



AMC 2025

Plenary

**A Day in the Life of the
Ethics Hotline: Calling All
Conflicts**

Presented by:

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About the Presenters...

Timothy J. Pierce has been Ethics Counsel for the State Bar of Wisconsin since 2004. He received his undergraduate degree from the University of Wisconsin–Madison and his law degree, *cum laude*, from the University of Wisconsin Law School. Mr. Pierce was previously a Deputy Director at the Office of Lawyer Regulation in Milwaukee and Madison. He has also been employed as the Ethics Administrator for Milbank, Hadley, Tweed & McCloy, in New York, and as an Assistant State Public Defender in Racine. He is a member of the State Bar of Wisconsin. He is a frequent speaker on matters of professional ethics and has given hundreds of CLE presentations to a wide variety of groups on professional responsibility law. He serves as reporter for the State Bar’s Committee on Professional Ethics and writes the monthly “Ethical Dilemmas” column for the State Bar of Wisconsin. He has also taught Professional Responsibilities at the University of Wisconsin Law School since 2011, is a member of the ABA Standing Committee on Professional Ethics and currently serves as a Volunteer Subject Matter Expert for the MPRE.

Sarah E. Peterson joined the State Bar of Wisconsin as Ethics Counsel in 2024. She received her undergraduate degree from the University of Wisconsin–Madison and her law degree from the University of Wisconsin Law School. She is a member of the State Bar of Wisconsin. Prior to joining the State Bar, Ms. Peterson was employed for more than 20 years as an investigator, and then lead investigator, at the Office of Lawyer Regulation. She is a frequent speaker and writer on professional ethics and is a liaison to the State Bar’s Committee on Professional Ethics.

Thomas J. Watson is President and CEO at Wisconsin Lawyers Mutual Insurance Company (WILMIC). He has been with WILMIC since 2005. Prior to becoming President and CEO, Tom was Senior Vice President, overseeing Underwriting and Claims, and developing and coordinating the company’s risk management programs and law firm and lawyer outreach. He is a 1981 Marquette University graduate with a degree in Journalism and Broadcast Communications and a 2002 graduate of Marquette University Law School. Watson was the Public Relations Coordinator for the State Bar of Wisconsin for more than seven years, and was then in private practice in Madison, focusing primarily on Family Law, before joining WILMIC. He serves on the Editorial Board of the State Bar of Wisconsin’s *Wisconsin Lawyer* magazine.

A Day in the Life of the Ethics Hotline: Calling All Conflicts

Starring: Tim Pierce and Sarah Peterson, Ethics Counsel, State Bar of Wisconsin

Hosted by: Tom Watson, President and CEO, WILMIC



1

Caller One:
Current client
conflict

- Lawyer is currently representing a client who is purchasing a car repair shop.
- The seller would like the lawyer to represent him in his purchase of a local restaurant.
- Can the lawyer represent both?

2

SCR 20:1.7 - Conflicts of interest current clients

(a)(1) – A concurrent conflict of interest exists if the representation of one client will be **directly adverse** to another client.

Comment [7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

The limitation on representing a client who is directly adverse to another current client applies even if the matters are wholly unrelated.

(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) each affected client gives informed consent, confirmed in a writing signed by the client.

3

Caller Two:
Former client
conflict

- A lawyer represent a client on drug charges.
- The DA just turned over their witness list.
- One of the witnesses is a person the lawyer represented on similar charges several years ago.
- Lawyer asserts he doesn't remember anything about the case.
- Does the lawyer need to withdraw?

4

SCR 20:1.9 – Duties to former clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a **substantially related matter in which that person's interests are materially adverse to the interests of the former client** unless the former client gives informed consent, confirmed in a writing signed by the client.

ABA Comment [3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.

