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Session 1

Graduated with Honors, Cited the Wrong Holding: AI and the Perils of Unverified Research

Presented by:

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About the Presenters...

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Ariella Schreiber is the vice president of claims and general counsel at Rural Mutual Insurance Company in Madison, Wisconsin. She received her B.A. from Douglass College at Rutgers University, her J.D. from Seton Hall University School of Law, and her M.B.A. from the University of Wisconsin-Madison. Ms. Schreiber is a member of the Dane County Bar Association, Wisconsin Defense Counsel, and the State Bar of Wisconsin. She is a past president and current board member of Wisconsin Defense Counsel and a director on the board of the Wisconsin Lawyers Mutual Insurance Company.

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Associate Quote: "I received the top grade in my legal research class…" – Famous last words before the bench lecture.

Atty. Matthew M. Beier
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Introduction

Last summer, in a routine personal injury auto accident case in California, things went off the rails—quickly. The defendant's insurance carrier hired a small firm to defend the lawsuit and the matter was assigned to an associate who had only been practicing for two years (Associate #1). Associate #1 missed the critical deadline to name expert witnesses and then left the firm. The defense firm did not inform the insurance carrier responsible for the defense until months later and just a few weeks out from trial. The firm also chose not to immediately report the matter to its legal malpractice carrier.

Instead, the small firm partners scrambled and hired a new associate (Associate #2)—freshly minted, having passed the bar exam just a few months earlier in January—and handed her a daunting task: file a motion seeking relief from the expert disclosure deadline (in Wisconsin, a motion for enlargement of time under § 801.15). What followed could generously be described as a cautionary tale.

Associate #2 filed the motion, but in doing so violated multiple procedural court rules. Worse, she cited several cases in her brief in support of her position—cases which, unfortunately, stood for the *exact opposite* of the propositions she asserted. The judge indicated he suspected she used artificial intelligence without verifying her writings. He then humiliated her, asking her to clarify the holdings and explain her legal reasoning, an impossibility. She famously responded:

"I received the top grade in my legal research class. I know how to do research. I know how embarrassing this looks right now."

Rather than admitting she had relied on artificial intelligence to prepare the brief or do her research—likely the true culprit—she stated plainly that she had simply been "incompetent." The judge went on a rampage and spun the associate in circles and toyed with her like a cat with its prey before denying the motion and leaving the defendant sans experts. The transcript, now legendary in certain circles, reads like a warning label for unchecked reliance on AI tools in the practice of law.

In this CLE program, we will walk through this real-world scenario (with names changed to protect the mortified), identifying the inflection points at which things could have—and should have—gone differently. We will also examine relevant **Wisconsin Supreme Court Rules of Professional Conduct**, particularly those relating to **supervision (SCR 20:5.3), competence (SCR 20:1.1), diligence (SCR 20:1.3), candor toward the tribunal (SCR 20:3.3),** and the evolving standards of **technological competence.**

Whether you're managing a firm, mentoring young lawyers, or experimenting with AI tools yourself, this session will help you avoid turning a simple procedural motion into a CLE-worthy case study.

I. Inflection Point #1 – Calendaring

The insurance carrier learned that the only employee who had the expert deadline on any calendar was Associate #1. Had the firm implemented adequate calendaring, this train wreck may never have happened.

A. "Whoosh! There Goes Another Deadline," Beier, M. ***96 Wis. Law. 43-45 (October 2023).***

- Douglas Adams quote sets the tone: "I love deadlines. I love the whooshing noise they make as they go by."
- Missed deadlines cause not only stress and embarrassment but also potential malpractice claims.
- Reliable calendaring systems are essential to competent legal practice.

B. Competence and Technology

- **Wisconsin SCR 20:1.1** requires competence, including the use of relevant technology.
    - "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
    - "Comment [8] - [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."
- Calendaring is a technological function that lawyers must understand and integrate into their practice.

C. The Scope of the Problem

- ABA: 19% of malpractice claims (2016–2019) stemmed from administrative errors like calendaring.
- WILMIC: Missed or ignored calendar events comprise 20% of claims (2010–2020).

- Lateral hires and firm transitions increase risk due to unfamiliar procedures.

