

Wisconsin Law Firm Self-Assessment

This self-assessment is designed to help lawyers mitigate risk, elevate competence, and enhance the quality of legal services. It is intended to be an aid to understanding and complying with the existing standard of care. The tool lets you see what works and what could be improved. The goal is to prevent problems before they arise, allowing you to spend more time on cases. While not every question applies to every law practice, collectively the questions let you see how you can better serve clients and run your practice more efficiently.

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Module #1 — Developing Competent Practices

SCR 20:1.1 requires lawyers to provide clients competent representation. This includes the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer should consider issues of competence when accepting a new matter and when substantively or procedurally expanding an existing matter. Examples include, whenever the lawyer addresses a new claim, files counterclaims, identifies other issues not previously considered, when unforeseen issues develop, when interpreting a contract previously drafted or negotiated by the lawyer, or at any point when the procedural course or substantive nature of the matter deviates from that which the lawyer initially envisioned. This self-assessment tool provides examples of issues to consider and resources to explore.

Question	Yes	No	Ethical Implications	Other Resources
When taking on new matters, do you assess whether you have the legal knowledge and education to handle the matters?				
Does your assessment include your familiarity with: <ul style="list-style-type: none"> • The applicable governing statutes, rules, regulations, and case law? 			<ul style="list-style-type: none"> • A lawyer must understand the substantive law (<i>Disciplinary Proceedings Against Merriam</i>, 2010 WI 21) and the procedures (<i>Disciplinary Proceedings Against Grenisen</i>, 2013 WI 99). • A lawyer cannot delegate the duty of competence to the client. <i>See In re Shipley</i>, 135 S. Ct. 1589- 90 (2015). • A lawyer must not charge a client fees for time spent achieving competence. SCR 20:1.5. A lawyer should ask, “Can I afford this obligation to get up-to-speed for which I cannot charge (or bill to) the client?” • A lawyer with a competence problem should immediately seek assistance: covering up incompetence often results in far graver charges of misconduct. • Competent representation requires the application of knowledge and skill, and the completion of meaningful work. <i>See Disciplinary Proceedings Against Bryant</i>, 2015 WI 7; <i>Disciplinary Proceedings Against Lister</i>, 2007 WI 55; <i>Disciplinary Proceedings Against Nunnery</i>, 2009 WI 89. <i>See also</i> SCR 20:1.1, comments 2 & 8. 	<p>Alan Gutterman, <i>Practical Challenges of Meeting Your Duties of Competence and Diligence to Your Clients</i>, Legal Solutions Blog (Thomson Reuters), July 18, 2016.</p> <p>Annotations to SCR 20:1.1, at www.wicourts.gov/olr.</p> <p><i>See also</i> Wisconsin Attorney's Desk Reference.</p>
<ul style="list-style-type: none"> • The governing rules of procedure and court or applicable tribunal rules? 				
<ul style="list-style-type: none"> • Any recent changes in applicable substantive or procedural law? 				
<ul style="list-style-type: none"> • The factual context and subject matter? 				
<ul style="list-style-type: none"> • The governing Rules of Professional Conduct? 				
If you do not have the legal knowledge to handle a matter, do you assess whether you can:				
<ul style="list-style-type: none"> • Timely acquire the knowledge or education to handle the case and whether you have resources available to do so? 				
<ul style="list-style-type: none"> • Learn from, associate with, or seek supervision or mentoring from a lawyer with established knowledge in the relevant field? 				

Question	Yes	No	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Limit the scope of representation to work within your current knowledge base or within the reasonably-expandable scope of your knowledge base? 				Dean R. Dietrich & Timothy J. Pierce, <i>Limited Scope Representation and Recent Rule Changes</i> , Equal Justice Conference, March 6, 2015.
<ul style="list-style-type: none"> Possibly handle the matter depending on whether the required proficiency is that of a general practitioner, or whether expertise in a particular field of law is required? 			<ul style="list-style-type: none"> Limiting the scope of a representation must be reasonable, and generally requires the informed consent of the client in writing. See SCR 20:1.2(c); see also SCR 20:1.1, comment 5. 	
<ul style="list-style-type: none"> Have the client provide informed consent (preferably in writing after a full explanation of the competencies necessary) to a limited scope of representation? 				
<p>When taking on new matters, do you assess whether you have sufficient expertise, training, or access to mentoring or other assistance such that you have the legal skills to handle the cases? (application of skills to black letter law)</p>				
<p>Does your assessment include whether:</p>			<ul style="list-style-type: none"> Before retaining a lawyer from outside the lawyer’s firm, the lawyer must obtain the client’s informed consent. See SCR 20:1.1, comment 6. If a lawyer contracts with or retains lawyers outside the lawyer’s own firm to assist in the representation, the lawyer must reasonably believe that the other lawyers’ services will contribute to the competent & ethical rep. of the client. SCR 20:1.1, cmt. 6. If lawyers from more than one firm provide legal services in the same matter, the lawyers should consult with the client and each other about the scope of the representation and the allocation of responsibility. SCR 20:1.1, comment 7. A lawyer must keep abreast of the benefits and risks associated with relevant technologies. See SCR 20:1.1, comment 8. 	<p>Aviva Meridian Kaiser & Tison H. Rhine, <i>Let’s Be Reasonable: The Ethics of Cybersecurity</i>, Wis. Law. (Oct. 2016).</p> <p>Christopher C. Shattuck, <i>ChatGPT Artificial Intelligence: Will It Replace Lawyers and Legal Staff?</i>, Wis. Law. (Feb. 2023).</p> <p>Christopher C. Shattuck, <i>AI and Emerging Technology Can Increase Law Practice Efficiencies</i>, Wis. Law. (May 2023).</p>
<ul style="list-style-type: none"> You have handled matters in the same practice area before? 				
<ul style="list-style-type: none"> You have handled client matters of similar complexity in the past? 				
<ul style="list-style-type: none"> The representation involves any special licenses or authorizations? 				
<ul style="list-style-type: none"> The representation involves practice in other jurisdictions that would constitute the unauthorized practice of law? 				
<ul style="list-style-type: none"> You can analyze precedent, spot issues, evaluate evidence, and draft legal documents in the new matters? 				
<ul style="list-style-type: none"> Do you keep up-to-date with new technologies, such as AI, that can enhance law firm efficiencies? 				

Question	Yes	No	Ethical Implications	Other Resources
<ul style="list-style-type: none"> The new matters involve compliance with different rules, regulations, or procedures than those with which you have had prior experience? 				
<p>If you do not have the skills-based competence to handle a new matter, do you assess whether you can:</p>				
<ul style="list-style-type: none"> Timely acquire the skills necessary to handle the matter? 				
<ul style="list-style-type: none"> Limit the scope of your representation to work within your current skill set or within the reasonably expandable scope of your skill set? 				
<ul style="list-style-type: none"> Learn from, associate with, or seek mentoring or supervision from a lawyer with established skills in this field? 			<ul style="list-style-type: none"> A lawyer must keep abreast of the benefits and risks associated with relevant technologies. See SCR 20:1.1, comment 8. 	
<p>Before taking on new matters, do you ask whether you have the necessary resources (time, finances, staffing, infrastructure, outside advice, and willingness) available to adequately prepare and offer thorough representation? Does your assessment include whether you have the following:</p>				
<p>TIME</p> <ul style="list-style-type: none"> To handle a potential new matter without neglecting existing professional or personal obligations? Conversely, whether other obligations impede providing adequate representation? 			<ul style="list-style-type: none"> Lawyers might not have reasonable access to the documentation necessary to make appropriate factual assertions and legal arguments. Lawyers thus will need the time to develop what is necessary to adequately perform the representation. 	<p>Am. Bar Ass’n, Ethics Op. 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation (2006).</p>
<ul style="list-style-type: none"> To investigate and develop the factual aspects of the cases you undertake? 			<ul style="list-style-type: none"> Failure to spend time investigating the factual and legal bases for an action could earn an adverse finding that a matter is frivolous or could expose a lawyer to sanctions. 	<p><i>Disciplinary Proceedings Against Nunnery, 2009 WI 89</i> (suspending lawyer for two months for not conducting a meaningful inquiry into veracity of documents presented by client).</p>
<ul style="list-style-type: none"> To investigate and develop all legal aspects of the cases? 			<ul style="list-style-type: none"> Making representations without due diligence or expressing insufficiently qualified opinions may violate duties to third parties under the Rules of Professional Conduct and other sources of legal authority. Lawyers are required to inform themselves about the 	

Question	Yes	No	Ethical Implications	Other Resources
<ul style="list-style-type: none"> • Clients who have needs or preferences that require additional time? If so, whether you have the time, patience, or resources to handle the cases properly? 			facts of their clients' cases and the applicable law. See SCR 20:3.1, comment 2.	
<ul style="list-style-type: none"> • An issue such that it would be prudent to refer the matters to a lawyer with the skill set and time to investigate and handle the representation? 				
FINANCIAL RESOURCES AND RESERVES <ul style="list-style-type: none"> • Fees that will support developing both the factual bases and the legal aspects of the matters you undertake? 			<ul style="list-style-type: none"> • Advanced fees may be received, but must be kept in trust until earned and notice given to the client; or must be in compliance with the advanced fee alternative. See SCR 20:1.5(f), (g), (h). 	<i>Legal Fees and Costs Under the Wisconsin Supreme Court Rules</i> , at www.wicourts.gov/olr . Christopher C. Shattuck, <i>Six Tips for Developing a Business Plan for Uncertain Financial Times</i> , InsideTrack (Sept. 15, 2021). Christopher C. Shattuck, <i>Johnson Financial Group Offers Financial Solutions for Lawyers and Firms</i> , InsideTrack (April 5, 2023).
<ul style="list-style-type: none"> • A business model that allows you to assume the financial risk involved if problems arise in the representation? 				
<ul style="list-style-type: none"> • A business model that supports access to the professional advice of others who can assist you to understand the technical aspects of the matters you take on, be they attorneys, accountants, engineers, or other experts? 				
<ul style="list-style-type: none"> • Sufficient financial liquidity to support the fee structure or payment timing of the representation? 				
<ul style="list-style-type: none"> • The ability to modify your fee structure so that you can provide adequate representation? 				
STAFFING <ul style="list-style-type: none"> • Sufficient staff-hours available as well as competent staff to handle the new matters? 			<ul style="list-style-type: none"> • Lawyers with supervisory authority over non-lawyers must make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. SCR 20:5.3(b). • Lawyers must also take into account that non-lawyers do not have legal training and are not subject to professional discipline. SCR 20:5.3, comment 1. 	Dean R. Dietrich, <i>Ethics: Supervising Lawyers: Accountability for Others' Work</i> , Wis. Law. (Mar. 2012). Christopher C. Shattuck, <i>The Role of Legal Administrators in U.S. Law Firms</i> , Wis. Law. (Oct. 2021).
<ul style="list-style-type: none"> • Staff with the knowledge and training to handle the cases? 				
<ul style="list-style-type: none"> • Staff members who have the skills to handle the cases? 				
<ul style="list-style-type: none"> • If your staff lacks competency to handle a case, you can: <ul style="list-style-type: none"> ○ Timely hire the necessary staff? ○ Timely train existing staff to ensure that they have adequate knowledge or skills to handle the matter? ○ Appropriately supervise the necessary staff? 				

Question	Yes	No	Ethical Implications	Other Resources
INFRASTRUCTURE			<ul style="list-style-type: none"> SCR 20:1.1, comment 8 (lawyers must keep abreast of the benefits and risks associated with relevant technology). 	Ellie Margolis, <i>Surfin' Safari – Why Competent Lawyers Should Research on the Web</i> , 10 Yale J. L. & Tech. 82 (2007) (noting rules of professional conduct, read together, “create an ethical obligation to perform sufficient research to effectively advocate on
<ul style="list-style-type: none"> Access to research resources to answer legal questions presented by cases? Systems in place to handle the electronic data involved in the matters you accept? 				
<ul style="list-style-type: none"> Ability to contract with or retain other lawyers, if necessary, who have the infrastructure to handle matters for which you do not have adequate infrastructure? 				
ADVICE			<ul style="list-style-type: none"> Without a sounding board or someone who can offer a different perspective, lawyers can fall prey to bad judgment and echo-chamber thinking. 	ABA Formal Opinion 98-411: Ethical Issues in Lawyer to Lawyer Consultation. State Bar of Wisconsin's lawyer-to-lawyer directory is a database of hundreds of lawyers who agree to share their knowledge with other attorneys, www.wisbar.org/lawyer2lawyer .
<ul style="list-style-type: none"> A relationship with at least one other lawyer whom you could consult for advice or assistance as to substance, procedure, or questions of judgment if needed? 				
<ul style="list-style-type: none"> Receive regular, honest, and relevant feedback on your work product? 				
WILLINGNESS				
<ul style="list-style-type: none"> Cases that are sufficiently interesting to develop the factual bases and legal theories? 				
<ul style="list-style-type: none"> Constraints in providing competent representation by your personal circumstances (including medical issues) or your personal feelings about the client or the matter? 				
<ul style="list-style-type: none"> A representation that creates any peer pressure or image issues with which you are not able to reasonably cope? 				
<ul style="list-style-type: none"> An unwillingness to take a case, such that it would be prudent to refer the matter to a lawyer with the requisite skill set and interest to investigate and handle the matter? 				
<ul style="list-style-type: none"> An unwillingness to take a case, what form and substance the communication(s) declining the representation should take? 				

Module #2 — Communicating in an Effective, Timely, Professional Manner

Communicating clearly with your client contributes to a healthy, thriving law practice. Communication problems are the second most type of client complaint seen in the Office of Lawyer Regulation. Communicating clearly with a client includes ensuring that you receive client communications and engage in mandatory duties of communication.

SCR 20:1.4 addresses a lawyer’s duties to communicate with the client. The rule is mandatory, not permissive. Lawyers must communicate with clients about certain things related to the representation and do so in a timely manner. Notably, SCR 20:1.5(b) requires the communication of information concerning fees charged, costs, expenses, and disbursements to the client. Other procedures not mandated by the Rules can nonetheless help prevent client misunderstandings that often lead to ethics complaints. Creating written policies establishing minimum communication standards expected of you, your employees, and your clients goes a long way toward this goal.

