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AMC 2026

Plenary 2

A Day in the Life of the Ethics Hotline: Answers to Questions Not Answered by the Rules

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About the Presenters...

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. Prior to coming to 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 member of the State Bar of Wisconsin. She is a frequent speaker on professional ethics and is a liaison to the State Bar's Committee on Professional Ethics.

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.

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.

DAY IN THE LIFE OF THE ETHICS HOTLINE: ANSWERS TO QUESTIONS NOT ANSWERED BY THE RULES


Starring: Tim Pierce and Sarah Peterson, Ethics Counsel, State Bar of Wisconsin
Hosted by: Tom Watson, President and CEO, WILMIC

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Caller One: Unclaimed Trust Account Funds

- Lawyer obtained a settlement for a client in a personal injury matter.
- At about the same time the matter settled, the client got arrested for a serious crime.
- The lawyer heard through the grapevine that the client fled the state. The lawyer has been trying to contact him for 3 years with no success.
- What should the lawyer do with the settlement funds that are in his trust account collecting dust?

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Unclaimed Trust Account Funds

- A lawyer may NOT donate or take possession of unclaimed trust funds.
- The Unclaimed Property Office in the Wisconsin Department of Revenue and the Office of Lawyer Regulation ("OLR") consider unclaimed or abandoned funds in a lawyer trust account to be unclaimed property, as described in Wis. Stat. §177.0213(1):

  Property held by agents and fiduciaries. – (1) Property and any income or increment derived from it held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within 5 years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, or otherwise indicated an interest as provided in s. 177.0210.

Unclaimed Trust Account Funds

- The OLR provides helpful guidance on their website regarding the circumstances in which the Unclaimed Property Office will take possession of such funds. These include the following:
  - The lawyer's records reflect that the last-known address for the apparent owner is in Wisconsin;
  - The lawyer's records do not reflect the identity of the person entitled to the property, and it is established that the last-known address of the person entitled to the property is in this state;
  - The lawyer's records do not reflect the last-known address of the apparent owner; and it is established that the last-known address of the person entitled to the property is in Wisconsin.
  - The transaction out of which the property arose occurred in this state and the last-known address of the apparent owner or other person entitled to the property is either unknown or in a state that does not provide for escheatment of unclaimed property.

Unclaimed Trust Account Funds

- Before contacting the Unclaimed Property Office, the lawyer should make reasonable efforts to locate the owner of the funds. The Department of Revenue provides a guide to the unclaimed property process that includes a sample due diligence letter.
- OLR takes the position that a lawyer generally may not charge for attempts to locate the owner because delivering funds held in trust to the owner of such funds is a professional obligation of the lawyer.
- In addition to accepting funds belonging to clients a lawyer cannot find, the Unclaimed Property Office will also accept funds whose owner is unidentifiable.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Two: Third Party Payors and Unearned Fees

- Lawyer represented a woman in a divorce.
- The woman's mom paid the advanced fee of $10,000.
- The woman and her husband have reconciled.
- The lawyer needs to refund $7000 in unearned fees.
- The woman is insisting the lawyer make the check out to her, but lawyer is uncomfortable doing so and would prefer to return them to the mom.

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Third-Party Payors and Unearned Fees

- SCR 20:1.8(f) allows a lawyer to accept fees from a non-client third party if certain conditions are met.
- The Rules do not address to whom the lawyer should refund unearned fees paid by a third party.
- The Wisconsin Comment to SCR 20:1.5(h) has this to say about the topic:

  "Sometimes the lawyer may receive advanced fee payments from 3rd parties. In such cases, the lawyer must follow the requirements of SCR 20:1.8(f). In addition, the lawyer should establish, upon receipt or prior to receipt of the advanced fee payment from a 3rd party, whether any potential refund of unearned fees will be paid to the client or 3rd-party payor. This may be done through agreement of the parties or by the lawyer informing the client and 3rd-party payor of the lawyer's policy regarding such refunds."