D. Diligence and Procrastination

- **SCR 20:1.3** mandates diligence and promptness.
- Procrastination leads to errors, especially in the digital age of mandatory e-filing (as of July 1, 2023).

E. Using Technology Effectively

- Centralized vs. decentralized calendaring systems.
- Importance of synchronization across devices and integration with firm workflows.
- Legal-specific software tools (e.g., Clio, MyCase) enhance reliability and user access.
- Tickler systems with escalating reminders help develop work-ahead habits.

F. Training and Accuracy

- Comprehensive and ongoing training for all users is critical.
- Accurate deadline calculation is essential—errors of even an hour can be fatal to a case.

G. Avoid Malpractice

- Missed deadlines are a preventable and common cause of legal malpractice.
- Competent use of calendaring technology and firm-wide adherence to best practices are essential to effective, ethical lawyering.

II. Inflection Point #2 – Supervision (1 of several)

An inflection point arose when the managing partners assigned the case to a second-year associate without ensuring appropriate supervision or implementing redundant calendaring safeguards. Under SCR 20:5.1(a), partners and lawyers with managerial authority are obligated to establish systems that ensure all attorneys—especially less experienced ones—comply with the Rules of Professional Conduct. Had the firm instituted adequate oversight and reliable calendaring protocols, the missed expert disclosure deadline and ensuing malpractice exposure could likely have been avoided.

A. "Ethics: Supervising Lawyers: Accountability for Others' Work," Dietrich, D. *85 Wis. Law.* (March 2012)

B. **Wisconsin SCR 20:5.1** identifies the 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."
- ABA Comment [2] - [2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. **Such policies and procedures include those designed to** detect and resolve conflicts of interest, **identify dates by which actions must be taken in pending matters**, account for client funds and property **and ensure that inexperienced lawyers are properly supervised**.

III. Inflection Point #3 – Communication

Upon discovering the missed expert disclosure deadline, the firm had a critical duty under SCR 20:1.4 to promptly inform both the client and the insurer of the error. Timely communication is essential not only to preserve trust, but also to allow clients to make informed decisions about their representation and potential case strategy. Equally important, the failure to notify the firm's malpractice carrier deprived the firm of potential repair assistance—intervention that might have preserved the opportunity to name an expert or mitigate the consequences of the oversight. Delayed or withheld disclosure in such situations compounds harm and exposes the firm to further ethical and liability risks.

A. What does a lawyer have to do when a claim is made or learns of a potential claim?

1. Ethically:

a. Lawyers are required to tell their clients if a serious mistake was made – risk of not doing so is a risk to the lawyer's license to practice law. SCR 20:1.4 (Duty to inform clients).

SCR 20:1.4 Communication

(a) A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests by the client for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

b. Clients should be advised to obtain separate legal advice on whether they have a claim arising out of the mistake. **SCR 20:1.7** (Conflict of interest). See also **SCR 20:4.3** (Dealing with an unrepresented person – basically what a client becomes when they have a potential legal malpractice claim against their lawyer).

c. ABA Comment to **SCR 20:1.7** Conflicts of interest current clients: "[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0 (f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly

identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing."

d. See also, "Conflict Waivers and the Informed Consent Standard." Pierce & Anderson. *Wis. Law*. July 2009.

2. Practically:

a. A claims-made-and-reported policy will only provide coverage if a claim or potential claim is reported during the applicable policy period

b. Review the policy language for specific reporting requirements and duties, but generally:

- reports must be in writing; and
- reports should include a chronological narrative of the representation; a description of the error or alleged error; the date the lawyer first became aware of the error; and a description of the potential damages.

3. If the lawyer's interest in getting past the mistake or minimizing any conflicts with the client's interest in getting a full and fair resolution of their matter, a conflict exists and the lawyer cannot continue the representation. The client should be told to obtain legal advice on how to proceed and existence of professional liability insurance should be disclosed.

4. The client is entitled to complete copy of their file and the lawyer should keep a complete copy as well. The insurer will ask for a copy of the file and likely defense counsel will want one also.

B. Insured's reporting obligation to insurer:

1. The reporting obligation is contractual, so each policy needs to be read for specific obligation.

2. The obligation to report includes mistakes out of which no claim is expected, or allegation of mistake that the insured believes are frivolous or unfounded.