Question	Yes	No	N/A	Ethical Implications	Other Resources
Communication Regarding the Scope of the Representation and Fees					
<p>What procedures and forms do you have or steps do you take to ensure that you and your clients share the same understanding of the terms and scope of the engagement letter and fee agreement?</p> <p>What procedures and forms do you use to ensure your clients understand the fees and expenses for which they are responsible?</p> <p>Do you have a policy or procedure in place for situations in which you or your staff will communicate with a fugitive client?</p>				<ul style="list-style-type: none"> • It is essential that both the client and the lawyer understand the terms of the representation and the fees to be charged for services. This reduces disputes as to what services were or were not contemplated. • SCR 20:1.5(b)(1) requires lawyers to inform clients of the scope of the representation and the basis or rate of fees and expenses. • Various rules of professional conduct are implicated when dealing with a fugitive client, and a lawyer must ensure their advice does not violate the prohibition against assisting the client with criminal or fraudulent conduct. 	<p>Dean R. Dietrich, <i>Ethics: Lawyers Owe Clients ‘Reasonable’ Communication</i>, Wis. Law. (June 2011).</p> <p>Sample forms available at: https://www.wisbar.org/formembers/ethics/Pages/Trust-Fiduciary-Accounts.aspx#sample.</p> <p>Aviva Meridian Kaiser, <i>Fee Agreements: Answers to Nagging Questions</i>, Wis. Law. (Oct. 2019).</p> <p>Aviva Meridian Kaiser, <i>Recipe for Effective Engagement Agreements</i>, Wis. Law. (Dec. 2019).</p> <p>Wisconsin Ethics Op. EF-21-03: Responsibilities of a Lawyer with a Fugitive Client.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Client Communication Policies Do you have a written policy regarding communication with clients? Does it:					
<ul style="list-style-type: none"> Even if your practice does not have a written communication policy, you should evaluate whether you address with clients the communication issues raised in the five following questions. You may want to consider developing a policy that addresses these issues. Does the policy promote compliance with all six ethical obligations to communicate required by SCR 20:1.4? Do you ensure whether the client or designated client contact is authorized to make decisions on behalf of the client or whether further authorization is necessary? 				<ul style="list-style-type: none"> SCR 20:1.4, comment 4: “regular communication will minimize the occasions on which a client will need to request information....” Communicating clearly with your client contributes to a healthy, thriving law practice. A communication policy promotes regular and timely client contact. Consider providing clients with a copy of your policy to avoid confusion over communication expectations and timeframes. SCR 20:1.4(a)(1)-(5), and (b). 	<p>Annotations to SCR 20:1.4, www.wicourts.gov/olr.</p> <p>Attorney -Client Relationships, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.</p> <p>Example Client Communications Policy available at https://mortonelderlaw.com/policies/client-communications-policy/.</p> <p>Thomas J. Watson, <i>Managing Risk: Heightened Standard of Care When Communicating With Clients in the Digital Age</i>, Wis. Law. (Dec. 2009).</p>
<ul style="list-style-type: none"> Include addressing with clients their appropriate and preferred methods of communication such as phone, mail, email, and text? 				<ul style="list-style-type: none"> SCR 20:1.4, comment 4: “[a] lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation.” 	Dean Dietrich, <i>Ethics: Handling Clients’ Text Messages</i> , Wis. Law. (April 2016).
<ul style="list-style-type: none"> Address the expected response time for client-initiated phone calls, emails, or texts, and is that response time communicated to clients? 				<ul style="list-style-type: none"> SCR 20:1.4(a)(4). 	Dean Dietrich, <i>Ethics: Lawyers Owe Clients ‘Reasonable’ Communication</i> , Wis. Law. (June 2011).
<ul style="list-style-type: none"> Establish when changes/status updates in cases will be relayed to clients and have you communicated this to your clients? 				<ul style="list-style-type: none"> SCR 20:1.4(a)(1). 	
<ul style="list-style-type: none"> Address the expected frequency of lawyer-initiated updates on the case when there is no activity? 				<ul style="list-style-type: none"> SCR 20:1.4(a)(1) & (4), comment 46. SCR 20:1.4(a)(1) & (4) require lawyers to “promptly” inform and comply with reasonable requests. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> • Ensure that clients receive copies of important correspondence sent and received? • Ensure clients are aware of scheduled events? 				<ul style="list-style-type: none"> • SCR 20:1.4. 	
Do you have a process to ensure continued compliance with client communication expectations or any written client communication policy by your associates and staff?				<ul style="list-style-type: none"> • Staff compliance with client communication policies promotes your compliance with SCR 20:1.4. If you have a policy, do you: 1) require staff to read and sign the policy, 2) regularly review it with staff, 3) assess compliance as part of performance reviews? 	
Do you assess your own compliance with client communications expectations set out for your practice or in a written communication policy?				<ul style="list-style-type: none"> • You should assess your compliance with the policy to meet your professional obligations. 	Dean R. Dietrich, <i>Ethics: Duty to Communicate with Client</i> , Wis. Law. (Dec. 2009).
Do you have a policy or system in place that confirms in writing any text or phone-based client communication?				<ul style="list-style-type: none"> • The use of texting to communicate with clients has become more common but creates its own issues. For example, some mobile phone companies retain texts for only a short time. It is important to maintain a record of text communications independent of relying upon the ability to subpoena them. 	Thomas J. Watson, <i>Managing Risk: Keeping Client Information Safe Until Disposal</i> , Wis. Law. (Mar. 2016).
Do you archive email conversations with clients and ensure they are copied to the file?				<ul style="list-style-type: none"> • Archiving emails documents client instructions to the lawyer and lawyer instructions to the client. It also provides evidence of case updates sent to the client. See SCR 20:1.4. 	<p>Wisconsin Ethics Op. EF-16-03: The Ethical Obligation of the Lawyer to Surrender the File upon Termination of the Representation.</p> <p>Wisconsin Ethics Op. EF-17-01: Retention and Destruction of Closed Client Files.</p> <p>See Wisconsin Ethics Opinions.</p> <p>Christopher C. Shattuck, <i>Managing Your Digital Files</i>, Wis. Law. (June 2018).</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do you have clients confirm their instructions to you in writing?				<ul style="list-style-type: none"> Confirming instructions in writing reduces confusion over whether the client authorized a course of action. SCR 20:1.2 and SCR 20:1.4. 	<p>Mark Bassingthwaighe, <i>If You Failed to Document It, It Never Happened</i> (ALPS Corp.), Jan. 18, 2017.</p> <p>Thomas J. Watson, <i>Risk Management: Document Everything: It's Vital to Managing Risk</i>, Wis. Law. (Mar. 2017).</p>
General Considerations for Communications with Clients					
Do you communicate in a manner that is respectful of clients and their needs?				<ul style="list-style-type: none"> SCR 20:1.6. SCR 20:8.4(ii). SCR 20:1.5. SCR 20:8:4(g) (which incorporates SCR 40.15). 	
Do you address language barriers, if any, in agreeing to represent a client?					Lisa Bliss, <i>Representing Clients with Limited English Proficiency</i> , News, Oct. 13, 2010.
Do clients need to designate someone else with whom you can communicate on their behalf about the matter?				<ul style="list-style-type: none"> If the client grants permission for you to communicate with someone else on the client's you should discuss any limitations on those communications, potential confidentiality issues that may arise, and confirm in writing. SCR 20:1.6. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
<p>Do you have a standard engagement letter that communicates:</p> <ul style="list-style-type: none"> ● Expected fees? ● Billing policies? ● Services covered? ● How and when the relationship will be terminated? ● A disclaimer that no specific outcome is guaranteed? 				<ul style="list-style-type: none"> ● SCR 20:1.5(b) requires attorneys to provide clients with a written “basis or rate of the fee and expenses” within a reasonable time of beginning the representation. 	<p>Wisconsin Ethics Op. E-09-03: Communications Concerning Attorneys Fees and Expenses.</p> <p>See Wisconsin Ethics Opinions.</p> <p>“Legal Fees and Costs Under the Wisconsin Supreme Court Rules,” at wicourts.gov/olr.</p> <p>Thomas J. Watson, <i>Risk Management: Engagement Letters – Protection You Don't Want to Live Without</i>, Wis. Law. (May 2017).</p> <p>Aviva Meridian Kaiser, Timothy J. Pierce & Travis J. Stieren, <i>2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted</i>, Wis. Law. (June 2023).</p> <p>Attorney -Client Agreements Toolkit, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.</p>
<p>Do you have a termination of engagement letter?</p>				<ul style="list-style-type: none"> ● A closing letter prevents confusion as to whether the attorney still represents the client if there is subsequent litigation. 	<p>ALPS Corp, (Sample Closing Letters).</p> <p>Dean R. Dietrich, <i>Ethics: Engagement Letters – Protection You Don't Want to Live Without</i>, Wis. Law. (April 2007).</p>
<p>If a client refuses to follow your advice, do you document your recommendations that the client refused to follow, the reason(s) you made the recommendations, and your explanation to the client of the risks of not following the advice?</p>				<ul style="list-style-type: none"> ● SCR 20:1.4(b). 	<p>Mark Bassingthwaite, <i>If You Failed to Document It, It Never Happened</i> (ALPS Corp.), Jan. 18, 2017.</p>
<p>Do you provide clients with regular cost updates at a frequency and in a form that suits their needs?</p>					

Question	Yes	No	N/A	Ethical Implications	Other Resources
Are clients informed of what is expected of them during the course of the representation?				<ul style="list-style-type: none"> • Clients need to understand their obligations in the attorney-client relationship. This includes truthful information, timely communication, and updated contact information. 	
Communication with Prospective Clients					
Are your advertisements, including your website, free of false or misleading statements?				<ul style="list-style-type: none"> • Statements about you/the firm must be independently verifiable. • SCRs 20:7.1 & 7.2. 	Better Business Bureau, Code of Advertising.
Do your advertisements contain any statements that are likely to create an unjustified expectation of results?				<ul style="list-style-type: none"> • SCRs 20:7.1 & 7.2. 	Better Business Bureau, Code of Advertising. Dean R. Dietrich, <i>Ethics: Rules for Marketing with Social Media</i> , Wis. Law. (May 2010).
Client Feedback. Do you or your firm:					
Conduct client surveys, interview clients, or otherwise seek feedback to assess client satisfaction with the representation?				<ul style="list-style-type: none"> • Client surveys and interviews allow you to identify what is working well for clients and what is not. They may also reveal areas where your practice can improve compliance with professional obligations. 	<i>Best Practices: Solicit and Respond to Client Feedback</i> , FindLaw.com (Feb. 9, 2017). Lynn Luong, <i>Law Firm Client Relations: How to Get Client Feedback That You Can Use</i> , AboveTheLaw.com (Nov. 9, 2016).
Have policies and procedures in place for addressing client complaints?				<ul style="list-style-type: none"> • Addressing complaints improves attorney-client relations and may avoid professional responsibility or liability complaints. 	Chris Hargreaves, <i>4 Types of Challenging Clients</i> , Wis. Law. (May 2018).

Module #3 — Ensuring that Confidentiality Requirements Are Met

SCR 20:1.6 addresses confidentiality of client information and when disclosure is prohibited or permitted. Confidentiality applies not only to matters communicated in confidence by the client, but to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules. [Cmt. 3 to SCR 20:1.6]. Confidentiality survives the conclusion of the attorney-client and the death of a client.

Many issues regarding disclosure of confidential information are preventable; thus, written policies to educate lawyers and staff, and review of such policies through the following form, will aid in preventing such disclosures. If you do not have a written policy, you still must consider whether you are taking appropriate steps to protect confidences. Technology presents additional issues, which are not always obvious, and therefore, while preventable, must first be identified as an area of concern.

Question	Yes	No	N/A	Ethical Implications	Other Resources
CONFIDENTIALITY POLICY FOR EMPLOYEES					
Do you have written policies for lawyers and support staff explaining duties to preserve client confidences? If not, consider developing written policies that include the criteria discussed below. If you do have policies, you may wish to consider the following criteria to build practices that protect client confidences.				<ul style="list-style-type: none"> Misunderstanding the breadth of SCR 20:1.6 and the differences between confidentiality and lawyer-client privilege. Ensuring adequate training for staff, SCR 20:5.1(a) and SCR 20:5.3(a). Inadvertent disclosure such as including the wrong parties in a confidential client email (<i>see also</i> SCR 20:4.4). 	<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>Wisconsin Ethics Op. EF-17-02: Duty of Confidentiality; Identities of Current and Former Clients.</p> <p>Ethical Dilemma ED-2014-08-20_</p>
<ul style="list-style-type: none"> Do you present your policies regarding client confidences at new employee orientation? Do you have new employees sign that they have reviewed these policies? 				<ul style="list-style-type: none"> Discussing “hypotheticals” with another lawyer where confidential information is provided (<i>see</i> SCR 20:1.6, comment 4). Posting responses to online reviews of the lawyer’s services (<i>see</i> Wisconsin Ethics Op. EF-23-01) or using social media to discuss work. Inadvertently providing other client files or client information when returning client files. Improperly disposing of or storing client information. Posting client names and case results on law firm website without client authorization. 	<p>Wisconsin Ethics Op. EF-21-02: Working Remotely.</p> <p>Wisconsin Ethics Op. EF-23-01: Responding to Online Criticism.</p> <p><i>Disciplinary Proceedings Against Harman</i>, 2001 WI 71.</p> <p>Annotations to SCR 20:1.6, https://www.wicourts.gov/courts/offices/olr.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Do your policies address when to obtain client consent for disclosure? 				<ul style="list-style-type: none"> SCR 20:1.6(a); SCR 20:1.0(f). Lawyers may want to memorialize a client’s consent to disclosure so that both parties are clear about the scope of authorization and when it was made. 	<p>SCR 20:1.6, comment 2.</p> <p>Dean R. Dietrich, <i>Ethics: Obtaining Client’s ‘Informed Consent’ to Disclose Information</i>, Wis. Law. (Nov. 2010).</p> <p>Dean R. Dietrich, <i>Ethics: Impliedly Authorized Disclosure of Client Information</i>, Wis. Law. (Oct. 2010).</p>
<ul style="list-style-type: none"> Do your policies include advising the client, if you work in a law firm, that you may disclose information about the representation to other attorneys and staff at the firm? 				<ul style="list-style-type: none"> If you work in a law firm, you may wish to consult other lawyers about a client matter. Lawyers within firms may discuss matters unless the client has specifically instructed otherwise. But lawyers normally must obtain client informed consent to discuss matters with lawyers outside the firm. 	SCR 20:1.6, comment 5.
<ul style="list-style-type: none"> Do your policies address office structure, such as public access to and visibility of client files, computer monitors, and files? 				<ul style="list-style-type: none"> SCR 20:1.6(d). 	<p>SCR 20:1.6, comment 18.</p> <p>Wisconsin Ethics Op. EF-21-02: Working Remotely.</p>
<ul style="list-style-type: none"> Do your policies address where confidential discussions within the office may occur? 				<ul style="list-style-type: none"> SCR 20:1.6(d). 	Wisconsin Ethics Op. EF-21-02: Working Remotely.
<ul style="list-style-type: none"> Do your policies address the security of the law office, such as who has keys to the office, who is responsible for locking the office at night, and who has off-hours access? 				<ul style="list-style-type: none"> SCR 20:1.6(d). 	
<ul style="list-style-type: none"> Do your policies address file storage either onsite or offsite? 				<ul style="list-style-type: none"> SCR 20:1.6(d). 	Wisconsin Ethics Op. EF-17-01: Retention and Destruction of Closed Client Files.
<ul style="list-style-type: none"> Do your policies address file disposal, such as using secure recycle or destruction of confidential materials? 				<ul style="list-style-type: none"> SCR 20:1.6(d). 	Wisconsin Ethics Op. EF-17-01: Retention and Destruction of Closed Client Files.

