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WSSFC 2026

Quality of Life/Ethics Track – Session 5

Flat Fees in the Age of AI

Presented By:
Christopher C. Shattuck
Madison College Paralegal Program, Madison

About the Presenter...

Christopher Shattuck is the Program Director and Legal Studies/Paralegal Program Instructor at Madison College. Previously, he managed a department and litigated cases for a creditor's rights firm in Milwaukee. He then dedicated nearly six years to the State Bar of Wisconsin as the Law Practice Assistance Manager. During this time, he provided over two thousand consultations, authored more than fifty published articles, and delivered over one hundred presentations, all focused on practice management, technology, and their ethical implications. He earned his undergraduate and Master of Business Administration degrees from the University of Wisconsin–Oshkosh and completed his Juris Doctor at the University of La Verne College of Law in Southern California.

Flat Fees in the Age of AI

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Outline

1. Ethical Rules
    A. 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.

            Comment [8]: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

    B. SCR 20:5.3 Responsibilities regarding nonlawyer assistance
        - SCR 20:5.3 requires the law firm to have in effect measures that give reasonable assurance that the assistance by a nonlawyer is compatible with the professional obligations of the lawyer and that a lawyer having direct supervisory authority over the nonlawyer assistance make reasonable efforts to ensure that the assistance is compatible with the professional obligations of the lawyer. In addition, the firm's lawyers may be vicariously responsible for violation of the rules caused by the assistance.
        - *See* Wisconsin Lawyer: Technology ChatGPT Artificial Intelligence: Will It Replace Lawyers and Legal Staff?: (wisbar.org).

    C. Ethical Dilemma: Are Client Interactions with AI Protected?
        - "Neither attorney-client privilege nor the work product doctrine are ethics rules."
        - Lawyers are still required to keep abreast of changes in the law and to explain matters to the extent reasonably necessary for clients to make informed decisions.
        - A defendant, not his attorney, used Claude AI to prepare an outline of legal defenses. The court found that Claude's disclaimer indicates it cannot provide legal advice (no attorney-client privilege, and system provides no confidentiality) and that the content is also not protected by work product, since the attorney did not request preparation of the materials.
        - In a separate case, a self-represented plaintiff faced a request from the defendant to produce all documents and information relating to the use of AI tools for the lawsuit. The court found that the work product doctrine protects documents used in anticipation of litigation and that a

work product waiver requires disclosure to an adversary. Finally, the court found that AI programs are tools, not persons.

- As the article notes, these are not Wisconsin cases and have no binding effect.
- What steps can your organization take?

D. AI Use Policy
   - Does your firm have an AI policy?
   - Are you blocking or monitoring traffic to common AI websites?
   - If you are using Copilot, have you blocked access to copilot.com?
   - Do you know the difference between the free version and paid version of AI applications?

E. ABA Opinion & State Bar Guidance
   - **ABA issues first ethics guidance on a lawyer's use of AI tools:** The article provides a summary of the guidance issued by the ABA, reinforcing many of the rules that have already been discussed. "Formal Opinion 512 states that to ensure clients are protected, lawyers and law firms using GAI must "fully consider their applicable ethical obligations," which includes duties to provide competent legal representation, to protect client information, to communicate with clients and to charge reasonable fees consistent with time spent using GAI."
   - **Ethical Considerations When Using Generative Artificial Intelligence:** The State Bar of Wisconsin summarized Formal Opinion 512 and discussed its implications under the Wisconsin Supreme Court Rules. Keep in mind that both the opinion and the article are intended to provide guidance within the framework of the rules. Only changes to the rules or decisions by the Wisconsin Supreme Court determine the enforceability and scope of using AI in legal practice.

F. Informed Consent - Formal Opinion 512
   - "Because many of today's self-learning GAI tools are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client, **a client's informed consent is required prior** to inputting information relating to the representation into such a GAI tool."
   - "When consent is required, it must be informed. To obtain informed consent when using a GAI tool, **merely adding general, boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI is not sufficient.**"

G. Wisconsin Ethics Opinion E-09-03: Communications Concerning Attorneys' Fees and Expenses

- "In setting the basis or rate of the fee, a lawyer must comply with SCR 20:1.5(a), which prohibits a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses."
- Several factors are to be considered in determining the reasonableness of the fee.
    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 the 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."
- Two different factors are at play in this opinion.
    1. If you are using AI in your work, does your fee still reflect a reasonable amount of time, labor, and skill required to properly perform the legal service?
    2. Are you charging clients for the cost of AI tools appropriately?