5

Wisconsin Formal Ethics Opinion EF-20-02: Lawyer Examining a Current or Former Client as Adverse Witness

In considering the propriety of cross examining, or conducting any form of adverse discovery against a former client, **the lawyer must consider whether it is reasonable to assume that a lawyer in the prior representation would have had access to information useful in cross examining the former client.** For example, a lawyer who previously represented a client in connection with a drunk driving offense would face a conflict in cross examining that former client as an adverse witness in a contract case because it would be reasonable to assume that issues that may have arisen in the drunk driving matter, such as possible substance abuse and illegal conduct, that would be relevant in attacking the credibility of the witness. On the other hand, a lawyer who previously represented a client in a simple real estate matter would not face a conflict in cross examining the former client who witnessed a traffic accident because it would be unreasonable to assume that information learned in the real estate matter would be relevant in cross examining the former client.

6

Caller Three:
Imputed
conflict

- Lawyer just hired an associate.
- While at his former firm, the old firm represented the wife in an on-going divorce in which our firm represents the husband.
- Lawyer did not catch this when screening for conflicts during the hiring process.
- The new associate practiced criminal law at his old firm and was not involved in the matter at all.
- Can the lawyer continue to represent the husband?

7

SCR 20:1.10

(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.

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

8

The question should be analyzed as if one of the lawyer would be representing both parties. Under those conditions, would there be a conflict under SCR 20:1.7(a)?

Yes, because the parties are directly adverse.

Representation is only allowed if the conditions under SCR 20:1.7(b) can be met.

Here, they cannot because the representation involves 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. SCR 20:1.7(b)(3).

The rules for imputation of former client conflicts are more permissive.

9

Caller Four:
Special conflict
rules for
government
employee

- Lawyer is the only ADA in a county.
- The lawyer is prosecuting a person who she defended on similar criminal charges a couple years ago when she was a defense attorney.
- Lawyer knows she's conflicted out under SCR 20:1.9(a).
- May the DA handle the prosecution or does the office need to get a special prosecutor appointed?

10

SCR 20:1.11(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.

SCR 20:1.0(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.

11

Wisconsin Formal Ethics Opinion EF-22-01: Migration in Criminal Practice

Adequate screening requires several components:

- Development of system – the firm should have a system in place, preferably reflected in a written policy.
- Training – all lawyers and non-lawyers in the firm should be trained to ensure they understand the system and their individual responsibilities in its implementation.
- Timeliness – the system should be in effect as soon as possible after the conflict is detected. Requiring the disqualified lawyer to provide a list of former firm clients for conflicts screening will facilitate accurate and timely implementation of the necessary screens.
- Isolation of the conflicted lawyer – the screen must prevent contact between the isolated lawyer and the lawyer(s) and support staff working on the matter.
- Protection of confidential information – the system must include procedures to protect relevant information in whatever form from being improperly disclosed.

12

Caller Five:
I'm sorry. We
can't help you
with that.

- Lawyer is one of three owners of a business in negotiating the terms of the dissolution of the business.
- The lawyer representing the second owner represented the third owner in his divorce a few years back.
- Doesn't the second owner's lawyer have a conflict?
- Do I need to report him to OLR?

13

By rule, we CANNOT offer an opinion on the conduct of a third-party. But we might be able to point you to the right rule to consider.

State Bar By-Laws, Article IV, Section 3: However, the committee shall not issue opinions as to the propriety of past or present conduct of specific member attorneys unless requested to do so by a grievance committee of the State Bar or by the Board of Governors of the State Bar.

The relevant rule is SCR 20:1.9, Duties to former clients.

SCR 20:8.3(a) lays out the conditions under which a lawyer must inform OLR of misconduct committed by another lawyer:

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial 207 question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

But remember:

- (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.

14

Caller Six:
I'm sorry. We
can't help with
that.

- Lawyer practices criminal law in a small county.
- One of the only other lawyers practicing criminal law in that county recently died.
- Lawyer has taken over several of the deceased lawyer's cases but neither the clients nor the lawyer have had any luck getting into his office to get their client files.
- Can someone at the Bar help them access their files?