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Do your policies address avoiding disclosure of confidential information in a motion to withdraw? Do your policies provide for the disposition of client files upon the lawyer's cessation of practice? 				<ul style="list-style-type: none"> The duty of confidentiality applies when requesting a court's permission to withdraw from a case. Withdrawal motions should be carefully drafted. A lawyer has a duty to preserve confidentiality after the representation has ended. <i>See Disciplinary Proceedings Against Niesen</i>, 2011 WI 97; SCR 20:1.6, comment 20. 	<p>Timothy J. Pierce, <i>Leaving a Client: Confidentiality upon Withdrawal</i>, Wis. Law. (July 2011).</p> <p>ABA Formal Op. 476: Confidentiality Issues When Moving to Withdraw for Nonpayment of Fees in Civil Litigation.</p>
INADVERTENT DISCLOSURE					
Have you considered implementing a policy to avoid inadvertent disclosures?				<ul style="list-style-type: none"> SCR 20:1.6, comment 18. "The unauthorized access to, or inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation... if the lawyer has made reasonable efforts to prevent the access or disclosure." 	<p>Lisa Gonzalo, <i>Inadvertent Disclosure in E-Discovery: How to Avoid Waiver of Privilege</i>, ABA Com & Bus. Litig. Sec., (Nov. 3, 2015).</p> <p>Aviva Meridian Kaiser, <i>Respecting Others' Privileged Information: Lawyers' Obligations to Third Persons</i>, Wis. Law. (April 2017).</p> <p>Steven Nelson & Jane Schlicht, <i>Upholding the Sanctity of the Attorney-Client Privilege</i>, Wis. Law. (Dec. 2004).</p>
Do you have a policy regarding what actions to take following notification of an inadvertent disclosure? Does this include a policy to notify and explain such disclosure to the client?				<ul style="list-style-type: none"> SCR 20:1.6(d). 	<p>Wisconsin Ethics Op. EF-12-01: The Transmission and Receipt of Electronic Documents Containing Metadata.</p> <p>See Wisconsin Ethics Opinions.</p>
EMAIL					
If you use email to communicate with clients, do you advise clients regarding the potential risks of email communication?				<ul style="list-style-type: none"> SCR 20:1.6, comment 19: "When transmitting a communication that includes information related to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients." 	<p>Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Formal Op. 477R: Securing Communication of Protected Client Information (2017).</p>
Have you considered whether encryption should be used to protect confidential information sent via email?					<p>Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 06- 440: Unsolicited Receipt of Privileged or Confidential Materials (2006).</p> <p>Robert Barrer, <i>Ethical Implications and Best Practices for Use of Email</i>, N.Y. Legal Ethics</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
UNAUTHORIZED ACCESS					Reporter (Mar. 1, 2015).
<p>Do you have written policies for preventing, identifying, and remediating breaches of your client’s electronically-stored information?</p> <ul style="list-style-type: none"> • Do your policies include requirements for passwords, log-in, and log-out procedures? • Do your policies provide for limiting use of electronic devices to locations where they are not likely to be monitored or compromised? • Do your policies require reporting breaches to affected clients and appropriate law enforcement agencies? • Do your procedures require training and audits? • Do your procedures provide adequate back-up storage and electronic protective measures? 				<ul style="list-style-type: none"> • SCR 20:1.1, comment 8. Lawyers must keep abreast of the benefits and risks of relevant technology. • SCR 20:1.6, comments 18 & 19. Lawyers must safeguard the storage and transmission of information relating to the representation of clients. • SCR 20:5.3, comment 3. Lawyers must ensure non lawyer support is provided commensurate with the lawyer’s professional obligations. 	<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>See Wisconsin Ethics Opinions.</p> <p>Stephanie L. Melnick, <i>Practice the Mindful Use of Email</i>, Wis. Law. (May 2017).</p> <p>Thomas J. Watson, <i>Risk Management: Give TLC to Clients: Respond ASAP to Security Breaches</i>, Wis. Law. (Oct. 2016).</p> <p>Christopher C. Shattuck, <i>Once Upon a Cybercrime: Are You Covered?</i>, Wis. Law. (July 2019).</p> <p>Christopher C. Shattuck, <i>When Ransomware Strikes: Strategies to Prevent and Recover</i>, Wis. Law. (Oct. 2019).</p>

Module #4 — Avoiding Conflicts of Interest

Why should you care about conflicts? Consider:

- *Fee forfeiture
- *Malpractice claims
- *Disqualification from litigation
- *Discipline

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do you have a process by which you identify conflicts?				<ul style="list-style-type: none"> • SCR 20:1.7, comment 2. 	
Have you clearly identified who is, and who is not, the client – particularly for clients who are business entities?				<ul style="list-style-type: none"> • SCR 20:1.7 & comments 2, 27, 34. • SCR 20:1.13(a) & comments 1-2, 10-11. 	<p>Wisconsin Ethical Dilemmas: ED-2022-9-21.</p> <p>Wisconsin Ethics Op. E-88-12: Simultaneous Representation of Corporation and Corporate Officer.</p> <p>Wisconsin Ethics Op. E-89-10: Conflicts: Representing Majority and Minority Investors in New Business Formation.</p>
<p>Do you have a system for detecting conflicts? Does it include:</p> <ul style="list-style-type: none"> • Names of clients & matters? • Names of adverse parties? • Names of related parties (witnesses, experts, insurance carriers, family members, co-counsel, opposing counsel, related entities, owners of business entities)? • Names of potential/rejected clients & matters? • Dates matters were active/closed/rejected? • Names of timekeepers who worked on particular matters? 				<ul style="list-style-type: none"> • SCR 20:1.7, comment 3. • SCR 20:5.1(a)₂ & SCR 20:5.1, comment 2. <ul style="list-style-type: none"> • SCR 20:1.18. 	<p>Marian Rice, <i>Maintaining a Conflict Checking System</i>, L. Practice Mag. (Nov./Dec. 2013).</p> <p>Todd Scott, <i>Three Great (and Cheap) Ways to Effectively Manage Conflict Checking</i>, GP Solo (Feb. 2006).</p> <p>Timothy J. Pierce, <i>Conflict Waivers and the Informed Consent Standard</i>, Wis. Law. (July 2009).</p> <p>Wisconsin Ethics Op. EF-20-02: Lawyer Examining a Current or Former Client as Adverse Witness</p> <p>ABA Formal Op. 95-390.</p> <p>Wisconsin Ethics Op. EF-10-03: Conflicts Arising from Consultations with Prospective Clients; Significantly Harmful Information.</p>
Does an attorney (as opposed to a staff person) review each new matter to identify conflicts?				<ul style="list-style-type: none"> • A thorough conflict detection system includes both attorney and staff review of new matters. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
Is the conflicts check updated regularly as new parties are identified and new names are added to the system?				<ul style="list-style-type: none"> SCR 20:1.7 comments 4-5. 	Marian Rice, <i>Maintaining a Conflict Checking System</i> , L. Practice Mag. (Nov. /Dec. 2013).
Does the firm use engagement letters and disengagement letters appropriately?				<ul style="list-style-type: none"> Engagement and disengagement letters clarify whether an attorney-client relationship exists and can help identify potential conflicts of interest with current and former clients. 	Mark Bassingthwaighte, <i>Watch Out for These Common Conflict of Interest Traps</i> ALPS Corp. (Mar. 3, 2015). Mark Bassingthwaighte, <i>Don't Kiss Off the Importance of Closure Letters</i> ALPS Corp. (Jan. 26, 2015).
Are you engaged in any of the following common conflict situations?					
<ul style="list-style-type: none"> Being adverse to a current client in any matter, however unrelated? 				<ul style="list-style-type: none"> SCR 20:1.7(a)(1) & comments 6-7. 	Wisconsin Ethics Op. E-84-3: Joint Representation in Divorces. <i>Disciplinary Proceedings Against Widule</i> , 2003 WI 34. Wisconsin Ethical Dilemmas ED-2015-11-18.
<ul style="list-style-type: none"> Being adverse to a former client in a substantially related matter? 				<ul style="list-style-type: none"> SCR 20:1.9(a) & comments 1-3. 	<i>Nelson v. Green Builders Inc.</i> , 823 F. Supp 1439 (E.D. Wis. 1993). <i>Burkes v. Hales</i> , 165 Wis. 2d 585, 478 N.W.2 37 (Ct. App. 1991). <i>Mathias v. Mathias</i> , 188 Wis.2d 280 (App. 1994) 525 N.W. 2d 81. Wisconsin Ethics Op. E-89-4: Prior Joint Representation of Spouses and Subsequent Representation of One Spouse in Divorce Action.

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Representing multiple clients in a single matter? 				<ul style="list-style-type: none"> SCR 20:1.7(a)(2) & comments 23, 27-33. SCR 20:1.8(g) & comment 13. SCR 20:1.13(g) & comment 12. 	<p>Wisconsin Ethics Ops. E-88-12: Simultaneous Representation of Corporation and Corporate Officer;</p> <p>Wisconsin Ethics Op. E-89-10: Representing Majority and Minority Investors in New Business Formation;</p> <p>Wisconsin Ethics Op. E-92-1: Conflicts, Representation of Plaintiff and Subrogated Insurance Carrier;</p> <p>Wisconsin Ethics Op. E-99-2: Multiple Representation in Vehicle Personal Injury Cases.</p> <p>See Wisconsin Ethics Opinions.</p> <p>Ethical Dilemma, ED-2023-2-15.</p>
<ul style="list-style-type: none"> Conflicts resulting from dealings with prospective clients that do not mature into engagements? 				<ul style="list-style-type: none"> SCR 20:1.18. 	<p>Wisconsin Ethics Op. EF-10-03: Conflicts Arising from Consultations with Prospective Clients; Significantly Harmful Information.</p>
<ul style="list-style-type: none"> Personal interest conflicts, including but not limited to: business transactions with clients; gifts from clients; providing financial assistance to clients; sexual relationships with clients? 				<ul style="list-style-type: none"> SCR 20:1.7(a)(2) & comments 8, 10; SCR 20:1.8 and all related comments. 	<p>Wisconsin Ethics Op. E-87-11: Settlements: Attorneys as Parties to as Guarantors Against Lien Claims.</p> <p>Wisconsin Ethics Op. EF-19-01: Job Negotiations with Opposing Firm or Pary.</p> <p>Ethical Dilemmas, ED-2013-09-18 & ED-2020-11-18.</p> <p><i>Disciplinary Proceedings Against Trewin</i>, 2014 WI 111 [SCR 20:1.8(a) and (b)].</p> <p><i>Disciplinary Proceedings Against Inderberg</i>, 210 Wis. 2d 5 (1997).</p> <p>Dean R. Dietrich, <i>Ethics: When Client and Lawyer Interests Conflict</i>, Wis. Law. (Sept. 2012).</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do any of your cases involve payment of fees by a third party, including insurance carriers?				<ul style="list-style-type: none"> SCR 20:1.2(e), SCR 20:1.7(a)(2), & comment 13; SCR 20:1.8(f) & comments 11-12. 	<i>Disciplinary Proceedings Against Gorokhovsky</i> ; Public Reprimand, 2012 WI 120. Ethical Dilemma: ED-2022-7-20.
Are you working on any cases in which you might be called as a witness?				<ul style="list-style-type: none"> SCR 20:3.7 & comments. 	Wisconsin Ethics Op. M-10-02. <i>See Wisconsin Ethics Opinions.</i>
Are you engaged in any matter in which you might have a positional conflict?				<ul style="list-style-type: none"> SCR 20:1.7 comment 24. 	ABA Formal Op. 93-377.
Have you considered conflicts that might arise from your use of contract attorneys, outsourcing, or office-sharing?				<ul style="list-style-type: none"> SCR 20:1.9(b) & comments 4-9. SCR 20:1.10(b) & comments 4-5. 	Wisconsin Ethics Op. E-96-4: Use of Temporary Attorneys in Wisconsin. Wisconsin Ethics Op. E-00-02: Sharing Office Space with Unrelated Entities.
Are you engaged in any representation in which conflicts are imputed to you?				<ul style="list-style-type: none"> SCR 20:1.10(a) & comments. SCR 20:1.8(k) & comment 20. 	<i>Silicon Graphics v. ATI Technologies</i> , 741 F. Supp. 2d 970 (2010) (discusses “minor and isolated”).
If you have a matter involving a conflict, or potential conflict, is the conflict consentable?				<ul style="list-style-type: none"> SCR 20:1.7 & comments 2, 14-15; SCR 20:1.9(a) & comment 9; SCR 20:1.10(c) & comment 6. 	
Is the conflict a type that is absolutely non-consentable:				<ul style="list-style-type: none"> SCR 20:1.7. 	Dean R. Dietrich, <i>Ethics: Facts Matter: Identifying Nonwaivable Conflicts of Interest</i> , Wis. Law. (Sept. 2016).
<ul style="list-style-type: none"> Representing two clients on opposing sides in a litigation matter? 				<ul style="list-style-type: none"> SCR 20:1.7(b)(3) & comments 17, 23. 	
<ul style="list-style-type: none"> Representations prohibited by law? 				<ul style="list-style-type: none"> SCR 20:1.7(b)(2) & comment 16. 	
<ul style="list-style-type: none"> Ordinarily, representing criminal co-defendants? 				<ul style="list-style-type: none"> SCR 20:1.7 & comment 23. 	
If not, in your judgment:					
<ul style="list-style-type: none"> Do you “reasonably believe that you will be able to provide competent and diligent representation?” 				<ul style="list-style-type: none"> SCR 20:1.7(b)(1) & comment 15. 	
<ul style="list-style-type: none"> Have you given serious consideration to what could go wrong due to the conflict? 					Dean R. Dietrich, <i>Ethics: Violate Conflict of Interest Rules, Surrender Fees</i> , Wis. Law (July 2012).
<ul style="list-style-type: none"> Have you resisted the natural desire to accept new work, thus, the natural inclination to minimize conflicts? 					

