



**WSSFC 2023**

**QOL/Ethics Track – Session 7**

# **Ethics of Working with Your Paralegal and Legal Assistant**

***Presented By:***

*Paul Dean R. Dietrich, Weld Riley, S.C., Wausau*

*Mathew S. Mayer, Weld Riley, S.C., Wausau*

*Rhonda Rindo, Weld Riley, S.C., Wausau*

## About the Presenters...

**Dean R. Dietrich** a shareholder with Weld Riley, S.C., has represented clients in the areas of lawyer ethics and professional responsibility for more than 35 years. He has represented attorneys in matters before the Wisconsin Supreme Court and the Office of Lawyer Regulation and consults with law firms and lawyers regularly regarding compliance with the Rules of Professional Conduct. Dean has served as Chair of the State Bar Committee on Professional Ethics in addition to past service on the Committee appointed by the Wisconsin Supreme Court to review changes to the Wisconsin Rules of Professional Conduct for Attorneys. He is a member of the ABA's Center for Professional Responsibility and the Association of Professional Responsibility Lawyers. Dean currently serves as President of the State Bar of Wisconsin. He is a graduate of Marquette University Law School.

**Matthew S. Mayer**, a shareholder with Weld Riley, S.C., has represented clients in the areas of civil litigation, family law, subrogation, mediation, and personal injury. He also acts as a guardian ad litem in both family and juvenile court actions. Mr. Mayer also serves on the management committee of Weld Riley, S.C. Matthew Mayer is a 1990 graduate of Marquette University Law School. Mr. Mayer is certified by the National Board of Trial Advocacy in both Civil Trial Advocacy and Civil Pretrial Practice Advocacy.

**Rhonda Rindo** a paralegal with Weld Riley, S.C., has worked as Attorney Mayer's paralegal for over 15 years. She works in conjunction with Attorney Mayer in the areas of civil litigation, subrogation, family law and personal injury. Rhonda is also the assistant director of computer information and software implementation with Weld Riley, S.C.

**STATE BAR OF WISCONSIN  
SOLO & SMALL FIRM CONFERENCE**

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**ETHICS  
OF WORKING  
WITH YOUR  
PARALEGAL AND LEGAL ASSISTANT**

**Presented by:**

**Dean R. Dietrich, Esq.**  
Weld Riley, S.C.  
500 N. Third Street, Suite  
800  
Wausau, WI 54403  
(715) 845-8234  
[ddietrich@weldriley.com](mailto:ddietrich@weldriley.com)

**Matthew Mayer, Esq.**  
Weld Riley, S.C.  
500 N. Third Street, Suite  
800  
Wausau, WI 54403  
(715) 845-8234  
[mmayer@weldriley.com](mailto:mmayer@weldriley.com)

**Rhonda Rindo**  
Weld Riley, S.C.  
500 N. Third Street, Suite  
800  
Wausau, WI 54403  
(715) 845-8234  
[rrindo@weldriley.com](mailto:rrindo@weldriley.com)



# **Rules of Professional Conduct**

### **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.

### **SCR 20:1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **SCR 20:4.1 Truthfulness in statements to others**

(a) In the course of representing a client a lawyer shall not knowingly:

(1) make a false statement of a material fact or law to a 3rd person; or

(2) fail to disclose a material fact to a 3rd person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by SCR 20:1.6.

(b) Notwithstanding par. (a), SCR 20:5.3(c)(1), and SCR 20:8.4, a lawyer may advise or supervise others with respect to lawful investigative activities.

### **SCR 20:5.1 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.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated 178 but fails to take reasonable remedial action.

### **SCR 20:5.2 Responsibilities of a subordinate lawyer**

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

- (b) (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

### **SCR 20:5.3 Responsibilities regarding nonlawyer assistance**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, 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 the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in 180 by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

