



Absolute Rules: Things Lawyers May Not Do Under *Any* Circumstance

The Rules of Professional Conduct, in most instances, are subject to interpretation, and compliance with them will depend on the lawyer's conduct. But some rules are absolute – know the difference.

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Question

I have heard you talk about the Rules of Professional Conduct being “rules of reason.” Are there some rules that are absolute or conduct that is absolutely prohibited?

Answer

For the most part, the Wisconsin Rules of Professional Conduct are rules of reason. Lawyers need to be aware of their responsibilities under the rules and should conform their conduct to what is reasonable and appropriate. The Rules of Professional Conduct also, in most instances, are subject to interpretation, and compliance with the rules will depend very much on a lawyer's conduct.

There are, however, certain types of conduct for which the rules are applied in a very rigid fashion. Some of those rules include the following.

- You may *not* use the word “nonrefundable” in your fee agreement or engagement letter unless you are receiving a true retainer payment that is paid only for agreeing to represent a client and is not related to any fees for the representation. SCR 20:1.0(mm).

- You may *not* put personal funds in the client trust account, other than a small amount to cover anticipated bank costs such as check costs or service fees. You may *not* put personal income into the client trust account to delay the accounting of those funds as income or use personal funds to pay personal expenses out of the client trust account. SCR 20:1.15.

- You may *not* represent the plaintiff in a litigation matter when another attorney in your firm is representing the defendant in the same litigation. SCR 20:1.7 (b)(3).

- You may *not* use client funds paid for services to be provided (an “advanced fee”) to pay for business expenses unless you follow the alternate-fee-protection requirements in all respects. SCR 20:1.0(ag), SCR 20:1.5(f).

- You may *not* disclose information that you learn while representing a client for your personal benefit or for public disclosure unless the client gives informed consent to such disclosure or you need to disclose information to provide for the representation of the client. SCR 20:1.6.

- You may *not* represent a client in a contingent-fee matter without a signed engagement or representation agreement. SCR 20:1.5(c).

- You may *not* engage in sexual relations with a current client at any time. SCR 20:1.8(j).

- You may *not* settle a litigation matter without the approval of the client. SCR 20:1.2(a).

- You may *not* write stories about the representation of the client without the consent of the client. SCR 20:1.8(d).

- You may *not* tell a lie to the court or misrepresent the facts or the law in statements to a judge. SCR 20:3.3(a)(1).

Conclusion

The specific rules above reflect an overview of the common prohibited conduct addressed in the Rules of Professional Conduct. There are other less common types of conduct that are prohibited under the rules. They are typically not subject to a reasonableness factor, while many other aspects of the rules will be applied using a reasonableness standard. Lawyers should fully understand the nature and scope of their obligations under the Wisconsin Rules of Professional Conduct. **WL**



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