CHAPTER SCR 23

REGULATION OF UNAUTHORIZED PRACTICE OF LAW

SCR 23.01 Definition of practice of law. The practice of law in Wisconsin is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

1. Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
2. Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s).
3. Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
4. Negotiation of legal rights or responsibilities on behalf of another entity or person(s).
5. Any other activity determined to be the practice of law by the Wisconsin Supreme Court.


SCR 23.02 License required to practice law; use of titles. (1) Right of a person to practice law in Wisconsin. A person who is duly licensed to practice law in this state by the Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar of Wisconsin.

(2) Exceptions and Exclusions. A license to practice law and active membership in the State Bar of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin, regardless of whether these activities constitute the practice of law:

a. Practicing law pursuant to SCR 10.03(4) by a non-resident counsel or registered in-house counsel.

b. Serving as a courthouse facilitator pursuant to court rule.

c. Appearing in a representative capacity before an administrative tribunal or agency to the extent permitted by such tribunal or agency.

d. Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

e. Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

f. Acting as a lobbyist.

g. Sale of legal forms in any format.

h. Activities which are preempted by federal law.

i. Selection or completion of a legal document, including a legal document created pursuant to statute, administrative rule, or Supreme Court Order, where the document may contain various blanks and provisions to be filled in or completed and selection or completion of the legal document requires only common or transaction-specific knowledge regarding the required information and general knowledge of the legal consequences.

j. Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

k. Any other activities that the Supreme Court has determined by rule or by published opinion do not constitute the unlicensed or unauthorized practice of law or which are permitted under a regulatory system established by the Supreme Court, Wisconsin Statutes, Administrative Code or common law.

l. Acting as a nonlawyer advocate under the direction or supervision of a lawyer.

m. Acting as a nonlawyer assistant under the supervision of a lawyer in compliance with SCR 20.5.3 of the Wisconsin Rules of Professional Conduct for Attorneys.

n. Governmental agencies, Indian tribes and their employees carrying out responsibilities provided by law.

o. Practicing within the scope of practice allowed by a current credential issued or authorized under chs. 440 to 480, stats., or performing services under the supervision of a professional holding a current credential issued under chs. 440 to 480, stats., provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

p. A victim service representative acting within the scope of s. 895.45, stats., or a Court Appointed Special Advocate (CASA) volunteer or staff member acting within the scope of s. 48.236, stats.

q. A nonlawyer entity or organization acting through lawyer employees to the extent such lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise in the public interest.

r. An entity or organization in the business of insurance guarantee or indemnity, or the provision, sale or marketing of insurance or financial products or services permitted to be offered by insurance companies under s. 6.75, Wis. Admin. Code, or a self-insured entity or organization, or any employee licensed under ch. 628, stats., or contractor of any of the foregoing entities or organizations when conducting their insurance business, which includes but is not limited to: (1) investigating or adjusting claims against it or its insured; (2) negotiating with other persons or entities; (3) conducting loss control functions; (4) underwriting busi-
ness; (5) selling insurance or financial products or services permitted to be offered by insurance companies under s. Ins 6.75, Wis. Admin. Code, or providing advice and counsel with respect to such insurance or financial products or services; (6) the preparation of releases or settlement agreements; (7) using a lawyer employee or captive lawyer admitted to the bar in Wisconsin or otherwise permitted to practice law in Wisconsin to represent its principal or corporate affiliate, or an insured or noninsured for whom a defense is provided; and (8) any act required of an insurer by law provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(s) Professional activities performed by a certified public accountant or by a person working under the direction of a certified public accountant.

(t) Any state or federally chartered financial institution or affiliate of such an institution when engaging in an activity that is within its authority under applicable state or federal law, including any person providing services for it in connection with that activity; provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(u) A benefits specialist acting in the scope of s. 46.81(4), stats., or in the scope of s. 46.283, stats., and s. DHS 10.23 (2) (d), Wis. Adm. Code.

(v) Nonlawyers making any disclosure or advisement which is required by state or federal law.

(w) Teaching about the law or providing information about the law including the legal rights or responsibilities of persons under the law, in a manner that is not directed at providing specific legal advice to a specific individual in the context of a specific matter.

(3) USE OF TITLES. Except as permitted by SCR 10.03(4), only a person who is currently licensed to practice law in Wisconsin and who is an active member of the State Bar of Wisconsin may represent herself to the public using the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, procurator, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law in this state or otherwise qualified to provide professional legal services or advice.