### **SCR 20:5.5 Unauthorized practice of law; multijurisdictional practice of law**

- (a) A lawyer shall not: (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction except that a lawyer admitted to practice in Wisconsin does not violate this rule by conduct in another jurisdiction that is permitted in Wisconsin under SCR 20:5.5 (c) and (d) for lawyers not admitted in Wisconsin; or (2) assist another in practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by this rule or other law, establish an office or maintain a systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to the practice of law in this jurisdiction.
- (c) Except as authorized by this rule, a lawyer who is not admitted to practice in this jurisdiction but who is admitted to practice in another jurisdiction of the United States and not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or for medical incapacity, may not provide legal services in this jurisdiction except when providing services on an occasional basis in this jurisdiction that: (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; or (2) are in,

or reasonably related to, a pending or (2) are in, or reasonably related to, a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to 183 appear in such proceeding or reasonably expects to be so authorized; or (3) are in, or reasonably related to, a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within subsections (c)(2) or (c)(3) and arise out of, or are reasonably related to, the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted to practice in another United States jurisdiction or in a foreign jurisdiction, who is not disbarred or suspended from practice in any jurisdiction for disciplinary reasons or medical incapacity, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that (1) are provided to the lawyer's employer or its organizational affiliates after compliance with SCR 10.03 (4) (f), and are not services for which the forum requires pro hac vice admission; or (2) are services that the lawyer is authorized to provide by federal law or other law or other rule of this jurisdiction.

(e) A lawyer admitted to practice in another jurisdiction of the United States or a foreign jurisdiction who provides legal services in this jurisdiction pursuant to sub. (c) and (d) above shall consent to the appointment of the Clerk of the Wisconsin Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction.

**SCR 20:8.4 Misconduct It is professional misconduct for a lawyer to:**

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;

(g) violate the attorney's oath;

(h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1);  
or

(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities.  
Legitimate advocacy respecting the foregoing factors does not violate par. (i).



## **I. INTRODUCTION.**

- A. Technically not covered by Rules at this time.
- B. But lawyer can get into trouble if you do something while under his/her supervision that the lawyer may not do.

## **II. ROLE OF PARALEGAL TO ENSURE COMPLIANCE WITH RULES.**

### **A. SCR 20:1.6 Confidentiality.**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in pars. (b) and (c).

(b) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably likely death or substantial bodily harm;

(2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(3) to secure legal advice about the lawyer's conduct under these rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with other law or a court order.

### **B. SCR 20:1.7 Conflicts of interest current clients.**

(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

**(b)** Notwithstanding the existence of a concurrent conflict of interest under par.

**(a)**, a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in a writing signed by the client.

**C. SCR 20:1.9 Duties to former clients.**

**(a)** A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in a writing signed by the client.

**(b)** A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by sub. (c) and SCR 20:1.6 that is material to the matter; unless the former client gives informed consent, confirmed in a writing signed by the client.

**(c)** A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

**D. SCR 20:1.10 Imputed disqualification: general rule.**

**(a)** While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by SCR 20:1.7 or SCR 20:1.9 unless:

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition arises under SCR 20:1.9, and

(i) the personally disqualified lawyer performed no more than minor and isolated services in the disqualifying representation and did so only at a firm with which the lawyer is no longer associated;

(ii) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written notice is promptly given to any affected former client to enable the affected client to ascertain compliance with the provisions of this rule.

**(b)** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by SCR 20:1.6 and SCR 20:1.9 (c) that is material to the matter.

**(c)** A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in SCR 20:1.7.

**(d)** The disqualification of lawyers associated in a firm with former or current government lawyers is governed by SCR 20:1.11.

**E. SCR 20:1.13 Organization as client.**

**(a)** A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

**(b)** If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act in behalf of the organization as determined by applicable law.

**(c)** Except as provided in par. (d), if,

(1) despite the lawyer's efforts in accordance with par. (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not SCR 20:1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

**(d)** Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

**(e)** A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to pars. (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

**(f)** In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

**(g)** A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of SCR 20:1.7. If the organization's consent to the dual representation

is required by SCR 20:1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) Notwithstanding other provisions of this rule, a lawyer shall comply with the disclosure requirements of SCR 20:1.6 (b).

### **III. RULES AFFECTING CONDUCT OF LAWYER**

#### **A. SCR 20:4.1 Truthfulness in statements to others.**

(a) In the course of representing a client a lawyer shall not knowingly:

(1) make a false statement of a material fact or law to a 3rd person; or

(2) fail to disclose a material fact to a 3rd person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by SCR 20:1.6.

(b) Notwithstanding par. (a), SCR 20:5.3 (c) (1), and SCR 20:8.4, a lawyer may advise or supervise others with respect to lawful investigative activities.

#### **B. SCR 20:4.2 Communication with person represented by counsel.**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

#### **C. SCR 20:8.4 Misconduct.**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;

(g) violate the attorney's oath;

(h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15 (4), SCR 22.001 (9) (b), SCR 22.03 (2), SCR 22.03 (6), or SCR 22.04 (1); or

(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).