2. Sample Fee Agreement Language

A. Notice of Artificial Intelligence Practices

- "Acme Law, LLC provides this Notice of Artificial Intelligence Practices to explain how and when artificial intelligence tools may be used in providing our services. We believe it is important for clients to understand the circumstances under which personally identifiable information and client confidential information may be processed using artificial intelligence, the safeguards we apply to protect that information, and your rights relating to our use of such tools."
- **Source:** Illinois Attorney's Guide to Implementing AI, p. 38

B. Informed Consent Cannot Be Boilerplate
    - "Where client consent is required, it must be informed. The client must receive a clear explanation of the purpose of the processing, the type of data involved, the type of GAI tool to be used, the potential risks (including risks of disclosure or misuse), and the safeguards in place to protect the data."
    - "This information must be provided separately from other materials, and the client must be given the opportunity to ask questions before providing consent."
    - **Source:** Illinois Attorney's Guide to Implementing AI, p. 44
C. Informed Consent Language
    - "The Client understands that the Firm may utilize generative artificial intelligence tools to assist with legal research, document review, drafting, analysis, and administrative functions related to the representation."
    - "The Client acknowledges that information relating to the representation may be processed through approved artificial intelligence systems selected by the Firm."
    - "The Client understands that the use of artificial intelligence may improve efficiency, reduce costs, and enhance the delivery of legal services, but may also involve risks including unauthorized disclosure, inaccurate output, or misuse of information."
    - "The Client has had an opportunity to ask questions regarding the Firm's use of artificial intelligence and consents to such use subject to the Firm's confidentiality, privacy, and security safeguards."
    - **Source:** Sample language based on Illinois Attorney's Guide to Implementing AI, p. 44
D. Client Use of Artificial Intelligence Tools
    - "Clients are encouraged not to input confidential, privileged, sensitive, or personally identifiable information relating to their legal matter into publicly available generative artificial intelligence systems without first consulting the Firm."
    - "Information submitted to third-party artificial intelligence platforms may be subject to the terms, conditions, privacy policies, and data retention practices of the platform provider."
    - "The Firm cannot guarantee the confidentiality, security, or privileged status of information independently disclosed by a client to a third-party artificial intelligence platform."

- **Source:** Sample language adapted from the confidentiality and client notice discussions in the Illinois Attorney's Guide to Implementing AI, pp. 18-21, 38-40

E. Client Rights and Opt-Out Options
- "Clients have the right to remain informed about how GAI tools may be used in matters we undertake for them."
- "Clients may opt out of De-Identified Processing and Confidential Processing..."

F. Disclaimer
- The sample provisions contained in this presentation are provided for educational purposes only. Some provisions are adapted from or inspired by guidance contained in the Illinois Attorney's Guide to Implementing AI and may require modification based on jurisdiction-specific requirements, firm policies, applicable ethical obligations, and the facts of a particular representation.
- Attorneys should independently review and tailor all engagement agreement language before implementation.

3. Flat Fees and Alternative Fee Arrangements

A. Flat Fees
- "a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation."
- Aviva Meridian Kaiser, "Fee Agreements: Answers to Nagging Questions," Wisconsin Lawyer, Vol. 92, No. 11 (Oct. 8, 2019), State Bar of Wisconsin.
- Even though rules state a flat fee becomes the lawyer's property upon receipt, it is *not* automatically earned when paid. Unearned portions must be refunded if the representation ends early.
- Aviva Meridian Kaiser, Timothy J. Pierce, & Travis J. Stieren, "2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted," Wisconsin Lawyer, Vol. 96, No. 6 (June 8, 2023).

B. Contingent Fee
- A contingent fee agreement must be in a writing that is signed by the client. See SCR 20:1.0(q) for a definition of writing.
- The written contingent fee agreement must include the scope of representation. While the rule does not require a particular degree of specificity, the description should be sufficient to identify the services for which the lawyer has been retained.