Question	Yes	No	N/A	Ethical Implications	Other Resources
If you have a conflict, but it is consentable, have you obtained valid consent?				<ul style="list-style-type: none"> SCR 20:1.7 & comment 2. 	
Have you obtained "informed" consent, where the prospective client has agreed to the conflict after receiving adequate information and explanation about the material risks and alternatives to the proposed course of conduct?				<ul style="list-style-type: none"> SCR 20:1.7(b)(4) & comment 18-19; SCR 20:1.9(a); SCR 20:1.10(dd); SCR 20:1.7 & comments 22, 30-31; SCR 20:1.0(f) & comments 6-7. 	Timothy J. Pierce, <i>Conflict Waivers and the Informed Consent Standard</i> , Wis. Law. (July 2009).
<ul style="list-style-type: none"> Does the prospective client have the capacity to consent? 					<i>In re Guardianship of Lillian P.</i> , 2000 WI App 203.
<ul style="list-style-type: none"> Were you able to provide adequate information to obtain an informed consent while complying with SCR 20:1.6? 				<ul style="list-style-type: none"> SCR 20:1.6(c) & Wisconsin Committee Comment; SCR 20:1.7, comments 18-19. 	Timothy J. Pierce, <i>Ethics: Conflict Waivers and the Informed Consent Standard</i> , Wis. Law. (July 2009). Dean R. Dietrich, <i>Ethics: Conflicts of Interest: Revealing Client's Name Permitted in Limited Circumstances</i> , Wis. Law. (April 2017).
<ul style="list-style-type: none"> In dual representation, have you explained the effect of the consent on the attorney-client privilege and confidentiality of client information? 				<ul style="list-style-type: none"> SCR 20:1.7 & comments 29-33. 	Timothy J. Pierce, <i>Ethics: Conflict Waivers and the Informed Consent Standard</i> , Wis. Law. (July 2009).
<ul style="list-style-type: none"> Was the consent "confirmed in writing" and signed by the client? 				<ul style="list-style-type: none"> SCR 20:1.7(b)(4) and Wisconsin Comment. 	Timothy J. Pierce, <i>Ethics: Conflict Waivers and the Informed Consent Standard</i> , Wis. Law. (July 2009).
Are you continuing to assess potential conflicts as the representation progresses?					
Are there new circumstances, such as changes in fee structure, acquisition of interest in the client's property, new parties, witnesses, counsel, etc., or divergence of interests in multi-party representation, creating a new conflict that didn't exist initially?				<ul style="list-style-type: none"> SCR 20:1.7 comments 4-5. 	Marian Rice, <i>Maintaining a Conflict Checking System</i> , L. Practice Mag. (Nov./Dec. 2013).
<ul style="list-style-type: none"> Is the new conflict consentable? If it is consentable, have you obtained informed consent? 				<ul style="list-style-type: none"> If the conflict is consentable, consider informed consent; if it is non-consentable, take steps to withdraw. 	
If the new conflict is not consentable or consent cannot be obtained:					
<ul style="list-style-type: none"> Have you taken steps to withdraw? 				<ul style="list-style-type: none"> SCR 20:1.7 comment 4; SCR 20:1.6(a)(1) & comment 2. 	Douglas J. Hoffer, <i>Navigating Conflict-of-Interest Disqualification Motions</i> , Wis. Law. (Sept. 2010).
<ul style="list-style-type: none"> In a litigation matter, have you obtained court approval? 				<ul style="list-style-type: none"> SCR 20:1.16(c) & comment 3. 	

Module #5 — File Management, Security, and Retention

How you organize, manage, and secure client files directly affects your efficiency and ability to get results for a client. This matters whether it is preparing for trial or timely responding to a client inquiry. Moreover, files often contain confidential client information, critical records, and client-lawyer communications about the objectives of the representation. You need to consider best practices for file management, security, and retention as part of a proactive assessment of your firm’s ethical infrastructure. This is particularly so in today’s digital age when client files are stored and portions shared and transmitted electronically.

Question	Yes	No	N/A	Ethical Implications	Other Resources
Client Files: Do you...					
Have a standardized filing system for all client files?				<ul style="list-style-type: none"> George C. Cunningham & John C. Montana, <i>The Lawyer’s Guide to Records Management and Retention</i>, American Bar Association (2006) at 39: “A lawyer’s management of her records must protect the client’s interests... must protect the client’s confidences and secrets, and must be governed by the lawyer’s professional judgment... where handling of the records is not governed by rule or statute.” 	<p><i>Top 5 Reasons a Document Management Program Is Critical to Law Practice</i>, FindLaw.com (Feb. 10, 2017).</p> <p>How to Successfully Organize Your Legal Files available at Clio.com.</p> <p>Wisconsin Ethics Op. EF-17-01: Retention and Destruction of Closed Client Files.</p> <p>WILMIC Law Practice Toolkit, Ch. 2, Sec. IV., File Storage.</p>
Have a file-naming convention for paper and electronic files?				<ul style="list-style-type: none"> “In the absence of a well-defined and well-executed structure [for file naming], poorly named files... are effectively lost.” Cunningham & Montana, <i>supra</i> at 172. 	<p>Sam Glover, <i>How to Organize Paperless Client Files</i>, Lawyerist.com (May. 22, 2017).</p> <p>Nerino J. Petro Jr., <i>Going Paperless</i>, Wis. Law. (Mar. 2014).</p>
Have a policy to ensure electronic and paper copies of files are consistent?				<ul style="list-style-type: none"> Organized file management comports with an attorney’s duty to safeguard client property. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
Have a policy (or is it your practice) to ensure all email or text communication with your client is copied to your paper/electronic files?				<ul style="list-style-type: none"> Copying communications to the file demonstrates your adherence to communication obligations. 	<p>Christopher C. Shattuck, <i>Social Media: Who's Got Your Data?</i>, Wis. Law. (May 2018).</p> <p>Dean R. Dietrich, <i>Ethics: Handling Clients' Text Messages</i>, Wis. Law. (April 2016).</p> <p>Wisconsin Ethics Op. EF-16-03: The Ethical Obligation of the Lawyer to Surrender the File upon Termination of the Representation.</p>
Have a policy for handling originals received from clients?				<ul style="list-style-type: none"> A log should be kept that complies with SCR 20:1.15(b)(4) whenever an attorney receives property from a client. 	
Log or document receipt of original documents from a client?				<ul style="list-style-type: none"> Documenting receipt of original documents is consistent with an attorney's fiduciary obligations under SCR 20:1.15(b)(4). 	
Scan and return originals or retain them?				<ul style="list-style-type: none"> If you retain originals, you should consider a policy for their eventual return to the client. SCR 20:1.15(e) & SCR 20:1.16(d). 	
Have a file-retention policy that complies with SCR 20:1.16(d)?				<ul style="list-style-type: none"> Written policies and fee agreements should contain terms that provide notice to clients. 	<p>Wisconsin Ethics Op. EF-17-01: Retention and Destruction of Closed Client Files.</p> <p>Thomas J. Watson, <i>Managing Risk: Save or Toss? What to Do With Client Files</i>, Wis. Law. (Dec. 2013).</p>
Maintaining File Security: Do you...					
Have a system to track or limit access to files by your staff members?				<ul style="list-style-type: none"> Tracking or limiting access protects client confidentiality. 	
Maintain a secure office?					<p>Thomas J. Watson, <i>Keeping Client Information Safe Until Disposal</i>, Wis. Law (Mar. 2016).</p>
o Are your paper files kept in a secured cabinet or secured within your office?					
o Are they protected from flood/fire/vermin?					

Question	Yes	No	N/A	Ethical Implications	Other Resources
Have adequate data back-up procedures for all firm and all client data?				<ul style="list-style-type: none"> Data back-up is essential to avoiding losing a file or work product in the event of a cyber-security breach, fires, flood, etc. 	<p>Christopher C. Shattuck, <i>Do Not Let Ransomware Win: Back Up Your Data</i>, Wis. Law. (July 2021).</p> <p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>WILMIC Law Practice Toolkit, Ch. 2, Sec. III.</p>
Have encryption policies in place to address transmission via email of medical records, financial records, or other highly confidential materials?				<ul style="list-style-type: none"> SCR 20:1.6(d) & comment 19. 	<p>Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 11-459 Duty to Protect the Confidentiality of E-mail Communications with One's Client (2011).</p> <p>Michael Eichacker, James Pearson & Christopher C. Shattuck, <i>Encrypting Your Law Firm</i>, Wis. Law. (May 2022).</p>
<p>Have time and expertise to oversee technology, including security, to properly maintain files?</p> <p>Have a policy in place for properly handling materials protected under privacy laws, such as HIPPA or Chapter 48?</p> <p>Have a procedure in place for responding to data breaches?</p>				<ul style="list-style-type: none"> "It is the responsibility of the lawyer delivering legal services online--not the hosting company, the software provider... or any other entity--to ensure that... the practice complies with the high ethical standards required by the lawyer's law license." Stephanie L. Kimbro, <i>Virtual Law Practice</i>, ABA (2010), p. 133. If you do not have a designated technology compliance officer, consider hiring someone to assist with this task. 	<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>Kendra Albert, <i>Computer Security Tools & Concepts for Lawyers</i>, 20 Green Bag 2D 127 (2017).</p> <p>Mary Ellen Egan, <i>Cyberthreats 101; The Biggest Computer Crime Risks Lawyers Face</i>, ABA J. (Mar. 1, 2018).</p> <p>Katharine H. Campbell & Christopher C. Shattuck, <i>Responding to a Data Breach</i>, Wis. Law. (July 2022).</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Have a training system in place for staff with respect to file systems, computer and internet usage, email, and services that can access filings?				<ul style="list-style-type: none"> Staff training should emphasize that proper file management is critical to protecting client confidences and property. 	Aviva Meridian Kaiser & Christopher C. Shattuck, <i>Sharing Filing Credentials and Case Information with Third-party Software Service Providers</i> , Wis. Law. (Mar. 2019).
Network / Hardware Security: Do you...					
Have adequate physical security protection for computer hardware used in operating your firm's network?				<ul style="list-style-type: none"> Secure hardware reduces the chance that confidential information stored or accessed electronically will be compromised. SCR 20:1.6(d) & comment 18. 	<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>Wisconsin Ethics Op. EF-12-01: The Transmission and Receipt of Electronic Documents Containing Metadata.</p> <p><i>Let's Be Reasonable: The Ethics of Cybersecurity</i>, Wis. Law. (Oct 2016).</p> <p>Michael Eichacker, James Pearson & Christopher C. Shattuck, <i>Encrypting Your Law Firm</i>, Wis. Law. (May 2022).</p>
Enforce software updates, including updating patches and antivirus software?				<ul style="list-style-type: none"> Client information and files stored electronically receive better protection from viruses and potential cybersecurity breaches through regular software updates. 	<i>Practical Steps to Thwart Ransomware and Other Cyberbreaches</i> , Around The ABA (Dec. 2016).
Use a wireless computer network or "open" or "wifi" networks not controlled by your firm? If so, do take adequate steps to protect the confidentiality of client information transmitted through or accessible by the use of those networks?				<ul style="list-style-type: none"> Client information transmitted or accessed through open networks could be vulnerable to inadvertent disclosure. 	Law Firm Data Security Guide: How to Keep Your Law Firm Secure available at Clio.com
Make sure your own firm internet is secure by using an encrypted in-house wifi and encrypted guest wifi network?				<ul style="list-style-type: none"> Allowing guests to freely use your internal wifi network could compromise client confidences. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
Use smart phones or other portable digital devices in your practice? If so, are they adequately configured to protect from a loss or breach the confidentiality of information stored on or accessible through the phone or other digital device (such as USB drives, portable storage devices)?				<ul style="list-style-type: none"> SCR 20:1.6(d). 	<p>Pem Guerry, <i>Why Remote Security Is a Must</i>, L. Tech Today (Jan. 12, 2017).</p> <p>Wisconsin Ethics Op. EF-21-02: Working remotely.</p>
Do you or your firm conduct periodic cyber-security testing?				<ul style="list-style-type: none"> Periodic testing, such as conducting vulnerability assessments, identifies cyber security procedures that need improvement. 	<p>Sherri Davidoff, <i>Law Firm Cybersecurity Audits: Getting to Good</i>, L. Practice Today (Feb. 12, 2016).</p>
Have a network configured to log data in the event of a cyber-security breach?					<p>Ed Tittel & Earl Follis, <i>How Better Log Monitoring Can Prevent Data Breaches</i>, CLIO.com (Feb. 24, 2015).</p>
Cloud Services: If you use cloud services...					
Where do the cloud servers reside? In the United States, or elsewhere? If elsewhere, how do the laws of that jurisdiction affect confidentiality?					<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>Aviva Meridian Kaiser & Christopher C. Shattuck, <i>Social Media: Who's Got Your Data?</i>, Wis. Law. (May 2018).</p>
Does the contract with the cloud provider address confidentiality of the information? Does it address whether the information will remain confidential should the contract end?					<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p> <p>WILMIC Law Practice Toolkit, Ch. 2, Sec. V.</p>
Does your cloud service have regular and adequate data backup policies?					<p>Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Is data in the cloud encrypted and do you and your firm have sole control of the encryption key?					Linda Musthaler, <i>Encrypted Data In the Cloud? Be Sure to Control Your Own Keys</i> , Network World (Sept. 5, 2014). Wisconsin Ethics Op. EF-15-01: Ethical Obligations of Attorneys Using Cloud Computing. <i>See Wisconsin Ethics Opinions.</i>
Do you advise clients of the risk that client files stored in the cloud could be hacked and do you obtain client consent to cloud file storage?					Judith Rosenblum, <i>Ethical Dilemmas or A No Good, Terrible, Bad Day</i> , The Docket (Oct. 26, 2014).
Disaster Plan / Continuity of Operations: Do you...					
Have a disaster recovery plan in place for paper files and electronic files?					Acts of God: Legal Issues & Disaster Preparation 2018. Joe Forward & Christopher C. Shattuck, <i>Law Firm Disaster Planning: Tomorrow Could Be a Day Too Late</i> , InsideTrack (Sept. 19, 2018). Aviva Meridian Kaiser, <i>Disasters and a Lawyer's Ethical Obligations</i> , Wis. Law. (Jan. 2019). Ready.Gov – IT Disaster Recovery Plan State Bar of Wisconsin Disaster Relief WILMIC Law Practice Toolkit, Ch. 7.
Have a continuity of operations plan so you may continue to operate if a natural disaster or security breach occurs?				<ul style="list-style-type: none"> A natural disaster or technological breach presents multi-faceted ethical issues related to confidentiality and diligence. 	Ready.Gov – Business Continuity Plan <i>Surviving A Disaster: A Lawyer's Guide to Disaster Planning</i> , ABA Special Committee on Disaster Response and Preparedness (Aug. 2011).