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Third-Party Payors and Unearned Fees

- In the absence of an agreement as to who will receive the unearned fees, the Wisconsin Comment to SCR 20:1.5(g) states,

  "If the client's fees have been paid by one other than the client, then the lawyer's responsibilities are governed by SCR 20:1.8(f). If there is a dispute as to the ownership of any refund of unearned advanced fees paid by one other than the client, the unearned fees should be treated as trust property pursuant to SCR 20:1.15(e)(3)."
- SCR 20:1.15(3) requires that funds in dispute be held in the lawyer's trust account until there is an accounting and severance of the interests.
- In the absence of a clear answer in the Rules, lawyers and law firms should establish a policy as to how the funds will be handled.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Three: Disclosures in a Motion to Withdraw

- Lawyer has a difficult client.
- Trial is coming up and the client is insisting the lawyer make frivolous arguments, which the lawyer is prohibited from doing under the Rules.
- Lawyer believes he is mandated to withdraw under SCR 20:1.16(a)(1).
- Lawyer is concerned that the judge might not let him withdraw so close to trial and, therefore, wants to explain in his motion exactly what is going on.

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Disclosures in a Motion to Withdraw

- SCR 20:1.16(a)(1) requires withdrawal when the representation of a client will result in a violation of the Rules.
- SCR 20:1.16(c) states that, when ordered to do so, a lawyer shall continue with the representation despite good cause for terminating the representation.
- ABA Formal Opinion 519 concludes:

  "When moving to withdraw from a representation under Rule 1.16, a lawyer's disclosure to the tribunal is limited by the broad duty of confidentiality in Rule 1.6(a). Unless an explicit exception applies or the client provides informed consent, the lawyer may not reveal "information relating to the representation" in support of a withdrawal motion. This restriction applies even when withdrawal is mandatory under Rule 1.16(a)."

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Disclosures in a Motion to Withdraw

- The opinion (and the Ethics Hotline) advises the lawyer proceed as follows:

  (1) initially submit a motion providing no confidential client information apart from a reference to "professional considerations" or "irreconcilable differences";

  (2) upon being informed by the court that further information is necessary, respond, when practicable, by seeking to persuade the court to rule on the motion without requiring the disclosure of confidential client information, asserting all non-frivolous claims for maintaining confidentiality consistent with [SCR 20:1.6(a)] and for protecting the attorney-client privilege;

  (3) if that fails and the lawyer is nonetheless ordered to submit information by the court-thereby invoking [SCR 20:1.6(b)(5)'s] exception-do so only to the extent "reasonably necessary" to satisfy the needs of the court and preferably by whatever restricted means of submission are available, such as in camera review, under seal, or such other procedures designated to minimize disclosure as the court determines is appropriate; and

  (4) if the court does not order the lawyer to disclose but states that the motion to withdraw will be denied unless the lawyer provides more information, the lawyer remains bound by the duty of confidentiality and should remind the judge that, absent an order from the court, the lawyer is obligated under [SCR 20:1.6] to maintain the confidentiality of the information. In doing so, the lawyer should also request that, if the court does order the lawyer to disclose, the court require the lawyer to disclose only so much information protected by [SCR 20:1.6] as is necessary and allow the lawyer to make those disclosures in camera or submitted under seal so as to minimize harm to client's interests.

- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Four: Client Provides Documents the Client is Not Authorized to Have

- Lawyer is representing a client in a worker's comp matter.
- Yesterday, the client emailed the lawyer a handful of documents the client said she had copied from the company's internal server on her last day on the job.
- The documents would be helpful to the client's case, but the lawyer knows his client shouldn't have them is unsure what he can and cannot do with them.