#### **IV. HOW CAN YOU HELP YOUR LAWYER BE IN COMPLIANCE WITH THE RULES?**

##### **A. 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. SCR 20:1.5 Fees.**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

**(b)** (1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.

**(c)** A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par. (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if

there is a recovery, showing the remittance to the client and the method of its determination.

**(d)** A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:

(1) in any action affecting the family, including but not limited to divorce, legal separation, annulment, determination of paternity, setting of support and maintenance, setting of custody and physical placement, property division, partition of marital property, termination of parental rights and adoption, provided that nothing herein shall prohibit a contingent fee for the collection of past due amounts of support or maintenance or property division.

(2) for representing a defendant in a criminal case or any proceeding that could result in deprivation of liberty.

**(e)** A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or

(2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or

(3) pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client.

**C. 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.

**D. SCR 20:7.2 Advertising.**

**(a)** Subject to the requirements of SCR 20:7.1 and SCR 20:7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

**(b)** A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:



(1) pay the reasonable cost of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with SCR 20:1.17; and

(4) refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral arrangement is not exclusive;

(ii) the client gives informed consent;

(iii) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(iv) information relating to representation of a client is protected as required by SCR 20:1.6.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

**E. SCR 20:7.4 Communication of fields of practice.**

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

**F. SCR 20:1.8 Conflict of interest: prohibited transactions.**

**(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

**(b)** A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these 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. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

**(d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**(e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

**(f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent or the attorney is appointed at government expense; provided that no further consent or consultation need be given if the client has given consent pursuant to the terms of an agreement or policy requiring an organization or insurer to retain counsel on the client's behalf;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by SCR 20:1.6.

**(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

**(h)** A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith; or

(3) make an agreement limiting the client's right to report the lawyer's conduct to disciplinary authorities.

**(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

**(j)** A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the client–lawyer relationship commenced.

(1) In this paragraph, “sexual relations” means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.

(2) When the client is an organization, a lawyer for the organization (whether inside counsel or outside counsel) shall not have sexual relations with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization’s legal matters.

**(k)** While lawyers are associated in a firm, a prohibition in the foregoing pars. (a) through (i) that applies to any one of them shall apply to all of them.

**SCR 23.01 Definition of practice of law.**

The practice of law in Wisconsin is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

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(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(5) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

**SCR 23.02 License required to practice law; use of titles.**

**(1) RIGHT OF A PERSON TO PRACTICE LAW IN WISCONSIN.** A person who is duly licensed to practice law in this state by the Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar of Wisconsin.

**(2) EXCEPTIONS AND EXCLUSIONS.** A license to practice law and active membership in the State Bar of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin, regardless of whether these activities constitute the practice of law:

(a) Practicing law pursuant to SCR 10.03(4) by a non-resident counsel or registered in-house counsel.

(b) Serving as a courthouse facilitator pursuant to court rule.

(c) Appearing in a representative capacity before an administrative tribunal or agency to the extent permitted by such tribunal or agency.

**COMMENT**

A nonlawyer who is an employee, member, or officer of an entity or organization may represent such entity, organization or any corporate affiliate before an administrative tribunal or agency of the State of Wisconsin.

(d) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(e) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

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(g) Sale of legal forms in any format.

(h) Activities which are preempted by federal law.

(i) Selection or completion of a legal document, including a legal document created pursuant to statute, administrative rule, or Supreme Court Order, where the document may contain various blanks and provisions to be filled in or completed and selection or completion of the legal document requires only common or transaction-specific knowledge regarding the required information and general knowledge of the legal consequences.

(j) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(k) Any other activities that the Supreme Court has determined by rule or by published opinion do not constitute the unlicensed or unauthorized practice of law or which are permitted under a regulatory system established by the Supreme Court, Wisconsin Statutes, Administrative Code or common law.

(l) Acting as a nonlawyer advocate under the direction or supervision of a lawyer.

(m) Acting as a nonlawyer assistant under the supervision of a lawyer in compliance with SCR 20:5.3 of the Wisconsin Rules of Professional Conduct for Attorneys.

## COMMENT

This provision encompasses practical training of law students authorized by SCR Ch. 50.