Module #6 — Managing the Law Firm/Legal Entity and Staff Appropriately

Responsible office management is indispensable to competent, ethical representation. It also pays dividends in the form of client satisfaction and repeat business and referrals. This self-assessment examines office and staff management procedures to help attorneys build an ethical infrastructure.

Question	Yes	No	N/A	Ethical Implications	Other Resources
<u>FIRM STRUCTURE</u>					
<u>Sole Practitioner</u>					
<ul style="list-style-type: none"> Do you practice as a sole proprietor or through an entity (e.g., a professional corporation or a single-member professional limited liability company)? 				<ul style="list-style-type: none"> SCR 20:5.7. 	Joseph W. Boucher, John R. Rather, Ron Bote, & Andrew Seifert, <i>Choosing a Limited Liability Entity</i> , Wis. Law. (Oct. 2019).
<ul style="list-style-type: none"> Have you considered the advantages that practicing through an entity can provide, particularly with regard to liability? 					
<u>Small Firm (2-5 attorneys)</u>					
<ul style="list-style-type: none"> Is the firm structure memorialized in a written agreement that forms and governs the law firm, e.g., partnership agreement, corporate bylaws, articles of organization? 				<ul style="list-style-type: none"> Good law office management – which includes managing risk – results in money for the firm. The partners, shareholders, or members will benefit most from anticipating problems and reducing mistakes. It is up to the owners to shape the firm’s culture in ways that promote long-term profitability. The limitations to liability provided by SCR 20:5.7. 	SCR 20:5.7.
<ul style="list-style-type: none"> Are these governing documents reviewed at least annually by the partners, shareholders, or members? 					
<ul style="list-style-type: none"> Do you revise them to reflect changes in ownership? 					
<ul style="list-style-type: none"> Is the firm a professional service company? 					
<u>COMPENSATION</u>					
<u>Sole Practitioner</u>					
				<ul style="list-style-type: none"> Although maintaining balance between earning fees and managing risk is challenging, the long-term detriment of an unmanaged risk can far outweigh short-term income from fees. SCR 20:1.5(a) (regarding the reasonableness of attorney’s fees). Compensation packages that encourage taking on 	Joe Forward, <i>The Economics of Law Practice</i> , Wis. Law. (Feb. 2018).

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Does your net income provide time apart from practicing law to handle management of risks to the practice? 				questionable clients to maximize billable hours in the near term may later result in unpaid accounts receivable or, even worse, a lawsuit.	
Small Firm (2-5 attorneys)				<ul style="list-style-type: none"> When conducting client intake, the lawyer's desire in introducing the client to increase his or her book of business must be balanced against the best interests of the firm as a whole. Compensation should be structured so the firm can decline an unsuitable prospective client. 	
<ul style="list-style-type: none"> Are partner, shareholder, or member compensation conducive to cooperation with and participation in managing risks to the firm? 					
INSURANCE AND COMPLIANCE COUNSEL					
Sole Practitioner				<ul style="list-style-type: none"> The policies discussed here also are useful to diminish risk. It is consistent with an attorney's fiduciary responsibilities to obtain insurance coverage up to the full amount of the possible harm, not including the cost of defense. 	State Bar of Wisconsin, LLC Firm Registration.
<ul style="list-style-type: none"> Do you have malpractice insurance? Have you put in place the insurer's required or recommended risk management policies? 					See SCR 20:5.7 for the minimum requirements for insurance. Am. Bar. Ass'n, <i>Materials for Purchasers of Professional Liability Insurance</i> .
Small Firm (2-5 attorneys)				<ul style="list-style-type: none"> To protect the firm from problems, it may make sense to appoint one of the owners as "Compliance Counsel," in charge of risk management. This lawyer must be given the authority to implement, maintain, monitor, and improve policies and procedures that reduce risk (e.g., a comprehensive conflicts checking system). Compliance Counsel should be given enough time to accomplish the necessary tasks and compensation for the hours spent on them. Compliance Counsel may also be a resource for ensuring attorneys remain compliant with CLE requirements. SCR 20:5.1 & SCR 20: 5.3. 	See SCR 20:5.7 for the minimum requirements for insurance. Materials For Purchasers of Prof'l Liab. Ins., AM BAR. ASS'N. Jeffrey P. Aiken, <i>Legal Malpractice: What Is It, Really?</i> , Wis. Law. (Nov. 2016).
<ul style="list-style-type: none"> Has the firm appointed one of its lawyers to represent the firm in litigation, obtain malpractice insurance, promote professional responsibility, and guide and monitor the implementation of risk management policies ("Compliance Counsel")? 					

Question	Yes	No	N/A	Ethical Implications	Other Resources
BUSINESS MANUAL					
<p>Sole Practitioner</p> <ul style="list-style-type: none"> Do you have a manual of risk management policies? 				<ul style="list-style-type: none"> A written manual of firm policies enables you and your staff to know and act on preventive and curative steps for risk management. Each employee should receive a copy of the manual. Train new hires to follow each procedure that applies to their position. All staff should attend a regular “refresher course” on policies listed in the manual. By fostering awareness in this way, the policies become an organic part of the firm’s operation. 	<p>See Sole Practitioner Business Manual and Risk Management Checklist. available at https://coloradosupremecourt.com/.</p> <p>Risk Management Guides, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.</p>
<p>Small Firm (2-5 attorneys)</p> <ul style="list-style-type: none"> Does the firm have written risk management policies? 				<ul style="list-style-type: none"> SCR 20:5.1 requires lawyers with supervisory responsibility to implement reasonable measures to ensure rule compliance. A written manual of firm policies is an important tool for managing risk. It enables you and your staff to know and put act on the necessary preventive and curative steps. Each employee should receive a copy of the manual. Train new hires to follow each procedure that applies to their position. All staff should attend a regular “refresher course” on policies listed in the manual. The policies should become an organic part of the firm’s operation. 	<p>See Small Firm Business Manual and Risk Management available at https://coloradosupremecourt.com/.</p> <p>Risk Management Guides, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
REPORTING					
Sole Practitioner					
<p>Are your staff aware of the requirement to timely report to you:</p> <ul style="list-style-type: none"> • Ethics violations? • Court-ordered sanctions for litigation misconduct? • Regulatory investigations? • Client allegations of malpractice or wrongdoing by firm lawyers or staff? • Billing disputes? • Alcohol, drug, or other employee problems? • Over-charging expenses to clients? • Incompetence? • Unauthorized practice of law? • Harassment? • Any other matters that impede client satisfaction? 				<ul style="list-style-type: none"> • You cannot reduce risk unless problems are timely reported. The sooner problems are disclosed, the more likely they are to be resolved without serious adverse consequences. The firm’s culture must foster an appreciation that each employee owes loyalty to the firm’s clients and the firm’s reputation, not to an individual who might prefer to hide a mistake. Assure employees that reporting problems is appreciated and will not result in retaliation. • These areas of potential concern implicate multiple Rules of Professional Conduct including, SCR 20:1.1, SCR 20:1.3, SCR 20:1.4, SCR 20:1.5(a), SCR 20:3.4(c), SCR 20:5.5, SCR 20:8.1, SCR 20:8.3. 	<p>Ethics Hotline, (800) 254-9154.</p> <p>Timothy J. Pierce & Sally E. Anderson, <i>What to Do After Making a Serious Error</i>, Wis. Law. (Feb. 2010).</p> <p>Thomas J. Watson, <i>Managing Risk: When Mistakes Occur, Honesty is the Best (Noninsurance) Policy</i>, Wis. Law. (July 2017).</p>
Are staff supported in making such reports?				<ul style="list-style-type: none"> • If feasible, allowing reports to be made confidentially may encourage greater reporting. 	
Small Firm (2-5 attorneys)					
<p>Are the lawyers and staff aware of the requirement to timely report to the Compliance Counsel:</p> <ul style="list-style-type: none"> • Ethics violations? • Court-ordered sanctions for litigation misconduct? • Regulatory investigations? • Client allegations of malpractice or wrongdoing by firm lawyers or staff? • Billing disputes? • Alcohol, drug, or other employee problems? • Over-charging expenses to clients? • Incompetence, unauthorized practice of law, harassment, and any other matters that impede client satisfaction? 				<ul style="list-style-type: none"> • You cannot reduce risk unless problems are timely reported. The sooner problems are disclosed, the more likely they are to be resolved without serious adverse consequences. The firm’s culture must foster an appreciation that each employee owes loyalty to the firm’s clients and the firm’s reputation, not to an individual who might prefer to hide a mistake. Assure employees that reporting problems is appreciated and will not result in retaliation. 	<p>Ethics Hotline, (800) 254-9154.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Are lawyers and staff supported in making such reports?				<ul style="list-style-type: none"> If feasible, allowing reports to be made confidentially may encourage greater reporting. 	
<u>SUPERVISION</u>					
<u>Sole Practitioner: Do you...</u>					
<ul style="list-style-type: none"> Conduct training to ensure lawyer and nonlawyer staff are able to comply with the lawyer's ethical obligations? Conduct performance reviews of staff? 				<ul style="list-style-type: none"> SCR 20:5.1 & SCR 20:5.3. Ongoing monitoring and mentoring of employees makes sense from a business standpoint. Clients are attracted to and retained by success. Successful lawyering requires proficiency and efficiency. To achieve these goals, managers must require that employees perform well. Those who cannot meet firm standards should be terminated. Performance reviews conducted at least annually are critical to reinforce professionalism and efficiency. 	
<ul style="list-style-type: none"> Have procedures in place to ensure staff conduct conforms to your professional obligations? 				<ul style="list-style-type: none"> Staff need written direction and verbal explanation as to what conduct the firm requires. SCR 20:5.3. You may wish to develop a handbook that addresses staff professional obligations. 	<p>See Sole Practitioner Staff Procedures Checklist available at www.coloradosupremecourt.com.</p> <p>Dean R. Dietrich, <i>Ethics: Supervising Lawyers: Accountability for Others' Work</i>, Wis. Law. (Mar. 2012).</p> <p>Christopher C. Shattuck, <i>Managing Your Digital Files</i>, Wis. Law. (June 2018).</p>
<ul style="list-style-type: none"> Regularly review each client matter to check that you and staff have timely performed tasks? 				<ul style="list-style-type: none"> Missed deadlines and work not completed are among the most common ethics complaints. SCR 20:1.3. SCR 20:1.4. 	<p>These checks may include:</p> <ul style="list-style-type: none"> That pleadings have been filed; Client inquiries responded to; Fund deposited in trust; Deadlines calendared. <p>Also consider regular meetings with each staff member regarding ongoing assignments.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Small Firm (2-5 attorneys): Does the firm...					
<ul style="list-style-type: none"> Conduct regular performance reviews of associates and staff? 				<ul style="list-style-type: none"> SCR 20: 5.3 mandates supervision of attorneys and nonlawyer staff to ensure professionalism. Ongoing monitoring and mentoring of attorneys and employees also makes sense from a business standpoint. Clients are attracted to and retained by success. Successful lawyering requires proficiency and efficiency. To achieve these goals, managers must require that attorneys and employees perform well. Those who cannot meet firm standards should be terminated. 	
<ul style="list-style-type: none"> Have a mentoring program for its associates? 				<ul style="list-style-type: none"> Mentoring associates improves their performance and, as a result, improves firm performance. 	Ready. Set. Practice. Lawyer to Lawyer Mentoring Program at State Bar of Wisconsin.
<ul style="list-style-type: none"> Have procedures in place to ensure staff conduct conforms to your professional obligations? 				<ul style="list-style-type: none"> Staff need written direction and verbal explanation as to what conduct the firm requires. SCR 20:5.3. You may wish to develop a handbook that addresses staff professional obligations. 	<p>See Small Firm Staff Procedures Checklist available at www.coloradosupremecourt.com.</p> <p>Risk Management Guides, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.</p>
HIRING					
Sole Practitioner					
<ul style="list-style-type: none"> Do you perform due diligence before hiring new staff? 				<ul style="list-style-type: none"> You must be careful to avoid hiring employees who will create problems down the road. In addition to the interview, you should thoroughly investigate the applicant's background, particularly problems during recent employment. You may also want to verify academic degrees and conduct a background check. 	
Small Firm (2-5 attorneys)					
<ul style="list-style-type: none"> Does the firm undertake due diligence before hiring new associates and staff? 				<ul style="list-style-type: none"> The firm should be cautious when hiring employees to prevent future issues. The hiring manager should thoroughly investigate the applicant's background, including recent employment issues & professional liability claims. When lawyers transfer from another firm, owners or Compliance Counsel should troubleshoot their cases. Compliance Counsel may also verify academic history. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Are new hires oriented regarding the firm's risk management policies? 				<ul style="list-style-type: none"> Educate new employees about risk management to avoid situations in which new employees do not follow the policies and an ethical concern arises. 	
TERMINATION OF STAFF					
Sole Practitioner					
<ul style="list-style-type: none"> Do you take steps when a staff member is terminated or leaves the firm to ensure client files remain confidential? 				<ul style="list-style-type: none"> If a staff member is terminated, your priority should be maintaining security and confidentiality. This means return of all firm property and cutoff from all access. This may entail changing passwords, and introducing clients to new staff who will be working on the case. 	See Employee Resignation/Termination Checklist available at www.coloradosupremecourt.com .
Small Firm (2-5 attorneys)					
<ul style="list-style-type: none"> When a lawyer, paralegal, or staff member is terminated or leaves the firm, does the firm take steps to ensure confidentiality of client matters? 				<ul style="list-style-type: none"> If a lawyer or staff member is terminated, your priority should be maintaining security and confidentiality. This means return of all firm property and cutoff from all access. If the firm continues as counsel for the departing lawyer's clients, transition of the files should include introducing of the clients to the new lawyer assigned to their cases. 	See Wisconsin Employment Law available on wisbar.org/marketplace . See Employee Resignation/Termination Checklist available at www.coloradosupremecourt.com .
ACCEPTING NEW ENGAGEMENTS					
Sole Practitioner					
<ul style="list-style-type: none"> Do you undertake due diligence before agreeing to represent new clients or taking on additional matters for an existing client, including assessing your competency and the client's capacity to pay? 				<ul style="list-style-type: none"> Clients who are financially weak may not be appropriate to take on, unless you can afford pro bono representation. 	See Sole Practitioner Client Engagement Checklist available at www.coloradosupremecourt.com . See Self-Assessment Module #1.
Small Firm (2-5 attorneys)					
<ul style="list-style-type: none"> Does the firm undertake due diligence before agreeing to represent new clients or taking on additional matters for a client, including considering your competency and the client's capacity to pay? 				<ul style="list-style-type: none"> Clients who are financially weak may not be appropriate to take on, unless you can afford pro bono representation. 	See Small Firm Client Engagement Checklist available at www.coloradosupremecourt.com .
PROVISION OF LAW-RELATED SERVICES					
<ul style="list-style-type: none"> Are you engaged in law-related services or do you control an organization that provides such services? If so, do you need to take measures to assure clients that the services are not legal services? 				<ul style="list-style-type: none"> SCR 20:5.8 details when an attorney may be bound by the Rules of Professional Conduct with respect to providing law-related services. 	Timothy J. Pierce, <i>Ethics: Dual Practice: Combining the Practice of Law with Other Occupations</i> , Wis. Law. (April 2006).