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Client Provides Documents the Client is Not Authorized to Have

- SCR 20:4.4(a) – Respect for rights of 3rd persons – In representing a client, a lawyer shall not use means that have no 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.
- Comment [2] - 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.
- Philadelphia Bar Ass'n Professional Guidance Comm., Op. 2008-2 – ABA Opinion 06-440 makes clear that under these circumstances, the lawyer is not required to notify the opposing party or counsel about the receipt of such documents. However:
  - Prior to taking any action, the lawyer should determine whether the client might be criminally or civilly liable under the circumstances, including being sure to understand how the client came into the possession of the documents.
  - If the lawyer could not rule out potential civil or criminal liabilities under the circumstances and the client ignored the lawyer's advice and insisted that the emails be used, the lawyer should seriously consider withdrawing from the representation pursuant to SCR 20:1.16(a)(1).

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Client Provides Documents the Client is Not Authorized to Have

- *In re Eisenstein,* 485 S.W.3d 759 (Mo. 2016) : Further, Mr. Eisenstein admitted that he reviewed the information provided by Husband, realized it was "verboten," and did not immediately disclose his receipt of the information to opposing counsel. Mr. Eisenstein's failure to promptly disclose his receipt of the information and return it to Ms. Jones until after the trial had commenced supports a finding that Mr. Eisenstein utilized Husband's improper acquisition of Wife's personal information, including privileged attorney client communications.
- *Burt Hill, Inc. v. Hassan* (W.D.Pa 1-5-2010): Documents helpful to a client's case showed up from an allegedly anonymous source. The court, ultimately unconvinced that the defense lawyers, who came to possess the "anonymously" provided documents, acted appropriately, entered a sanctions order requiring not only the return of all the documents but also prohibiting those documents from ever being introduced into evidence even if they could have been otherwise obtained through legitimate, formal discovery efforts.

The court declined to disqualify the lawyers involved because they had previously obtained an opinion from an outside ethics expert blessing their retention of the documents in question. But the court soundly criticized the merits of the ethics expert's opinion. "Any suggestion that Defense counsel's receipt and retention of [the documents] carried no ethical concerns would come not from a careful study of the applicable law, but rather from a failure to appreciate it."

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Client Provides Documents the Client is Not Authorized to Have

- This fact pattern is distinguishable from a situation in which someone inadvertently sends a lawyer information or documents. That situation is dealt with in SCR 20:4.4(b) and (c), which state:

  (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 disclosed 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.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Five: What Constitutes a Client File?

- Lawyer represents a client in a property dispute.
- Despite filing a lawsuit three years ago, the matter has still not settled and is not scheduled for trial.
- Lawyer has been fired for not bringing the matter to a timely conclusion.
- The client wants their entire file. There are several documents in the file the lawyer would rather the client not see, especially those pertaining to the lawyer's frustrations with the client. Does the lawyer have to give the client everything in the file?

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What Constitutes a Client File

- Wisconsin Formal Ethics Opinion EF-16-03 states that the lawyer must provide the following to a client, unless prohibited by other law:
  - Any materials that were provided to the lawyer by the client;
  - Legal documents filed with a tribunal or those completed, ready to be filed, but not yet filed;
  - Discovery, including interrogatories and their answers, deposition transcripts, expert witness reports, witness statements, and exhibits;
  - Orders and other records of a tribunal;
  - Executed instruments such as contracts, wills, trusts, corporate records, and similar records prepared for the client's actual use;
  - Correspondence issued or received by the lawyer in connection with the representation of the client on relevant issues, including emails, texts, and other electronic correspondence that have been retained according to the firm's document retention policy;
  - Legal opinions issued at the request of the client;
  - Third-party assessments, evaluations, investigative reports or records paid for by the client;
  - Legal research and drafts of documents that are relevant to the matter; and
  - Any materials for which the client has been billed, either directly or through lawyer or staff time.

