



WSSFC 2025

Quality of Life/Ethics Track – Session 3

Lawyering in Uncertain Times: Supporting Clients in Turbulent Political & Economic Climates

Presenters:

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About the Presenters...

Patricia McKinney-Lins practices elder law and estate planning at Neider & Boucher, S.C. She is dedicated to serving families as well as small business owners, including family farm owners. She is a certified health and wellness coach helping lawyers reduce stress, prevent burnout and build habits that bring more energy, clarity, and ease.

Sarah E. Peterson joined the State Bar of Wisconsin as Ethics Counsel in 2024. She received her undergraduate degree from the University of Wisconsin–Madison and her law degree from the University of Wisconsin Law School. Prior to coming to the State Bar, Ms. Peterson was employed for more than 20 years as an investigator, and then lead investigator, at the Office of Lawyer Regulation. She is a member of the State Bar of Wisconsin. She is a frequent speaker on professional ethics and is a liaison to the State Bar's Committee on Professional Ethics.

CLE Program

Wisconsin State Bar Solo & Small Firm Conference

October 16, 2025

Lawyering in Uncertain Times: Supporting Clients in Turbulent Times

Presented by Attorney Sarah E. Peterson, State Bar of Wisconsin Ethics Counsel

and

Patricia McKinney-Lins, Estate Planning Attorney at Neider & Boucher, S.C.

I. Introduction

- This is a discussion of how uncertainty in the world and in clients' lives shows up in the lawyer–client relationship.
- The purpose of this session is to equip lawyers with tools and strategies to support clients ethically, without veering into non-legal roles.
- We acknowledge that the lawyer's own stress management and boundaries are important, too.

II. Understanding Client Needs in Volatile Conditions

- Clients often seek stability, reassurance, and foresight from their attorneys, regardless of the legal matter at hand.
- Clients most often come into contact with the legal system during difficult times in their personal lives, which can be exacerbated by their perceptions of the state of the world.
- Lawyering is by its nature a helping profession but lawyers need understand the ethical limits of helping their clients.

III. Ethical Consideration and Constraints

Rules and ethics opinions that speak to your duties when counseling a client in crisis:

SCR 20:2.1 Advisor

SCR 20:1.8(e) Conflict of interest: prohibited transactions

SCR 20:1.4(a)(3) and Comment [7] Communication

SCR 20:1.4(a)(5) Communication

SCR 20:3.3(a)(1) Meritorious claims and contentions

SCR 20:1.6(c)(1) Confidentiality

SCR 20:1.14 Client with diminished capacity

SCR 20:1.6(a) Confidentiality

SCR 20:1.16(a)(1) Declining or terminating representation

Wisconsin Formal Ethics Opinion EF-21-03: Responsibilities of a Lawyer with a Fugitive Client

SCR 20:1.2(b) Scope of representation and allocation of authority between lawyers

SCR 20:1.7(a)(2) Conflicts of interest current clients

SCR 20:1.10(a)(1) Imputed disqualification: general rule

SCR 20:5.4(a) Professional independence of a lawyer

SCR 20:7.2(b)(4) Advertising

The substance of these rules can be found in the PDF of the PowerPoint presentation and will be discussed in the context of a real-life scenario. The ethics opinion can be found on the Bar's website.

IV. Real-Life Scenarios for Discussion

See PDF handout.

V. Strategies for Supporting Clients

1. Managing Client Expectations

- Use clarifying language: “This is the law today; here’s where there’s uncertainty.”
- Encourage scenario planning instead of predictions.
- Help clients separate emotion-driven fears from legally actionable concerns.

2. Offering Practical, Ethical Support

- Collaborate with colleagues and check in with the State Bar Ethics Counsel.
- Provide resources without practicing outside your lane.
- Document client instructions carefully when driven by uncertainty.

VI. Lawyer Well-Being

- Acknowledge the secondary stress lawyers absorb from clients.
- Maintain boundaries in availability and role.
- Consult with WisLAP

VII. Conclusion and Takeaways

- Clients need steadiness, clarity, and honesty—not predictions.
- Ethical framework is the safety net. Consult your Wisconsin State Bar Ethics Counsel.
- In turbulent times, lawyers serve as anchors, not fortune tellers.

Lawyering in Uncertain Times

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Overarching Theme

SCR 20:2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

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Scenario One – Financial Hardship

You recently agreed to represent an indigent client in a paternity matter. Paternity has not yet been established, and a child support order has not been issued. The client wants to put the child in daycare two days a week so she can pick up additional hours at work. The cost of daycare will be manageable when child support payments begin but are not currently manageable. Can you pay for the first month of daycare? What if you don't expect repayment? Can you ask others to pay for it?

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Scenario One – Financial Hardship

SCR 20:1.8(e) Conflict of interest: prohibited transactions

(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.

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Scenario One – Financial Hardship

ABA Model Rule 1.8(e)(3)

A lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses. The lawyer:

- (i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;
- (ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and
- (iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

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Scenario Two – Adverse Ruling

You are representing a client in an immigration matter. You just learned that the immigration court has issued a ruling that is adverse to your client. Your client just had a baby and is out of town visiting relatives. Can you wait until your client returns to tell your client the bad news?

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Scenario Two – Adverse Ruling

SCR 20:1.4(a)(3) Communication

A lawyer shall keep the client reasonably informed about the status of the matter.