- The written contingent fee agreement must include the method by which the fee is to be determined. The written contingent fee agreement must state the percentage(s) that will accrue to the lawyer in the event of settlement, trial, or appeal. It must state the litigation and other expenses to be deducted from the recovery and must state whether such expenses are to be deducted before or after the contingent fee is calculated.
- The written contingent fee agreement must include a clear statement of expenses for which the client will be liable whether or not the client prevails.
- The written contingent fee agreement must be signed by the client before or within a reasonable time after commencing representation. The rule does not require that the written agreement be signed by the client before the work on the matter commences, even though that is preferable. In situations in which time is of the essence, lawyers may commence work on the matter and have the client sign the written contingent fee agreement within a reasonable time. What is a reasonable time depends on the specific situation, but the written contingent fee agreement should be signed by the client as soon as reasonably possible.
- Upon conclusion of the matter, the lawyer must provide the client with a statement showing the remittance to the client and the method of its determination.
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C. Alternative Fee Arrangements

- **Subscription Pricing:** A monthly recurring fee to provide specific ongoing legal support. For example, the client agrees to pay $1,000 a month, which includes four hours of billable work. If the matter required more time, client agrees to pay a reduced hourly rate.
- **Capped Hourly Fees:** The firm bills the standard hourly rate but agrees that the final bill will never exceed a monetary ceiling.
- **Blended Hourly Rates:** A single hourly rate applies, whether a senior or junior attorney works on the matter.
- **Hybrid Fee Agreement:** Firm agrees on a standard flat fee and then switches to an hourly rate if certain events occur.

D. Limited Scope
    - Wisconsin Supreme Court Rule 20:1.2 Scope of representation and allocation of
    - authority between lawyer and client
    - (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).
    - (cm) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that "This document was prepared with the assistance of a lawyer." A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

4. Key Questions
    A. Are you currently using any technologies that incorporate artificial intelligence?
    B. What types of fee agreements are utilized within your organization?
    C. Have you properly accounted for any decrease in billable work and any increase in costs associated with implementing AI?
    D. Is your fee agreement reasonable under the circumstances?
    E. Does your fee agreement comply with the applicable Wisconsin Supreme Court Rules?
    F. Have you consulted with the State Bar of Wisconsin Ethics Counsel regarding your use of AI and related fee arrangements?
    G. What are the potential long-term consequences if your firm does not implement AI technology?

Flat Fees in the Age of AI

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Speaker Bio

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Agenda

1. Ethical Rules
2. Sample Fee Agreement Language
3. Flat Fees and Alternative Fee Arrangements

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1. Ethical Rules

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SCR 20:1.1 Competence

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> Comment [8]: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

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SCR 20:5.3 Responsibilities regarding nonlawyer assistance

SCR 20:5.3 requires the law firm to have in effect measures that give reasonable assurance that the assistance by a nonlawyer is compatible with the professional obligations of the lawyer and that a lawyer having direct supervisory authority over the nonlawyer assistance make reasonable efforts to ensure that the assistance is compatible with the professional obligations of the lawyer. In addition, the firm's lawyers may be vicariously responsible for violation of the rules caused by the assistance.

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Ethical Dilemma: Are Client Interactions with AI Protected?

- "Neither attorney-client privilege nor the work product doctrine are ethics rules."
- Lawyers are still required to keep abreast of changes in the law and to explain matters to the extent reasonably necessary for clients to make informed decisions.
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Ethical Dilemma: Are Client Interactions with AI Protected? – Contd.

- In a separate case, a self-represented plaintiff faced a request from the defendant to produce all documents and information relating to the use of AI tools for the lawsuit. The court found that the work product doctrine protects documents used in anticipation of litigation and that a work product waiver requires disclosure to an adversary. Finally, the court found that AI programs are tools, not persons.
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AI Use Policy

- Does your firm have an AI policy?
- Are you blocking or monitoring traffic to common AI websites?
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- Do you know the difference between the free version and paid version of AI applications?

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Client Rights and Opt-Out Options

"Clients have the right to remain informed about how GAI tools may be used in matters we undertake for them."

"Clients may opt out of De-Identified Processing and Confidential Processing..."

Source: Illinois Attorney's Guide to Implementing AI, p. 39

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Flat Fees

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Contingent Fee Contd.

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Questions?

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