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What Constitutes a Client File

- A lawyer may withhold the following:
  - Materials that would violate a duty of nondisclosure to another person, such as when the lawyer uses the document of another client as a model;
  - Materials containing information, which, if released, could endanger the health, safety, or welfare of the client or others;
  - Materials that could be used to perpetrate a crime or fraud;
  - Materials containing only internal firm communications concerning the client file, such as conflicts checks, personnel assignments, and advice the lawyer receives concerning the lawyer's own conduct, such as compliance with the Rules; and
  - Materials containing the lawyer's assessment of the client, such as personal impressions and comments relating to the business of representing the client. If a lawyer's notes contain both factual information and personal impressions, the notes may be redacted or summarized to protect the interests of both the lawyer and the client.
- A link to EF-16-03 is included in your materials.

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Caller Six: Criminal Defendant Client Might Lie on the Stand

- Lawyer represents a client in a criminal matter.
- A jury trial is set.
- Lawyer's client wants to testify and wants lawyer to call an alibi witness on their behalf.
- The lawyer had his investigator talk to both the client and the potential witness about the alleged alibi and based on other evidence in the case, the lawyer thinks there is very little chance the story true.
- Client still insists that he and the witness be called and threatens to call OLR if lawyer doesn't go along with this plan.

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Criminal Defendant Client Might Lie on the Stand

- SCR 20:3.3(a)(3) - Candor toward the tribunal - A lawyer shall not knowingly offer evidence that the lawyer knows to be false.... A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.
- Comment [6] -If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.
- Comment [7] – The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

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Criminal Defendant Client Might Lie on the Stand

- Comment [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). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.
- Comment [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 discriminate in the quality of evidence and thus impair 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 refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

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Criminal Defendant Client Might Lie on the Stand

- *State v. McDowell*, 2004 WI 70 (2004): Under what circumstances do criminal defense attorneys have knowledge of prospective perjury sufficient to trigger a requirement that a client testify in the unaided narrative rather than the usual question and answer format?

  [We] determine that an attorney may not substitute narrative questioning for the traditional question and answer format unless counsel knows that the client intends to testify falsely. Absent the most extraordinary circumstances, such knowledge must be based on the client's expressed admission of intent to testify untruthfully. While we recognize that the defendant's admission need not be phrased in "magic words," it must be unambiguous and directly made to the attorney.

  We agree with the observation of the court of appeals that Supreme Court Rule 20:3.3 must be harmonized with our determination here.

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Caller Seven: Help! I've Been Scammed!

- Lawyer settled a civil matter for a client.
- A few days before the settlement funds are supposed to arrive in lawyer's account, he gets an email from his client telling the lawyer he has a new email address and has opened a new bank account solely for the purpose of receiving the settlement funds.
- When the settlement funds arrive, lawyer transfers the funds to the client's new account and emails the client at his new email address to let him know.
- A few days later, the client calls asking where his money is. When the lawyer tells the client he deposited it into the client's new bank account, the client tells the lawyer he has no idea what he's talking about.
- The money is gone from the lawyer's trust account. The client checks all his accounts and doesn't see it anywhere.

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Help! I've Been Scammed!

- A lawyer should:
  - Promptly inform their client of the incident.
  - Replace the client funds that are missing from the trust account.
  - Maintain all records.
  - Contact local law enforcement.
- While the Rules do not require the lawyer to report the incident to the Office of Lawyer Regulation, lawyer should be aware that falling for these scams can result in discipline. Private Reprimand 2024-OLR-08 concluded that, "By initiating a wire transfer of client funds pursuant to fraudulent wiring instructions without taking reasonable steps to safeguard client funds, including the failure to verify the wiring instructions with the client or client's bank and the failure to recognize numerous red flags that should have raised suspicions about the fraud, the lawyer violated SCR 20:1.15(b)(1).

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Help! I've Been Scammed!