Question	Yes	No	N/A	Ethical Implications	Other Resources
DISENGAGEMENTS					
Sole Practitioner: Do you...					
<ul style="list-style-type: none"> Have a policy requiring a letter be sent to each client or successor counsel promptly following a file closing? 				<ul style="list-style-type: none"> A closing letter prevents confusion as to whether the attorney is still representing the client if there is subsequent litigation. It also allows a lawyer to end the attorney-client relationship on a positive, cordial note. 	Miranda Mandel, <i>Ethical & Liability Concerns When the Client Relationship Ends</i> , Atty's Liab. Assurance Soc'y, Inc. (2014).
<ul style="list-style-type: none"> Have a standard procedure for returning unearned fees and other client funds to clients? 				<ul style="list-style-type: none"> SCR 20:1.16(d). 	
<ul style="list-style-type: none"> Have a procedure for collecting accounts receivable? 				<ul style="list-style-type: none"> SCR 20:1.16(d). 	
<ul style="list-style-type: none"> Have a standard procedure for notifying the court of your disengagement? Have a policy regarding the resolution of client disputes? 				<ul style="list-style-type: none"> The advanced fee alternative, SCR 20:1.5(g), requires a lawyer to submit unresolved fee disputes to arbitration. 	Miranda Mandel, <i>Ethical & Liability Concerns When the Client Relationship Ends</i> , Atty's Liab. Assurance Soc'y, Inc. (2014).
Small Firm (2-5 attorneys): Do you...					
<ul style="list-style-type: none"> Have a policy requiring a letter be sent to each client or successor counsel promptly following the closing of a file? 				<ul style="list-style-type: none"> A closing letter prevents confusion as to whether the attorney is still representing the client if there is subsequent litigation. It also allows a lawyer to end the attorney-client relationship on a cordial, positive note. 	Miranda Mandel, <i>Ethical & Liability Concerns When the Client Relationship Ends</i> , Atty's Liab. Assurance Soc'y Inc. (2014). Ethical Dilemma ED-2017-9-4.
<ul style="list-style-type: none"> Have a procedure for returning unearned fees and other client funds upon disengagement? 				<ul style="list-style-type: none"> SCR 20:1.16(d). 	
<ul style="list-style-type: none"> Have a procedure for collecting accounts receivable? 					
<ul style="list-style-type: none"> Have Compliance Counsel review an unpaid balance before a collection action is commenced? 					
<ul style="list-style-type: none"> Have a procedure for notifying the court of its disengagement? 					Attorney -Client Relationships, Lawyers Mutual Liability Insurance Company of North Carolina available at lawyersmutualinc.com.
<ul style="list-style-type: none"> Have tail malpractice coverage if the firm is selling or ending its business? 					
CLOSING					
Sole Practitioner					
<ul style="list-style-type: none"> Do you have written plans for winding down your practice? Do they provide guidance and procedures for the unexpected absence or inability to practice law? 				<ul style="list-style-type: none"> In closing your practice, you need to notify clients, opposing counsel, and courts. You also need to return client files or transfer them and return unearned funds. You may consider tail malpractice insurance. 	<i>After All, You Are Only Human: The Solo Practitioner's Handbook for Disability and Death</i> , the handbook created by the State Bar's Solo/Small Firm & General Practice Section.

Module #7 — Charging Appropriate Fees and Making Appropriate Disbursements

Except in circumstances in which a lawyer has previously represented a client, a lawyer is required to communicate to a client the scope of representation, the basis or rate of the fee and whether the client will be responsible for expenses. If it is reasonably foreseeable that the total cost of the matter to the client will exceed \$1000, this communication must be in writing. In considering what provisions the agreement should contain, counsel should address the following questions:

Question	Yes	No	N/A	Ethical Implications	Other Resources
Have you identified the client properly?					
<ul style="list-style-type: none"> If the client is an entity, does the person with whom you are dealing have the authority to bind the client? 				<ul style="list-style-type: none"> SCR 20:1.13. 	
<ul style="list-style-type: none"> If someone other than the client is paying your fee, do you have a separate understanding written with that person? Does the understanding identify to whom any unearned fees will be refunded? Has the client consented? 				<ul style="list-style-type: none"> SCR 20:1.8(f). Does the separate understanding make it clear that only the client controls the representation and that the lawyer cannot disclose any information to a third-party payor without the informed consent of the client? 	Ethical Dilemma, ED-2022-7-20.
<ul style="list-style-type: none"> Does the client have policies that require in-house approval of your fee agreement? 					
If you have represented the client before, is there a good reason not to have a new fee agreement for the new matter?				<ul style="list-style-type: none"> SCR 20:1.5(b)(1). 	<p>Wisconsin Ethics Op. E-09-03: Communications Concerning Attorney's Fees and Expenses.</p> <p>Gretchen Viney, 101: Using the Fee Agreement to Build Client Rapport, Wis. Law. (Nov. 2013).</p>
Have you adequately described in your fee agreement or engagement letter the scope of the representation, the basis or rate of the fee, and the expenses for which the client will be responsible?				<ul style="list-style-type: none"> SCR 20:1.5(b)(1) & SCR 20:1.2(c). Precision in describing the scope of the representation avoids disputes as to what services were contemplated. In a litigation matter, for example, a lawyer may want to exclude an obligation to file an appeal. In an entity formation matter, a lawyer should consider whether to include that the representation covers tax advice. 	<p>Wisconsin Ethics Op. E-09-03: Communications Concerning Attorney's Fees and Expenses.</p> <p>Marian Rice, <i>Engagement Letters: Beginning a Beautiful Relationship</i>, L. Practice Mag. (May/June 2013).</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> If you are providing a limited scope representation, are your responsibilities clearly defined? Did you obtain the client's informed consent? 				<ul style="list-style-type: none"> SCR 20:1.2(c). 	
Do you clearly explain your fees?				<ul style="list-style-type: none"> SCR 20:1.5(b)(1). 	
<ul style="list-style-type: none"> If your fees may be recoverable from another party, does your agreement make it clear to the client whether they are still responsible? 					
<ul style="list-style-type: none"> Do you comply with one of the advanced fee alternatives? 				<ul style="list-style-type: none"> SCR 20:1.5(f) & (g). 	"Legal Fees and Costs," https://www.wicourts.gov/olr .
If the fee agreement involves a retainer, have you explained how unearned fees will be held in trust prior to being earned? Does the retainer meet the definition in SCR 20:1.0(mm)?					Revised Wisconsin Ethics Op. E-93-4: Nonrefundable Retainers and Advanced Fees.
For flat fee agreements, have you clearly defined how you earn your fee? Have you...				<ul style="list-style-type: none"> SCR 20:1.0(dm). 	
<ul style="list-style-type: none"> Set milestones for earning increments or considered another metric (other than time) by which the fee shall be considered earned? 					
<ul style="list-style-type: none"> Appropriately provided for what happens if the representation is terminated before the goal of the representation is accomplished? 					
<ul style="list-style-type: none"> Made sure not to include any "non-refundable" fee language? 					Wisconsin Ethics Op. E-93-4: Nonrefundable Retainers and Advanced Fee.
For a contingent fee agreement, have you complied with SCR 20:1.5(c) & (d)?					Office of Lawyer Regulation, <i>Trust Account Manual</i> .
<ul style="list-style-type: none"> Does your contingent fee agreement clearly define the gross recovery that is subject to the percentage you earn? 					Gina Hendryx, <i>Contingency Fee Agreement Checklist</i> , Okla. Bar J. (Jan. 16, 2010).

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> Is it clear that your client is responsible for costs and expenses even if the client recovers nothing? 					Gina Hendryx, <i>Contingency Fee Agreement Checklist</i> , Okla. Bar J. (Jan. 16, 2010).
Have you accurately described costs and expenses?				<ul style="list-style-type: none"> SCR 20:1.5(b). 	Wisconsin Ethics Op. E-09-03: Communication Concerning Attorney's Fees and Expenses.
<ul style="list-style-type: none"> If you advance costs or expenses, when is your client obligated to reimburse you? 					Office of Lawyer Regulation, <i>Trust Account Manual</i> .
<ul style="list-style-type: none"> Is it clear that the client is responsible for certain costs like postage, copying, depositions, transcripts, service of process? 					SDCBA Legal Ethics Opinion 2013-3, San Diego County Bar Ass'n. (July 16, 2013).
<ul style="list-style-type: none"> Have you considered a cost retainer to ensure that persons providing services will be paid because it would otherwise be your responsibility? 					<i>Sutton v. Theuerkauf</i> , 102 Wis. 2d 176, 306 N.W.2d 651 (1981).
If you are working with a lawyer on the case who is outside your firm, has the client consented and have the responsibilities of each lawyer been clearly defined?				<ul style="list-style-type: none"> SCR 20:1.5(e). 	Wisconsin Ethics Op. EF-10-02: Ethical Responsibility of Lawyers When Referral Fees are Received.
Have you described how other lawyers or paralegals who work on the matter will be compensated?				<ul style="list-style-type: none"> SCR 20:1.5(b). 	
If your client is considering the proposed fee agreement, have you stated when you must have a signed fee agreement in order to commence work?				<ul style="list-style-type: none"> SCR 20:1.5(b) provides that the lawyer shall communicate to the client in writing the basis or rate of the fee before or within a reasonable time after commencing the representation. 	
<ul style="list-style-type: none"> Is time of the essence? If you must have money before work begins, have you made this clear to the potential client? 				<ul style="list-style-type: none"> If you must have money before commencing work, explain this to the potential client. 	
<ul style="list-style-type: none"> Do you have a system to track unsigned, outstanding proposed fee agreements? 					
Have both you and your client signed the fee agreement?				<ul style="list-style-type: none"> Although not expressly required under the Wisconsin Rules of Professional Conduct, a lawyer should obtain a signed fee agreement. The client's agreement should be memorialized. 	

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do you have an appropriate arbitration clause in your fee agreement?				<ul style="list-style-type: none"> SCR 20:1.5, comment 9. SCR 20:1.5(g). 	ABA Ethics Op. 02-425 Retainer Agreement Requiring Arbitration of Fee Disputes and Malpractice Claims.
<p>If withdrawal becomes necessary, do you have a procedure to explain to your client the circumstances under which you may be forced to ask the court for permission to withdraw, or when you have to do so in a non-litigation matter?</p> <p>Do you have procedures to ensure unearned fees are refunded promptly?</p>				<ul style="list-style-type: none"> SCR 20:1.16(a) & (d). 	<p>Helen Gunnarsson, <i>Avoiding Withdrawal Pains</i>, Ill. Bar J. (May 2010).</p> <p>Dean R. Dietrich, <i>Ethics: Withdrawing When a Client Doesn't Pay</i>, Wis. Law. (Sept. 2005).</p>
Does the fee agreement explain the rights you and the client have to withdraw or terminate the relationship based on certain events or conduct, such as non-payment or non-cooperation?					Helen Gunnarsson, <i>Avoiding Withdrawal Pains</i> , Ill Bar J. (May 2010).

Module #8 — Ensuring Reliable Trust Account Practices are Used

Lawyers must establish a trust account if they accept fees from clients for work they have not yet performed or for expenses not yet incurred. In addition, lawyers who receive client settlement funds or hold a third party’s funds as part of a legal representation must have a trust account. The obligation to establish a trust account springs from an attorney’s fiduciary duty to clients and third parties and the related duty to safeguard property belonging to others. Under the Wisconsin Rules of Professional Conduct, lawyers have to keep funds that belong to clients or third persons separate from the lawyer’s own property. This includes separate from the lawyer’s business or personal accounts.

Lawyers can find the rules pertaining to trust account management at SCR 20:1.15. These rules cover trust account issues ranging from record keeping, to who may withdraw funds, to when account reconciliation must occur.

Proper trust account management is essential to an ethical, professional practice. The following self-assessment contains questions that lawyers required to have a trust account should consider in managing and maintaining such an account.