(n) Governmental agencies, Indian tribes and their employees carrying out responsibilities provided by law.

(o) Practicing within the scope of practice allowed by a current credential issued or authorized under chs. 440 to 480, stats., or performing services under the supervision of a professional holding a current credential issued under chs. 440 to 480, stats., provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

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(s) Professional activities performed by a certified public accountant or by a person working under the direction of a certified public accountant.

(t) Any state or federally chartered financial institution or affiliate of such an institution when engaging in an activity that is within its authority under applicable state or federal law, including any person providing services for it in connection with that activity; provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

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Nonlawyer entities or organizations which employ lawyer employees to perform the activities described in 23.01(1) for such entity, other entities within the organization, or in the case of privately held entities or organizations, for owners and their families, officers, directors, or employees of the entity or organization;

A nonlawyer entity or organization acting through lawyer employees providing legal services, without direct payment therefor, to a party other than a party described in (j), in a manner consistent with the Wisconsin Rules of Professional Conduct for Attorneys (including, without limitation, the rules relating to conflicts of interest and fee sharing), so long as the entity or organization has a financial interest in the outcome of the legal services, there is a commonality of purpose between the entity or organization and the third party, and the entity or organization is not otherwise in the business of providing legal services except as provided in these rules.

(3) USE OF TITLES. Except as permitted by SCR 10.03(4), only a person who is currently licensed to practice law in Wisconsin and who is an active member of the State Bar of Wisconsin may represent himself or herself to the public using the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law in this state or otherwise qualified to provide professional legal services or advice.

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The practice of law requires a skillful practitioner with training in how to find, interpret and apply the law in various circumstances which involve the legal rights and interests of the person(s) being served.

Licensure and regulation of the practice of law are necessary to protect the public interest from harm which can result from incompetency, dishonesty, and unethical behavior. The regulation of the practice of law in Wisconsin is a judicial power vested in the Wisconsin Supreme Court. Seitzinger v. Community Health Network, 2004 WI 28, 31, 270 Wis. 2d 1, 19.

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continuing legal education every two years and is required to follow a code of professional and ethical conduct. The failure of a lawyer to abide by the required standards may result in discipline, including but not limited to suspension and/or revocation of a lawyer's license to practice law as well as other remedies.

Link to ABA Publication - The Attorney-Paralegal Relationship: Notes for the New Attorney

[https://www.americanbar.org/groups/labor\\_law/publications/labor\\_employment\\_law\\_news/issue-summer-2023/the-atty-paralegal-relationship-notes-for-the-new-atty/](https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/issue-summer-2023/the-atty-paralegal-relationship-notes-for-the-new-atty/)



Solo & Small Firm Conference

ETHICS OF WORKING  
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October 21, 2023

3624 Oakwood Hills Pkwy, P.O. Box 1030 • Eau Claire, WI 54702-1030 • P 715.839.7786 • F 715.839.8609 • [weldriley.com](http://weldriley.com)

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DEAN R. DIETRICH, ESQ.  
[ddietrich@weldriley.com](mailto:ddietrich@weldriley.com)

MATTHEW MAYER, ESQ.  
[mmayer@weldriley.com](mailto:mmayer@weldriley.com)

RHONDA RINDO, PARALEGAL  
[rrindo@weldriley.com](mailto:rrindo@weldriley.com)

Weld Riley, S.C.  
500 N. Third Street, Suite 800  
Wausau, WI 54403  
[ddietrich@weldriley.com](mailto:ddietrich@weldriley.com)  
P: (715) 845-8234  
F: (715) 848-1085

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**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.

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### **SCR 20:1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

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### **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;

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(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.

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**SCR 20:5.1 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.

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(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

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(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated<sup>178</sup> but fails to take reasonable remedial action.