- How to avoid scams:
  - Verify the identity of the client and adverse party independent of client-provided information.
  - Meet with client in person, or at least via video conferencing. The client should want to meet with the lawyer who will be representing them.
  - Beware of suspicious requests, such as a high fee for little work, requiring immediate transfer of funds, or threats against the lawyer if they do not take immediate action.
  - Notify the client, in advance, that you will be unable to disburse funds until they have cleared the banking system, NOT just "available" at the depository bank.
  - Be wary of last-minute changes to payment or wire transfer instructions.
  - Check with your bank AND the issuing bank to ensure the check is legitimate BEFORE depositing. Only the supposed issuing bank can confirm if the check is real.
  - Hold deposits until the funds actually clear the banking system before issuing any disbursement, again NOT just "available" at the depository bank.
  - Train your staff regarding scams and internet security.
  - Know what steps to take if you become a victim of fraud, including contacting the bank, local and federal law enforcement, and your insurers.
  - Listen to your instincts. If something feels wrong, it probably is.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Eight: Closing a Trust Account

- Lawyer, a long-time solo practitioner, has decided to take an in-house counsel position.
- Since she cannot take any of his clients with her, she is either wrapping up their cases or assisting them to find successor counsel.
- Now all the lawyer has to do is close her trust account. She knows that when she opened her trust account, there were certain rules she had to follow and certain forms she had to complete.
- She scours the Rules and OLR's trust account manual for directions on how to close it and can't find any.

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Closing a Trust Account

- SCR 20:1.15 does not address closing a trust account.
- Lawyer must ensure all funds in the trust account is properly accounted for and disbursed.
- If owner of funds is unknown or cannot be found, the funds fall under the jurisdiction of the Unclaimed Proerty office.
- Must maintain full and complete trust account records for 6 years after the termination of the relevant representation.
- Lawyer is not required to notify the Bar or OLR that the account is closed but OLR asks that the lawyer contact them so they can mark the account as closed. Email olr.trustaccount@wicourts.gov.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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Caller Nine: Gifts from Clients

- It's Christmastime in the city!
- Lawyer must admit that she's had a pretty stellar year and has gotten some great results for a few clients.
- One afternoon, one of those clients stops by with a fruit basket and a card. Inside the card is a generous gift card to the nicest restaurant in town.
- The lawyer's not sure if she can accept the gift.

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Gifts from Clients

- SCR 20:1.8(c) is the only restriction on gifts found in the rules – (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, nor prepare an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, except where (1) the client is related to the donee, (2) the donee is a natural object of the bounty of the client, (3) there is no reasonable ground to anticipate a contest, or a claim of undue influence or for the public to lose confidence in the integrity of the bar, and (4) the amount of the gift or bequest is reasonable and natural under the circumstances.
- Comment [6] – A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).
- Firms should establish a policy on gifts from client, either banning or requiring approval before the acceptance of any "substantial" gift.
- A link to a relevant Ethical Dilemmas column is included in your materials.

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THANK YOU

Ethics Hotline: 1-800-254-9154

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AMC 2026 – List of Ethics Plenary Resources

Unclaimed Trust Account Funds

Inside Track: Ethical Dilemma What to Do with Unclaimed Money in a Trust Account: Reboot:

Third Party Payors and Unearned Fees

Inside Track: Dilemma: Who Receives the Advanced Fee Refund When a Third Party Pays?:

Disclosures in a Motion to Withdraw

Inside Track: Ethical Dilemma: Justifying Withdrawal Without Violating Confidentiality:

Client Provides Documents the Client is Not Authorized to Have

Wisconsin Lawyer: Respecting Others' Privileged Information: Lawyers' Obligations to Third Persons:

What Constitutes a Client File?

Wisconsin Formal Ethics Opinion EF-16-03 File Return - final.pdf

Help! I've Been Scammed!

Inside Track: Dilemma: Will I Be Disciplined If I Fall for a Wire Transfer Scam?:

Closing a Trust Account

Inside Track: Ethical Dilemma Closing a Trust Account: What Wisconsin Lawyers Need to Know:

Gifts from Clients

Inside Track: Ethical Dilemma: Is it OK to Accept Gifts from Clients?: