that which the attorney would have otherwise be paid. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm’s aggregate pro bono activity.

[8] 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 fee services. At such times a lawyer may discharge 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 to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm’s aggregate pro bono activity.

[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 fee services. At such times a lawyer may discharge 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 to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm’s aggregate pro bono activity.

[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.

[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. A firm may satisfy the responsibility set forth for fewer hours than the annual standard if it can reasonably demonstrate an equivalent effort, including, but not limited to, planning and modifying the practice to increase pro bono work load, has a responsibility to provide legal services to those unable to pay whose problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. However, a lawyer may decide to choose a higher or lower number of hours of 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 for fewer hours of the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, 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 or appeal cases.
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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 obligated 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.

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

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

(a) if participating in the decision would be incompatible with the lawyer’s obligations to a client under SCR 20:1.7; or
(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

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 services organizations. A lawyer who is an officer or a member of such an organization should be in a position to help clients in the organization to identify and make appropriate choices in the lawyer-client relationship.

[2] It may be necessary in appropriate cases to reassure a client that the representation will not be affected by conflicting loyalties of a member of the organization. Where the decision could have a material adverse effect on the representation of a client adverse to a client of the lawyer, the lawyer should consult the client regarding participation in the organization.

SCR 20:6.4 Law reform activities affecting client interests.
A lawyer may represent a client in the activities described in this subchapter as long as the representation will not be affected by conflicting loyalties of a member of the lawyer’s firm, as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

(a) A lawyer 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 if it affects 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 of a lawyer’s involvement in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially harmed.

(b) A lawyer 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 if it affects 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 of a lawyer’s involvement in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially harmed.

(c) A lawyer 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 if it affects 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 of a lawyer’s involvement in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially harmed.

(d) A lawyer 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 if it affects 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 of a lawyer’s involvement in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially harmed.

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SCR 20:7.2 Advertising. (a) Subject to the requirements of SCR 20:7.1 and SCR 20:7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may:

(1) pay the reasonable cost of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

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

(4) refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral arrangement is not exclusive;

(ii) the client gives informed consent;

(iii) there is no interference with the lawyer’s independence of professional judgment or with the client–lawyer relationship; and

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

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

History:
Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv. SCR 20:7.3 Solicitation of clients. (a) A lawyer shall not by in-person or live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by par. (a), if:
(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or
(2) the target of solicitation has made known to the lawyer 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 pars. (a) (1) or (2), and a copy of it shall be filed with the office of lawyer regulation within five days of its dissemination.

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.

Except as permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents such as wills, trusts, instruments or contracts, which require or imply that the lawyer’s services will be used in relation to that document.

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

Wisconsin Committee Comment: 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.

When a lawyer uses standard form solicitations that are mailed to many prospective clients, the lawyer satisfies the filing obligation in subparagraph (c) by filing one copy of each version of the solicitation form with the office of lawyer regulation, and by maintaining in the lawyer’s files the names and addresses to which the solicitation was mailed.

Because of differences in content and numbers between the Wisconsin Supreme Court Rule and the Model Rule, care should be used in considering the ABA Comment.

ABA Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers 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 Internet searches. [Created by Sup. Ct. Order No. 15−03, 2016 WI 76, filed 7−21−16, eff. 1−1−17.]

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real−time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel a disposition toward legal involvement for the need to seek legal services, may find it difficult to evaluate all available adversarial positions with regard to both the lawyer’s self−interest and the appropriate self−interest in the face of the lawyer’s presence and insistence upon being retained. 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 laws and court rules offer a number of 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 be undesirable to the person contacted.

[4] A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

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 law may engage in patent practice in the United States Patent and Trademark Office may use the designation “patent attorney” or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation “admiralty,” “proctor in admiralty” or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association, and

(2) the name of the certifying organization is clearly identified in the communication.

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

Case Note: An attorney whose practice is concentrated in one particular area and who represents himself as a specialist should be held to a higher standard of care than a generalist. The enforceability of this section insofar as it prohibits statements that are true and not misleading is questionable. Duffay Law Office v. Tank Transport, 194 Wis. 2d 675, 535 N.W.2d 91 (Ct. App. 1995).