15

Neither the State Bar, the Office of Lawyer Regulation, nor the Board of Bar Examiners are equipped to, or tasked with, assisting in the winding down of a lawyer's practice after the death of a lawyer.

We can provide general information about what the person tasked with doing so should do.

Lawyers in small firms and those who are sole practitioners are strongly encouraged to name a successor through the Bar's successor registry to ease the burden on loved ones and clients in the event of a lawyer's death or disability.

Lawyers are encouraged to visit the succession planning portion of the Bar's Practice Management section of its website.

16

Caller Seven: Prospective client conflict

- Last week, lawyer spoke with a man about representing him in a dispute with his neighbor, who had cut down several trees on his property.
- The man told the lawyer he had sent a settlement offer to the neighbor but is willing to settle for much less because he hated the trees anyway. The problem is, the neighbor won't communicate with him.
- The lawyer did not learn the number of trees cut down, the location of the property, or the amount of the settlement offer currently on the table.
- After discussing what the lawyer's fees would be, the man declined to hire the lawyer.
- Today, the neighbor called.
- Can the lawyer represent the neighbor?

17

SCR 20:1.18 – Duties to Prospective Client

- (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information learned in the consultation, except as SCR 20:1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to 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).

18

Wisconsin Formal Ethics Opinion EF-10-03

Significantly harmful information is information that that could be harmful to the prospective client.

Examples:

- ❖ Sensitive personal information
- ❖ Financial information
- ❖ Settlement position
- ❖ Litigation strategies

See, also, ABA Formal Opinion 492 and Wisconsin Lawyer: Ethical Dilemma Minimizing Imputed Prospective-Client Conflicts

19

Caller Eight:
Help! My client
filed a grievance
against me!

- Lawyer represents a couple in real estate matter that ended up being litigated.
- The lawyer's clients went to trial and lost, an outcome the lawyer told the clients was possible.
- Lawyer agreed to file an appeal but I just found out the clients filed a grievance against the lawyer with OLR!
- Lawyer isn't sure he wants to keep representing the couple but if he wants to, can he?

20

SCR 20:1.7(a)(2)

A concurrent conflict of interest exists if there is a **significant risk** that the representation of one or more client 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**.

Significant risk: "The mere possibility of subsequent harm does not require disclosure and consent. The critical questions are **the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere 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." ABA Comment [8]

A conflict exists when the risk of a material limitation is **"significant and plausible, even if is not certain or even probable that it will occur. The standard requires more than a mere possibility of adverse effect."** Restatement (Third) of the Law Governing Lawyers § 121, comment (c)iii.

Materially limited: Is there a significant risk that a **lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited** as a result of the lawyer's other responsibilities or interests?

21

Wisconsin Formal Ethics Opinion EF-20-01: Responsibilities of a Lawyer When a Grievance is Filed Against the Lawyer

The fact that a client has filed a grievance against a lawyer who is currently representing the client **does not by itself create a conflict** that requires the lawyer to withdraw from the matter or seek the informed consent of the client to continue the representation.

The lawyer must consider whether the lawyer's personal interests pose a significant risk of materially limiting the lawyer's ability to represent the client after the client has filed a grievance against the lawyer.

The filing of a grievance may create tension between the client's interest and that of the lawyer that may be difficult to reconcile. In most cases, where the grievance does not raise a plausible claim that the lawyer violated a disciplinary rule, the lawyer may respond to OLR and if appropriate, address the client's concerns directly, while continuing the representation. **If, however, the grievance sets forth credible allegations of misconduct, and the lawyer may attack the client's credibility or otherwise damage the client's interest, the lawyer has a conflict that would require withdrawal. In the opinion of the Committee, such conflicts may not normally be consented to by the client.**

22

Caller Nine:
Organization as
client

- Lawyer is general counsel for a non-profit.
- The non-profit is being sued by an individual who was denied services by the organization.
- The chairperson of the board is also a named defendant.
- The interest of the board and the chairperson are currently aligned, and the lawyer doesn't foresee those interests diverging.
- May the lawyer represent both parties?

