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# WSSFC 2023

## QOL/Ethics Track – Session 6

# Just Say No

***Presented By:***
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*Sarah L. Ruffi, Ruffi Law Offices, S.C., Wausau*

# About the Presenters...

**Paul F. Angel** is a shareholder in the Dodgeville Law firm of Angel & Angel, SC. He received his law degree from the University of South Dakota in 1970 (yes, that is correct) two years in the Army after ROTC during law school, then an LLM at the University of Missouri-Kansas City in 1973. Paul has been practicing since 1973 in Dodgeville, now with sons Timothy and Matthew. Paul is a Fellow of the Wisconsin Law Foundation and proud recipient of the Solo and Small Firm Section John Lederer Award.

After earning her Bachelor's degree from Marquette University in marketing and finance, **Sarah L. Ruffi** began her career as the Marketing Coordinator in her family's business. Two years later, she went to UW-Whitewater and earned her MBA in marketing. Immediately after graduation, she entered Marquette University Law School and graduated in 1996, way before the social media era. She opened Ruffi Law Offices, S.C. on February 23, 2004. Since graduating from law school, she has been helping businesses maneuver through the obstacles and challenges of operating in an ever changing environment by providing peace of mind. Her practice focuses on the areas of business law (whether starting, buying and selling businesses, drafting contracts), residential and commercial real estate, landlord-tenant issues, civil litigation, collections, copyrights, trademarks, successions planning and estate planning.

**Just Say No**

2023 Wisconsin Solo and Small Firm Conference
October 19, 2023 at 2:30pm

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**Summary:**

It can be hard to say "no" to judges, clients and other attorneys who demand your attention. Learn how to handle these demands and set work/personal boundaries when others want your schedule to work for them. Keep control of your caseload, calendar and time to not get overworked, overwhelmed, and revert to negative stress-induced habits.

**Getting to "No" may involve a multi-step process or just say no.**

**STEP ONE**

**Be Mindful of the Supreme Court Rules**:

**SCR 20:1.3** Diligence
A lawyer shall act with reasonable diligence and promptness in representing a client.

ABA COMMENT
[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Model Rules for Lawyer Disciplinary Enforcement R. 28 (2002) (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

**SCR 20:1.16** Declining or terminating representation
(a) Except as stated in par. (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
(1) the representation will result in violation of the Rules of Professional Conduct or other law;
(2) the lawyer's physical or mental condition materially impairs the 161 lawyer's ability to represent the client; or
(3) the lawyer is discharged.
(b) Except as stated in par. (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;
(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
(3) the client has used the lawyer's services to perpetrate a crime or fraud;
(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(7) other good cause for withdrawal exists.
(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation
. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.
WISCONSIN COMMITTEE COMMENT
With respect to subparagraph (c), a lawyer providing limited scope representation in a matter before a court should consult s 802.045, stats., regarding notice and termination requirements. With respect to the last sentence of paragraph (d), it should be noted that a state bar ethics opinion suggests that lawyers in Wisconsin do not have a retaining lien with respect to client papers. See State Bar of Wis. Comm. on Prof'l Ethics, Formal Op. E95-4 (1995).
ABA COMMENT
[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].
Mandatory Withdrawal
[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.
[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the

representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

**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 t 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). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in par. (d).

(d) When the lawyer has received disqualifying information as defined in par. (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and (ii) written notice is promptly given to the prospective client.

ABA COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a clientlawyer relationship, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client. 169

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15

**SCR 20:6.2** Accepting appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client—lawyer relationship or the lawyer's ability to represent the client.

ABA COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono public service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

l[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would

result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

## STEP TWO

1. What business are you in? Keeping the Supreme Court Rules in mind, have a clear understanding of what business you are in. Hint: it's NOT practicing law. The practice of law simply represents the vehicle/tool that you use. Understand and decide what service you provide to your clients. What problem do they need you to solve or help them solve? How do they want/need you to help them? Why did they contact you?

    a. Clearly define your practice areas. The days when you can be a general practitioner seem to be over. Given the rapidly changing laws in some practice areas and the trend of selecting a minimal number of areas where you want to practice, the natural first step in saying "no" is clearly defining what areas of law you handle. For example, is your practice area limited to real estate, estate planning, family law, disability, personal injury, criminal defense, intellectual property, tax law, bankruptcy, collections, etc.? If someone contacts you with an issue outside of your clearly defined practice area, simply let them know that you do not handle that type of case.

    b. Have referrals available for potential clients outside of those areas so you can say "no" while still helping them. Establish relationships with lawyers outside of your set practice areas. This way you can refer cases to them and they can reciprocate. If you lack a referral source for a particular issue/area of the law, you can suggest that they contact the State Bar of Wisconsin Lawyer Referral Service.

    c. Beware of the "backdoor client". When you turn someone away, be careful not to let them come in as a new client wrapped in "different packaging" by having them frame their issue in a way that falls within your practice area(s).

