



Professionalism Under Pressure: Staying Ethical When Other People Don't

When in highly charged situations, lawyers might feel like responding to opposing counsel's bad behavior with more of the same. But two wrongs don't make a right. Here are a few tips for deciding whether and how to deal with other lawyers' ethical lapses.

BY MATTHEW M. BEIER

Almost every practicing lawyer has encountered difficult opposing counsel. Most lawyers have at least one story about an adversary who pushed every limit – filing meritless motions, ignoring discovery, or engaging in sharp, or even sanctionable, conduct or communication. The adversarial nature of the practice of law requires zealous advocacy, but that does not mean that lawyers are allowed to be unprofessional or unethical.

Unfortunately, bad behavior sometimes begets more bad behavior. When provoked, lawyers may feel tempted to respond in kind. But as officers of the court and members of a self-regulating profession, Wisconsin lawyers are expected to resist that temptation. The Wisconsin Supreme Court's Rules of Professional Conduct for Attorneys demand both zealous advocacy and principled restraint.

In this article, I explore the questions, “when does opposing counsel's conduct cross the line?” and “when the line is crossed, what are my obligations in response under the Rules of Professional Conduct?”

Civility in the Practice of Law

There is a solid legal foundation for civility in the practice of law in Wisconsin, primarily established through the Rules of Professional Conduct for Attorneys.¹ A lawyer's career begins by taking an oath to respect the courts and to “abstain from all offensive personality....”² The attorney's oath also requires lawyers to respect judicial officers, refrain from advancing unjust lawsuits, and avoid misleading a judge or jury by a false statement of fact or law. Violation of the attorney's oath is an act of misconduct subject

to discipline.³ Civility is not optional – “it is a fundamental aspect of professionalism and ethical practice ... encompass[ing] respect, courtesy, and integrity in interactions with clients, colleagues, opposing counsel, and the judiciary.”⁴

Other rules also demonstrate the need for civility in practice. SCR 20:3.4, titled “Fairness to opposing party and counsel,” prohibits certain conduct, including:

- Unlawfully obstructing access to evidence,
- Knowingly disobeying a court rule,
- Making frivolous discovery requests, or
- Intentionally failing to comply with proper discovery requests.⁵



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Even in contentious matters, these rules apply. Responding to aggressive or unfair conduct with similarly inappropriate behavior is not supported under the rules – and an unethical response to unethical conduct may itself be the subject of a grievance filed with the Office of Lawyer Regulation (OLR).

Don't Take the Bait

A bitter email dripping with sarcasm. Evasive and incomplete discovery responses designed to hinder or delay. A motion riddled with accusations and platitudes. In these moments, it can feel satisfying to provide a knee-jerk response in kind. But Wisconsin's ethical rules require lawyers to maintain composure and professionalism, regardless of the provocation.

SCR 20:4.4(a) provides, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

This provision makes clear that even strategic decisions and responses must serve a legitimate purpose. Readers familiar with the movie *Bull Durham* might remember when rookie pitcher Ebby Calvin "Nuke" LaLoosh shook off his veteran catcher Crash Davis's pitch

calls so that he could instead "announce his presence with authority" by throwing his prized fastball. This served no legitimate purpose because it prioritized ego over strategy and showed immaturity. (And it backfired when the batter crushed LaLoosh's fastball for a home run!) Engaging in incivility and escalating hostilities simply to "be heard" or to "make a point" are inconsistent with SCR 20:4.4 – and ineffective in the long term.

Likewise, SCR 20:8.4(c) prohibits "conduct involving dishonesty, fraud, deceit or misrepresentation." Even a small lapse in judgment can carry consequences, especially when the matter is already contentious.

Rather than reflexively engaging, consider some alternative strategies and actions:

- Keep communications brief, courteous, and documented.
- Be mindful of tone and word choice – especially in digital communication, which can lack the nuance of nonverbal communication that occurs with in-person conversations.
- Use procedural tools, such as protective orders, motions to compel, or court intervention, to address misconduct constructively.

- Avoid inflammatory language, even when provoked.

Judges and clients notice when a lawyer remains professional in the face of provocation. A reputation for integrity often becomes an advantage both in and outside the courtroom.

Mandatory Reporting: When Ethical Obligations Escalate

What if opposing counsel's behavior crosses the line from unprofessional to unethical – or even illegal? SCR 20:8.3(a) imposes a mandatory duty to report certain kinds of misconduct:

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

This duty is not triggered by all violations. The applicable elements are that 1) the lawyer has actual knowledge of the violation; 2) the conduct violates the Rules of Professional Conduct; and 3) the violation raises a substantial question as to the lawyer's honesty, trustworthiness, or overall fitness to practice law.

The threshold for "substantial" is clarified in comment 3 to SCR 20: 8.3: "The term 'substantial' refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." In other words, a single serious incident – such as knowingly filing a false affidavit or threatening criminal charges solely to gain leverage – may trigger the reporting requirement, even if the incident is isolated.

If a lawyer believes the rule applies, the lawyer should report the incident to the OLR. Reporting may feel uncomfortable, particularly in smaller legal communities, but it plays a vital role in preserving the profession's integrity.

Discretion Versus Duty: Informal Resolution or Formal Report?

Not every lapse requires a formal complaint. As attorney Stacie Rosenzweig

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wrote in 2018, “Grievances made not because a lawyer has committed a real wrong but because someone wants attention or advantage aren’t just an expense and a worry for the respondent lawyer; they clog the already burdened regulatory system and generally reflect poorly on the profession.”⁶

SCR 20:8.3 aims to balance the duty to report with the reality that not all misconduct rises to the level of substantial concern. In some cases, a direct conversation with opposing counsel – or informal guidance from a mentor – may be enough to address the issue. But when the misconduct implicates core values such as honesty, fairness, or the administration of justice, lawyers are obligated to report.

Use Available Resources

Ethical dilemmas are seldom straightforward. When in doubt, lawyers should use available resources such as the State

Bar of Wisconsin’s Ethics Hotline ((800) 254-9154), which offers confidential guidance to attorneys navigating difficult ethical questions. Consulting a colleague or supervising attorney may also help clarify the best course of action.

If the issue appears to involve serious misconduct, contact the OLR directly for more formal assistance or to initiate a complaint.

Conclusion

Contentious opposing counsel will always exist. But Wisconsin lawyers are not without options when faced with unethical conduct. By following the Rules of Professional Conduct, maintaining composure, and reporting serious violations when necessary, attorneys protect not only their own reputations but also the integrity of the profession itself. The preamble to the rules states, “[The principles underlying the rules] include the lawyer’s obligation zealously

to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”⁷

Let that guide us – even in the most challenging of legal battles. **WL**

ENDNOTES

¹SCR ch. 20.

²SCR 40.15.

³SCR 20:8.4(g).

⁴Daniel S. Wittenberg, *Civility in the Practice of Law: A Pillar of Professionalism*, ABA Litig. News (March 26, 2025), <https://www.americanbar.org/groups/litigation/resources/litigation-news/2025/winter/civility-practice-law-pillar-professionalism/> (behind paywall for some readers).

⁵SCR 20:3.4(a), (c), (d).

⁶Stacie Rosenzweig, *Misuse of the Disciplinary System: When Squealing Isn’t Appealing*, Wis. L.J. (Feb. 19, 2018), <https://wislawjournal.com/2018/02/19/misuse-of-the-disciplinary-system-when-squealing-isnt-appealing/>.

⁷SCR ch. 20 pmbl. ¶ 9. **WL**

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