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### **SCR 20:5.2 Responsibilities of a subordinate lawyer**

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person. (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

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### **SCR 20:5.3 Responsibilities regarding nonlawyer assistance with respect to a nonlawyer employed or retained by or associated with a lawyer:**

(a) A partner, 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 the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

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(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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**SCR 20:8.4 Misconduct.**

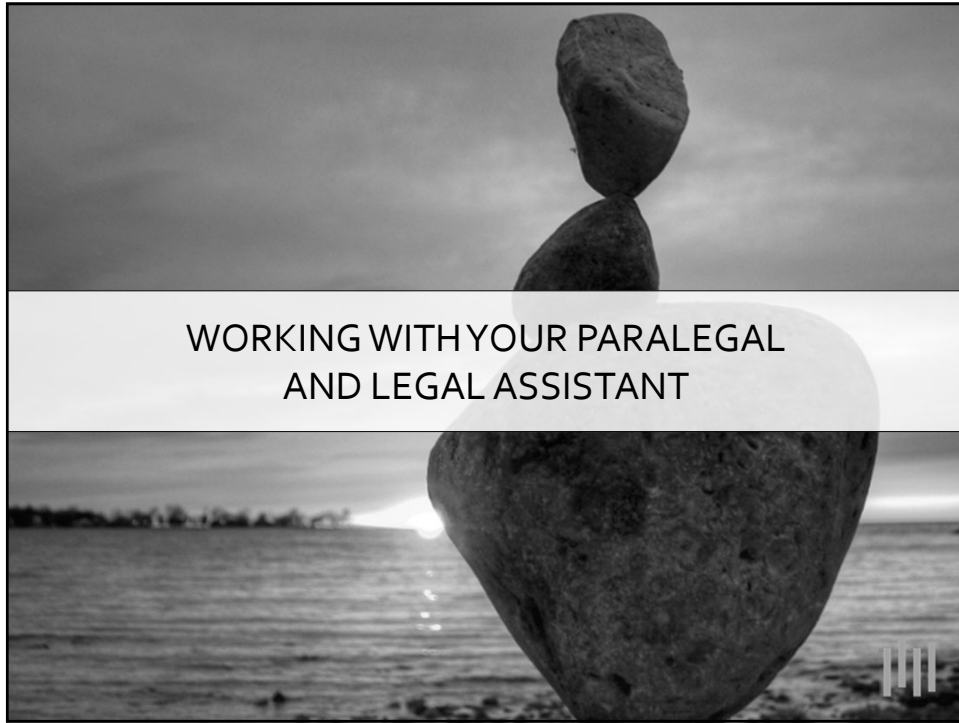
It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

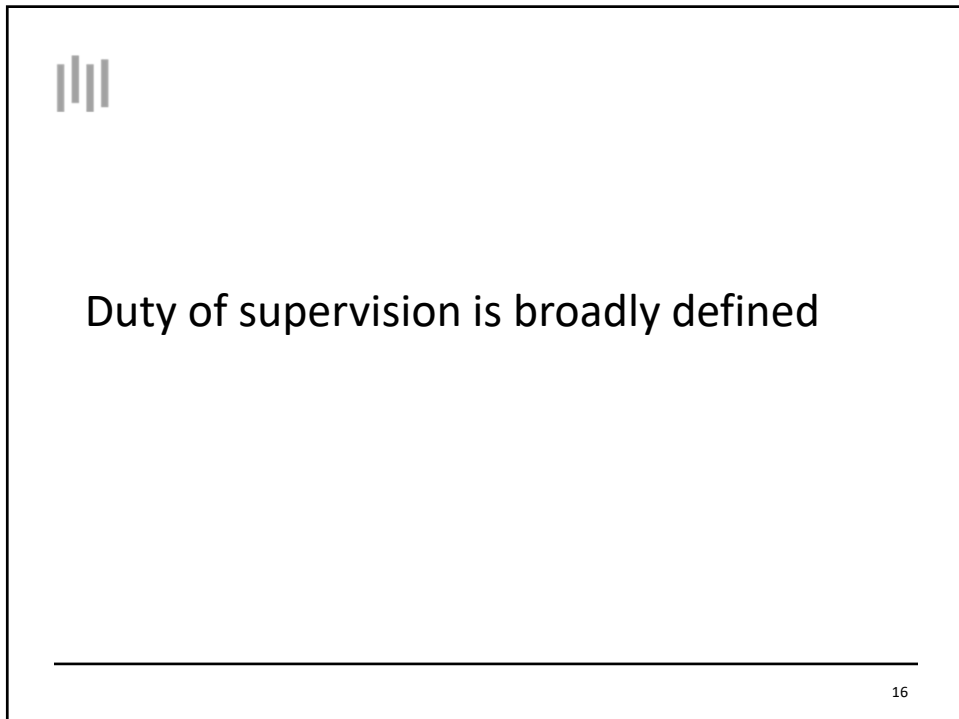
(b) commit a criminal act that reflects adversely on the lawyer's