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

ABA Comment: (1) Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer’s services. If a lawyer practices only in particular fields of law, the lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(2) 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, editorials, or similar communications soliciting professional employment from a client known to be in need of legal services within the meaning of Rule 7.3 (b) are not within the meaning of Rule 7.3 (b). 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).

(d) Paragraph (d) of this Rule permits a lawyer to participate with an organization that 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 participated in a group or prepaid legal service plan 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 must also 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 other means of affordable legal services. The participation of a lawyer 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).

(c) Recognizes that designation of a lawyer as a specialist in a particular field of law or a field of practice serves a valuable function and enhances the public's ability to recognize counsel of special knowledge and skill; and

(d) Recognizes that a lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a specialist in a particular field of law, unless:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(2) the target of solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

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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 insure that a lawyer’s recognition as a specialist is meaningful. In order to insure that consumers can obtain accurate and useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

SCR 20:7.5 Firm names and letterheads. (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates SCR 20:7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of SCR 20:7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the 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, any name of a deceased member where there has been a continuation of the firm’s identity or by a trade name such as the “ABC Legal Clinic.” A lawyer or law firm may use the name of any person licensed to practice law in the state, 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 law, may not use the same name or other professional designation in their advertising. If, 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 in an effort to obtain an engagement for legal work awarded by a government agency, or to obtain an appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term “political contribution” denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other public office. Political contributions in initiatives 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” designates any arrangement to provide legal services that a public officer has the direct or indirect power to award; and (ii) the term “appointment by a judge” denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis compiled without regard to political contribution.

[4] The term “lawyer or law firm” includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the contributions, the judge would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occurred. For example, contributions to a candidate, or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4 (b) is implicated.

SCR 20:8.1 Bar admission and disciplinary matters. An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by SCR 20:1.6.

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

ABA Comment: [1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a 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 misstatement 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 he or she does not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the claim–lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

SCR 20:8.2 Judicial and legal officials. (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the code of judicial conduct.

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

ABA Comment: [1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal officer, 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.
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(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 xiv.


Wisconsin Comment: The change from “having knowledge” to “who knows” in SCR 20:8.3 (a) and (b) reflects a Model Rule. See also SCR 20:1.0 (g) defining “knows.” The requirement under paragraph (c) that the lawyer consult with the client is not expressly included in the Model Rule. Paragraph (d) differs slightly from the Model Rule. It deletes reference to judges. 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 instigate 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 reporting obligations 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 lawyer should be made to be 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 conduct is in question. 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 in the course of that lawyer’s participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, to neglect such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the public. These Rules do not otherwise address the confidentiality of 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 governmental 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;

(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);

(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 xiv.

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 (1), absent a showing of innocent or good faith error. In In Disciplinary Proceedings Against Cassidy, 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 20:1.9 (d). 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 concerning harassment set forth in SCR 11.15 (5) and SCR 22.22 (1).

2013 Wisconsin Comment: In addition to the obligations in this rule, Wisconsin attorneys concerning notification set forth in SCR 21.15 (5) and SCR 22.22 (1).

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 considered 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 by this Rule. An advisory opinion reflects adversely on fitness to practice law, 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 matters of personal moral significance such as adultery and comparable offenses, that have no specific connection to fitness to practice law. Although a lawyer is personally answerable to the 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.

[3] A lawyer is not subject to discipline when the lawyer is acting in good faith to represent a client, knowingly manifesting by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) 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 above annotations cite to SCR 20 as it existed prior to the adoption of SCR 21.15 (5) and SCR 22.22 (1).

[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 exercise the responsibilities of a public position in a manner consistent with one’s legal obligations. A lawyer’s abuse of public office can suggest an inability to exercise the responsibilities of a public position in a manner consistent with one’s legal obligations.

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 only to one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b) (1) provides that as to a lawyer’s conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b) (2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer’s conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer’s conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise. [Re Order No. 06–06, effective January 1, 2009]

An attorney licensed outside of Wisconsin acting as in–house counsel in this state is not practicing law for the purposes of bar admission under Mostoff 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.

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