23

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

24

Caller Ten:
I'm sorry. We
can't help with
that.

- Yesterday when a lawyer arrived for a hearing, the judge and opposing counsel were just emerging from the judge's chambers, really yucking it up.
- The judge ruled the lawyer's my client on every issue.
- Although opposing counsel denied it, the lawyer thinks he and the judge were talking about the case before the hearing. What else could explain such a lopsided outcome?
- Can a judge do that?

25

SCR Chapter 60: Code of Judicial Conduct

We are not familiar with Chapter 60, as it does not regulate lawyer conduct, and giving advice as to the conduct of judges is outside the purview of our job.

But you can call the Judicial Commission at 608-266-7637.

26

Caller Eleven: Job search conflicts

- Lawyer represents a party in a lawsuit. Lawyer is not at her job and has been thinking of looking for work elsewhere.
- Lawyer friend, who happens to work at opposing counsel's firm, just called and told the lawyer they are looking to hire and she thinks she'd be a great fit. Neither my friend or her boss are involved in the lawsuit.
- Lawyer doesn't want to tell her boss or her client that she's looking for other work.
- If lawyer accepts an invitation to go to lunch with her friend and her friend's boss, does she have to tell her boss and her client?

27

SCR 20:1.7 Comment [10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, **when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client.**

The Restatement (Third) of the Law Governing Lawyers, §125

d. A lawyer seeking employment with an opposing party or law firm. This Section applies when a lawyer seeks to discuss the possibility of the lawyer's future employment with an adversary or an adversary's law firm. **The conflict arises whether the discussions about future employment are initiated by the lawyer or by the other side. If discussion of employment has become concrete and the interest in such employment is mutual, the lawyer must promptly inform the client. Without effective client consent (see § 122), the lawyer must terminate all further discussions concerning the employment, or withdraw from representing the client (see § 32(2) & (3)). The same protocol is required with respect to a merger of law firms or similar change (see § 123).**

28

Wisconsin Formal Ethics Opinion EF-19-01: Job Negotiations with Opposing Firm or Party

Guidelines as to when the conflict arises:

- (1) Generalized, **non-specific job searches normally do not result in a conflict**. For example, a lawyer who sends out the same resume to multiple potential employers, which may include an opposing firm, will not have a conflict.
- (2) If a **potential employer that is an opposing firm responds to a generalized job search with an offer of an interview (or other concrete offer to discuss possible employment)**, the lawyer will have a conflict if the lawyer agrees to the interview. If the lawyer declines the interview, or if the potential employer indicates that they are not interested, the lawyer does not have a conflict.
- (3) If a **lawyer has an active and material role in a matter, and the lawyer sends a targeted, specific expression of interest to an opposing firm, the lawyer normally will have a conflict of interest when the expression of interest is communicated to the opposing firm**. For example, a partner who has primary responsibility for a matter and is the main client contact, ordinarily must disclose before specifically seeking employment with an opposing firm. Likewise, a criminal defense lawyer who sends a targeted and specific expression of interest to an opposing prosecutor's office has a conflict requiring disclosure and consent from the lawyer's criminal defense clients.
- (4) A lawyer who receives a **contact from a potential employer, or a head-hunter acting on behalf of a potential employer, offering to discuss potential employment has a conflict when the lawyer agrees to participate in such a discussion**. If, however, the lawyer declines to participate, no conflict arises.
- (5) While these **guidelines do not cover every possible situation, and are not meant to be exhaustive**, it is hoped that they serve as useful examples of the principles set forth in the conflict rules.

29

Caller Twelve:
GAL conflict

- Lawyer works part-time for the county, handling paternity and child support actions.
- In private practice, the lawyer accepts GAL appointments.
- As part of matter the lawyer was handling for the county, he handled a paternity action against a man. That action resulted in a child support order being issued.
- Now the lawyer has been asked to be GAL for the man's children in a CHIPS petition that's been filed.
- May the lawyer accept the appointment?