    - The existence of a claim (allegation of a mistake and a demand for payment) is usually obvious. For example, when a client alleges that you made a mistake and demands restitution, a claim exists. The recompense sought by a client could range from a return of your fees to a demand for outright payment of financial loss allegedly suffered.

    - Other matters may be subtler and you may be either reluctant or unsure to report it. For example, in reviewing a file, you may discover a problem of which no one else is aware. Although you may want to look the other way, you have a duty under the terms of your policy to inform your insurance carrier immediately. Plus, your ethical duty is another matter.

3. What if I believe that the allegation is frivolous?

    As a condition of coverage, you have the duty to report any circumstance which could give rise to a claim, regardless of whether or not you believe the matter is defensible. If the matter is without merit, by reporting it to your insurance carrier you have done your duty and have triggered protection just in case the matter would mushroom into a problem.

4. What is the importance of timely reporting?

    Prompt reporting has a number of benefits to both you and your insurance carrier:

    - Mitigation and repair.
    - Defense.
    - Accurate accounting to the applicable fiscal year, affecting financial statements and rate making.
    - Timely reporting to reinsurance carriers (participation by reinsurance carriers varies from one treaty year to another; only those carriers receiving premium will tolerate paying a claim).

- Thorough, complete disclosure builds trust (lawyer & underwriter; underwriter & reinsurance carrier).
- Benefit other policyholders/owners of a mutual insurance company.

5. What happens if a known matter is reported after my policy expires?

   Coverage is only provided if a known matter is reported, in writing, to the insurance carrier before the policy expiration date. Once your policy expires, coverage terminates, regardless of when you performed the professional services.

   In this example, will my next policy provide coverage?

   If, after a matter is reported to an insurance carrier, it is determined that you knew or should have known of a matter that could potentially become a claim – based on the reasonably prudent lawyer standard – then coverage could be contested.

IV. Inflection Point #4 – Supervision (2 of several)

When the firm assigned Associate #2 to the unenviable task of to salvage the ability to name experts, it failed to meet its responsibilities under SCR 20:5.1(c). Entrusting such a high-stakes motion to an associate with only months of practice—without close mentoring, guidance, or review—was both unfair to the attorney and dangerous to the client. Law firms have an ethical obligation to provide meaningful training and support to junior lawyers, especially when the matter involves correcting prior missteps with significant malpractice exposure. This was not simply poor judgment; it was a failure of professional responsibility at the management level.

A. "Partners can also be disciplined under 5.1(c) for the actions of others if they ordered, ratified, or failed to take reasonable remedial action regarding misconduct. Here the partner's responsibility is not strictly vicarious; it requires active participation or knowledge of misconduct without appropriate preventive or corrective measures." Lundberg. "Professional Quandaries and Quagmires," *Minn. Lawyer* (April 22, 2024).

   - In this matter, the supervising partner was certainly aware of the error.

   - The supervising partner's response was to hire an even less experienced associate and assign her the task of fixing the error. That is not an "appropriate corrective measure."

B. "Disciplinary issues often arise from inadequate training and policies for supervising nonlawyers or junior associates, leading to problems like mishandling trust accounts, missed deadlines, unreturned client communications, and improper investigatory communications by nonlawyers." Id.

- This requirement applies to the managing attorney both as to Associate #1, as previously discussed, and Associate #2.

- With respect to Associate #2, the supervisory attorney's explanation to the judge that "[she] represented to me that she fully understood her obligations and confirmed that she was capable of handling all aspects of the motion and hearing," flies in face of common sense and, more importantly, falls short of his obligations under this Rule.

V. Inflection Point #5 – Competence

Before assigning a critical motion to newly licensed Attorney #2, both the associate and the managing partner had a duty to handle the task competently. Competence is not presumed by licensure alone—particularly when the assignment involves correcting a significant procedural misstep with potentially case-dispositive consequences. The managing partner should have evaluated the complexity of the matter and ensured that adequate support and supervision were in place, while Associate #2 had a parallel obligation to recognize the limits of her experience and seek guidance. Proceeding without that mutual awareness and caution compromised the client's representation and triggered avoidable ethical and professional risks.