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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Relationship between paralegal and attorney needs to be discussed

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Communication to client regarding paralegal involvement is critical

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Do not assume that client understands role of paralegal

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Paralegal needs to remind client of non-lawyer status

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Attorneys need to be aware of statements  
being made by paralegal or legal assistant

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Assignment of communication by attorney  
should be carefully considered

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Legal assistant giving legal advice can  
create misunderstandings

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Explanation of billing arrangements for  
paralegal or legal assistant should be clear

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Knowing what tasks can be assigned to  
paralegal requires thoughtful analysis

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Assuming that legal assistant will make  
correct statements is risky

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Using paralegal is great way to make representation affordable

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Billing of legal assistant time must be clarified

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Use of systems and forms helps efficiencies  
in representation

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Teamwork between attorney, paralegal,  
and legal assistant is critical

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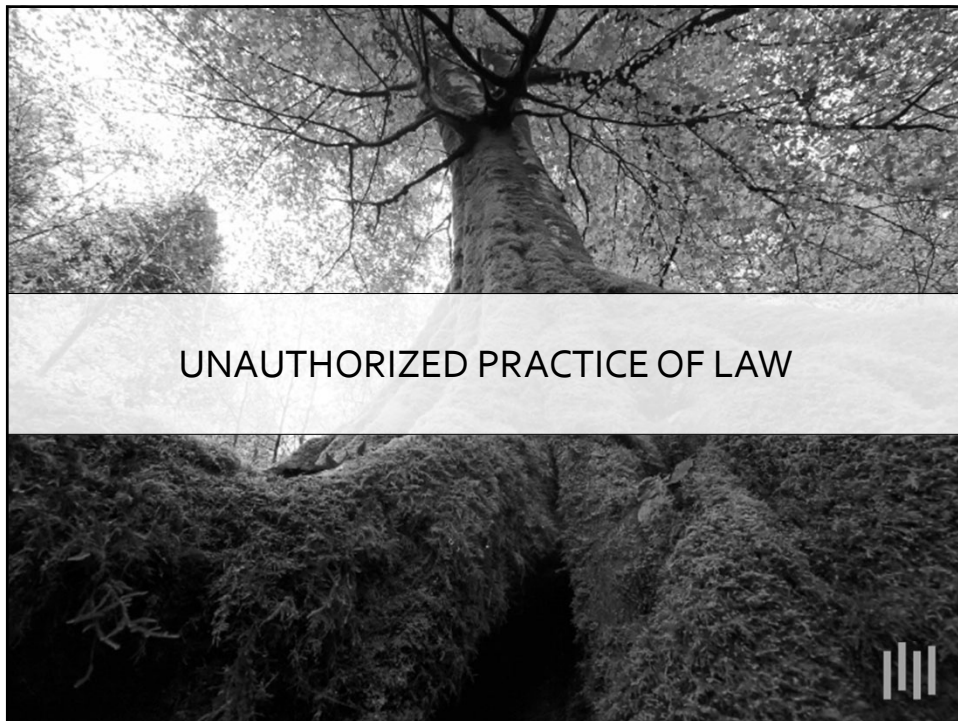
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Create checklists to ensure consistency in representation

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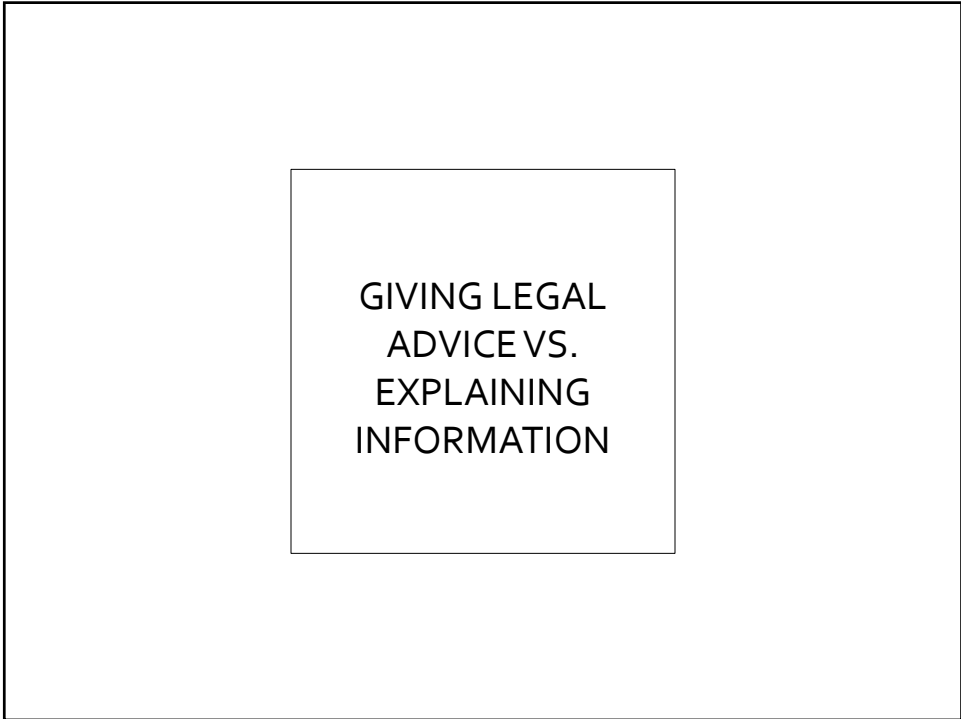