30

SCR 20:1.7

Identify Clients:

- County
- Best interest of the child

Identify Clients' Interests:

- Collecting child support
- Termination of parental rights

Identify Conflict:

The county's interest in collecting child support to provide for the care of the children
vs.
Extinguishing the rights of the father, which would also extinguish his obligation to pay child support

31

Wisconsin Ethics Opinion EF-23-01: Guardian ad Litem Conflicts and Informed Consent, Confidentiality and other Obligations under the Rules of Professional Conduct

These statutory provisions track SCR 20:1.7(a)(1) and (2). The court's decision in *La Crosse County Dep't of Soc. Servs. v. Rose K.*, 196 Wis.2d 171, 178, 537 N.W.2d 142, 145 (Ct. App. 1995), is consistent with the statutory limits even though they were not mentioned in the court's analysis, which relied on the disciplinary rules. At issue in the case was whether the same lawyer could act as a GAL in a chapter 48 action while simultaneously representing La Crosse County in a child support enforcement action.

The appellate court concluded the lawyer had a conflict because **enforcement of child support, which was assigned to La Crosse County due to the mother's receipt of government benefits, would benefit the county-client but prejudice the children's "best interests" by making the father's funds unavailable to them. Conversely, a decision to not enforce the child support order would harm the county-client even though it would benefit the children's "best interests."** The court found a conflict and remanded the case with instructions to disqualify the attorney from acting as a GAL for the children.

32

Caller Thirteen: Conflict checks after leaving a firm

- An associate at lawyer's firm gave his two-week notice last week. The firm gave him two days to put affairs in order and leave and cut off his access to the computer system.
- The lawyer and the firm are working together to send letters to his current clients.
- Lawyer got an email from the departing lawyer today asking for a list of all his clients, current and past, so he can run conflict checks.
- Lawyer has heard at several CLEs that client identity is confidential information so the firm doesn't think they can give him the list. They also worry he'll use the information to poach clients.
- Must the firm give him the list of clients?

33

SCR 20:1.6 – Confidentiality

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

(c)(6) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

34

Wisconsin Formal Ethics Opinion EF-25-02: Lawyer Mobility: Ethical Responsibilities of the Departing Lawyer and the Firm

The firm should provide (or make available to) the departing lawyer with a list of the lawyer's current and former clients, opposing parties, and any other information necessary for conflict-checking purposes as this does not violate SCR 20:1.6 and serves to protect the interests of clients who may be affected by future conflicts. Such cooperation should extend to reasonable post departure requests from the departed lawyer for information reasonably necessary to perform conflicts checks.

And also, **SCR 20:7.3(a)(2)**:

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

A Day in the Life of the Ethics Hotline: Calling All Conflicts

Caller Two

[Wisconsin Lawyer: Ethics Opinion: Ethics Opinion EF-20-02: Responsibilities When a Lawyer Examines a Current or Former Client as Adverse Witness:](#)

Caller Four

[Wisconsin Lawyer: Ethics Opinion Ethics Opinion EF-22-01: Migration in Criminal Practice:](#)

Caller Six

[Succession Planning](#)

Caller Seven

[Wisconsin Formal Ethics Opinion EF-10-03: Conflicts arising from consultations with prospective clients; significantly harmful information](#)

[Wisconsin Lawyer: Ethical Dilemma Minimizing Imputed Prospective-Client Conflicts:](#)

Caller Eight

[Wisconsin Lawyer: Ethics Opinion EF-20-01: Responsibilities of a Lawyer When a Grievance is Filed Against the Lawyer:](#)

Caller Eleven

[Wisconsin Lawyer: Ethics Opinion Ethics Opinion EF-19-01: Job Negotiations with Opposing Firm or Party:](#)

Caller Twelve

[EF-23-02 GAL Conflict.pdf](#)

Caller Thirteen

[EF-25-02 Lawyer Mobility - FINAL.pdf](#)