2. How do you define your ideal client? Have you ever graded clients? You may not have established set criteria; however, I would venture a guess that you can describe your ideal client and your terrible client. That is what we mean by establishing tangible, specific criteria.

a. Have criteria for A, B, C, D and F clients. Think back to when you were in school and had certain criteria for each grade level. Granted, the criteria generally focused around scores for homework, quizzes and tests. Now, you are free to establish your own criteria. Not every lawyer has the same criteria for their classifications. After all, one attorney's F client may be another's A client.

b. Create a system for handling walk-ins. Have you ever had prospective or current clients walk into your office and expect to meet with you at that moment? Establish a screening to determine if the person is an ideal prospect. If the person fits within your practice area, schedule an appointment. If not, give them a referral or let them know that you cannot help them.

c. Create a system for calls with "just one question". Have you ever noticed that "just one question" usually leads to several more questions and half an hour of your time? If you take those calls, have the person answering your phone determine if the person's "question" falls within your practice area. If not, give a referral. If so and you accept the call, set a time limit before ending the call or scheduling an appointment.

d. Watch for warning signs. How do they treat your staff? Are they pushy? Do they keep repeating their story without listening to you? Do they have an issue with your hourly rate or retainer fee? What does your little voice say? Do they have unrealistic expectations, including timelines? Do you realistically have the time to handle their matter? Have you empowered your staff to turn away clients?

e. Create a system for handling Out of State clients? Is your practice area conducive to representing out of state clients? How will you communicate with your client? How much will your retainer be?

f. Know how the client found you. Did they come from a referral source? If so, does the referral source send A or B clients, or D or F clients? If the source sends D or F clients, have your staff screen the person to determine if they would be a fit before putting the person through to you. Did they find you via Google or online? Did they find your website?

3. Establish guidelines for when it's time to say "no" to an active client. Once you make your decision, act quickly. Have a solid, valid reason for turning the client away. Before taking action, determine the impact on the client and whether you are complying with your fee agreement. Has there been a breakdown in the attorney-client relationship perhaps through a breakdown in communication or the client failing to meet their financial obligations? Do you have a conflict representing the client?

## STEP THREE

1. How do we get our clients and does it matter in getting to "no"?

    a. Walk in.
    b. Website.
    c. Referral from attorney or another referral source
    d. Appointment from court
    e. Email including on Junk Mail
    f. Friend or relative
    g. Solicitation letter
    h. Phone call
    i. Voice Message
    j. Drop box.

2. Establish a system on how you want to respond to each of the above, whether it is a yes or a no.

## STEP FOUR

1. Determine who gets to say no. Give your staff authority to turn prospective clients away when their issue is clearly outside of your practice area. For example, if you only do criminal defense, it is easy to say no to everything else. Then, your staff or you can just say "no" by letting the person know that your firm doesn't handle that type of issue.

2. Determine if you have time to handle the matter. If the person's issue is within your practice area, but you are too busy, let the person know that you do not have the time required to best help them. Then, give them a referral.

3. If the matter is not an easy "no" and you want to know more, then the client meeting may head to "no" if:

    a. You meet with the client and do not agree on the objectives, cost and likely outcome, say "no". If there is a disagreement before you start representing the client, a happy client is not likely. Therefore, do not take the case.

    b. Your schedule doesn't allow for client's deadline. If a client calls and wants something done this week or an answer is due in two days, but your calendar is full, saying "no" relieves you from unreasonable deadlines and stress.

    c. The work is significant but you are not sure if you want to take the case or not, consider:

i. Doing a CCAP search.
ii. Asking how many other attorneys they have seen for the same case.
iii. Client's reaction to your honest estimate of fees and costs.
iv. If the case involves litigation, whether you can afford to stay in the case if the money runs out and the judge will not allow you to withdraw.
v. If the case is significant and you don't want to handle it, put the declination in writing.
vi. If the client has a small window, consider why the client considers it an emergency. Consider how long the client waited to bring in the complaint. That type of client may be trouble in meeting your deadlines.
vii. If the client expects more than you can deliver, say "no".
viii. Do not take a client with an estimate that you can't deliver, such as a personal injury client who asked other attorneys for a ballpark on the value of their case that exceeds your estimate.
ix. If you are the second, third, fourth, etc. attorney, say "no" as well.
x. If the client acts as though they know more than you, say "no"
xi. If you handle family law cases and the client wants to "get even" or demands that you be "tough" or "mean", you may want to say "no".
xii. If the work is outside of your comfort zone, say "no" since one usually puts that work off for other more "enjoyable" work.
xiii. If the client tries to "buy" your representation by offering referrals or more work if you take their case, this is a red flag.

4. For solo attorneys saying yes may be possible if you have developed a network of attorneys competent in a specialized field. Instead of saying "no" during the first meeting with the client, you may decide to schedule a second meeting with you and potential co-counsel.

5. Determine how to say "no"

a. Avoid a long explanation
b. Say "no" to potential clients you expect will not take your advice
c. "I'm sorry, but I can't take your case."
d. "This is outside of my practice area."
e. "Sorry, I can't take your case."
f. "Your case is not a good fit for me."
g. "I have a conflict and can't help you."
h. "Your case is not a good fit for me/my firm."
i. Offer a referral to an attorney who may be a better fit
j. If you consider the case to be a loser, simply tell the client "no" without anything more. If you take on a loser case, you run the risk that your client may later ask "why did you take my case if it was a loser." After all, hindsight is 20/20.

## STEP FIVE

1. The upside to saying "no"

    a. Less stress/burden
    b. More free time
    c. More quality work / raise level of work
    d. More "A" and "B" clients – raise quality of clients
    e. Less "uncollectible" receivables. Earn an extra Million Dollars (use example of unpaid fees from clients you should have turned down over your career)
    f. Lower risk of ethics and/or malpractice complaints
    g. Better rest because you won't have nightmares over the problem files on your desk
    h. Less time spent procrastinating
    i. Better serve your clients
    j. More responsive to your clients