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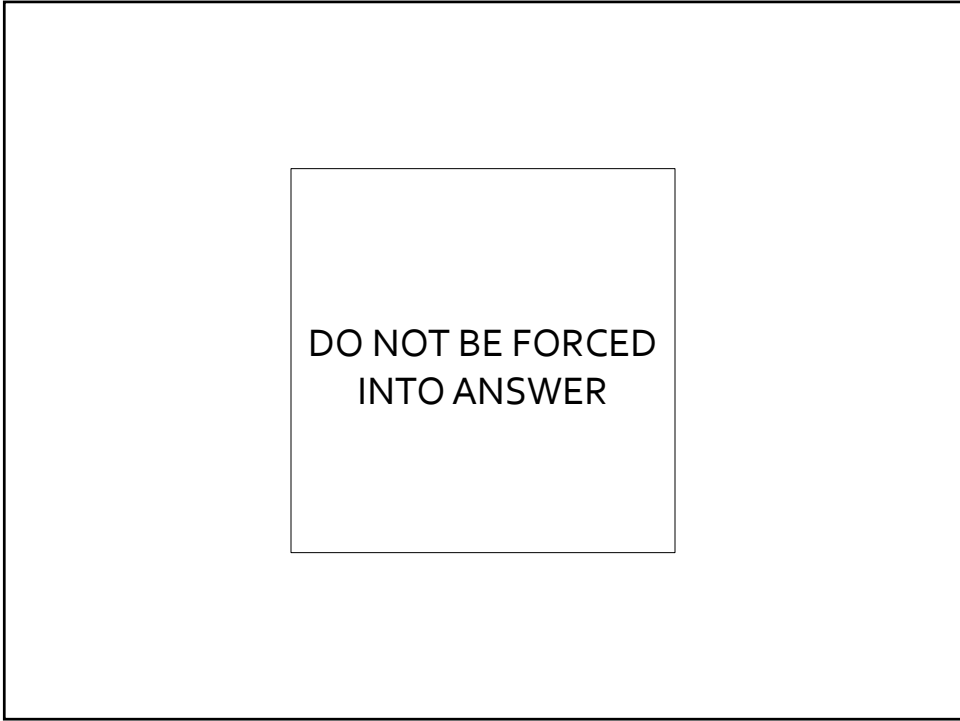
WHAT IS THE  
PRACTICE OF LAW?