Comment [7]

In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

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Scenario Three – Employment Issues

You are representing a client in an employment matter. The client was discharged for what the client believes were actionable reasons. After gathering information from the client, you don't think the client has a case. The client still wants you to file, believing that the mere filing of a lawsuit will make the employer pay a nuisance settlement. Your client hasn't been able to obtain new employment and is desperate for money. Can you file the lawsuit?

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Scenario Three – Employment Issues

SCR 20:1.4(a)(5) Communication

A lawyer shall 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.

SCR 20:3.1(a)(1) Meritorious claims and contentions

In representing a client, a lawyer shall not knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;

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Scenario Four – Suicidal Ideation

Your client has been fighting for 50/50 placement of her children and the court has ruled against her. Over the weekend, she leaves you several messages indicating she intends to kill herself. What can/should you do with the information?

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Scenario Four – Suicidal Ideation

SCR 20:1.6(c)(1) Confidentiality

A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably likely death or substantial bodily harm.

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Scenario Five – Diminished Capacity

You have represented a woman for many years in a variety of matters, including estate planning. In the past couple years, she has become more isolated due to health concerns. Your client calls wanting to amend her will to leave most of her assets to an organization she heard about on TV. After talking with your client, you realize that your client is not as sharp as she used to be and may not fully understand the consequences of the decisions she is making. What can/should you do?

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Scenario Five – Diminished Capacity

SCR 20:1.14 Client with diminished capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian. (

(c) Information relating to the representation of a client with diminished capacity is protected by SCR 20:1.6. When taking protective action pursuant to par. (b), the lawyer is impliedly authorized under SCR 20:1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

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Scenario Six – Distraught Missing Client

You have been representing a client on criminal charges. At the beginning of the representation, your client was very responsive. You're preparing to go to trial and have a status conference coming up. Your client is distraught at the thought of losing his job if he's convicted. You have not been able to reach your client for a month. You even paid a visit to his home. He wasn't there. What do you tell the court if he doesn't show up for the status conference? Can you continue to represent him?

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Scenario Six – Distraught Missing Client

SCR 20:1.6(a) Confidentiality

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).

SCR 20:1.16 (a)(1) Declining or terminating representation

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 the representation will result in violation of the Rules of Professional Conduct or other law.

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Scenario Six – Distraught Missing Client

Wisconsin Formal Ethic Opinion EF-21-03: Responsibilities of a Lawyer with a Fugitive Client

While representing a client who has escaped from custody, failed to appear in court, or absconded from supervision, the lawyer will often possess knowledge that would help authorities apprehend and prosecute the client. This raises the question about whether this information may or must be disclosed to authorities.

Wisconsin's disciplinary rules impose a mandatory disclosure obligation only when necessary to prevent 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." SCR 20:1.6(b). The failure to appear in court, comply with conditions of bail, or report to one's probation or parole officer is not the type of conduct which creates a risk of the type of harm necessary to trigger the obligations of the rule.

A related question may arise when the client fails to appear for a scheduled court appearance and the presiding judge asks the lawyer why the client is not present. While the lawyer may not make a false statement in response to the court's inquiry, the lawyer is under no obligation to inform the court where the client is, if known, how the client may be contacted, or whether the client knew about the appearance and SCR 20:1.6 generally prohibits the lawyer from providing such information to the court.

Often the response, "I don't know" may be appropriate when the lawyer does not have actual knowledge of the whereabouts of the client and does not wish to appear evasive or disrespectful to the court.

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Scenario Six – Distraught Missing Client

Wisconsin Formal Ethic Opinion EF-21-03: Responsibilities of a Lawyer with a Fugitive Client

Under SCR 20:1.16(a)(1) mandatory withdrawal is required if continued representation would "result in a violation of the Rules of Professional Conduct or other law ...". Even if the lawyer has not provided improper assistance to the client, if the lawyer has lost contact with the client, it may not be possible to satisfy the responsibility to consult with the client and assist them in making necessary decisions. The lack of contact could be viewed as violating SCR 20:1.1, 20:1.2 and 20:1.4 – adequate representation being impossible when the client cannot be reached. Should the lawyer conclude that continued representation is not viable, withdrawal may be required.

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Scenario Seven – Differences in Worldviews

My client is distressed by the political climate in the country. We don't see eye-to-eye on those issues but I think I can provide diligent and competent representation and I believe that everyone deserves effective representation.

My concern is that our differences in opinion may, at some point, get to a point at which I think I have an unwaivable personal conflict under SCR 20:1.7(a)(2). If that happens, can someone else in my firm take over or would I have to send him to another firm?

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Scenario Seven – Differences in Worldviews

SCR 20:1.2(b) Scope of representation and allocation of authority between lawyer and client

A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

SCR 20:1.7(a)(2) Conflicts of interest current clients

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 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.

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Scenario Seven – Differences in Worldviews

SCR 20:1.10(a)(1) Imputed disqualification: general rule

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 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

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Scenario 8 – Out of My Wheelhouse

My clients plan to retire in five years and are stressed about their investments in light of current economic uncertainty. I have told the clients that they need to speak with a financial advisor, as that is not my expertise. Can I refer them to an advisor I know and trust?

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Scenario 8 – Out of My Wheelhouse

SCR 20:5.4(a) Professional independence of a lawyer

A lawyer or law firm shall not share legal fees with a nonlawyer.

SCR 20:7.2(b)(4) Advertising

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may 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.

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State Bar Resources

Ethics Hotline
1-800-254-9154

WisLAP
1-800-543-2625
You can schedule a
consult or send an
email via the Bar's
website.