Question	Yes	No	N/A	Ethical Implications	Other Resources
Client Trust Account Overview				Any lawyer in private practice shall maintain a trust account for: <ul style="list-style-type: none"> advanced payment of fees that have not been earned, advanced payment of expenses, funds that have been entrusted to the lawyer’s care in connection with a representation. 	Wisconsin Court System – Trust Account Program, Office of Lawyer Regulation, <i>Trust Account Manual</i> .
Do you hold funds for your clients or third parties as part of your legal representation of another?					Wisconsin Court System – Trust Account Program.
<ul style="list-style-type: none"> If so, do you have a client trust account? 				<ul style="list-style-type: none"> SCR 20:1.15(c). 	Wisconsin Trust Account Foundation.
<ul style="list-style-type: none"> Is it an IOLTA account? Is your general client trust account or IOLTA account labeled as either “trust” account or “client” account? Have you filed an overdraft agreement with OLR for every draft trust and fiduciary account? 				<ul style="list-style-type: none"> SCR 20:1.15(b)(2). SCR 20:1.15(h). 	Trust Account Program, www.wicourts.gov/olr .
Do you practice in more than one state or does your firm practice in multiple jurisdictions?					Out-of-State Lawyers: Trust Account Requirements available at https://www.wicourts.gov/services/attorney/trust.htm
<ul style="list-style-type: none"> If so, do you or your firm maintain a client trust account in each state in which you or your firm practices? 					

Question	Yes	No	N/A	Ethical Implications	Other Resources
<ul style="list-style-type: none"> If so, do you or your firm follow each state's varying rules of professional conduct concerning trust accounts? 				<ul style="list-style-type: none"> Jurisdictions vary in their trust account management requirements. Lawyers who practice in multiple jurisdictions should familiarize themselves with jurisdiction-specific trust account rules. 	<p>Steven J. Best, <i>A Lawyer's 7-Point Plan for Trust Account Management</i>, LexisNexis Law Firm Practice Management White Paper Series (2013), at p. 2.</p> <p><i>Managing Trust Accounting for Compliance</i>, LexisNexis Best Practice (2010).</p>
For funds held as part of your Wisconsin practice, is your trust account at an approved bank doing business in the State of Wisconsin?				<ul style="list-style-type: none"> SCR 20:1.15(b)(2). 	IOLTA participating institutions available at https://www.wistaf.org/ .
Do you have Wisconsin clients who want the funds you hold for them placed in a non-IOLTA account?				<ul style="list-style-type: none"> SCR 20:1.15(c). 	
<ul style="list-style-type: none"> If so, do you have a form for obtaining client consent to place funds outside of a traditional client trust account? 				<ul style="list-style-type: none"> Lawyers using non-traditional trust accounts may wish to obtain written client consent to such an arrangement to memorialize the agreement. 	
Who in your firm is responsible for operating the client trust account?					<p>OLR Guidelines for Trust Account Records.</p> <p><i>Managing Trust Accounting For Compliance</i>, LexisNexis Best Practice (2010).</p>
Do you keep unearned fees in your client trust account/IOLTA account until you have earned the funds?				<ul style="list-style-type: none"> SCR 20:1.5(f) & (g). 	Sheila Blackford, <i>Managing Your Client Trust Account: Where the Buck Stops</i> , L. Practice Mag. (Jan/Feb. 2011).
Do you notify the client of your removal of earned funds within a reasonable time?				<ul style="list-style-type: none"> SCR 20:1.15(e). 	Ed Poll, <i>Trust Accounts: Accountability, Access, and Advantages</i> , L. Practice Today (Jan. 24, 2015).
Do you have policies and procedures in place to ensure that you do not deposit business or personal funds in to your trust account?				<ul style="list-style-type: none"> SCR 20:1.15(b)(3). Lawyers cannot use their trust account as a personal account for holding or hiding personal assets. Likewise, it would be inappropriate for a law firm to deposit in a trust account the money the firm plans to use on a holiday party. Another example of such a problem is a lawyer who has stock market sales receipts wired into the trust account. 	<p>Office of Lawyer Regulation, Trust Account Manual.</p> <p>OLR, Trust Account Manual, Commingling.</p> <p>Amy DeVan, <i>Use of the Client Trust Account: What Not to Do</i>, The Docket (June 30, 2016).</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do you deposit all items intact into your client trust account/IOLTA account?				<ul style="list-style-type: none"> SCR 20:1.15(f)(2)a. 	
Do you hold disputed funds in your client trust account/IOLTA account until the dispute is resolved voluntarily or by court action?				<ul style="list-style-type: none"> SCR 20:1.15(e)(3). 	<p>Wisconsin Ethics Op. E-09-01 Lawyer's Responsibilities When a Client Gives a Third Party a "Lien" on Settlement Proceeds.</p> <p>See Wisconsin Ethics Opinions.</p>
Do you provide a prompt accounting to your clients or third parties for whom you have or are still holding funds?				<ul style="list-style-type: none"> SCR 20:1.15(e)(2). 	
Do you comply with the trust account recordkeeping guidelines published by Office of Lawyer Regulation?				<ul style="list-style-type: none"> SCR 20:1.15(g) requires lawyers to keep complete records. 	OLR Guidelines for Trust Account and Fiduciary Account Records, available at wicourts.gov .
Do you maintain copies of all trust account records for a period of six years after termination of the representation?				<ul style="list-style-type: none"> SCR 20:1.15(g)(1). 	
To promote compliance with your recordkeeping requirements, do you keep a generalized ledger that lists all transactions in your trust account? Do you also keep separate client and administrative ledgers?					Office of Lawyer Regulation, Trust Account Manual.
Do you have policies and procedures to ensure that a reconciliation of your trust account occurs at least monthly and that a lawyer admitted in Wisconsin or a person under such a lawyer's supervision performs the reconciliation?					Office of Lawyer Regulation, Trust Account Manual.
As part of the reconciliation, do you ensure that the balance on your trust account bank statement is the same as that in the general ledger or check register with adjustments?					
When reconciling do you make sure each client ledger balance adds to the same balance as in the trust account bank statement?					

Question	Yes	No	N/A	Ethical Implications	Other Resources
Do you have a training program for any nonlawyer who has day-to-day trust account management duties that covers how to handle client or third party funds? Have you and your delegee attended Office of Lawyer Regulation's Trust Account Management Seminar?				<ul style="list-style-type: none"> SCR 20:5.3. 	Office of Lawyer Regulation, Trust Account Manual.
<p>If you delegate trust account management duties to a nonlawyer, ensure that you actively oversee the nonlawyer's work by:</p> <ul style="list-style-type: none"> Reviewing monthly bank statements; Reviewing the trust account general ledger monthly; Reviewing client ledgers monthly; Reviewing images of cancelled checks monthly; <p>Reviewing trust account reconciliation whenever it is performed.</p>				<ul style="list-style-type: none"> SCR 20:5.3. 	Office of Lawyer Regulation, Trust Account Manual.
Do you intend to make or accept electronic payments, including payments for advanced fees and advanced costs, in your trust account?				<ul style="list-style-type: none"> SCR 20:1.15(f)(1) 	Aviva Meridian Kaiser, Timothy J. Pierce & Travis J. Stieren, <i>2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted</i> , Wis. Law. (June 2023).
Do you maintain commercially reasonable security measures in your trust account?				<ul style="list-style-type: none"> SCR 20:1.15(f)(1). 	Office of Lawyer Regulation, Commercially Reasonable Security for Electronic Transactions.
Do you have policies and procedures in place to ensure that all electronic transactions are authorized by a lawyer or a person under the direct supervision of a lawyer?				<ul style="list-style-type: none"> SCR 20:1.15(f)(1). SCR 20:5.3. 	SCR 20:1.15(f)(1), comment.
Have you arranged for any shortfalls or negative balances in the trust account due to chargebacks, surcharges, or ACH reversals to be reimbursed within three business days, preferably from your operating account?				<ul style="list-style-type: none"> SCR 20:1.15(f)(1). 	<p>Aviva Meridian Kaiser, Timothy J. Pierce & Travis J. Stieren, <i>2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted</i>, Wis. Law. (June 2023).</p> <p>SCR 20:1.15(f)(1)), comment.</p>

Question	Yes	No	N/A	Ethical Implications	Other Resources
<p>Do you have policies and procedures in place with respect to service fees charged by electronic payment processors?</p> <p>To the extent that you hold clients responsible for any such service fees or charges, have you provided the clients with advance written notice and obtained the clients' consent? Are such disclosures in writing, to the extent necessary to comply with SCR 20:1.5(b)? Does charging service or processing fees to your clients violate the terms of service agreement with your payment processor or other law?</p> <p>If possible, have you arranged for any electronic payment processing fees and service charges to be paid from your operating account rather than from your trust account?</p>				<ul style="list-style-type: none"> • SCR 20:1.15(f)(1). • SCR 20:1.5(b). 	<p>Aviva Meridian Kaiser, Timothy J. Pierce & Travis J. Stieren, <i>2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted</i>, Wis. Law. (June 2023).</p> <p>SCR 20:1.15(f)(1)), comment.</p>
<p>Before accepting electronic payments to your trust account, have you considered the possible tax ramifications?</p>					<p>Aviva Meridian Kaiser, Timothy J. Pierce & Travis J. Stieren, <i>2023 Amendments to the Trust Account Rule: Electronic Transactions Permitted</i>, Wis. Law. (June 2023).</p>

Module #9 — Access to Justice and Client Development

An important part of the administration of justice in our state is ensuring that people of all economic levels and geographic locations have access to the courts and to competent, licensed professional legal assistance. This self-assessment is designed to help lawyers evaluate their practices and procedures relating to this important principle. Because tackling the justice gap necessarily involves reaching out to underserved communities, it also provides guidelines concerning client development.

Access to Justice: Lawyers have a duty to promote and protect the public interest. One of the most significant issues currently facing legal service consumers is meaningful access to justice. For purposes of this assessment, “access to justice” is defined as a concept much broader than access to the courts and litigation. It encompasses a recognition that everyone is entitled to the protection of the law. It is about protecting ordinary and vulnerable people and solving their problems.

Improving access to justice in Wisconsin requires leadership and change that reaches well beyond the traditional construct of legal aid. The responsibility must also fall to law firms and other for-profit legal organizations to look inward at what they might do themselves to better meet their obligations to promote and protect the public interest. Encouraging pro bono or other volunteer work, as well as exploring alternative fee arrangements and limited scope agreements (where appropriate and permitted), are examples of some tangible steps that firms can take to do their part to close the justice gap.

Additionally, lawyers and law firms should explore how they interact with self-represented parties. One aspect of the access to justice crisis in Wisconsin is that legal services have become increasingly expensive, and are unaffordable for many people who need legal services. Another aspect involves the concept of legal deserts, wherein large rural areas of Wisconsin are experiencing a shortage of attorneys needed to adequately represent the needs of their communities. These situations have resulted in a significant number of self-represented parties. Studies show that a significant number of self-represented litigants have complaints about the opposing counsel with whom they interact. Many lawyers also report challenges in communicating or negotiating with self-represented litigants. This suggests, at the very least, that lawyers need more information and training in dealing with self-represented litigants.

Client Development: Client development and access-to-justice issues are closely tied together. When law firms are willing to retain clients using alternative fee structures and limited scope representation, more people are aware of and able to access legal services, while lawyers expand their books of business and diversify revenue streams. This is a classic example of a win-win. Providing legal services at reduced rates for low-income clients, adopting alternate billing models, and providing unbundled services are all examples of ways that lawyers can both bridge the justice gap and develop new clients.

Question	Yes	No	N/A	Suggested Systems & Practices	Resources
Objective 1: Creating an efficient business structure that has room for alternative operational strategies to reduce expenses and improve sustainability.					
Have you carefully considered your monthly expenses and overhead, and ways to reduce your expenses such as: <ul style="list-style-type: none"> • Office sharing • Phone service • Investigator pricing • Staff • Supplies/equipment 				<ul style="list-style-type: none"> • A law firm can minimize expenses by efficient infrastructure management, enhancing profitability. Utilizing tools like a state-of-the-art case management system reduces the need for additional staff, allowing lawyers to take on pro bono and modest means cases. Sharing office space can save money, but it's important to be aware of the limitations and ethics requirements when considering non-lawyer office sharing. 	Wisconsin Ethics Op. E-00-02: Sharing Office Space with Unrelated Entities. Joe Forward, <i>The Economics of Law Practice</i> , Wis. Law. (Feb. 2018).

Question	Yes	No	N/A	Suggested Systems & Practices	Resources
Do you use technology to increase your efficiency and increase your ability to provide legal services at a lower cost/hourly fee?				<ul style="list-style-type: none"> Computer programs – such as for timekeeping, case management, etc., can increase productivity and reduce manual hours spent (and reduce stress). 	Christopher C. Shattuck, <i>AI and Emerging Technology Can Increase Law Practice Efficiencies</i> , Wis. Law. (May 2023).
Objective 2: Having an effective office set-up that is conducive to providing services to a broader population.					
<p>Do you have a plan to promote cultural competency in your office?</p> <p>Does that plan include recruitment practices that consider diversity as relevant to promoting access to justice?</p>				<ul style="list-style-type: none"> Consider training to help lawyers and staff develop strategies for dealing with non-English speaking clients, low-income clients, and clients who may have had prior bad experiences with the justice system. Develop training to help lawyers effectively reach out to underserved populations who may not understand the American legal system. Consider setting up appropriate expectations and practices – including hiring – to allow the office to be responsive to the community. Diversity is a legitimate consideration in this regard. 	<p>New York City Bar Association Minorities in the Profession Committee, Best Practices Standards for the Recruitment, Retention, Development, and Advancement of Racial/Ethnic Minority Attorneys.</p> <p>Minority Corporate Counsel Association, <i>Creating Pathways to Diversity</i>.</p> <p>Carlos R. Pastrana, <i>As I See It: Is Your Law Firm Truly Committed to Diversity?</i>, Wis. Law. (Sept. 2020).</p> <p>State Bar of Wisconsin – Diversity Clerkship Program.</p>
Does your firm have bilingual staff or access to interpreter/translator services?				<ul style="list-style-type: none"> Hiring bilingual staff or providing interpreter/translator services will help in outreach and service to non-English speaking or English-as-a-second-language clients. 	Dean R. Dietrich, <i>Hiring a Translator? Yes, There Are Rules</i> , Wis. Law. (Mar. 2018).
Do you provide formal or informal training to help staff interact with the public and potential clients?				<ul style="list-style-type: none"> Training is important for lawyers and staff alike. Simple tasks such as answering phones and responding to inquiries from clients, potential clients, and pro se parties are some of the office’s most important PR. Keep in mind that these interactions are sometimes a person’s first encounter with the legal system – make sure it is positive and respectful. 	<p>Successful Business Planning: Representing the Moderate Income Client Income, Colorado Bar Association Modest Means Task Force.</p> <p>State Bar of Wisconsin – Diversity and Inclusion Oversight Committee.</p>