Note: The Comments to SCR Chapter 23 are not adopted, but will be published and may be consulted for guidance in interpreting and applying SCR Chapter 23.
(5) COURT APPEARANCES. The authority granted by this rule does not include appearances in court except:
(a) pursuant to that court’s pro hac vice admission rule (SCR 10.03(4)) and, if such authority is granted, any fees for such admission shall be waived; or
(b) if this Court, in any determination made under sub. (1), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to sub. (2). If such an authorization is included, any pro hac vice admission fees shall be waived.

(6) DISCIPLINARY AUTHORITY AND REGISTRATION REQUIREMENT. Lawyers providing legal services in the State of Wisconsin pursuant to sub. (2) or (3) are subject to the Wisconsin Supreme Court's disciplinary authority and the Rules of Professional Conduct for Attorneys of this jurisdiction as provided in SCR 20:8.5 of the Rules of Professional Conduct. Lawyers providing legal services in the State of Wisconsin under sub. (2) or (3) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of Supreme Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in the State of Wisconsin.

(7) NOTIFICATION TO CLIENTS. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Wisconsin of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in the State of Wisconsin except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in the State of Wisconsin.

History: Sup. Ct. Order No. 11−07, filed and eff. 7−5−12.

ABA COMMENT
[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers from unaffected jurisdictions may be willing to serve residents of the affected jurisdiction. In such cases, local authorities may ask that lawyers who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency. The identity of a lawyer who is authorized by this rule to provide pro bono legal services in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction may need to be provided to the justice system with respect to the provision of legal services for a sustained period of time.

[2] Paragraph [(2)] permits lawyers to provide legal services in an unaffected jurisdiction, and not disbarred, suspended, or not otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency. The authority created by paragraphs [(2)] and [(3)] also ends with appropriate notice to the lawyers that the authority granted by those paragraphs will end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph [(2)] may continue to provide pro bono legal services, and not disbarred, suspended from practice or otherwise restricted from practice in this jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any other United States jurisdiction, may provide pro bono legal services in this jurisdiction provided that the lawyers assisting residents of this jurisdiction under paragraph [(2)] are not disciplined or disbarred, suspended, or otherwise restricted from practice in any other United States jurisdiction.

[3] Paragraph [(2)] permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended, or not otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency. The authority granted by paragraph [(2)] will end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph [(2)] may continue to provide pro bono legal services, and not disbarred, suspended from practice or otherwise restricted from practice in any other United States jurisdiction, may provide pro bono legal services in this jurisdiction provided that the lawyers assisting residents of this jurisdiction under paragraph [(2)] are not disciplined or disbarred, suspended from practice or otherwise restricted from practice in any other United States jurisdiction.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in this or any other jurisdiction, may provide legal services in this Rule in that jurisdiction pursuant to paragraph [(5)] only for purposes of this Rule. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of “arise out of and reasonably related to,” see Rule 5.5 Comment [14], Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs [(2)] and [(3)] also ends with appropriate notice to enable lawyers to plan and to consider whether to continue practice here or in another jurisdiction. Lawyers authorized under paragraph [(2) or (3)] are subject to the Wisconsin Supreme Court's disciplinary authority and the Rules of Professional Conduct for Attorneys of this jurisdiction as provided in SCR 20:8.5 of the Rules of Professional Conduct. The registration statement shall be in a form prescribed by the Clerk of Supreme Court. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in the State of Wisconsin except as permitted by this Rule.

[6] Paragraphs [(2)] and [(3)] do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission rules of the particular court. This Court may, in a determination made under paragraph [(5)](b), include authorization for lawyers who provide legal services in this jurisdiction under paragraph [(2)] to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction requires lawyers a limited scope of permitted practice and may therefore restrict that person’s ability to provide legal services under this Rule. Lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any other United States jurisdiction, may provide pro bono legal services in this jurisdiction provided that the lawyers assisting residents of this jurisdiction under paragraph [(2)] are not disciplined or disbarred, suspended from practice or otherwise restricted from practice in any other United States jurisdiction.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether an attorney seeking to practice in this jurisdiction pursuant to paragraphs [(2)] or [(3)] of this Rule is disbarred, suspended from practice or otherwise restricted from subject to a public disciplinary sanction that would restrict the lawyer’s ability to practice law in any other jurisdiction.