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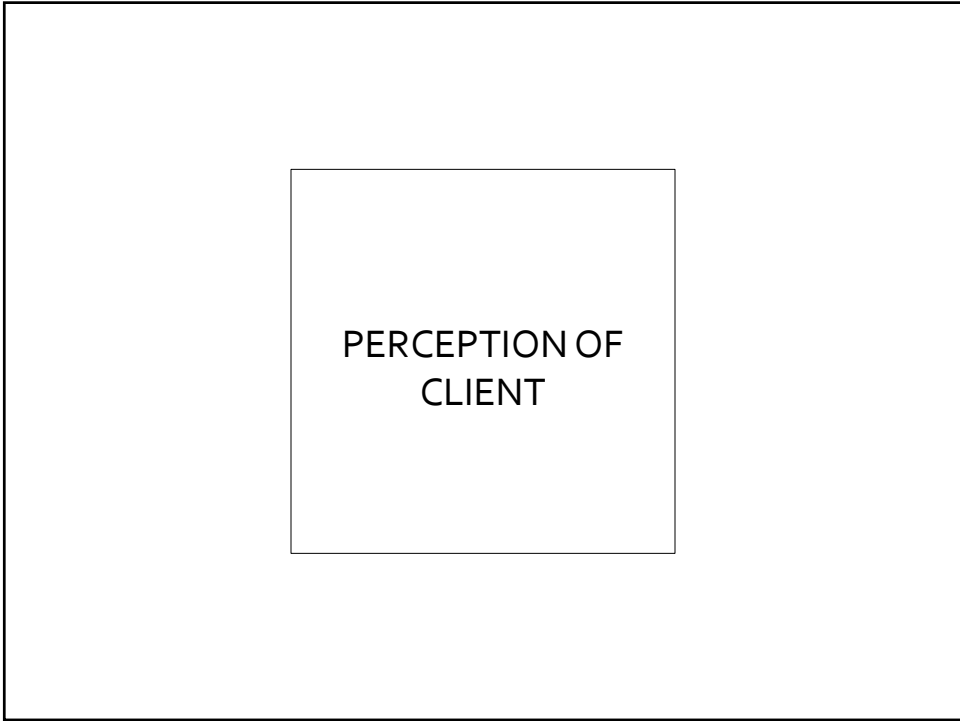


GIVING LEGAL  
ADVICE VS.  
EXPLAINING  
INFORMATION

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36

FOLLOW UP ON  
DISCUSSION WITH  
CLIENT

37

- Lawyers practicing in virtual practices and lawyers working remotely during the pandemic have raised questions about the unauthorized practice of law.
- Each state establishes its own laws and rules regulating the practice of law within its borders: there is no nationally uniform rule.
- Therefore, the question of whether a properly licensed Wisconsin lawyer, representing Wisconsin clients with respect to Wisconsin matters is engaged in unauthorized practice in another jurisdiction is dependent on the rules of the jurisdiction in which the lawyer is physically present.

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- Both Model Rule 5.5(b)(1) and SCR 20:5.5(b)(1) provide that a lawyer who is not admitted to practice in this jurisdiction shall not “establish an office or maintain a systematic and continuous presence in this jurisdiction for the practice of law.”
- In December 2020, the ABA’s Standing Committee issued ABA Formal Opinion 495 concluding: “The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law.”

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- “That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed.” **ABA Formal Op. 495.**

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- “In the absence of a local jurisdiction’s finding that the activity constitutes the unauthorized practice of law, a lawyer may practice the law authorized by the lawyer’s licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed if the lawyer does not hold out the lawyer’s presence or availability to perform legal services in the local jurisdiction or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.”  
ABA Formal Op. 495.

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- Similarly, Utah Ethics Opinion 19-03 (2019) concluded that the Utah Rules of Professional Conduct do not prohibit an out-of-state attorney from representing clients from the state where the attorney is licensed even if the out-of-state attorney does so from his private location in Utah.
- However, in order to avoid engaging in the unauthorized practice of law, the out-of-state attorney who lives in Utah must not establish a public office in Utah or solicit Utah business.

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- Maine Ethics Opinion 18g (2005) had reached the same conclusion more than a decade earlier.
- “The mere fact that an attorney, not admitted in Maine, is working in Maine does not automatically mean that the attorney is engaged in the unauthorized practice of law. For example, an out-of-state lawyer who has a vacation home in Maine might bring work to Maine to complete while on vacation.”
- “Where the lawyer’s practice is located in another state and where the lawyer is working on office matters from afar, we would conclude that the lawyer is not engaged in the unauthorized practice of law. We would reach the same conclusion with respect to a lawyer who lived in Maine and worked out of his or her home for the benefit of a law firm and clients located in some other jurisdiction.”

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- Wisconsin Formal Ethics Opinion EF-21-02 Working Remotely (January 29, 2021) concluded that SCR 20:5.5 does not prohibit an out-of-state lawyer from representing clients from the state where the attorney is licensed even if the out-of-state lawyer does so from the lawyer’s private location in Wisconsin. However, in order to avoid engaging in the unauthorized practice of law, the out-of-state lawyer must not establish a public office in Wisconsin or solicit Wisconsin business unless otherwise authorized by law.

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44

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