A. **SCR 20:1.1 Competence** – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

- Comment 2: [2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar … Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

B. Dabbling – Extremely Risky

- Approximately 40% of all claims involve areas of practice in which lawyers practice LESS than 10% of the time.

- Less than 1% of all claims involve areas of practice in which lawyers practice 90 – 100% of the time.

VI. Inflection Point #6 – Supervision (3 of several – use of AI)

When Associate #2 appeared before the court with a brief citing cases that contradicted her arguments, the judge strongly suspected—and the facts suggest—that she relied on generative AI to draft her submission. Though she denied using such tools and instead claimed incompetence, the scenario underscores a failure by the firm to establish policies governing AI use. Under SCR 20:5.1 and SCR 20:5.3, the managing partner had an ethical duty to supervise both the associate and any nonlawyer assistance, including technological tools that function in lieu of human support. A lack of clear guidance, oversight, and training on the permissible and ethical use of AI left the associate—and the client—vulnerable to grave consequences, making this an avoidable inflection point with serious implications.

A. **Rules 5.1 and 5.3 – Supervisory Responsibilities**: "Managerial lawyers must establish clear policies regarding the law firm's permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm's lawyers and nonlawyers comply with their professional obligations when using GAI tools. Supervisory obligations also include ensuring that subordinate lawyers and nonlawyers are trained, including in the ethical and practical use of the GAI tools relevant to their work as well as on risks associated with relevant GAI use." ABA Standing Comm. on Ethics & Pro. Resp., Formal Op. 512 (July 29, 2024); see also Kaiser, "Ethical Obligations When Using ChatGPT," 96 Wis. Law. 41 (Feb. 2023)

B. **ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 512** also considers lawyers obligations to vet third-party providers. When outsourcing legal or nonlegal services to third-party vendors—including generative AI providers—lawyers must take reasonable steps to ensure competent performance and the protection of client confidentiality.

Key Considerations:

- ensure that the [GAI tool] is configured to preserve the confidentiality and security of information, that the obligation is enforceable, and that the lawyer will be notified in the event of a breach or service of process regarding production of client information;

- investigate the [GAI tool's] reliability, security measures, and policies, including limitations on the [the tool's] liability;

- determine whether the [GAI tool] retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information;

- and •understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.

VII. Inflection Point #7 – Candor Toward the Tribunal

By submitting a brief that misrepresented case law, the associate breached multiple ethical obligations under SCR 20:3.1 (meritorious claims), SCR 20:3.3 (candor toward the tribunal), and SCR 20:8.4 (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation). Even if the errors stemmed from generative AI, the associate had a nondelegable duty to verify the accuracy and legal soundness of the content she submitted to the court under her signature. Lawyers may not blame technology or others for misstatements of law; they are ethically responsible for reviewing and affirming the integrity of all work—especially when it originates from AI tools that are known to hallucinate or fabricate authority. Had she verified the statements in her brief prior to submitting same, she could have avoided damage to her reputation and to her client.

A. Lawyers have ethical responsibilities to the courts.

- **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…

- **SCR 20:3.3 Candor toward the tribunal** (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

- **SCR 20:8.4 Misconduct** It is professional misconduct for a lawyer to: …(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

B. "Therefore, output from a GAI tool must be carefully reviewed to ensure that the assertions made to the court are not false.

Issues that have arisen to date with lawyers' use of GAI outputs include citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.

> Some courts have responded by requiring lawyers to disclose their use of GAI. As a matter of competence, as previously discussed, lawyers should review for accuracy all GAI outputs. **In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments."** ABA Formal Op. 512.

Conclusion

This cautionary tale serves as a stark reminder that in the age of artificial intelligence, the foundational duties of competence, diligence, communication, supervision, and candor remain firmly rooted in the Rules of Professional Conduct. The ethical failures in this scenario—ranging from inadequate calendaring and poor supervision to unverified use of AI and misstatements of law—were not the result of a single error, but rather a cascade of missed inflection points where responsible action could have prevented harm. As legal technology evolves, lawyers must adapt thoughtfully and proactively, ensuring that emerging tools enhance, rather than erode, the quality and integrity of their practice. When those obligations are overlooked—no matter how promising the software or how bright the associate—the consequences can be swift, public, and professionally devastating.