Question	Yes	No	N/A	Suggested Systems & Practices	Resources
Do you provide alternatives for clients with less ability to travel (such as to your office or normal work site) or potential clients who need off-hour meetings?				<ul style="list-style-type: none"> Potential clients and clients might not be able to leave their work during business hours. Can the firm meet with these people? Some individuals might not have transportation options. Can you accommodate them? 	Consider alternative meeting options such as, Zoom or Teams, as well as home visits or meetings at a local library or other appropriate locations (while being cautious about client confidentiality for public meetings).
Objective 3: Implementing alternative billing arrangements to bring in business and bridge the justice gap.				<ul style="list-style-type: none"> It is important that strategies and practices are in place that help the firm think broadly about taking diverse clients who might not be able to access a lawyer. 	Justice Index 2021, National Center for Access to Justice, Fordham Law School.
Do you use alternative pay arrangements based on income level?				<ul style="list-style-type: none"> These can include payment plans, reduced fees, sliding scale fees, and modest means fee structures, unbundled services, and pro bono. 	<p>Alternative Fee Arrangement for Law Firms: 9 Examples available at Clio.com.</p> <p>Successful Business Planning: Representing the Moderate Income Client Income, Colorado Bar Association Modest Means Task Force.</p>
Do you provide limited scope representation, that is, unbundled services?				<ul style="list-style-type: none"> Remember obligations in both state and federal court. A clear letter laying out the limitations of the representation is crucial. See SCR 20: 1.2. 	<p>Institute for the Advancement of the American Legal System, <i>Unbundling Legal Services: A Guide for Lawyers</i> (2015).</p> <p>Joe Forward, <i>Are You Ready? New Limited-Scope Representation Rules Take Effect in 2015</i>, InsideTrack (Nov. 5, 2014).</p>
If you are unable to take a client, do you direct them to resources for modest means and indigent clients?				<ul style="list-style-type: none"> In providing access to justice for individuals who are confronted with a legal problem, it is important to think about whether simply saying “no” is the best answer. It is important to redirect a person to the right resources for their situation. 	<p>Wisconsin Free Legal Answers.</p> <p>State Bar of Wisconsin – Lawyer Referral & Information Service or Modest Means Program.</p> <p>Wisconsin State Law Library – Legal Assistance.</p>

Question	Yes	No	N/A	Suggested Systems & Practices	Resources
Objective 4: The Firm or Lawyer Provides Pro Bono and Other Volunteer Services					
Do you take on pro bono work and encourage other lawyers in the firm to do so too?				<ul style="list-style-type: none"> • Pro bono and other community volunteer activity is encouraged by the law firm and considered in performance evaluations (eg., billable hour credits are provided or annual goals are set). • A written pro bono policy is in place. • You are required to participate in pro bono work. • Your entity encourages pro bono work. • Pro bono hours “count” toward billable hour targets. • You spend the needed time with the client and are empathetic. • Consider SCR 20:6.1. 	ABA Standing Committee on Pro Bono & Public Service and the Center for Pro Bono – Resources for Law Firms.
Objective 5: Using Effective Client Development Strategies to Increase Business and Bridge the Justice Gap					
Do you have a marketing strategy?				<ul style="list-style-type: none"> • Lawyers should attempt to be a part of the legal and nonlegal community. One way is to network with local bar associations or other legal groups. Lawyers could use social media and internet marketing to reach nontraditional legal consumers. Lawyers should emphasize they provide low cost or alternative fee services in their marketing. Websites and other marketing material should be user friendly and understandable. • A marketing strategy might target underserved populations by emphasizing the firm’s commitment to alternative fee arrangements, modest means clients, and unbundled services. 	Local and Specialty Bar Associations available at www.wisbar.org . Successful Business Planning: Representing the Moderate Income Client Income, Colorado Bar Association Modest Means Task Force.

Question	Yes	No	N/A	Suggested Systems & Practices	Resources
Do you have a website or do you use internet tools for marketing?				<ul style="list-style-type: none"> Use the internet to reach new clients. A good website can bring in business. The website could provide concrete information about fees and billing. Websites can also clearly explain the firm’s commitment to alternative fee structures, modest means, and unbundled services. 	<p>Christopher C. Shattuck, <i>Budget-friendly Marketing Methods to Attract New Clients</i>, Wis. Law. (Nov. 2020).</p> <p>Christopher C. Shattuck and Spencer X. Smith, <i>SEO 101: How to Drive Website Traffic</i>, Wis. Law. (Dec. 2020).</p>
Are you actively involved in the State Bar of Wisconsin or a local bar association or specialty bar association?				<ul style="list-style-type: none"> The State Bar of Wisconsin can help lawyers find pro bono resources and other valuable resources for working with modest means or indigent clients. 	Local and Specialty Bar Associations available at www.wisbar.org .
Do you market in nontraditional ways and reach out to underserved legal markets?				<ul style="list-style-type: none"> Consider advertising in diverse publications neighborhoods, and in languages other than English. Further, Wisconsin is a big state with many potential clients who need services that live outside of populous cities. 	<p><i>Reinventing the Law Firm Business Model</i>, Wis. Law. (Dec. 2016).</p> <p>Christopher C. Shattuck, <i>Going Rural: Insights from Park Falls to Monroe</i>, Wis. Law. (Sept. 2018).</p>
Objective 6: The Firm evaluates Success in Providing Access to Justice					
Do you track and evaluate the demographics of clients and where they are from?				<ul style="list-style-type: none"> Consider tools to be strategic in advertising, not just reactive. Data collection, for planning purposes, is crucial. 	Jeffrey Louis Brown, <i>Moving the Needle: Serving Wisconsin’s Low-income Residents</i> , Wis. Law. (Mar. 2017).
Do you interview clients at the end of representation to evaluate how they feel they have been treated in the legal system?				<ul style="list-style-type: none"> A satisfied client, and a client who understands what happened and why, is one who will leave with a sense of justice. That client will also refer other clients to the lawyer, even if the client “lost.” This is because, as Maya Angelou said, “people will forget what you said, people will forget what you did, but people will never forget how you made them feel.” 	
Do you or your law firm periodically review your success in reaching out to underserved populations?					

Module #10 — Wellness and Inclusivity

Lawyers understand that attention to work/life balance and support for diversity and inclusion initiatives have a positive impact on the profession. In 2015, the ABA Commission on Lawyer Assistance Programs and the Hazelden-Betty Ford Foundation published their study of nearly 13,000 practicing lawyers from 19 states. The study revealed that between 21-36 percent of the lawyers qualified as problem drinkers, 28 percent displayed depression, and 19 percent showed symptoms of anxiety. The study also revealed that nearly one third of the lawyers with these issues are under 30 years old and have practiced less than 10 years, indicating that many of our youngest lawyers are at risk. Reports by the National Task Force on Lawyer Well-being and Task Force on Wisconsin Lawyer Well-being have illustrated similar findings in recent years.

Meanwhile, attraction and retention of quality legal staff is a challenge due to the reduction in law school attendance, aging in the profession, and 21st century changing technology. Diversity is when you count people; inclusiveness is when you make people count. You need both to have sustainable diversity in your firm/organization. Studies show that to increase staff retention, it is better to keep staff happy, healthy, engaged, and motivated. This requires attention to improving cultural effectiveness.

This module presents questions to help you evaluate whether your practice promotes wellness and inclusivity. For resources, the Wisconsin Lawyers Assistance Program (WisLAP) offers confidential well-being support to lawyers, judges, and law students. WisLAP staff are available for phone and in-person consultations, self-care retreats, mental health trainings, onsite office hours and well-being presentations. Additionally, WisLAP trained volunteers are available for individualized peer-to-peer support upon request. WisLAP can be reached by phone at (800) 543-2625 and its website (wisbar.org/wislap) features links to resources, support groups, and articles on wellness issues.

The Center for Legal Inclusiveness, which is dedicated to “actively educating and supporting private and public sector legal organizations in their own individual campaigns to create cultures of inclusion,” supports lawyers looking to enhance diversity in their practice. The Center for Legal Inclusiveness promotes networking to connect lawyers to lawyers to build career satisfaction and success. Its social media pages offer updates on diversity and inclusivity issues on a local and national level. Other resources include the American Bar Association’s Office of Diversity and Inclusion, and What If I Say the Wrong Thing, by Verna Myers, also available through the American Bar Association. The State Bar of Wisconsin also offers Diversity and Inclusion programs.

Part A: Wellness

	Yes	No
Do you or your firm/organization recognize the importance wellness plays in a person’s professional and personal life? Do you have a plan to balance in your law practice?		
Does your firm/organization have trainings to reduce the shame and stigma surrounding mental health and substance use? Do you... <ul style="list-style-type: none"> • Have a nonpunitive method of adjusting the attorney’s workload until the issue is resolved? • Allow for lawyers/staff with any practice or personal problem to safely and confidentially identify themselves? • Review resources that help identify the warning signs for employee impairments? 		
Do you have a mentor, trusted colleague, family, or friend to whom you can turn for support if you experience a personal or practice difficulty (or both)? If not, WisLAP offers peer support from trained legal professional volunteers.		

	Yes	No
<p>Do you take steps to maintain a healthy work-life balance? These may include:</p> <ul style="list-style-type: none"> • Taking time to spend with family and friends; • Volunteering time through community service organizations; • Planning and taking time off; • Reading a new book; • Engaging in physical activity; • Practicing yoga or meditation. 		
<p>If you become stressed or anxious, do you know simple techniques to quickly reduce stress, including:</p> <ul style="list-style-type: none"> • Taking a deep breath; • Placing one hand on your upper chest, one on your abdomen, and breathing (a practice that activates calming neurotransmitters); • Opening your eyes and smiling (the act of smiling releases endorphins); • Thinking: “I have the resources to deal with this” and then using them; • Visiting a national website for mental health techniques to reduce stress (mhanational.org/living-mentally-healthy). 		
<p>Does your firm/organization have policies and procedures that encourage work life balance/integration, including:</p> <ul style="list-style-type: none"> • Taking entitled breaks: lunch breaks, sick leave, annual leave; • Family/parental leave; • Flexible hours when needed; • Implementing recommendations from published reports by the National Task Force on Lawyer Well-being and Task Force on Wisconsin Lawyer Well-being. 		
<p>Does your firm/organization provide/offer appropriate and regular quality of life programs during regular business hours, and is everyone encouraged and able to take advantage of them?</p>		
<p>Does your firm/organization’s work environment promote a healthy lifestyle, for example, ergonomically correct workstations, work breaks, walking paths, and access to healthy food and drink choices?</p> <ul style="list-style-type: none"> • Does management encourage their use? 		
<p>Does your firm/organization have appropriate resources to support individuals with mental health diagnosis (stress, anxiety, depression, bipolar, relationships, etc.)? Know that you can confidentially consult with WisLAP for resources and appropriate ways to begin difficult conversations about mental health.</p>		
<p>Does your firm/organization have a proactive written protocol and leave policy that covers the assessment and treatment of substance use and mental health problems, including a defined back-to-work policy following treatment?</p>		
<p>Does your firm/organization encourage all personnel to use accrued leave time, consider flexible work schedules, and eliminate artificial deadlines while continuing to provide competent, diligent representation?</p>		
<p>Does your firm/organization provide training to understand the signs and symptoms of substance use and mental health challenges, as well as to prevent burnout and social isolation?</p>		

	Yes	No
Does your firm/organization take initiative to support a personnel member's possible mental health concerns and undertake reasonable measures to support that person on a confidential basis?		
Does your firm/organization recommend to individuals who may be facing mental health or substance use concerns, and those concerned for them to contact the lawyers assistance program for confidential support?		
<ul style="list-style-type: none"> Is everyone aware of resources in the community? 		
Does your firm/organization have appropriate resources for programs to assist with substance-related and addictive disorders (alcohol, drugs, gambling, sex, food, etc.)?		
Does the firm/organization have a dedicated budget to wellness?		
<ul style="list-style-type: none"> Who is the designated person in charge of the budget? 		

Part B: Diversity/Inclusiveness

	Yes	No
Has your firm/organization developed a culture for creating a more diverse and inclusive workplace?		
<ul style="list-style-type: none"> Does this culture tie in with your firm/organization's business initiatives and strategies? 		
Have you taken steps to increase your awareness of implicit bias and other barriers that affect those underrepresented in the legal profession? Consider Project Implicit's free, available at https://implicit.harvard.edu/implicit/takeatest.html .		
Assess which groups you feel comfortable with, or have a natural affinity for, and take steps to meet with or market to groups that fall outside that list.		
<ul style="list-style-type: none"> Acknowledge that these steps may make you uncomfortable and fearful of saying or doing something that may offend others, but that you may become comfortable once you get past the "uncomfortable." 		
Develop and implement an inclusive plan that includes a written statement that defines inclusivity and the benefits you hope to gain from being inclusive.		
Does your firm/organization regularly review the compensation structure to ensure it demonstrates equal opportunities for all?		
Has your firm/organization devised measures to evaluate diversity and inclusion initiatives and ensure accountability?		
Has your firm/organization identified a person, department, committee to monitor your diversity/inclusiveness efforts?		
<ul style="list-style-type: none"> Does everyone in the firm/organization have a role in its success? 		
Does the firm/organization have a dedicated budget to support diversity/inclusiveness efforts?		
Has the firm/organization implemented training sessions for employees that focus on issues related to diversity/inclusiveness?		

Part C: Catch All

	Yes	No
Does management/senior staff set a good example for staff by creating, implementing, and monitoring dependable office policies and systems, including work-life balance and mentoring programs?		
Does your firm/organization offer networking and other events that aren't centered around consuming alcohol?		
Does your firm/organization treat all communications as confidential to the extent consistent with their duties to protect clients, and to comply with the rules of professional conduct, state or federal rules, regulations or statutes? <ul style="list-style-type: none"> Does your firm/organization handle all protected health information in accordance with state and federal laws? 		
Are the above policies reviewed regularly (minimum every year) for effectiveness and current, up-to-date standards and information?		
Does Human Resources or management conduct exit interviews that allow for an honest and respectful discussion?		