

MEMORANDUM

To: All Law Students Engaged in Pro Bono Work
From: Angela F. Schultz, Assistant Dean for Public Service
Re: Professional Responsibilities of Law Students Engaged in Pro Bono Work



Legal education is generally a passageway to careers of service in the law. The standards of responsibility for that service are high. The responsibilities of law students are of course different from those of lawyers. Yet in a real sense professional responsibility begins upon entering law school. Before you graduate from law school, you will be required to complete a course in professional responsibility in which you will learn the professional and ethical obligations of an attorney. This memo will outline the issues of which you should be aware as you begin what we hope will be a lifelong practice of pro bono service.

Unauthorized Practice of Law

Wis. Stat. 757.30 Penalty for practicing without license.

(1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

As a law student, you will be viewed by non-lawyers as possessing legal knowledge and skills and are likely to receive requests for legal advice or assistance from family, friends, and even strangers. It is unethical, but more importantly illegal, to offer legal advice, assistance or representation, draft documents, or in any way appear to be giving a legal opinion to a person or entity unless you are licensed to practice in that jurisdiction. If someone were to rely on your advice, you could cause grievous harm. A disclaimer that you are “just a law student” is not sufficient. Not only could you be subject to civil or criminal penalties, you could jeopardize your future admission to the Bar.

In the context of pro bono placements, it is essential that you do not give anything that could be construed as legal advice to a client or prospective client. Legal advice is when the law is applied to a specific set of facts. For example, if a client asks “Do you think I’ll win my case?” or “What should I say in court” or “Which pieces of evidence will be most persuasive?”, the answers to each question requires an analysis of the facts in that case and how the law applies. Without a license to practice law, you cannot answer those questions. On the other hand, as you progress in your pro bono work and your legal education generally, you will have legal information that you can share with people without running afoul of the unauthorized practice of law rule. For example, if a client asks “Where should I file these forms?” or “How many copies will I need to bring to court?” or “What is the process to have the other party served with a copy of the lawsuit paperwork?”, you may answer these questions as you develop the knowledge to answer accurately. In summary, legal advice is specific to a particular set of facts and may only be provided by licensed attorneys. Legal information is general and the answers will not differ based on the specific facts of the case. If you are ever uncertain about where the line should be drawn, talk with the supervising attorney of your pro bono placement, or consult with any members of the Office of Public Service.

Confidentiality

Wisconsin Supreme Court Rule (SCR) 20:1.6(a).

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and

except as stated in pars. (b) and (c).

When volunteering or working in a legal clinic or law office, you are likely to learn information about the clients and potential clients of the attorney, firm, or organization for which you are working. Almost without exception, this information is considered “confidential” which means it is protected by the ethical obligation of confidentiality regardless of the source of the information (even information that is also contained in the public record) and should not be discussed with others outside the clinic, office, firm, or organization.

Although you are not yet a lawyer, you have an obligation to the attorneys who are supervising you and to the organization’s clients to keep this information confidential. This is true even after you have left the firm or organization and regardless of whether the matter has been resolved.

On a related note, you may feel that something you have prepared during your pro bono placement would be a good writing sample for a future job search. Be aware that you must first get permission from your supervising attorney and then be sure to “redact” (black out) any confidential information that could identify the client(s).

Conflicts of Interest

SCR 20:1.7 Conflicts of interest current clients.

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

Under the Wisconsin Supreme Court Rules of Professional Conduct, a lawyer cannot work for a client and the adverse party on the same matter. A lawyer is also prohibited from working for the adversary of a former client if the lawyer possesses confidential information about the former client that could adversely affect the client.

Although you are not yet a lawyer, the conflict of interest rules apply to you both as a future attorney and as a non-lawyer volunteer working with an attorney. The confidential knowledge gained from working in a legal clinic or law office can place you in a situation that could potentially create a conflict of interest for you in subsequent volunteer positions or employment. For example, if at one point you worked for a firm that represented a landlord, then, while volunteering with a legal clinic, became involved in a landlord/tenant dispute against that same landlord, it would be a conflict of interest for you to work on the case. You would have an obligation to inform the supervising attorney (but not the client because of confidentiality concerns) of your conflict.

While the process of determining whether there is an actual or a potential conflict of interest will be an essential part of your practice of law, there are special rules governing the type of clinics that we operate, including the Marquette Volunteer Legal Clinics (MVLC) and Marquette Legal Initiative for Nonprofit Corporations (M-LINC) clinics which allow us to proceed with giving advice to the client without going through the process of determining the existence of conflicts or creating future conflicts. This rule does not include actual conflicts of interest which the attorney or you may have based on actual knowledge of a conflict.

SCR 20:6.5 Nonprofit and court-annexed limited legal services programs.

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to SCR 20:1.7 and SCR 20:1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to SCR 20:1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by SCR 20:1.7 or SCR 20:1.9(a) with respect to the matter. (b) Except as provided in par. (a)(2), SCR 20:1.10 is inapplicable to a representation governed by this rule.

While the rule provides an exception to the requirement that conflicts be ruled out, there may, nevertheless, be certain actual conflicts that prevent us from providing legal advice. For example, an attorney knows of a conflict because the firm represents the opposing party. Or, a student knows of a conflict through work for a company involved in the matter or actually knows a party to the action.

If it occurs that there is an actual conflict that prevents the attorney or you from meeting with the client, there will likely be another attorney or student at the clinic that does not have a conflict of interest. If there is no one available and the client cannot be seen, this information should be conveyed to the client by the attorney or the clinic supervisor, not by the student. Also, the circumstances of the conflict or the fact that a conflict exists should not be shared with the client as this itself may constitute a breach of confidentiality.

Misconduct and Bias

SCR 20:8.4 Misconduct.

- (i) It is professional misconduct for a lawyer to harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities.

Rule Comment from ABA Model Rules.

Discrimination and harassment by lawyers in violation of paragraph (i) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (i).

Working in a pro bono setting means working with a wide variety of people from various backgrounds. Most clients in pro bono clinics are living near the poverty level. Most lawyers and law students have never experienced that level of hardship, though some have. Pro bono clinics are a place where everyone involved—from the clients to the volunteer law students to the volunteer lawyers—should be treated with respect and dignity. If any person involved with a pro bono project ever feels targeted with bias in any form, that person is encouraged to speak with Dean Schultz or any member of the Office of Public Service.

Conclusion

As lawyers and law students, our professional responsibilities require that we use our skills, even while public citizens, in furtherance of justice for all.

Should anything arise during your pro bono placement that you have questions about, whether touching on the issues raised in this memo or anything of a professional or ethical nature, feel free to contact Dean Schultz (angela.schultz@marquette.edu) or Director Mertz (kathryn.mertz@marquette.edu).